

MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION)

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JACOB KAISER (U.S.A.) *v.* UNITED MEXICAN STATES

*(October 15, 1928. Pages 80-87.)*

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*Commissioner Fernández MacGregor, for the Commission:*

This claim is presented by the United States of America on behalf of Jacob Kaiser, a naturalized American citizen, who, it is alleged in the Memorial, was without justification deprived of his liberty on February 4, 1911, held *incomunicado* under confinement in the prison of the city of Morelia, Michoacán, Mexico, for a period of five days and later in the Penitentiary of Mexico City for seventy-four days, and finally released on bail under obligation not to leave Mexico City. It is alleged that during the entire time of his confinement the claimant suffered harsh and oppressive treatment and that no judicial procedure was carried out against him to elucidate the acts charged against him. By virtue of the suffering to which he was subjected by the Mexican authorities, the United States claims on his behalf damages in the amount of fifteen thousand dollars with the corresponding interest thereon.

The Mexican Government has submitted as a primary defense against this claim that the case does not come within the jurisdiction of this Commission, as it appears from the evidence presented that the claim arose in the year 1911, having its origin in the revolutionary disturbances which took place in Mexico between November 20, 1910, and May 31, 1920. It alleges, therefore, that pursuant to Article I of the Convention of September 8, 1923, and according to Article III of the Convention of September 10, 1923, this case is beyond the jurisdiction of the Commission. The preamble of the General Claims Convention of September 8, 1923, says: "The United States of America and the United Mexican States, desiring to settle and adjust amicably claims by the citizens of each country against the other since the signing on July 4, 1868, of the Claims Convention entered into between the two countries (*without including the claims for losses or damages growing out of the revolutionary disturbances in Mexico which form the basis of another and separate Convention*), have decided to enter into a Convention with this object, etc., etc...." Article I of that Convention provides, in short, the submission to this Commission of all claims against Mexico or against the United States "*except those arising from acts incident to the recent revolutions.*"

The United States does not predicate this claim upon some loss or damage caused by revolutionists or resulting directly from some revolutionary act, but upon a deficient administration of justice by an established Government, which neither arises from nor may be attributed to revolutionary movements. The mere fact that the claim arose during the period beginning on November 20, 1910, and ending on May 31, 1920, does not preclude the jurisdiction of this Commission, provided that the damaging fact or act does not have its origin in the revolution itself. Therefore I believe that the claim presented comes clearly within the jurisdiction of this General Claims Commission.

With regard to the basic point of the matter, the first charge to be examined is that the claimant was arrested without cause by the authorities of Morelia. It appears from the evidence presented by the Mexican Government that a charge was brought before the Political Prefect of Morelia that Kaiser was a seditious propagandist. It appears that he made proposals to a certain Ernesto Ortiz Rodríguez (who was the accuser), formerly a lieutenant, to take part in an uprising, and that thereupon he repeated them before Police Commandant Camilo Martínez, who was present in disguise. It is not shown that Ortiz Rodríguez was a member of the police force of Morelia. After he was arrested his declaration was taken, in which he did not deny having offered the invitation imputed to him to raise men for the Madero revolution; but he added, first, that he had done so for the purpose of ascertaining the opinions of others in order to publish an article in some foreign periodical; and, later, that his object was to find out whether the individuals with whom he was talking were involved in any plot or conspiracy against the Government so that he might inform the Police Prefect of that place. In view of these declarations, the Police Prefect of Morelia arrested him, sending him temporarily to the Police Headquarters pending his being sent to the City of Mexico. The foregoing facts suffice, in my opinion, to establish that the Mexican authorities who brought about his arrest had sufficient cause, required by international law, as there were grounded suspicions that the claimant was committing a crime for which Mexican law provides a penalty.

It is alleged that Kaiser suffered inhumane treatment during his incarceration in the City of Morelia. In a letter which he wrote, from the Penitentiary of Mexico on March 25, 1911, to a friend of his, he says: "I was thrown in a cell dirty and filthy, in a manner indescribable, without a bed of any kind, on the bare stones, without bread or water for several days, except what little I could buy . . ." From the evidence presented by the Mexican Government it is gathered that Kaiser was not in the general prison at Morelia but in the Police Headquarters which, it is asserted, is a spacious, commodious and clean building, where sanitary conditions prevail, his being placed there having been a special mark of consideration; and that he received good treatment there, and that because he refused to eat the food intended for the prisoners he was furnished food from a restaurant as requested by him. It is probable that this food was paid for by the claimant. Kaiser's statement not being supported by evident proof, I do not believe that doubt should be cast on the declaration of the Mexican authorities as to the good treatment which the prisoner received.

