

(English Translation from Spanish Original)

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES
WASHINGTON, D.C.

IN THE PROCEEDING BETWEEN

EMILIO AGUSTÍN MAFFEZINI
(CLAIMANT)

and

THE KINGDOM OF SPAIN
(RESPONDENT)

CASE NO. ARB/97/7

RECTIFICATION OF THE AWARD

Members of the Tribunal

Professor Francisco Orrego Vicuña, President
Judge Thomas Buergenthal, Arbitrator
Mr. Maurice Wolf, Arbitrator

Secretary of the Tribunal

Mr. Gonzalo Flores

Representing the Claimant

Dr. Raúl Emilio Vinuesa
Dra. María Cristina Brea
Dra. Silvina González Napolitano
Dra. Gisela Makowski
Estudio Vinuesa y Asociados
Buenos Aires
Argentina

Representing the Respondent

Mr. Rafael Andrés León Cavero
Abogado del Estado
Subdirección General de los
Servicios Contenciosos del
Ministerio de Justicia
Madrid
Spain

Date of dispatch to the parties: January 31, 2001

THE TRIBUNAL

Composed as above,

After deliberation,

Makes the following decision:

Procedure Leading to the Rectification of the Award

1. On November 13, 2000, the Arbitral Tribunal constituted in this case rendered its Award. On the same date, and in accordance with Rule 48 of the Rules of Procedure for Arbitration Proceedings (Arbitration Rules), the Acting Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID or the Centre) dispatched a certified copy of the Award to Mr. Emilio Agustín Maffezini (the Claimant) and to the Kingdom of Spain (the Respondent), indicating the date of dispatch on the original text and on all copies.
2. On December 13, 2000, the Kingdom of Spain submitted to the Secretary-General a request for rectification of the Award in accordance with Article 49(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) and Arbitration Rule 49.
3. On December 27, 2000, the Kingdom of Spain submitted to the Centre the lodging fee for the rectification of an Award prescribed in Arbitration Rule 49(1)(d).
4. On January 2, 2001, the Acting Secretary-General, pursuant to Arbitration Rule 49(2), registered the request for rectification of the Award submitted by the Kingdom of Spain and, on the same day, notified the parties of the registration, transmitted to the Claimant a copy of the request for rectification and transmitted to each member of the Tribunal a copy of the notice of registration, together with a copy of the request.

5. On January 4, 2001, pursuant to Arbitration Rule 49(3), the Secretary of the Tribunal informed the parties of the Tribunal's decision that it would not be necessary for the Tribunal to meet in order to consider the request for rectification of the Award. The Secretary of the Tribunal also communicated to the parties the time limits for the parties' filing of their observations on the request and the proceeding to be followed for the consideration of the request.

6. In accordance with the schedule set by the Tribunal, the Claimant, on January 9, 2001, announced that he did not have observations to file with respect to the request for rectification of the Award submitted by the Kingdom of Spain. The Kingdom of Spain did not file any additional observations on the request for rectification of the Award.

7. The Tribunal, by means of telephone communication and mail correspondence, deliberated on the request for rectification of the Award submitted by the Kingdom of Spain, unanimously reaching the present decision.

Summary of the request for rectification submitted by the Kingdom of Spain

8. The Kingdom of Spain, in its request for rectification of the Award has asked that the word "official" used in line 14 (line 13 in the English version of the Award) of paragraph 45 of the Award be substituted by "employee."

9. Said request for rectification is based on the Kingdom of Spain's conviction "that due to a transcription error, it is affirmed in the Award that the Kingdom of Spain recognizes in its allegations that the employees of SODIGA were 'officials', which is exactly the contrary of what it has alleged and defended in its arguments."

10. The Respondent likewise states that "in a sufficiently precise and documented manner, the Kingdom of Spain has presented the legal distinction between employee and official, defending in its allegations that the employees of SODIGA were not officials from a legal standpoint, but rather employees within the framework of labor law. [...] It is therefore not possible to impute to Spain recognition of the official status of an employee which has never been made."

11. In support of said affirmations, the Kingdom of Spain cites its counter-memorial of April 9, 1999, in which it states, on page 91, “But it is that in addition, [...] **its employees (sic. Those of SODIGA S.A.) are not officials** whose services are regulated by the standard for Spanish public officials. What is involved is a corporation regulated by Spanish commercial private law, which is subject to judgment before Spanish civil courts and whose **workers are employees**, bind to their employer under a relationship regulated by Spanish labor laws.” (emphasis and clarification in parenthesis in the original request for rectification).

12. As a consequence, the Kingdom of Spain sustains that “that which most conforms with what has been truly alleged by Spain, whose legal position is intended to be summarized in section 45 of the award [...] is the following: ‘According to Spain, the transfer of funds to EAMSA was fully authorized by Mr. Maffezini and was carried out by an employee of SODIGA acting in his personal capacity...’” (emphasis in the original).

Considerations

13. Article 49(2) of the ICSID Convention establishes that “The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award.”

14. Arbitration Rule 49 supplements that which is stated in the above-mentioned paragraph, establishing that “within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or rectification of, the award,” with the requirement that the request, among other requisites, “state in detail any error in the award which the requesting party seeks to have rectified.”

15. The Kingdom of Spain filed its request for rectification of the Award on December 13, 2000, and submitted its fee for lodging a request for rectification, as prescribed by Arbitration Rule 49(1)(d), on December 27, 2000, that is, within 45 after the date on which the Award was rendered.

16. Paragraph 45 of the Award dated November 13, 2000 forms part of section C of said Award, entitled *Summary of Facts and Contentions*. In said paragraph 45, the Arbitral Tribunal described the arguments presented by the Kingdom of Spain in its oral and written pleadings.

17. The rectification requested by the Kingdom of Spain appropriately summarizes the arguments set forth by the Respondent in the present proceeding.

18. The request of the Kingdom of Spain seeks, as a consequence, the rectification of a material error in the Award of November 13, 2000, as prescribed by Article 49(2) of the ICSID Convention.

19. Having received no objections from the Claimant, and in view of the modification of the summary of arguments by the Respondent as set forth by the Respondent itself, this Tribunal finds it appropriate to grant the request for rectification of the Award filed by the Kingdom of Spain.

20. For the purpose of Arbitration Rule 49(4) the present decision refers to the terms of the Award dated November 13, 2000, relating to the matters indicated in Arbitration Rule 47(1)(a-g). In accordance with Article 49(2) of the ICSID Convention, the present decision constitutes an integral part of the Award.

Decision

21. For the reasons stated above, the Tribunal unanimously decides:

- (1) To grant the request for rectification of the Award submitted by the Kingdom of Spain on December 13, 2000, thereby substituting in line 14 (13 in the English version of the Award) of paragraph 45 of the Award the word “employee” for the word “official.”
- (2) Each of the parties shall bear the entirety of the costs of its own expenses and legal fees for its own counsel resulting from the present rectification proceeding.

So Decided.

[signature and date]
Francisco Orrego Vicuña
President of the Tribunal

[signature and date]
Thomas Buergenthal
Arbitrator

[signature and date]
Maurice Wolf
Arbitrator