

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Gettinger Case—Decision No. 12**

30 June 1952

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GETTINGER CASE—DECISION No. 12  
OF 30 JUNE 1952 <sup>1</sup>

Compensation under Article 78 of Peace Treaty—Sequestration—State responsibility—Loss of enemy property—Evaluation of damages—Power of appreciation of Conciliation Commission.

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Indemnisation au titre de l'article 78 du Traité de Paix — Sequestre — Responsabilité de l'Etat — Perte de biens ennemis — Evaluation des dommages — Pouvoir d'appréciation de la Commission de Conciliation.

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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 argument 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.

Appearances: Mr. Francesco Agrò, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Calros 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 on behalf of Mr. Isadore Gettinger, 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 Mr. Isadore Gettinger (hereinafter referred to as the claimant) indemnity for the loss as a result of the war of certain personal property owned by him and for such further or 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 his naturalization on July 9, 1943, a national of the United States of America; 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.

Prior to becoming a national of the United States of America, it appears

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<sup>1</sup> *Collection of decisions*, vol. I, case No. 13.

that the claimant possessed Austrian nationality; the record does not indicate when the claimant migrated from Austria to the United States of America. Following the annexation of Austria by the German Reich in March, 1938, anti-Semitic laws and measures were immediately introduced in Austria. The exodus of Jewish people which followed is a historical fact. It was under these circumstances that the claimant arranged to have his mother send to him certain of his personal effects. During August, 1939, the claimant's mother packed and shipped three trunks from Vienna, Austria, to the claimant. Each of these trunks had arrived in Italy for trans-shipment to the United States of America when the outbreak of the war made it impossible for the shipments to go forward, necessitating the warehousing of the claimant's property.

In his Affidavit of Claim, prepared on August 27, 1948, the claimant furnished certain details regarding the personal property contained in these three trunks; allegedly, this property included Oriental carpets, silverware, a stamp collection, oil paintings, linens and clothing; an evaluation set opposite each classification was expressed in dollars, the total amount being also shown in lire at the then rate of exchange of 575 lire to the dollar. The claimant stated that the silverware, carpets and other personal effects had been purchased between 1937 and 1939, and that the paintings and the stamp collection had been inherited by him in July, 1936 upon the death of his grandmother, Lea Schuldenfrei, at Vienna, Austria. Certain of these allegations in the claimant's Affidavit of Claim are supported by Affidavits of the claimant's mother and two other witnesses all of whom stated that they were present when the trunks were packed and prepared for shipment in Vienna, Austria, in August 1939. No evidence of any insurance carried by the claimant or the warehousemen was introduced in this case; this being explained, in part, by the claimant's mother in that portion of her Affidavit which reads as follows:

I was the shipper of the trunks and hereby state that at the time of shipment [1939 from Vienna] it was impossible for people of Jewish descent to take out *any* kind of insurance, this being the reason why there are no insurance papers now.

The firm of Danzas and Co., Forwarding Agents of Milan, stored in its warehouse for the claimant's account in September, 1940 one of these three trunks, weighing 80 kilograms, which was subsequently lost when the warehouse itself suffered heavy war damage during an aerial bombardment.

The firm of Francesco Parisi, Forwarding Agent, Trieste, stored in its warehouse for the claimant's account, prior to the outbreak of the war, the other two of these trunks, weighing 218 kilograms. 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 emigrating Jews under the sequestrator's control. One of these measures was the consequent issuance of an Order to certain firms requiring them to make a written denunciation to the authorities of the transit goods owned by emigrating Jews and suspected of residing in enemy countries. A list of the property denounced as a result of this particular Order was subsequently compiled by the sequestrator, and a photostatic copy thereof was introduced in evidence in this case; on page 124 thereof there appears under the claimant's name an entry describing two of the trunks

which are the subject of this claim, and showing the residence of the claimant to be Brooklyn, New York.

On January 12, 1944 the German High Commissioner in the Operation Zone "Adriatic Coast Territory" issued his Order No. III/4/81 to the storage warehousemen in the Free Port of Trieste, including the claimant's Forwarding Agent, Francesco Parisi. Said Order has been fully set out in Decision No. 10 of the Commission (Case No. 15—*The United States of America ex rel. Fred O. Winter vs. the Italian Republic*), and is incorporated herein by reference. On March 27, 1944, in compliance with the aforesaid Order, the two trunks owned by the claimant were 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 was introduced in evidence. Afterwards the claimant's property cannot be traced.