On February 9 the claimant arrived in Mexico City, consigned to the Inspector General of Police of that city. This official consigned him

to the First District Judge of Mexico who was trying the case against Francisco I. Madero and associates for the crime of rebellion. This is proved because it is set forth in a document presented as Annex 3 to the Mexican Answer, which is a certification of the several pieces of evidence relating to Kaiser's case in the suit referred to. The Court headed the document in question saying: "that in Volume VIII of the case tried in this Court which then had only the designation of First District Court, in the month of April, 1911, *versus* Don Francisco I. Madero and Associates, on folio 1075, there is a document reading as follows: . . ." and there are thereupon copied the pieces of evidence referring to Kaiser. Before the First District Judge of Mexico City Kaiser ratified the declaration he had given before the prefect of Morelia, and as that Judge found grounds for bringing him to trial, he issued orders for his formal commitment on February 10th, holding him accountable for the crime of rebellion, as defined in Chapter I, Title XIV, Book III of the Penal Code of the Federal District. The record does not show what the Judge did during this period.

With these facts as a basis, the American Agent contended (1) that the First District Judge did not issue the order of formal commitment within the period of seventy-two hours provided by Mexican Law, thereby incurring a denial of justice; (2) that moreover the order of formal commitment was given in the absence of any grounds for bringing the claimant to trial. The Mexican Agent argued, with regard to the first charge, that the order for formal commitment, according to Article 142 of the Federal Code of Criminal Procedure, should be issued within 72 hours, but counting from the time that the defendant is placed at the disposition of his judge, explaining that Kaiser's judge was the First District Judge of Mexico, as it was he who had jurisdiction over the entire proceedings against Don Francisco I. Madero and associates, because of which, as has been seen, according to Mexican law, Kaiser's case had to be incorporated with the principal case, he being charged with complicity with the rebels. Thus, although Kaiser was apprehended on February 4, as he did not arrive in Mexico City until the 9th of that month, the decree of formal commitment which was issued on the 10th was within the legal period. It seems to me that the reasoning advanced by the Mexican Agent is supported by the evidence offered and by Mexican jurisprudence, to which he referred in his pleading and that therefore no complaint can be predicated on a defective administration of justice on this point. Now, with regard to the District Judge not having sufficient ground to decree the formal commitment of Kaiser, the evidence submitted by Mexico shows that Kaiser confirmed to the Judge the conversations which he had had in Morelia with Ortiz Rodríguez, and with Camilo Martínez, conversations having to do with an invitation to join a revolutionary movement and therefore there was sufficient cause, as required by International Law, to consider that that invitation was a culpable act, it being in order to define it, according to Mexican law, after all the circumstances of the case were known, that is, upon the conclusion of procedure against Kaiser. It is reasonable that the Judge could not accept, *prima facie*, Kaiser's excuse for those conversations, attributing them to the desire to obtain reports for some definite purpose, inasmuch as his obligation was to investigate thoroughly the facts of the case, which he could only do by proceeding with the investigation. It is to be observed with regard to the charge under examination, that, as was pointed out

by counsel for Mexico, at that time this country was involved in a serious internal crisis and that the Government was struggling for its life. In such circumstances it had the right and even the duty to prevent and punish with greater severity than ever the attacks directed against it, it not being possible to take lightly the simple statements or excuses of suspects.

It was submitted in the American Memorial that Kaiser's confessions had been obtained by exercise of force. The charge is not repeated in any of the other documents presented by the complainant Government and I do not believe that the evidence presented supports such a conclusion. The report of the Mexican judge states that he ratified his declaration "spontaneously and without pressure of any kind having been exerted."

