

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Gattone Case—Decision No. 156

22 January 1957

VOLUME XIV pp. 304-307



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

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 réclama-
nt — 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.

of Messrs. Alexander J. Maturri, Representative of the United States of America and Antonio Sorrentino, Representative of the Italian Republic, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

The dispute between the two Governments arose out of a claim under Article 78 of the Treaty of Peace and the Agreements supplemental thereto or interpretative thereof, which was submitted on the 19th day of January, 1953, to the Ministry of the Treasury by Michele Gattone, through the Embassy of the United States of America at Rome.

The Italian Ministry of the Treasury, by letter dated April 23, 1956, informed the Embassy that the claim had been rejected on the grounds that the claimant, who was born in Italy of a naturalized American father, formerly an Italian national, resided in Italy until 1937, served in the Italian Armed Forces and exercised political rights in Italy; that he possesses, therefore, also Italian nationality and that, for purposes of the application of Article 78 of the Treaty of Peace, the claimant's Italian nationality must be considered dominant over his United States nationality.

Thereupon, the Agent of the United States of America filed a petition stating that the claimant's predominant nationality was American since he had maintained his residence in the United States since 1935 and that his economic social political civic and family life evidenced a closer and more effective bond with the United States than with Italy.

The Agent of the Italian Government, having deposited his Answer admitting that the claimant is in possession of both Italian and United States nationality, argued that since the facts of this case do not come under any of the exceptions as stated in the Mergé Decision (*The United States of America, ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Decision No. 55, Case No. 3¹), paragraph 9 of the Decision would apply, i.e.:

(9) In all other cases of dual nationality, Italian and United States, when, that is, the United States nationality is not prevalent in accordance with the above, the principle of international law, according to which a claim is not admissible against a State, Italy in our case, when this State also considers the claimant as its national and such bestowal of nationality is, as in the case of Italian law, in harmony (Article 1 of the Hague Convention of 1930) with international custom and generally recognized principles of law in the matter of nationality, will reacquire its force.

In addition, the Agent of the Italian Government argues that "an individual who has lived in Italy uninterruptedly for 37 years since birth; who served in the Italian Army; who exercised political rights; who when departing for America in 1937, left his family, home and furniture in Italy; who also left in Italy cattle and tools—carpenter's bench, etc.—kitchen and table utensils including a large tomato squasher, has not shown any intention of transferring to the Starred Republic that closer and more effectual bond which until then had unquestionably tied him to Italy".

The Commission ordered that the Agent of the United States of America deposit evidence proving on what elements the claimant was considered to be an American national subsequent to his return to the United States.

The Agent of the United States of America filed with the Commission evidence of the claimant's American nationality. He filed a copy of a letter dated April 30, 1952 addressed to the Secretary of State by the Commissioner of the United States Immigration and Naturalization Service, from which it

¹ *Supra*, p. 236.

appears that the Service issued a Certificate of derivative citizenship to Michele Gattone, upon his application, pursuant to Section 339 of the Nationality Act of 1940, in that he was born abroad on July 17, 1900 subsequent to the naturalization of his father and while his father was still a citizen of the United States; a copy of Section 339 of the Nationality Act of 1940, which provides that the Commissioner of the United States Immigration and Naturalization Service shall issue a certificate of derivative citizenship when it is proved to his satisfaction that the applicant for such a certificate is a citizen, that he derived his citizenship through the naturalization of his parent, and upon taking and subscribing to the oath of allegiance required of a petitioner for naturalization, but only if the individual is at the time within the United States; and a copy of Section 336 (b) of the Nationality Act of 1940 which prescribes the form of oath of renunciation and allegiance required to be taken by a petitioner for naturalization.

The oath required under this section is as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So help me God. In acknowledgment whereof I have hereunto affixed my signature.

CONSIDERATIONS OF LAW:

Having examined the facts of the case, the Commission finds that the question of dual nationality does not arise here.

From the evidence contained in the record it appears that the claimant, who acquired American nationality at birth and therefore not of his own volition, went to America (it is disputed whether in 1935 or in 1937, but the exact date is immaterial) where he established his residence; it also appears that, prior to securing a certificate of derivative citizenship, the claimant was requested to take an oath of allegiance which includes, as can be seen from the wording cited above, a formal renunciation of every other citizenship.

The instant case, therefore, comes under paragraph 2 of Article 8 of Italian Law No. 555 of June 13, 1912, which provides that nationality is lost by any individual who subsequent to acquiring, not of his own volition, a foreign nationality, declares that he renounces Italian citizenship, and establishes or has established his residence abroad.

As regards the amount of the damage, the Commission holds that the evaluation made by the Italian Government is adequate. Therefore, with due regard to the Agreements supplemental to and interpretative of Article 78 of the Treaty of Peace, grants an award of 1,500,000 lire inclusive of expenses incurred in establishing the claim.

DECIDES:

1. That the claimant, Michele Gattone, is entitled to received from the Italian Government under the provisions of Article 78 of the Treaty of Peace, the sum of one million, five hundred thousand (1,500,000) lire, 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 on which a request for payment is presented to the Italian Government by the Government of the United States of America.

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

Rome, January 22, 1957.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

CESTRA CASE—DECISION No. 165 OF
28 FEBRUARY 1957¹

Compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Criteria laid down by the Conciliation Commission in order to establish prevalent nationality—Reference to Decision No. 55 handed down in Mergé case—Applicability of principles established in said Decision—Measure of damages.

Indemnisation 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 — Applicabilité des principes établis par cette décision — 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 of Messrs. Alexander J. Maturri, Representative of the United States of America and Antonio Sorrentino, Representative of the Italian Republic, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

The dispute between the two Governments arose out of a claim under Article 78 of the Treaty of Peace and the Agreements supplemental thereto or interpretative thereof, which was submitted on the 3rd day of October 1951 to the Ministry of the Treasury by Natale Cestra through the Embassy of the United States of America.

The Italian Ministry of the Treasury, by letter dated March 15, 1956

¹ *Collections of decisions*, vol. IV, case No. 192.