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Menkes Case—Decision No. 13

9 January 1953

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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

MENKES CASE—DECISION No. 13 OF
9 JANUARY 1953¹

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.

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.

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

¹ *Collection of decisions*, vol. I, case No. 18.

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. 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 on behalf of (Mrs.) Hilda Sara Menkes, 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.) Hilda Sara Menkes, (hereinafter referred to as the claimant), indemnity for loss as the result of the war of certain personal property owned by her which was sequestered by Italian authorities on May 11, 1943, and for such other or further 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 February 20, 1945 a national of the United States of America. On the same page, but beneath the certification that the claimant is a national of the United States of America, it is asserted that the claimant was treated as enemy under the laws in force in Italy during the war.

Prior to becoming a national of the United States of America, it appears that the claimant had been a national of Austria by reason of birth on July 14, 1888 in Vienna. Following the annexation of Austria by the German Reich in March, 1938, anti-Semitic laws and measures were immediately introduced in Austria. Among the Austrian people of Jewish extraction who emigrated from that country were the claimant and her husband, Dr. Joseph Israel Menkes. Before leaving Austria, the claimant arranged for the exportation of her household goods and personal effects.

On August 14, 1950 the firm of Karl Kridtner, Freight Forwarding Agents in Vienna, furnished to the claimant certain documents from their files which were copies of the original documents required by the Austrian authorities as a prerequisite to the exportation of the claimant's personal property; prepared in Vienna in 1939, and introduced in evidence, these documents include Proof of Registration of the claimant with the police, approval of the office of Foreign Exchange for the transportation abroad by the claimant of listed personal property, a certification showing that no irregularity existed with respect to taxes and an Export Declaration filed in Vienna with the Austrian authorities by the firm of Karl Kridtner covering the shipment to the United States of America of one lift van containing the claimant's personal property. To this Export Declaration there was attached a detailed list of one hundred ninety (190) different items of household goods and personal effects prepared on September 15, 1939. The evidence establishes that the lift van containing the personal property listed on this Export Declaration was cleared by the Austrian customs officials in Vienna and was shipped in 1939 from Vienna to Trieste. With the outbreak of the war, it was impossible to trans-ship this lift van to the United States of America; and the evidence establishes that it was stored thereafter in the Free Port of Trieste in Warehouse No. 23 by the firm of Julia Intertrans, S.A., Freight 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 immigrating to enemy countries were to be placed under sequestration, since the chattels belonging to such immigrating Jews were to be considered as enemy property. This decree of sequestration was issued under the Italian War Laws and designated the sequestrator and fixed his powers, duties and responsibilities. Attached to said decree was a list of the property which was to be sequestered, since such listed property was already known by the Italian authorities to belong to immigrating Jews. Shown on this list of sequestered property is the claimant's lift van stored by Julia Intertrans, S.A., under lot No. 1386 in Warehouse 23, weighing 3706.5 kilograms.

The claimant's lift van is also included in a list subsequently compiled by Dr. Bruno C. Steinkuhl, the sequestrator appointed in Decree No. 1100/12409, *supra*; the claimant's lift van is enumerated at page 34 of such list and is correctly described therein except that the owner of such lift van is shown as "Dr. J. Menkes". It has been established that Dr. Joseph Israel Menkes is the husband of the claimant and his name appears in some documents introduced in evidence.

On January 12, 1944 the German High Commissioner in the operation zone "Adriatic Coast Territory" issued his Order No. III/4/81 to storage warehousemen in the Free Port of Trieste. Said order has been fully set out in Decision No. 10¹ 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 April 18, 1944, in compliance with the aforesaid Order, the lift van containing the personal property owned by the claimant was delivered to the German authorities, who issued on that date an official Receipt thereof; a certified true copy of the Receipt (which was furnished in 1946 by the firm of Julia Intertrans, S.A., to the Office of the Allied Military Government in Trieste) has been introduced into evidence. Afterwards, the claimant's property cannot be traced.

