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Sonnino Case—Decision No. 155

27 November 1956

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Notwithstanding the fact that he resided in Italy from 1915 to 1929, the Commission, on the basis of the elements acquired during the proceedings, considers that this sojourn, although a lengthy one, was not accompanied by the intention to reside permanently in this country. Therefore, there is here involved the hypothesis provided for by point 7 (b) of the above-cited Decision in Case No. 3, namely, an Italian national who reacquired his nationality of origin as a matter of law merely as a result of having sojourned in Italy for more than two years, without the intention of re-transferring his residence permanently to Italy.

The fact that he now resides in Italy is irrelevant for the purposes of the subject case because it involves events which occurred subsequent to those which the Commission is called upon to consider.

The Commission, having examined the appraisals of the damages prepared by the two Governments, acting in the spirit of conciliation,

DECIDES:

1. That the claimant, Francesco Saverio Zangrilli, is entitled to receive from the Italian Government under the provisions of Article 78 of the Treaty of Peace, the sum of 900,000 lire plus 100,000 lire for the expenses in establishing this claim, thus making a total of 1,000,000 lire net, without any reduction of one-third which may be applicable under said Article 78 as amended by the Exchange of Notes of February 24, 1949, between the Governments of the United States of America and of the Italian Republic.

2. The amount set forth in the foregoing paragraph shall be paid within sixty (60) days from the date in which a request for payment is presented to the Italian Government by the Government of the United States of America.

This Decision is final and binding and its execution is incumbent upon the Italian Government.

Rome, December 21, 1956.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

SONNINO CASE—DECISION No. 155 OF
27 NOVEMBER 1956¹

Claim under Article 78 of the Treaty of Peace—Exemption from special progressive tax on property—Active right to claim—Applicability of second part of paragraph 9 (a) of the aforementioned Article—Interpretation of treaties—Treatment as enemy—Meaning and scope of the expression “laws in force in Italy during the war”—Confiscation of property—Failure to pay indemnity for expropriated property—State responsibility—Acts and omissions of State organs and officials.

¹ *Collection of decisions*, vol. IV, case No. 100.

Réclamation au titre de l'article 78 du Traité de Paix — Exemption d'un impôt extraordinaire sur le patrimoine — Droit d'action — Applicabilité de la seconde partie du paragraphe 9 a) de l'article 78 du Traité — Interprétation des traités — Traitement comme ennemi — Signification et portée de l'expression « législation en vigueur en Italie pendant la guerre » — Confiscation de biens — Défaut de paiement d'indemnité pour expropriation — Responsabilité de l'Etat en raison d'une action ou d'une omission qui lui est imputable.

The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace between Italy and the Allied and Associated Powers, and composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and Plinio Bolla, former President of the Swiss Federal Court, Third Member chosen by mutual agreement between the United States and Italian Governments, on the Petition of the Government of the United States, represented by its Agent, Mr. Carlos J. Warner and subsequently represented by its Agent, Mr. Edward A. Mag at Rome, on behalf of Mr. Gabriel Sonnino, residing at 15 West 16th Street, New York, N.Y. *versus* the Government of the Italian Republic, represented by its Agent, State's Attorney, Prof. Dr. Francesco Agrò, at Rome.

CONSIDERATIONS OF FACT:

A. Mr. Gabriel Sonnino of the late Mosè Marco (hereinafter: the claimant) at the time an Italian national of the Jewish race, left Rome, where he was domiciled, for the United States in the summer of 1939. He became a naturalized citizen of that country on May 6, 1946.

On May 22, 1954 the District Office of Direct Taxes in Rome served on the claimant a notice of assessment of the special progressive tax on property established under Italian Law No. 828 of September 1, 1947.

The claimant refused to pay this tax contending that he was a United Nations national within the meaning of Article 78, second paragraph of paragraph 9 (a) of the Treaty of Peace; it is agreed between Italy and the United States that United Nations nationals, on the strength of paragraph 6 of Article 78 of the Treaty of Peace, are exempted from the payment of the Italian progressive tax on property.

