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Weidenhaus Case—Decision No. 9

28 April 1952

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DONE in Rome, this 11th day of April 1952.

*The Representative of the
United States of America
on the
Italian-United States
Conciliation Commission*

(Signed) Emmett A. SCANLAN, Jr.

*The Representative of the
Italian Republic
on the
Italian-United States
Conciliation Commission*

(Signed) ANTONIO SORRENTINO

WEIDENHAUS CASE—DECISION No. 9 OF
28 APRIL 1952¹

Compensation under Article 78 of Peace Treaty—War damages—Nationality of claimant—National of United States—National of one of the other United Nations at time damages occurred—Sale of property in its damaged condition to Italian nationals—Retention of right to claim compensation under Peace Treaty—Reference to decision No. 5 rendered in Carnelli case—Measure of damages.

Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre — Nationalité du réclamant — Ressortissant des Etats-Unis — Ressortissant d'une autre Nation Unie à la date du dommage — Vente des biens endommagés à des ressortissants italiens — Persistance du droit du réclamant de se prévaloir de l'indemnité prévue par le Traité de Paix — Référence à la décision n° 5 rendue dans l'affaire Carnelli — Evaluation des dommages.

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy pursuant to Article 83 of the Treaty of Peace and composed of Antonio Sorrentino, Representative of the Italian Republic, and Emmett A. Scanlan, Jr., Representative of the United States of America, after due consideration of the relevant articles of the Treaty of Peace and the pleadings, documents and evidence and the arguments and other communications presented to the Commission by the Agents of the two Governments, and having carefully and impartially examined same, finds that it has jurisdiction to adjudicate the rights and obligations of the parties hereto and to render a decision in this case which is embodied in the present award.

¹ *Collection of decisions*, vol. I, case No. 7.

Appearances: Mr. Francesco Agrò, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Charles E. Higdon, Agents of the United States of America.

STATEMENT OF THE CASE:

This case concerns a dispute which has arisen between the Government of the United States of America, acting on behalf of (Mrs.) Lucia Schwarz Weidenhaus, and the Government of the Italian Republic in regard to the interpretation and application of Article 78 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947, and the Agreements supplemental thereto or interpretative thereof. The object of the dispute is to obtain on behalf of (Mrs.) Lucia Schwarz Weidenhaus (hereinafter referred to as the claimant) indemnity for war damages to her interest in certain real property in Italy, reimbursement for expenses incurred by the claimant in the preparation of her claim, and such other relief as may be just and equitable.

The material facts are as follows:

The Embassy of the United States of America in Rome certified that the claimant is now and has been at all times since her naturalization on July 1, 1946 a national of the United States of America. Prior to becoming a national of the United States of America, it appears that the claimant was a national of the Czechoslovakian Republic on September 3, 1943 and on the date that the loss involved here was sustained. There was submitted in evidence a Certificate of the Czechoslovak Consul General in New York, New York, certifying the foregoing facts and stating that the claimant

... was considered a Czechoslovak citizen until August 2, 1945, the date of the issuance of Constitutional Decree No. 33/45 ruling upon the question of Czechoslovak citizenship.

Czechoslovakia was one of the signatory Powers to the Treaty of Peace with Italy; and the fact that the claimant is a "United Nations national" within the meaning of this term as defined in paragraph 9 (a) of Article 78 of the Treaty of Peace is not in dispute.

The original Statement of Claim was executed in behalf of the claimant by her legal representative, Architect Fridolino Munnich, a resident of Bolzano, Italy; and satisfactory documentary proof of the authority of such legal representative to act in behalf of the claimant in this matter was submitted in evidence.

On December 1, 1921 there was registered in the Office of Land Registry of the Province of Bolzano a Certificate of Inheritance (No. A III 373/19/18, dated May 4, 1921) showing the claimant to be the owner, by inheritance from her father, of an undivided one-sixth (1/6) interest in the real property which is the subject of this claim. In the Statement of Claim the building is described as a large three-storey building with basement. Located approximately fifty (50) metres from railroad facilities, this building suffered heavy damages on and after December 2, 1943 as a result of aerial bombardments.

