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Winter Case—Decision No. 10

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WINTER CASE—DECISION No. 10 OF
28 APRIL 1952¹

Compensation under Article 78 of Peace Treaty—Sequestration—State responsibility—Loss of enemy property taken by German authorities—Nationality of claimant—National of Czechoslovakia prior to 1945, date of acquisition of United States nationality—United Nations national within the meaning of Peace Treaty—Transaction between parties—Effect on case before Conciliation Commission.

Indemnisation au titre de l'article 78 du Traité de Paix — Sequestre — Responsabilité de l'Etat — Perte de biens ennemis enlevés par les autorités allemandes — Nationalité du réclamatant — Ressortissant tchécoslovaque antérieurement à 1945, date de l'acquisition de la nationalité américaine — Ressortissant d'une Nation Unie au sens du Traité de Paix — Transaction entre les parties — Effet sur le différend porté devant la Commission.

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, evidence 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.

Appearances: Mr. Stefano Varvesi, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Carlos J. Warner, 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 in behalf of Dr. Fred O. Winter, 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 Dr. Fred O. Winter (hereinafter referred to as the claimant) indemnity for the loss of personal property owned by him, which property was taken in Trieste by German authorities during 1944.

The material facts are as follows:

The Embassy of the United States of America in Rome certified that the

¹ *Collection of decisions*, vol. I, case No. 15.

claimant is now and has been at all times since his naturalization on February 5, 1945 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 Czechoslovak Republic by virtue of his birth on October 15, 1892 at Uherske Hradiste (Moravia), Czechoslovakia, and the treaties and other arrangements made after the dissolution of the Austro-Hungarian Empire. There was submitted with the original Statement of claim a photostatic copy of an official Certificate issued at Uherske Hradiste on February 21, 1939 showing the claimant to be a citizen of the Republic of Czechoslovakia; this certificate of Czechoslovak nationality (which did not expire until ten years after the date of issuance) substantiates the claimant's statement that he was a Czechoslovak national until February 5, 1945, when he became a national of the United States of America by naturalization. Czechoslovakia was one of the signatory Powers to the Treaty of Peace with Italy; and the Commission finds that sufficient evidence has been presented to establish 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.

The claimant resided at Brno, Czechoslovakia, prior to September, 1939, when conditions after the German occupation in 1938 caused him to emigrate therefrom. The dental equipment, household and other personal effects owned by the claimant in Brno, Czechoslovakia, were cleared by the Customs officials in Brno on October 2, 1939; and a photostatic copy of an Inventory prepared by the Czechoslovak Customs Office at that time was introduced in evidence. The claimant states that certain personal effects included in this Inventory were brought with him as luggage to the United States. The remainder of this property was located in a lift van marked "F W 660" (gross weight 5,005 kilograms), and forwarded to the Italian firm of Francesco Parisi, forwarding Agent, Trieste, for transshipment to the United States of America. The claimant states that there were loaded in this lift van certain items owned by him which were not enumerated in the inventory prepared by the Czechoslovak Customs officials because of restrictions against the exporting of such items imposed after the occupation of German authorities. With the outbreak of war, the claimant's lift van could not be forwarded from Trieste and was therefore warehoused in Trieste by the Forwarding Agent.

By Decree No. 1100/12409, dated May 11, 1943, the Prefect of Trieste provided that all of the transit goods stored in certain warehouses in Trieste and owned by Jews emigrating to enemy countries were to be placed under sequestration since the chattels belonging to such emigrating Jews were to be considered as enemy property. This decree, which was issued under the Italian War Laws, designated the sequestrator and fixed his powers, duties and responsibilities; and thereafter measures were taken to bring the chattels of emigrated Jews under the sequestrator's control. On January 12, 1944, the German High Commissioner in the Operation Zone "Adriatic Coastal Territory" issued his Order No. III/4/81 to storage warehousemen in the Free Port of Trieste, including the claimant's Forwarding Agent, Francesco Parisi. An unverified copy of this Order, submitted with the original Statement of Claim, reads in part as follows:

Betrifft: Weggschaffung des Umzugsgutes in Freihafen von Triest.

Der Oberst Kommissar hat aus kriegsbedingten Sicherungsgrunden die Raemung des Freihafen angeordnet. Im Zuge dieser Raemung erfolgt auch die Weggschaffung des im Freihafen lagernden Unzugsgutes. Soweit es sich bei diesem Umzugsgut um Juedisches Vermoegen handelt, ist es beschlagnahmt und dem O.K. zur Verfuegung zu halten. Das Eigentum von Nicht-guden wird vom O.K. in weitere Verwahrung genommen. Hierdurch

entfaellt fuer die bisherigen Verwahrer, vom Zeitpunkt der Uebergabe an die beauftragen Organe des O.K., jede Haftung. Mit der Wegschaffung des Umzugsgutes habe ich Herrn. Dr. Karl Schnuerch beauftragt. Die auf dem Umzugsgut zu Ihren Gunsten lastenden Spesen und Gebuehren werden nach erfolgter Verladung und Ueberprufung der Rechnung in der von mir anerkannten Hoehe verguetet.

Der Prefekt ist von dieser Regelung bereits unterrichtet.;

and in translation :

Removal of transit goods from Free Port of Trieste.

