

**REPORTS OF INTERNATIONAL
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Cestra Case—Decision No. 165

28 February 1957

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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.

informed the Embassy that the claim had been rejected on the ground that the claimant, an American national by naturalization, had reacquired his original Italian nationality, following his return on several occasions to Italy and his sojourn here from November 6, 1934 to May 17, 1938; from October 29, 1938 to March 28, 1939, and from November 19, 1954 to date.

Thereupon, the Agent of the United States of America filed a Petition stating that the claimant was only an American national during the pertinent dates of the Treaty and that he did not reside in Italy from 1934 to 1938, as alleged by the Ministry, and did not reacquire his Italian nationality by virtue of residing in Italy for a period in excess of 2 years, as provided under the Italian law.

The Agent of the Italian Government, having deposited the Answer, stating that the claimant is in possession of both Italian and United States nationality, alleged that the facts of this case do not come under Section 7 (b) of the Mergé Decision (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Decision No. 55¹) which states:

The United States nationality shall also be prevalent in cases involving Italians who, after having acquired United States nationality by naturalization and having thus lost Italian nationality, have reacquired their nationality of origin as a matter of law as a result of having sojourned in Italy for more than two years, without the intention of retransferring their residence permanently to Italy.

It is further alleged that since the claimant resided in Italy from 1934 to 1938 he had reacquired his Italian nationality and as such did not comply with the necessary prerequisites of this Decision.

CONSIDERATIONS OF LAW:

The Agent of the United States denies that the claimant resided continuously in Italy from November 6, 1934 to May 17, 1938; this sojourn is said to have begun on November 6, 1937 and is alleged to have lasted, therefore, little more than six months. If the allegation of the Agent of the United States were proved, there would not arise in this case a question of dual nationality, in that, at no time prior to the Treaty of Peace would Cestra have reacquired Italian nationality, in view of the fact that his two sojourns in Italy subsequent to his acquisition of American citizenship and prior to September 15, 1947 would both have lasted less than two years.

There is, however, in the record—submitted by the Italian Agent—a statement by the Frosinone Chief of Police, according to which Cestra resided in Italy from November 6, 1934 to May 17, 1938 and then from October 29, 1938 to March 28, 1939, on which date he left for America and returned to Italy only as late as January 19, 1954 (whereas the United States Agent admits that Cestra came to Italy on December 3, 1947 and that he resided in this country until April 15, 1950).

Prescinding from investigating into this latter difference, which seems to be irrelevant, the Commission is of the opinion that the sojourn of 1934, in exceeding two years, raises the question of Cestra's dual nationality and therefore the applicability to this case of the principles established in the afore-mentioned Mergé Decision.

The Commission is also of the opinion that the instant case does not involve a sojourn coupled with the intention of retransferring residence to Italy; in actual fact Cestra came to Italy periodically, where he had a family and

¹ *Supra*, p. 236.

interests, but always for limited periods of time, and if the duration of one of these periods exceeded two years it cannot be assumed without a doubt that claimant intended to resettle definitively in Italy.

The Commission therefore, considers that the claimant is entitled to receive compensation for damages as provided for by Article 78 of the Treaty of Peace. As regards the amount thereof, the Commission observes that it is not denied that the house owned by the claimant suffered war damages which U.T.E., in its report, appraises at 204,500 lire. As regards the linen and furniture the damages are likewise not denied and are valued by the Italian technical agencies at 140,000 lire globally.

The Italian Government is of the opinion, however, that these latter damages should not be compensated in view of the fact that the linen and furniture were the property of Cestra's wife.

However, whereas U.T.E. refers to a second report of the Guardia di Finanza which, in contrast with the former, acknowledges claimant's title to the property; whereas this assumption arises from the fact that the furniture was located in the house owned by Cestra himself; and finally considering the time at which the evaluation was made and the subsequent increases in the cost of living, the Commission, acting in the spirit of conciliation, holds that global award of 300,000 lire can be made for the real property, the furniture and the linen, including expenses for preparing claim.

DECIDES:

1. That the claimant, Natale Cestra, is entitled to receive from the Italian Government, under the provisions of Article 78 of the Treaty of Peace, the sum of three hundred thousand (300,000) lire, including expenses in establishing his claim, 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 definitive and binding and its execution is incumbent upon the Italian Government.

Rome, February, 1957.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

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