

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Mazzonis Case—Decision No. 56

10 June 1955

VOLUME XIV pp. 249-251



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MAZZONIS CASE—DECISION No. 56
OF 10 JUNE 1955¹

Claim for compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Criteria adopted by Commission in order to establish prevalent nationality—Reference to Decision No. 55 handed down in Mergé Case.

Demande en indemnité au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Double nationalité — Critères admis par la Commission pour établir la nationalité dominante — Référence à la Décision n° 55 rendue dans l'affaire Mergé.

The Conciliation Commission composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Mr. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and Prof. José de Yanguas Messia, Professor of International Law at the University of Madrid, Third Member chosen by mutual agreement between the United States and Italian Governments.

On the Petition filed by the Agent of the Government of the United States on March 1, 1951 *versus* the Government of the Italian Republic in behalf of Mrs. Winifred Cecil Mazzonis.

I. THE FACTS

On July 26, 1949, the Embassy of the United States of America in Rome submitted to the Ministry of the Treasury of the Italian Republic, on behalf of Mrs. Winifred Cecil Mazzonis, a national of the United States of America, a claim based upon Article 78 of the Treaty of Peace for compensation for the loss as a result of the war of an automobile and other personal property located in Italy and owned by Mrs. Mazzonis.

As the Italian Ministry of the Treasury had rejected the claim on the grounds that Mrs. Mazzonis was an Italian national under Italian law, the Agent of the United States of America, on March 1, 1951, submitted to this Commission the dispute which had arisen between the two Governments with respect to the claim of Mrs. Winifred Cecil Mazzonis.

Following the Answer of the Italian Agent, the Conciliation Commission issued an Order on May 28, 1951, by which the dispute was limited to the consideration of the problem of Mrs. Mazzonis' dual nationality, and all other questions regarding her right to compensation were reserved for subsequent examination.

The following facts relating to the nationality status of Mrs. Mazzonis are revealed by the record:

¹ *Collection of decisions*, vol. III, case No. 9.

Winifred Cecil was born in New York City on August 31, 1907, thereby acquiring United States nationality according to the law of the United States.

On November 26, 1942, at the age of 35, Winifred Cecil married Paolo Mazzonis in Turin, Italy. As Mr. Mazzonis was an Italian national, Winifred Cecil acquired Italian nationality by operation of Italian law, notwithstanding the fact that at the time of her marriage she was a national of a country then at war with Italy.

Mrs. Mazzonis, who had visited Italy for long periods prior to her marriage and who had remained in Italy at the outbreak of war between the United States and Italy, took up her residence with her husband at or near Turin following their marriage. She remained there after the war had ended and continued to reside with her husband in Italy until his death on June 8, 1948.

Shortly after her husband's death, Mrs. Mazzonis went to the United States for a brief period and on November 30, 1948 she returned to Italy for the purpose of settling the estate of her deceased husband.

In September 1949, Mrs. Mazzonis returned to the United States where she has since continuously resided.

II. THE LAW

In its Decision in Case No. 3, *The United States of America ex. rel. Florence Strunsky Mergé vs. The Italian Republic*,¹ the Conciliation Commission has discussed at length the positions of the two Governments, as well as the interpretation of the Treaty of Peace and the principles of international law with reference to the right of the United States of America to bring before this Commission claims of its nationals who possess or formerly possessed Italian nationality, as well.

The Commission, therefore, refers to the principles established by that Decision and particularly to Paragraph 7 (c) of the Considerations of Law, wherein it is stated:

With respect to cases of dual nationality involving American women married to Italian nationals, the United States nationality shall be prevalent in cases in which the family has had habitual residence in the United States and the interests and the permanent professional life of the head of the family were established in the United States.

Examining the facts of the instant case in the light of the aforementioned principles, the Commission holds that Mrs. Mazzonis, by reason of her conduct as it appears from the record, cannot be considered to have been dominantly a United States national within the meaning of Article 78 of the Treaty of Peace, because, apart from the fact that she married a national of a country then at war with her own country, thus acquiring the nationality of an enemy country, the family did not have its habitual residence in the United States, but in Italy where her husband's professional life was located, even after the end of hostilities when the family would have been able to move to the United States. If her husband had not died in 1948, Mrs. Mazzonis would presumably still be living in Italy.

Inasmuch as Mrs. Mazzonis, for the foregoing reasons, cannot be considered to have been dominantly a United States national, within the meaning of Article 78 of the Treaty of Peace, the Commission is of the opinion that the Government of the United States of America is not entitled to present a claim against the Italian Government on her behalf.

The Commission, therefore, unanimously,

¹ Decision No. 55, *supra*, p. 236.

DECIDES:

1. The Petition of the Agent of the United States of America is rejected.
2. This Decision is final and binding.

Madrid, June 10, 1955.

The Third Member

JOSÉ DE YANGUAS MESSIA

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

PALUMBO CASE—DECISION No. 120
OF MARCH 1956¹

Claim for effective restitution of property—Requisition of apartment under Italian legislation—Whether constitutes measure that can be nullified under provisions of paragraph 2 of Article 78 of Peace Treaty—Scope of obligations under said provisions—Treaty interpretation—Reference to *ratio legis*—Reference to decisions of another Conciliation Commission—Meaning of expression “free of any encumbrances and charges of any kind”—Meaning of expression “as a result of the war”—Absence of direct link of causality between the war measure and the damage—Measure of a general and non-discriminatory nature—Rejection of claim.

Demande en restitution d'un bien — Restitution effective — Réquisition d'un appartement en application de la législation italienne — Question de savoir si cette réquisition constitue une mesure annulable en vertu des dispositions du paragraphe 2 de l'article 78 du Traité de Paix — Portée des obligations découlant de ces dispositions — Interprétation des traités — Recours au *ratio legis* — Recours à des décisions rendues par une autre Commission de Conciliation — Signification de l'expression «libres de toutes hypothèques et charges quelconques» — Signification de l'expression «du fait de la guerre» — Absence de lien de causalité direct entre la mesure de guerre et le dommage — Mesure de caractère général et non discriminatoire — Rejet de la demande.

The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace, composed of Messrs. Alexander J. Maturri, Representative of the Government of the United States of America, Antonio

¹ *Collection of decisions*, vol. III, case No. 142. The Collection does not indicate the exact date of the decision.