The High Commissioner has ordered, on security grounds, because of war conditions, the clearing of the Free Port. In the course of this clearing the transit goods stored in the Free Port will be removed. The removed goods owned by Jews are sequestered and will be held for disposal in accordance with orders of the High Commissioner. The non-Jewish property will be further held in custody by the High Commissioner. Hereby every responsibility of the present custodian ceases from the moment of delivery to the commissioned agents of the High Commissioner. I have charged Dr. Karl Schnuerch with the removal of the transit goods. The expenses and fees chargeable against the transit goods in your favour will be reimbursed in the amount recognized by me after the goods have been moved and the bill examined.

The Prefect has already been informed of this regulation.

On May 11, 1944, in compliance with the aforesaid Order, the claimant's property was delivered by the Forwarding Agent, Francesco Parisi, to German authorities, who issued on that date an official Receipt therefor; a photostatic copy of this receipt which described the claimant's lift van was introduced in evidence. Afterwards the property in question cannot be traced.

On May 7, 1949 the Embassy of the United States of America in Rome submitted to the Government of the Italian Republic the claim of Dr. Fred O. Winter based on Article 78 of the Treaty of Peace. Following the initial rejection of this claim by the Ministry of the Treasury of the Italian Republic on August 5, 1949, reconsideration was requested by the Embassy of the United States of America on August 24, 1949. Thereafter there was additional correspondence between the two Governments regarding this claim but the only fact which is noteworthy here is contained in the letter of September 2, 1950 from the Ministry of the Treasury of the Italian Republic in which it is stated that, while the claim of Fred O. Winter would receive reconsideration at an early date, the Italian Government denied the right of the United States of America to invoke the application of Article 78 of the Treaty of Peace in behalf of the claimant; this contention of the Italian Government was rejected by the Embassy of the United States of America in Rome in its letter of September 12, 1950.

On June 4, 1951 the Petition of the United States of America in this case was filed with the Commission; the Petition alleges that the failure of the Government of the Italian Republic to make its determination regarding this claim constituted in effect a rejection of the claim and that, as a result, a dispute had arisen between the two Governments for decision by the Conciliation Commission established under Article 83 of the Treaty of Peace; and with a statement of the foregoing facts as a premise, the Petition concludes by requesting the Commission to find that a dispute regarding this claim exists between the two Governments, and that the claimant is entitled to receive from the Government of the Italian Republic two-thirds of the sum necessary at the date of payment to make good the loss suffered (which amount was estimated by the claimant

to be Twenty-eight Thousand, Two Hundred Twenty-four Dollars (\$28,224.00) as of January 31, 1949), as well as such other relief as may be just and equitable.

In the Answer of the Italian Republic filed with the Commission on July 5, 1951 it is denied that a "dispute" regarding this claim exists between the two Governments within the meaning of Article 83 of the Treaty of Peace; and additional time was requested by the Italian Government to permit it to complete an investigation.

Having heard the arguments of the Agents of the two Governments on July 16, 1951, the Commission issued an Order on July 23, 1951 declaring that a dispute regarding the claim of Dr. Fred O. Winter exists between the two Governments, and granted the Italian Republic an additional period of sixty (60) days within which to complete its investigation and to file a full and complete Answer.

On October 3, 1951 the Agent of the Italian Republic filed with the Commission a statement that his Government had reconsidered the claim of Dr. Fred O. Winter and, as a result of an administrative decision made by the appropriate authorities of the Italian Government, it could be anticipated that the question in dispute between the two Governments would cease to exist and that an official communication regarding this case would be received by the Embassy of the United States of America.

On January 23, 1952 the Agent of the United States of America filed a Request for an Award with the Commission, basing his request on the fact that the time limit for filing the Answer of the Italian Republic had expired and that no official communication regarding this case had been received from the Government of the Italian Republic.

The Commission on February 28, 1952 heard the Agents of the two Governments on the Request for an Award; and at this hearing of the Commission the Agent of the Italian Republic submitted an offer in behalf of his Government in the amount of Five Million, Seven Hundred Eleven Thousand, Two Hundred Fifty (5,711,250) Lire, in full and complete settlement of this claim; after due consideration, this offer of the Government of the Italian Republic was accepted by the Agent of the United States of America.

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

HEREBY DECIDES:

1. That, under Article 78 of the Treaty of Peace, there exists in this case an international obligation of the Government of the Italian Republic to pay the sum of Five Million, Seven Hundred Eleven Thousand, Two Hundred Fifty (5,711,250) Lire in full and complete settlement of the claim of Dr. Fred O. Winter, a national of the United States of America, for the loss in Trieste during 1944 of personal property owned by him;

2. That the payment of this sum in 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 (30) days from the date that a request for payment under this Decision is presented to the Government of the Italian Republic;

3. That the payment of this sum in Lire shall be made by the Government of the Italian Republic free of any levies, taxes or other charges, and as otherwise provided for in paragraph 4 (c) of Article 78 of the Treaty of Peace;

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

5. 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.

This Decision is filed in English and in Italian, both texts being authenticated originals.

DONE in Rome, this 28th 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

AMABILE CASE--DECISION No. 11 OF
25 JUNE 1952 ¹

Claim for compensation under Article 78 of Peace Treaty—Evidence in support of claim—Power of Commission as to receiving and evaluating evidence—Value of Affidavits, *Atti di Notorietà*, signed statements and similar ex parte instruments as testimonial documentary evidence.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Pouvoirs de la Commission en matière de recevabilité et d'appréciation des preuves — Affidavits, *Atti di Notorietà*, déclarations sous signature et autres actes *ex parte* analogues — Admissibilité en preuve.

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, evidence 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.

Appearances: Mr. Francesco Agrò, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Carlos J. Warner, Agents of the United States of America.

¹ *Collection of decisions*, vol. I, case No. 5.