On December 11, 1948 the Embassy of the United States of America in Rome submitted to the Ministry of the Treasury of the Italian Republic the Claim of Mr. Isadore Gettinger, 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 June 24, 1950, there was correspondence between the two Governments regarding the evidentiary value of the documentary evidence submitted; but it does not appear from the record that the Italian Government took any further action regarding this claim, after its initial rejection.

On May 29, 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 a determination regarding this claim constituted in effect a rejection of the claim, resulting in a dispute between the two Governments submissible to the Conciliation Commission established under Article 83 of the Treaty of Peace. 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 on August 27, 1948 to be \$8,050 or 4,628,750 lire at the then rate of exchange of 575 lire to the dollar), 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 complete an investigation.

The Commission issued an Order on July 23, 1951 declaring that a dispute regarding the claim of Isadore Gettinger exists between the two Governments, and granted an additional period of sixty (60) days to the respondent Government within which to complete its investigation and to file the full and complete Answer.

On October 3, 1951 the Agent of the Italian Republic filed with the Commission a supplementary Answer in which the Government of the Italian Republic did not deny that the claimant was the owner of the three trunks in question or that the trunks had been lost as a result of the war in Milan and Trieste; but the Agent of the Italian Republic maintains that the evidence submitted by the claimant does not establish the nature of the value of the contents of these trunks, and argues that the proper criterion to be followed in evaluating this loss would be "to take the average insurance value of one

kilogram of baggage and multiply it by the weight of the trunks lost by Mr. Gettinger"; and, based upon such a calculation, the Agent of the Italian Republic submitted an offer of six hundred thirty thousand (630,000) lire in full and complete settlement of this claim.

The Commission set this case for hearing on February 28, 1952, and on February 27, 1952 the Agent of the United States of America filed with the secretariat a statement that the settlement offer had been rejected by the claimant in a letter dated February 4, 1952. In this letter of rejection, the claimant pointed out that this claim, is for the loss "of household furnishings, silverware, oil paintings, and other items of personal property none of which ordinarily fall within the description of baggage", and that "the freight from Vienna to New York is quite considerable and items of lesser value were discarded when the cases were packed".

At the sitting of the Commission on February 28, 1952, the Agent of the United States of America stated that he was unable to submit any additional evidence regarding the contents and the value of the three trunks, but maintained his Government's position that these questions should be resolved on the basis of the evidence submitted with the Petition; while the Agent of the Italian Republic maintained that the evidence submitted has established only the weight of the trunks, but not the nature or the value of the contents thereof, it being impossible for his Government to obtain any evidence to refute the statements made by the claimant and the witnesses, since the trunks were locked when they entered Italy and were still locked when one was destroyed by aerial bombardment and the other two were removed from Italy following their seizure by German authorities.

None of the foregoing facts with regard to the ownership of the property and the occurrence of the loss was controverted or denied by the Government of the Italian Republic before the Conciliation Commission; and the Commission finds that sufficient evidence has been submitted to substantiate such facts. The only questions of fact which are controverted are the contents of the three trunks and the evaluation to be placed thereon.

Considering the evidence submitted in the light of all the circumstances surrounding this particular case, and the arguments made by the Agents of the two Governments, and attempting to determine the probative value of the evidence acting in the spirit of conciliation, as to the exact nature and value of the property lost, the Commission,

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 one million, five hundred thousand (1,500,000) lire in full and complete settlement of the claim of Mr. Isadore Gettinger, a national of the United States of America, for the loss in Milan and Trieste during the war 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 and other charges, and as otherwise provided for in paragraph 4 (c) of Article 78 of the Treaty of Peace: and

4. That this Decision is final and binding from the date that 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 30th day of June, 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

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MENKES CASE—DECISION No. 13 OF  
9 JANUARY 1953<sup>1</sup>

Compensation under Article 78 of Peace Treaty—Loss of property—Sequestration—Nationality of claim—Owner naturalized “United Nations national” subsequent to date of Peace Treaty—Applicability of second part of paragraph 9 (a) of Article 78—Treatment as enemy.

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Indemnisation au titre de l'article 78 du Traité de Paix — Perte de biens — Séquestre — Nationalité de la réclamation — Acquisition par le propriétaire du statut de “ressortissant d'une Nation Unie” à une date ultérieure à celle prévue par le Traité — Applicabilité de la seconde partie du par. 9 a) de l'Article 78 — Traitement comme ennemi.

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<sup>1</sup> *Collection of decisions*, vol. I, case No. 18.