It is alleged that during Kaiser's confinement in the Penitentiary he received bad treatment and was held the entire time *incomunicado*. Regarding the first charge, the claimant says in a letter to a certain Wildermuth, that he "was taken to the Penitentiary and the treatment accorded him there was much better, with sufficient food, a fair bed, and that, except the food all is very clean. . . ." Mexico presented a report of the Judge who tried the Kaiser case in which he says, "the defendant is being held at my disposition in the Penitentiary where he is accorded the same consideration and attention as all the others, being subject to the penitentiary regime and he is furnished with sanitary and abundant food, it being publicly and generally known that this is what the prisoners are given". In view of the foregoing evidence it would not appear that the charge of illtreatment in the Penitentiary of Mexico can be sustained.

The charge that Kaiser was held *incomunicado* during the entire period of his confinement is based on the following salient facts: During his detention in Morelia he wrote several letters, which were intercepted and held for the purpose of being added to the record; two friends of the claimant tried to see him in Mexico City at the Sixth Ward Police station and for three weeks they were unable to see him. Counsel for Mexico alleged that every defendant, according to Mexican law, may be held *incomunicado* for 72 hours and during that time his correspondence may be held; Kaiser's letters which appear in the record were written in Morelia during that period. The foregoing involves no violation of either Mexican or international law.

It furthermore appears, in a way, that Kaiser was sent to Mexico City expressly for the purpose of enabling him, through his friends, to clear himself, as the Prefect of Morelia says in a report: "In view of the circumstances stated, the German, J. A. Kaiser, brings suspicion upon himself; and moreover since he can not furnish any references and *inasmuch as he states that in that Capital (Mexico City) it will be easy for him to do so*, I have deemed it proper to send him, placing him at your disposition" etc. Still further, as early as February 13 he was interviewed by the German Chargé d'Affaires; according to the claimant's own statement, the American Ambassador had contact with him *a number of times* through two of the claimant's friends, he then reiterating that he was reached by his two friends. He affirms all this in a letter which he wrote in the Penitentiary on March 25 and which it appears reached its destination.

In that letter Kaiser affirms that he could not communicate even with a lawyer and the American Brief emphatically reiterates this charge, stating:

"In any event, it is clear that the Mexican authorities prevented the claimant from obtaining the evidence which he deemed necessary for his vindication" and later "it patently amounted to an act of injustice on the part of Mexican authorities in actively preventing the claimant from properly preparing his defense."

But the evidence submitted by Mexico shows that almost as soon as the defendant was brought before his judge he appointed defending counsel, this taking place on February 10th.

The plaintiff government also argues that after the judge had taken the first steps in the Kaiser process the trial was completely suspended. In this respect it is pertinent to observe: (a) that the evidence submitted by the Mexican Government does not purport to include all the procedure in the case of the claimant; (b) that the Mexican judge had before him, as has already been stated, a very complicated process against all the partisans of Madero and that that of Kaiser was incorporated with the principal case, on account of which any delay which might be involved probably should not be adjudged, criticizing parts of the case instead of the entire process as a whole. In a document from the Secretariat of Justice of Mexico, offered as evidence by the respondent Government, it is stated in this regard: "As the record is very voluminous and the personnel of the defendants very numerous, notwithstanding the preference which has been accorded in its handling, it has not yet been possible to put it into shape for submission to the Agent of the *Ministerio Público* and steps continue to be taken in the case because almost daily new defendants are arriving from different States of the Republic". In all events it appears that the judge did not, in so far as Kaiser was concerned, go beyond the period which Mexican law fixes for closing the investigation, a period which, for the reasons stated, this Commission has, on other occasions considered proper to bear in mind. (See *Roberts* case, Docket No. 185.)<sup>1</sup>

The last charge brought against the Mexican authorities is that they released the claimant without ever showing by means of a trial that he had committed a crime. The record shows that Kaiser was released on bail on April 28th and counsel for Mexico argued that this was done as a special concession. It seems that Mexican law makes provision for bail for defendants who merit a penalty of less than five years' imprisonment and it may be assumed that that benefit could have been accorded to the defendant if he had requested it earlier.

Kaiser's release on bail does not indicate that the Mexican authorities considered him to be innocent; his trial would have been continued possibly if the triumph of the Madero revolution had not intervened less than a month after the claimant left the Penitentiary.

In view of the foregoing analysis I do not believe that Kaiser has suffered either a denial of justice or mistreatment.

#### *Decision*

The claim of the United States of America on behalf of Jacob Kaiser v. the United Mexican States is disallowed.

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<sup>1</sup> See page 77.