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Batchelder Case (the Kirinkuoiska and the Thele)—Decision No. 25

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BATCHELDER CASE (THE *KIRINKUOISKA* AND THE *THELE*)—
DECISION No. 25 OF 26 JULY 1954¹

Compensation under Article 78 of Peace Treaty—War damages sustained by enemy property—Loss of movable property located in ceded territory—Loss of two yachts in Italian territory after requisition by Italian authorities—Determination of existence of dispute—Evidence of loss or damage—Burden of proof—Request for interest denied on basis of Decision No. 35 handed down in Fatovich case.

Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre subis par des biens ennemis — Perte de biens mobiliers situés sur un territoire cédé — Perte de deux yachts en territoire italien après leur réquisition par les autorités italiennes — Détermination de l'existence du différend — Preuve de la perte ou du dommage — Fardeau de la preuve — Demande d'intérêts rejetée sur la base de la décision n° 35 rendue dans l'affaire Fatovich.

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 Alexander J. Matturri, Representative of the United States of America, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

This dispute arose out of the claim of George Lewis Batchelder against the Italian Government, under Article 78 of the Treaty of Peace and Agreements supplemental thereto or interpretative thereof.

The claim was submitted to the Italian Ministry of the Treasury through the Embassy of the United States of America in Rome on November 2, 1949. It requested compensation for the loss of household furnishings and other personal property and for the loss of two yachts. The household furnishings and other personal property were located in the Villa Flora at Lussinpiccolo, a town situated along the Dalmatian coast of the Adriatic Sea. The two yachts were first seized by Italian Naval authorities in Adriatic ports and were later destroyed as a result of the war in Italian territorial waters.

On July 27, 1953, the Italian Ministry of the Treasury advised the Embassy that, with regard to the property removed from Villa Flora at Lussinpiccolo, the Italian Government was not responsible on the grounds that Lussinpiccolo had never been Italian territory, and that the two yachts might have been nationalized pursuant to Yugoslav domestic law, so that further evidence on the fate of the two yachts was necessary.

On September 22, 1953, the Embassy advised the Ministry of the Treasury that it could not agree with the viewpoint of the Italian Government and requested re-examination of the claim. On December 22, 1953, the Embassy

¹ *Collection of decisions*, vol. II, case No. 36.

submitted to the Italian authorities additional documentation tending to show that one of the yachts had been sunk at Zara as a result of the war.

As the Italian authorities did not notify the Embassy of any modification of their original position, the Agent of the United States of America submitted the case to this Commission by Petition dated February 4, 1954, requesting the Commission to decide that the Italian Government is responsible for the loss of the claimant's household furnishings and personal property at Lussinpiccolo, for the loss of the motor yacht *Kirinkuiska* sunk at Zara as a result of the war, and for the failure to return the sailing yacht *Thele*, sequestered as enemy property at Lussinpiccolo; to decide that the claimant is entitled to receive, in lire, two-thirds of \$185,743, values as of March 24, 1949, the date on which the claim was prepared; and to grant interest on the amount to be awarded to the claimant at the rate of 5% per annum from March 24, 1949.

The Answer of the Agent of the Italian Government indicates that the Italian authorities have come to recognize that Lussinpiccolo was formerly under Italian sovereignty and was included in the part of Italian territory ceded to Yugoslavia under the Treaty of Peace, so that, under paragraph 7 of Article 78, the provisions of Article 78 are, in principle, applicable to the property of nationals of the United Nations located at Lussinpiccolo.

However, the Italian Agent argues in his Answer that, on the one hand, there is no certain proof of the existence of ownership of the household furnishings and other personal property located at Villa Flora at Lussinpiccolo, and that, on the other hand, the evidence submitted by the claimant himself proves that the loss of that property cannot be attributed to an event of war.

With regard to the two yachts, the Italian Agent raises no preliminary objections, in view of Decision No. 19 of this Commission in Case No. 4, *The United States of America ex rel. Helene M. E. Beaumont vs. The Italian Republic*.¹ He states, instead, that there is no evidence that the loss of the two yachts was caused by an act of war.

The Italian Agent does raise a preliminary objection, however, with regard to the question whether there exists a dispute between the two Governments, as required by Article 83 of the Treaty of Peace under which this Commission is established.

The Italian Agent states that the alleged dispute is based on a presumption of the rejection of the claim because of the protracted silence of the Italian Government, whereas the Italian authorities have twice expressed an opinion.

After setting forth evaluations of the two yachts, based on the cost of new yachts, and after denying the admissibility of the request for interest, the Italian Agent concludes by requesting that the Petition be declared inadmissible because of the lack of a dispute or, in the alternative, that the Petition be rejected unless additional proof can be secured by the Commission concerning the loss of the yachts as a result of the war.

I. In view of the fact that there exists a communication of the Italian Ministry of the Treasury, dated July 27, 1953, which takes a position with regard to the claim of George Lewis Batchelder, and that it is in relation to said decision that the dispute has arisen, the Commission holds that the Petition of the Agent of the United States of America is admissible and that therefore it is not necessary in the instant case to examine and decide the question whether delay in the decision of a claim on the administrative level can constitute a presumption of its rejection, so that a dispute may be considered to have arisen within the meaning of Article 78 of the Treaty of Peace.

¹ *Supra*. p. 174.