The Italian Government denied that the claimant could be considered as having had the status of a United States national; according to the Italian Government, Mr. Sonnino was not considered ("*traité*" "treated") as enemy under the legislation in force in Italy during the war.

The United States Government has espoused the theory of the claimant who, in rebutting the Italian Governments argument, claims he was treated as enemy under the laws in force in Italy during the war.

B. By Petition dated November 8, 1954, the dispute was brought before Conciliation Commission, established under Article 83 of the Treaty of Peace; in the Petition the Commission was requested to:

(a) Decide that the claimant is to be considered a United Nations national within the meaning of paragraph 9 (a) of Article 78 of the Treaty of Peace.

(b) Decide that the claimant is entitled to exemption from the Extraordinary Progressive Patrimonial Tax on his property by the Italian Government.

The Agent of the Italian Government has, in turn, requested that the action taken by the Italian authorities be acknowledged and admitted to be quite legitimate.

C. By *Procès-verbal* of Non-Agreement, dated January 25, 1955, the Representatives of Italy and of the United States of America on the Conciliation Commission decided to resort to a Third Member "in order to resolve the disputed questions raised by this claim".

The Conciliation Commission, completed and presided over by the Third Member, Dr. Plinio Bolla, former President of the Swiss Federal Court at Morcote (Switzerland), heard the Agents of the two Governments during an oral discussion held in Rome on March 12, 1956. The Agents confirmed their contentions, arguments and conclusions. The arguments of the Parties are summed up below in the Considerations of Law of this Decision.

D. As regards the treatment as enemy suffered by the claimant in Italy during the war, the records show the following:

(a) Prior to the outbreak of World War II, the Italian Government, by Royal Law Decree No. 1728, of November 17, 1938, made certain provisions for defending the Italian race. Article 10 of this decree reads as follows:

Italian nationals belonging to the Jewish race cannot:

...

d. be the owners of plots of land the global value of which exceeds 5,000 lire;

e. be owners of urban buildings the global taxable value of which exceeds 20,000 lire;

By Royal Decree, at the proposal of the Minister of Finance, in concurrence with the Ministers of the Interior, of Justice, of Corporations and of Exchange & Currencies, new regulations shall be issued for implementing the provisions contained in sub-paragraphs (*c*), (*d*) and (*e*).

These regulations for implementing the provisions contained in Article 10 of Royal Law Decree No. 1728, of November 17, 1938, regarding the limitations on the property owned, and the industrial and commercial activities performed by Italian nationals belonging to the Jewish race, were included in Royal Law Decree No. 126 of February 9, 1939. This law also was enacted prior to the outbreak of World War II. Under this latter decree there was established (Article 11) a corporation known as *Ente di Gestione e Liquidazione Immobiliare* (E.G.E.L.I.) with head office in Rome, for the purpose of taking over, managing and selling "that part of the property exceeding the limits permitted to Italian nationals belonging to the Jewish race" (Article 4). Royal Law Decree of February 9, 1939 provided for a procedure which permitted recourse to a provincial commission (Article 23 through 25) in the determination of the permitted quota, the excess quota and the evaluation of the property. When the determination of the excess quota of the property became final, said quota was transferred to E.G.E.L.I. (Article 26 through 31), which corporation paid the corresponding amount, in application of the principles laid down in the decree itself, in the form of special registered 30-year 4% interest shares. Normally, these shares were transferrable only to persons belonging to the Jewish race (Article 33); and their substitution with Public Debt Bonds was to be provided for thirty years subsequent to their issue (Article 35). The disposal of the real property transferred to E.G.E.L.I. was to be made in accordance with a progressive plan of sale; the proceeds collected as a result of the sale were to be paid into the Treasury of the State (Article 40).