On March 4, 1947 the claimant joined with her two brothers in executing a Deed which conveyed her interest in this real property to Dr. Giuseppe Parteli and Guglielmo Parteli and Virgilio Parteli. This contract, which was recorded and transcribed according to Italian law in the Province of Bolzano on May 3, 1947 under Entry No. GN 448/47, shows that the property was sold in its damaged state for a valuable consideration and reads in part as follows (in translation):

The sellers do not transfer, by reason of having transferred their share of co-ownership in the real property described above, the war damages to which they are entitled and, therefore, reserve every action and right due to them for compensation for such damages.

On September 15, 1947 the Treaty of Peace with Italy entered into force.

On November 29, 1949 the Embassy of the United States of America in Rome, on behalf of the claimant, submitted to the Ministry of the Treasury of the Italian Republic a claim for war damages based on Article 78 of the Treaty of Peace.

On October 16, 1950 the Ministry of the Treasury of the Italian Republic advised the Embassy of the United States of America that, since the claimant had sold her interest in the damaged property prior to the entrance into force of the Treaty of Peace, the claim could not be accepted because the claimant was not an "owner" within the meaning of this term as defined in paragraph 9 (b) of Article 78 of the Treaty of Peace.

The Embassy of the United States of America in its letter of October 31, 1950 informed the Ministry of the Treasury of the Italian Republic that it could not accept the position taken by the Italian authorities, and made reservation to submit the dispute to the Conciliation Commission established under Article 83 of the Treaty of Peace.

On January 29, 1951 the Agent of the United States of America filed the Petition in this case. Having premised the statement of the case, the Petition states the issue involved as being:

Is a national of the United States, who was a national of one of the other United Nations at the time the damages occurred, whose property in Italy suffered damages during the war in December 1943, and who normally has a claim for such losses under Article 78 of the Treaty of Peace, precluded from receiving compensation if the property was sold to an Italian national on March 4, 1947, i.e., . . . before the effective date of the Treaty of Peace?;

and concludes by requesting the Commission to:

(a) Decide that the claimant is entitled to receive from the Italian Republic two thirds of the sum necessary at the time of payment to make good the loss suffered, which sum is estimated to be 3,314,230.50 lire as of October 15, 1949, subject to the necessary adjustments for variations in values between October, 1949 and the final date of payment;

(b) Decide that the claimant is entitled to receive reimbursement of the full amount of 70,000 lire as expenses incurred in the preparation of her claim;

(c) Order that the costs and incidental to this claim be borne by the Italian Republic;

(d) Give such further and other relief as may be just and equitable.

The Answer of the Italian Republic filed on February 28, 1951 maintains in substance that the legal question involved in this case is the same as the legal question involved in the dispute between the two Governments regarding the claim of *Elena Iannone Carnelli* (Case No. 1), which was then pending before the Commission. The questions of fact regarding the ownership of the subject property and the nature of the damages thereto are not controverted in the Answer by the Government of the Italian Republic, which made reservation regarding the foregoing question of law and the questions involving evaluation of the damages. Pleadings and documents were submitted thereafter by the

Agents of the two Governments as provided for by the Rules of Procedure and Orders of the Commission.

In its Order of October 16, 1951 the Commission specifically requested the Agents of the two Governments to submit:

Documentary evidence of any factors which the Agents of the two Governments believe should be considered by the Commission in adjusting to present-day values the estimates of damages approved on October 15, 1949 by the Office of the Civil Engineers of Bolzano.

In compliance with this Order, the Agents of the two Governments developed the question of evaluation of the damages to the property here involved. The Agent of the United States of America filed with the Commission a new Estimate of Damages based upon official price indices, showing the sum necessary to repair the damages to the subject property as of April 1, 1951 to be Twenty-three Million, Six Hundred Seventy-Five Thousand, Four Hundred Twenty-seven (23,675,427) Lire, rather than Nineteen Million, Six Hundred Sixty-five Thousand, Three Hundred Eighty-three and seven tenths (19,655,383.70) Lire (the amount of the Estimate submitted with the original Statement of Claim). On the basis of this new Estimate of Damages, the Agent of the United States of America asserted that the loss sustained, as a result of the war, to the claimant's undivided one-sixth (1/6) interest in the subject property had increased from Three Million, Three Hundred Fourteen Thousand, Two Hundred Thirty and five tenths (3,314,230.50) lire to Three Million, Nine Hundred Forty-five Thousand, Nine Hundred Four (3,945,904.00) lire, and in support thereof submitted detailed technical data. Similarly, the Agent of the Italian Republic filed with the Commission an Estimate of Damages prepared by officials in the Ufficio Tecnico Erariale in Bolzano and technical data in support thereof.