On April 27, 1950, the Embassy of the United States of America submitted to the Ministry of the Treasury of the Italian Republic the claim of (Mrs.) Hilda Sara Menkes, based on Article 78 of the Treaty of Peace. The claim was initially rejected on August 22, 1950 by the Ministry of the Treasury of the Italian Republic on the ground that the claimant had not acquired the nationality of the United States of America until February 20, 1945 and had not established that she possessed the nationality of one of the "United Nations" on September 3, 1943. Following the initial rejection of this claim, there was correspondence between the two Governments regarding whether the claimant was a "United Nations national" within the meaning of the Treaty of Peace; but it does not appear from the record that the Italian Government took any further action regarding this claim after its initial rejection.

On June 15, 1951 the Petition of the United States of America in this case was filed with the Commission. The Petition states the issue involved in this case as being:

Is an individual whose property was sequestered as enemy property by the Italian authorities under the decree of the Prefect of Trieste dated May 11, 1943 an individual treated as an enemy under the laws in force in Italy during the war within the meaning of Article 78 of the Treaty, and therefore a "United Nations national" within the meaning of that Article?

With a statement of the foregoing facts as a premise, the Petition concludes by requesting the Commission to find that the claimant is a "United Nations national" within the meaning of this term as used in Article 78 of the Treaty

¹ See *Supra*, p. 111

of Peace (the claimant having been treated as enemy under the laws in force in Italy during the war when the lift van containing her personal property was sequestered by the Italian authorities on May 11, 1943), and that the claimant is entitled to receive from the Government of the Italian Republic two-thirds ($2/3$) of the sum necessary at the date of payment to make good the loss suffered by her, (which amount was estimated by the claimant on January 4, 1949 to be Nine Thousand, Four Hundred and $40/100$ Dollars (\$9,400.40) or 5,405,230 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 21, 1951, it is argued that the subject claim was expressed in proper terms of law for the first time in the letter dated May 4, 1951 from the Embassy of the United States of America in Rome to the Ministry of the Treasury of the Italian Republic, and that therefore a "dispute" regarding this claim did not exist between the two Governments within the meaning of Article 83 of the Treaty of Peace on the date that the Petition in this case was filed with the Commission; to support this argument, the Agent of the Italian Republic provided for the transfer of the original Statement of Claim and all of the documents attached thereto from the Ministry of the Treasury of the Italian Republic to the Secretariat of the Commission for inclusion in the record of this case. In the Answer additional time was requested by the Italian Government to complete its investigation and to consider further this claim.

The Commission issued an Order on August 8, 1951 declaring that a dispute regarding the claim of (Mrs.) Hilda S. Menkes exists between the two Governments, and granted an additional period of ninety (90) days to the respondent Government within which to complete its investigation and to file a full and complete Answer.

On November 27, 1951 the Agent of the Italian Republic filed with the Commission a supplemental Answer in which it is argued that the evidence presented by the claimant Government creates a reasonable doubt as to whether or not the husband of the claimant, Dr. J. Menkes, and not the claimant herself, was on the date of loss the real owner of the personal property which is the subject of this claim; and maintain further that, even if the claimant's sole ownership interest is established—and purely on a presumptive basis—the amount necessary to purchase similar property or to make good the loss suffered can be evaluated properly at Five Million (5,000,000) Lire; and that, under the provisions of paragraph 4 (a) of Article 78, the claimant would be entitled to receive only two-thirds ($2/3$) of such evaluation as compensation for the alleged loss of her personal property.