(b) These regulations were applied to the claimant in the following manner:

By Decree dated November 10, 1942, that is to say, after Italy and the United States had entered World War II, the *Intendenza di Finanza* of the province of Rome transferred to E.G.E.L.I., at the latter's request, title to the following property owned by "Sonnino Gabriele of the late Mosè Marco, an Italian national of the Jewish race":

- (a) a house with stores at via del Vantaggio and via di Ripetta;
- (b) grotto and small vat at via Galvani;
- (c) house and court-yard at via del Boschetto;
- (d) house with store at via San Teodoro;
- (e) house with stores at via San Teodoro;
- (f) house with store at via Sforza ai Monti and via Giovanni Lanza;
- (g) part of a small villa with garden at via Po; the remaining part was left to the claimant as permitted quota.

About three months later, in implementing the same regulations of Royal Law Decree of February 8, 1939, the *Intendenza di Finanza* of the province of Frosinone, by Decree dated January 19, 1943, transferred to E.G.E.L.I. other property owned by Gabriel Sonnino of the late Mosè Marco, to be more specific, plots of land and rural buildings located in the territory of the municipality of Paliano (province of Frosinone).

On January 3, 1943, E.G.E.L.I. took possession of that part of the villa with garden at via Po, which had been considered to be the excess quota; the value of this quota, and therefore the price thereof, had been fixed at 402,580, equal to 20 times its taxable value, according to the principles laid down in Royal Law Decree of February 1, 1939 (Article 20). E.G.E.L.I. took possession of the other real property located in the province of Rome, which also came under the excess quota, by *procès-verbal* of January 8, 18, 21 and 25 and February 5 and 10, 1943. E.G.E.L.I. also took possession of the plots of land and rural buildings owned by the claimant in the municipality of Paliano (province of Frosinone).

When the war came to an end, the retransfer of all the buildings, formerly owned by him and transferred to E.G.E.L.I., was made under Article 3 of Royal Law Decree No. 6 of January 20, 1944, published by virtue of Legislative Decree of the Lieutenant of the Realm No. 252 of October 5, 1944.

Said retransfer was verified, excepting the portion of the villa at via Po and the plots of land and rural buildings at Paliano (province of Frosinone) by an amicable *procès-verbal* dated December 13, 1944, which was subsequently confirmed and extended, by notarial deed of October 24, 1946, to the buildings located in the municipality of Paliano. The premises in the deed of October 1946 show that, as regards the real property retransferred, E.G.E.L.I. had "delayed the payment of the amount due under Royal Law Decree No. 126 of February 9, 1939 because a state of emergency had arisen"; the "failure to deliver the shares representing the amount of the transfer" had already been pointed out by Mr. Piperno, claimant's attorney, in the amicable *procès-verbal* of December 13, 1944, and E.G.E.L.I. had raised no exception in that respect.

As regards the quota of the villa at via Po, which had been transferred to E.G.E.L.I., this corporation had sold that quota in the meanwhile to Mr. and Mrs. Filippo Pennavaria and Jolanda Medici in Pennavaria, by notarial deed of April 23, 1943, for 2,250,000 lire; it was retransferred by the purchaser to the claimant by notarial deed of February 20, 1945; E.G.E.L.I. intervened in this act and reimbursed Mr. and Mrs. Pennavaria the price it had collected

from them; also for this property the claimant was not handed the shares due to him in payment thereof.

(c) The claimant was also co-owner of a farm at Monte Porzio Catone. This farm does not appear to have been subjected to measures based on racial laws. It appears, however, from the sworn statements contained in the records, that the Sonnino farm at Monte Porzio Catone was occupied by German troops from October 1943 through June 1944, that these troops persecuted the land agents in order to discover the whereabouts of the claimant, that the occupying troops laid mines and set fire to the buildings of the farm when they withdrew prior to the arrival of the American troops. From another sworn statement contained in the records it appears that, after the outbreak of war, Italian police searched for the claimant, presumably to arrest him, and that on October 16, 1943, German S.S. accompanied by Italian policemen, called at Via Po No. 28, claimant's former residence, to arrest and deport him and his family.

CONSIDERATIONS OF LAW:

(1) The issue involved is whether or not the claimant was considered as enemy "under the laws in force in Italy during the war".