II. As the Italian Government now admits that Lussinpiccolo was in Italian territory, Article 78 would be applicable to injury or damage as a result of the war to personal property located in that town belonging to the claimant, a national of one of the United Nations. However it is necessary for the claimant, or the Government claiming on his behalf, to submit proof that such loss occurred as a result of the war or, at least, to submit sufficient evidence of a causal connexion between the war and the loss that the burden of rebuttal would be shifted to the Italian Government. In the instant case, an examination of the evidence submitted by the claimant leads to the conclusion that there is in the record neither proof that the loss was caused by the war nor evidence sufficient to oblige the Italian Government to prove the contrary.

Two documents were submitted by the claimant in support of the claim for compensation for the loss, as a result of the war, of household effects and other personal property which were in Villa Flora at Lussinpiccolo. One is his own affidavit of claim which reads as follows, in the pertinent part:

6. I left Lussinpiccolo in June 1945 with my wife Pia C. Batchelder who is the owner of Villa Flora at Lussinpiccolo in or about which the articles listed in Exhibit A were located. I have been informed by persons who left Lussinpiccolo during September 1946 and since that date that all of the furnishings and contents of the Villa listed in Exhibit A were confiscated and carried away by the Yugoslav Army and Government officials and that none of the property can be traced or recovered. See letter from Joe Cattarinich dated September 23, 1946 (Exhibit J). I am also informed that the land and buildings known as Villa Flora in Lussinpiccolo have been confiscated by the Yugoslav Government.

The second document is the letter of Joe Cattarinich referred to by the claimant in his affidavit quoted above. Said letter is dated September 23, 1946 and bears a return address in Venice, Italy. The pertinent part of the letter reads as follows:

Few days ago arrived from Lussinpiccolo the wife of Guido Tebaldi and she told that Tito's regular army or better to say the yugoslav army stole or removed everything from your house, furniture and all personal silver and pictures and everything that was in the house. One of the army's captain made a payment receipt to himself for the furniture of the room near the bath and for the sewing machine so to show to the authority that may have asked a receipt. Anna Consulich who has your power of attorney protested to the judge and to the president of the district of Lussin but her action and the action of the judge and president of the district were not taken in consideration by the army and they took everything as if it would have been their own. . . [sic]

Another document submitted by the claimant is an Act of Notoriety dated February 19, 1951, and executed at Bordighera, Italy, in which four witnesses state under oath that the personal property located in the Villa Flora at Lussinpiccolo belonged to the claimant. Prescinding from the value of this document as proof of ownership, it makes no statement whatsoever concerning the facts surrounding the loss of property.

Now it appears from the two documents quoted above that both the claimant and the writer of the letter, Mr. Cattarinich, are making statements concerning facts which are not within their own personal knowledge but which are at most a repetition of what they have heard other people say. The facts involved are in their nature susceptible of being proved by witnesses who speak from their own knowledge. The statements quoted above rest on the veracity and competency of some other, unidentified persons. Apart from any question whether the loss of property in circumstances such as are alleged here constitutes a loss

“as a result of the war”, the Commission must reject the claim for household effects and other personal property located at Lussinpiccolo, for the reason that the claimant has failed to make even a *prima facie* case with regard to the loss of such property or to the causal connexion between the war and the loss. On the basis of the evidence in the record, the Commission is unable to find as a fact that there actually was a loss of the property in question or that the loss, if any, occurred “as a result of the war”.

III. With regard to the two yachts, the evidence in the record as to their loss in Italian territory as a result of the war is deemed sufficient by the Commission to entitle the claimant to compensation.

They were seized by the Italian Navy, subsequently requisitioned and placed at the disposal of the Italian Government. They were sunk in the waters of the Port of Zara as a result of an air bombardment.

IV. The sum necessary to make good the loss suffered by the claimant through the destruction of his two yachts at Zara, formerly Italian territory which was ceded to Yugoslavia under the Treaty of Peace, is held by the Commission, acting in the spirit of conciliation, to be fifty million (50,000,000) lire. Under paragraph 4 (a) of Article 78 the claimant is entitled to receive two-thirds of that amount, or 33,333,333 lire.

V. The request contained in the Petition filed on February 4, 1954, for interest at 5% per annum from March 24, 1949, on the amount awarded to the claimant is denied for the reasons set forth in Decision No. 24, dated July 12, 1954, in Case No. 35, *The United States of America ex rel. Joseph Fatovich vs. The Italian Republic*.¹

The Conciliation Commission, in consideration of the foregoing and having noted the sworn statement of the claimant dated May 7, 1954 and deposited with the Commission on June 16, 1954, in which the claimant states that he has neither applied for nor received any compensation from the Government of Yugoslavia for the loss of the two yachts here involved,

DECIDES :

1. The claimant, George Lewis Batchelder, is entitled to receive from the Government of the Italian Republic the amount of thirty-three million three hundred thirty-three thousand three hundred and thirty-three (33,333,333) lire in full settlement of his claim under Article 78 of the Treaty of Peace.

2. The sum of 33,333,333 lire is to be paid within thirty (30) days from the date on which a request for payment is presented to the Italian Government by the Government of the United States of America.

3. The request for interest is denied.

4. This decision is final and binding and its execution is incumbent upon the Government of the Italian Republic.

Rome, July 26, 1954.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

¹ *Supra*, p. 190.