On March 4, 1952 the Commission entered its Decision in the case of *The United States of America ex rel. Elena Iannone Carnelli vs. The Italian Republic*, Case No. 1 (Decision No. 5).¹ In that case the Commission held that Article 78 of the Treaty of Peace provides that those United Nations nationals whose property sustained damages as a result of the war and who thereafter sold their property in its damaged state prior to the entrance into force of the Treaty of Peace with Italy were not to lose their right to compensation under Article 78, even though the purchaser of the property in its damaged state was not a United Nations national.

As the question of law in the instant case is identical with the question of law involved in the Carnelli case, *supra*, the Commission finds that the claimant in this case has the right under Article 78 of the Treaty of Peace to receive compensation for damages suffered as a result of the war to her interest in the real property which is the subject of this claim.

At its sitting on February 28, 1952 and on March 20, 1952 the Commission heard the discussion and arguments of the Agents of the two Governments on the points of disagreement involved in the technical Estimates of Damages, and particularly on the question of depreciation. On the basis of the technical evidence submitted regarding evaluation of damages, and considering the statements made on March 20, 1952 by the Agents of the two Governments regarding their efforts to reach an agreement in this case, the Commission finds that at the date of this Decision the amount necessary to make good the loss suffered by the claimant, as a result of the war, to her undivided one-sixth (1/6) interest in the subject property is Three Million, Three hundred Forty-

¹ *Supra*, p. 86.

Five Thousand (3,345,000) lire. Under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace and the Agreements supplemental thereto or interpretative thereof, the claimant is entitled to receive as compensation two-thirds (2/3) of this sum, namely, Two Million, Two Hundred Thirty Thousand (2,230,000) Lire.

The Commission further finds that sufficient evidence has been introduced in this case to establish the reasonableness of the request of the claimant for payment by the Government of the Italian Republic of the sum of Seventy Thousand (70,000) lire for expenses incurred by her in Italy in establishing this claim.

No evidence having been submitted that any previous payment has been made to the claimant for war damages to the property which is the subject of this claim, the Commission, acting in a spirit of conciliation,

HEREBY DECIDES:

1. That in this case there exists an international obligation of the Government of the Italian Republic to pay the sum of Two Million, Two Hundred Thirty Thousand (2,230,000) Lire under Article 78 of the Treaty of Peace for damages sustained, as a result of the war, by the undivided one-sixth (1/6) interest in real property in Bolzano, Italy, which interest was owned by (Mrs.) Lucia Schwarz Weidenhaus, a national of the United States of America;

2. That in this case there also exists an international obligation of the Government of the Italian Republic to pay the additional sum of Seventy Thousand (70,000) lire under paragraph 5 of Article 78 of the Treaty of Peace for expenses incurred in Italy by (Mrs.) Lucia Schwarz Weidenhaus, a national of the United States of America, in establishing this claim;

3. That the payment of these two sums in Lire, (aggregating a total of Two Million, Three Hundred Thousand (2,300,000) Lire), shall be made in Italy by the Government of the Italian Republic upon request of the Government of the United States of America within thirty days (30) from the date that a request for payment under this Decision is presented to the Government of the Italian Republic;

4. That the payment of these two sums in lire, (aggregating a total of Two Million, Three Hundred Thousand (2,300,000) Lire) shall be made by the Government of the Italian Republic free of any levies, taxes and other charges and as otherwise provided for in paragraph 4 (c) of Article 78 of the Treaty of Peace;

5. That in this case an Order regarding costs is not required; and

6. That this decision is final and binding from the date it is deposited with the secretariat of the Commission and its execution is incumbent upon the Government of the Italian Republic.

DONE in Rome, this 28th day of April 1952.

*The Representative of the
United States of America
on the
Italian-United States
Conciliation Commission*
Emmett A. SCANLON, Jr.

*The Representative of the
Italian Republic
on the
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Antonio SORRENTINO