The Italian Government admits that, by decrees of November 19, 1942 of the Intendenza di Finanza of the Province of Rome, and of January 19, 1943 of the Intendenza di Finanza of the Province of Frosinone, all the buildings owned in Rome and Paliano by the claimant were confiscated and turned over to E.G.E.L.I., in application of Article 26 of Royal Law Decree No. 126 of February 9, 1939, because he belonged to the Jewish race.

The Agent of the Italian Government acknowledges that the Law Decree under which the transfer to E.G.E.L.I. occurred was in force in Italy during the war and does not deny that said Law Decree, enacted prior to the time when Italy was cut in two, comes within the notion of legislation as intended by the second paragraph 9 (a) of Article 78 of the Treaty of Peace.

But, the Agent of the Italian Government adds, the Law Decree of February 9, 1939 was enacted not only prior to the Armistice but prior to the outbreak of war as well. It cannot, therefore, have considered as enemies Italian nationals belonging to the Jewish race because on February 9, 1939 Italy was at war with no one. Law Decree of February 9, 1939, which authorized racial discriminatory measures, should be considered—still in the words of the Agent of the Italian Government—as a mere and simple peacetime police act; these measures which are distinct and separate from the contingencies of war, appear to be, in the technical sense, different to those which were applicable to nationals of enemy Powers.

(2) The argument of the Agent of the Italian Government, even if it were to be accepted in principle, does not take into any account whatever the fact that the claimant never received from E.G.E.L.I. the shares representing the amount due on the transfer to that corporation of his property in Rome and Paliano (province of Frosinone), in accordance with Royal Law Decree of February 9, 1939. The treatment to which the claimant was subjected by the Italian authorities during the war cannot therefore be referred to the mere and simple implementation against him, and his property located in Rome and Paliano, of Royal Law Decree of February 9, 1939 which provided for (Article 36) the payment of compensation "within ninety days of the date of publication in the Official Gazette of the Kingdom, of the decree concerning transfer of property to E.G.E.L.I." (the decree of November 19, 1942 concerning the claimant, was published in the Official Gazette of November 25, 1942).

Nor can the failure to deliver the shares to the claimant be attributed to any negligence on his part or to the arbitrary action of a State or State controlled agency, which had been careless and had not fully implemented Royal Law Decree of February 9, 1939. From the premises appearing in the notarial deed of October 24, 1946, which were accepted by E.G.E.L.I.'s attorney, it seems that failure to make delivery of the shares was due to the "existence of a state of emergency". In fact, Royal Law Decree of February 9, 1939 was not immediately implemented against the claimant, as it should have been, in accordance with the spirit and the letter thereof (cf. Article 13) but after a lapse of three to four years, and was implemented against him when Italy had changed from a state of peace to a state of war. It is a well-known fact that Italy's entry into World War II, and to even a greater extent the United States' entry into the war, caused a stiffening on the part of the Italian Government against Italian nationals belonging to the Jewish race, and especially against those who had left the country, most of them to take refuge in an enemy country such as (from December 1941) the United States. Whatever the arguments in this respect, after the Armistice was published on September 8, 1943, Rome, its province and the province of Frosinone formed part, until this area was occupied by the Allied forces, of the territory subjected *de facto* to the power of the Italian Social Republic. Said Republic had proclaimed the principle that, during the war, all individuals belonging to the Jewish race were enemy nationals. In implementing this principle, the Duce of the Italian Social Republic, Head of the Government, enacted Legislative Decree No. 2, of January 4, 1944, published in the Official Gazette No. 6 of January 10, 1944, under which Italian nationals belonging to the Jewish race were deprived, in the territory of the State, of the possibility of being owners of plots of land, buildings or of stocks, valuables, credits and movable property, whatever the nature thereof (Article 1); this decree confiscated said property in favour of the State and turned it over to E.G.E.L.I. for management in order that it be disposed of and the proceeds of the sale paid into the State "in partial recovery of the expenses sustained for assisting, paying subsidies and compensation for war damages to individuals rendered homeless by enemy air attacks". The reference to the "state of emergency" contained in the deed of October 24, 1946 cannot be interpreted other than as a specific reference to this *de facto* and *de jure* change of condition, and in any event to the issuance of the decrees of November 10, 1942 of the Intendenza di Finanza of Rome and of January 19, 1943, of the Intendenza di Finanza of Frosinone.