In its Order of February 12, 1952 the Commission granted the request of the Agent of the United States of America and allowed a period of thirty (30) days within which to file a Reply. To the Reply filed on February 26, 1952 there was attached a certification by the Embassy of the United States of America in Rome that Dr. Joseph Menkes is now and has been at all times since his naturalization on February 20, 1945 a national of the United States of America. In the Reply the Agent of the claiming Government seeks to rebut the contention of the Italian Republic that the evidence in this case does not establish that the claimant was the sole owner of the subject personal property, by pointing out that not only did Dr. Joseph Menkes state that the property in question was owned by his wife (who is the claimant here) in an Affidavit subscribed and sworn to before a duly commissioned and qualified Vice-Consul of the United States in America of Vienna on the 31st of October, 1950, but that, further, Dr. Joseph Menkes would not have any reason whatsoever to misrepresent the facts in the Affidavit since Dr. Joseph Menkes himself

became a national of the United States of America on precisely the same date as his wife.

The time limit having expired for filing a counter-Reply by the Agent of the Italian Republic, the Agent of the United States of America filed on April 2, 1952 a Request for an Award, agreeing therein to accept the Italian Government's basis of evaluation of the subject personal property, that is, to evaluate the household goods and personal effects contained in the lift van which was lost at Five Million (5,000,000) Lire.

An examination of all of the evidence introduced in this case clearly establishes, and the Commission so finds, that the claimant was the sole owner of the subject household goods and personal effects on the date of loss. The basis for the mistake made by the sequestrator in making the husband of the claimant as the owner of the subject property is clear from the evidence; the Commission considers it only natural that the claimant's husband undertook to assist his wife in expediting the clearance for export from Vienna in 1939 of her personal property, and that the claimant's husband subsequently corresponded with the various Freight Forwarding Agents who handled this shipment. However, such acts by her husband does not cloud in any way the claimant's title to the subject property.

The Commission also finds that the claimant is a "United Nations national" within the meaning of this term as used in paragraph 9 (a) of Article 78 of the Treaty of Peace; the second sentence of this paragraph reads as follows:

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy.

It is clear from the evidence that the lift van containing the claimant's property was sequestered on May 11, 1943 by the Decree of the Prefect of Trieste, and that this sequestration was made under the Italian War Laws. The sequestration alone of the claimant's personal property is sufficient to show that the claimant was "treated as enemy" within the meaning of this phrase as used in the second sentence of paragraph 9 (a) of Article 78; and since (Mrs.) Hilda Sara Menkes is a national of the United States of America, it follows that the claiming Government is entitled to submit a claim in her behalf under the provisions of Article 78 of the Treaty of Peace.

Having reached the foregoing conclusions, and having noted that the Agents of the two Governments are agreed that the claimant's property can be properly evaluated at Five Million (5,000,000) Lire, the Commission finds that under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace, the claimant is entitled to receive as compensation for the loss suffered by her as a result of the war two-thirds ($\frac{2}{3}$) of this amount, namely, Three Million, Three Hundred Thirty-three Thousand, Three Hundred Thirty-three (3,333,333) Lire.

No evidence having been submitted that any previous payment has been made to the claimant for war damages to the personal property which is the subject of this claim, the Commission, acting in the 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 Three Million, Three Hundred Thirty-three Thousand, Three Hundred Thirty-three (3,333,333) Lire under Article 78 of the Treaty of Peace in full and complete settlement of the claim

of (Mrs.) Hilda Sara Menkes, a national of the United States of America, for the loss in Trieste during the war of personal property owned by her;

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 the 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 Italian, both texts being authenticated originals.

DONE in Rome, this 9th day of January, 1953.

*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

BARTHA CASE—DECISION No. 14 OF 30 MARCH 1953¹

Compensation under Article 78 of Peace Treaty—Loss of property—Sequestration—Nationality of claim—Whether owner, not a United Nations national at time of damage, entitled to claim—Applicability of second part of paragraph 9 (a) of Article 78—Treatment as enemy.

Indemnisation au titre de l'article 78 du Traité de Paix — Perte de biens — Séquestre — Nationalité de la réclamation — Question de savoir si le propriétaire, qui ne possédait pas le statut de ressortissant d'une Nation Unie au moment du dommage, avait qualité pour se prévaloir des dispositions de l'article 78 du Traité — Traitement comme ennemi.

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy

¹ *Collection of decisions*, vol. I, case No. 19.