(3) Even supposing that the claimant, notwithstanding the radically changed situation of fact, had still been entitled to obtain certain shares in payment of the excess quota of his property transferred to E.G.E.L.I., this right was in any event wiped out in favour of the Italian State through the enactment of the Legislative Decree of January 4, 1944, which deprived claimant also of title to the quota permitted (part of the small villa at via Po in Rome) and of his joint interest in the Sonnino Farm at Monte Porzio Catone.

Certainly, Decree Law of January 4, 1944 required a decree of confiscation issued by the Head of the Province. But even supposing that, with regard to the quota of the small villa at via Po and the joint ownership of Monte Porzio Catone, treatment as enemy within the meaning of paragraph 9 (a) of Article 78 of the Treaty of Peace could have occurred only by the issuance of the executive decree of confiscation, no decree was required to free E.G.E.L.I., in actual fact the Italian State, from the obligation to deliver the shares representing compensation for the excess quota. It was in fact not a question of property, whether movable or immovable, in the hands of the claimant or of

third parties, and of taking this property away from its holder; there were here involved shares, which were to be issued by the State controlled agency in question (Article 32 of Royal Law Decree of February 9, 1939) and it is obvious that this was an obligation to issue shares in favour of an individual who, under the intervening Law Decree of January 4, 1944, had been deprived of the possibility of owning "shares, valuables, credits and real property, whatever the nature thereof". A decree of confiscation by the Head of the Province would have been utterly redundant; in this case implementation had already resulted from the confiscation required by law; and this was exactly E.G.E.L.I.'s thinking in that it never issued the shares and even less attempted to deliver them to the claimant. The latter was therefore completely dispossessed of his property located at Rome and at Paliano, *ope legis*, without receiving the slightest compensation.

(4) Coming to the question as to whether or not the legislation of the Italian Social Republic can be considered as legislation in force in Italy during the war within the meaning of the second paragraph 9 (a) of Article 78 of the Treaty of Peace, this Commission has given an affirmative opinion in its decisions rendered on September 24, 1956 in the Vittorio Leone and Amalia Sacerdote Levi,¹ Peter G. and Gino Robert Treves² and Leo J. Wollemborg³ cases, which are incorporated herein.

This decision in no way conflicts with the two-Member decision of this Commission, rendered on February 19, 1954, in the Hilde Gutman Bacharach Case.⁴ In that decision the Commission judged that "to be treated as enemy necessarily implies on the one hand that there be an actual course of action on the part of the Italian authority (and not an abstract possibility of adopting one), and on the other hand that said course of action be aimed at obtaining that the individual who is subjected to it be placed on the same level as that of enemy nationals". Actual compoment may result also from an omission and in the instant case it flows from the failure to deliver the shares representing compensation of the property transferred; this failure to deliver, which was due to intervening regulations, has changed a partly compensated expropriation (the portion of the villa at via Po transferred to E.G.E.L.I. on January 3, 1943 for 402,580 lire, had been re-sold by E.G.E.L.I., on April 24, 1943, for 2,250,000 lire) into a total dispossession, which is fully equal to treatment as enemy within the meaning of the second paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace; in this latter connexion, reference is made to the afore-mentioned decisions rendered on September 24, 1956 by this Commission in the Vittorio Leone and Amalia Levi Sacerdote, Peter G. and Gino Robert Treves and Leo J. Wollemborg Cases. In addition to the arguments contained therein, it should be stated that the premises of the Treaty of Peace make specific reference to the Armistice clauses signed by Italy on September 3 and 29, 1943, and to the fact that the Armistice clauses of September 29, 1943 contain an Article 31, which reads as follows:

All Italian laws involving discrimination on grounds of race, colour, creed or political opinions insofar as this is not already accomplished be rescinded, and persons detained on such grounds will, as directed by the United Nations, be released and relieved from all legal disabilities to which they have been subjected. The Italian Government will comply with all such further directions as

¹ *Supra*, p. 276.

² *Supra*, p. 262.

³ *Supra*, p. 283.

⁴ *Supra*, p. 187.

the Allied Commander-in-Chief may give for repeal of Fascist legislation and removal of any disabilities or prohibitions resulting therefrom.

An interpretation of Article 78, second paragraph of paragraph 9 (a) of the Treaty of Peace, such as that proposed by the Italian Government, would mean an utter disregard of the letter of said provision and of the reasons for which the Allied and Associated Powers had insisted on its inclusion, reasons which had been clearly explained in the Armistice of September 29, 1943. Wherefore, the afore-mentioned provision of the Treaty of Peace appears to be a logical confirmation and completion of said Article 31.

(5) One can therefore leave unresolved the question as to whether or not the treatment required by the second paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace against the claimant can be found in the conduct of the detachment of German troops in the Sonnino Farm at Monte Porzio Catone during the period December 1943 through the first days of June 1944, and the search for the claimant made in Lazio by the Italian police, subsequent to the outbreak of war; and by German security men accompanied by Italian policemen, subsequent to the Armistice.

DECIDES:

1. The Petition is admitted.
2. This Decision is final and binding.

Rome, November 27, 1956.

*The Representative of the
United States of America*

Alexander J. MATTURRI

The Third Member

Plinio BOLLA

DISSENTING OPINION OF THE REPRESENTATIVE OF THE ITALIAN REPUBLIC
IN THE GABRIEL SONNINO CASE

The majority Decision asserts that treatment as enemy originates from the failure to pay the indemnity for the expropriated property and, to that end, bases its assertion on a sentence appearing in a report drawn up *ex post*, wherein it is stated that E.G.E.L.I. had "*deferred* payment of the amount due under R.D.L. of February 9, 1939, because a state of emergency had arisen". Wherefrom it is assumed that failure to make such payment is due to the confiscation provided for by the law of January 1944 enacted by the Salò Government.

It seems to me that this opinion is not justified; and that the indemnity was, in this case, confiscated, is denied:

(a) By the tenor of the wording used. One does not *defer*—that is, one *withholds*—payment of a confiscated indemnity; one does not refer to *the arising of a state of emergency* to indicate the phenomenon of the implementation of a provision of law;

(b) By the fact that failure to make payment occurred quite some time before the Salò Republic came into being; the observation that payment should have been made as soon as the ninety days had elapsed, hardly seems,

to me, to be reconcilable with the statement that failure to make such payment was due to a law which was enacted one year later;

(c) By the circumstance that the implementation of the laws of Salò requires a decree of confiscation which, doubtless, was never issued in the instant case; nor, in my opinion, is the objection valid that in this case the decree was not required in view of the fact that E.G.E.L.I. was the debtor, that is, the State itself; the objection does not take into account either the fact that E.G.E.L.I. was not the State, but an autonomous corporation, with a separate budget and property assets, or that, also vis-à-vis the State a formal decree was required were it not but for the purpose of legitimizing the essential formality of cancelling a debt entered in the budget and losing the corresponding revenue.

In view of this essentially different evaluation of the facts, I do not feel I can sign the Commission's majority Decision. I also disagree with the interpretation given of the efficacy and value of the legislation of the so-called Italian Social Republic, on which point I expressed my dissent at the time, September 24, 1956, the Decision in the Treves Case was rendered.

Rome,

*The Representative of the
Italian Republic*

ANTONIO SORRENTINO

GATTONE CASE—DECISION No. 156 OF
22 JANUARY 1957¹

Compensation under Article 78 of Peace Treaty—Nationality of claimant—Defence of dual nationality—Expatriation—Renunciation of nationality—Effect of oath of allegiance—Measure of damages.

Indemnisation au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Invocation de la double nationalité — Expatriation — Renonciation à la nationalité — Effet d'un serment d'allégeance — Détermination du montant de l'indemnité.

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of the Italian Republic pursuant to Article 83 of the Treaty of Peace and composed

¹ *Collection of decisions*, vol. IV, case No. 258.