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Salvoni Case—Decision No. 169

9 May 1957

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to meet and submit further findings on the question of damages. On April 6, 1956 both experts submitted reports of their findings.

Subsequently, the Representatives of both Governments each appointed an impartial expert to accompany them and the other interested members of the Commission to personally inspect the property. The Commission met at Roccaraso on July 19, 1956 and on the Mannella property on July 20, 1956, held hearings and made a personal inspection of the real property. Thereafter, both impartial experts submitted their reports to the Representatives.

CONSIDERATIONS OF LAW:

The only questions to be decided, by the Commission are those involving the evaluation of the various damages. The Commission, having heard the partial and impartial experts; having studied the appraisals submitted by both parties to this controversy; and acting in the spirit of conciliation finds that the damages suffered as a result of the war by the claimant's property can be equitably valued at 17,000,000 lire. Therefore,

DECIDES:

1. The claimant, Domenica Mannella, is entitled to receive from the Government of the Italian Republic, under the provisions of Article 78 of the Treaty of Peace, the sum of 11,666,000 (eleven million six hundred and sixty six thousand) lire, representing two-thirds of the amount of 17,000,000 (seventeen million) lire, as compensation for the damages suffered, as a result of the war, by her property in Italy.

2. The claimant is also entitled to receive the sum of 1,000,000 (one million) lire as reimbursement of expenses sustained in the preparation of her claim.

3. The total of the sums specified in paragraphs 1 and 2 above shall be paid within sixty (60) days of the date on which the United States Government has presented a request for payment to the Italian Government.

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

Rome, April 5, 1957.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

SALVONI CASE--DECISION No. 169 OF

9 MAY 1957 ¹

Claim for compensation under Article 78 of Peace Treaty—Nationality of claim—Dual nationality—Criteria laid down by Conciliation Commission in order to establish dominant nationality—Reference to Decision No. 55 rendered in Mergé Case—Italian nationality regarded as prevalent—Rejection of claim.

¹ *Collection of decisions*, vol. IV, case No. 250.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Nationalité de la réclamation — Double nationalité — Critères admis par la Commission pour établir la nationalité dominante — Référence à la décision n° 55 rendue dans l'affaire Mergé — Prévalence de la nationalité italienne — Rejet de la demande.

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. Matturri, 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 of October 1951 to the Ministry of the Treasury through the Embassy of the United States of America.

The Italian Ministry of the Treasury, by letter dated April 9, 1953 informed the Embassy that the claim had been rejected on the ground that the claimants' predecessor, an American national by birth, acquired Italian nationality on June 21, 1927 by marriage to an Italian citizen and, secondly, that the ownership of the property does not appear to have been proved.

On February 9, 1955, the American Embassy requested the Italian Ministry of the Treasury to reconsider the claim in light of the Decision of the Italian-United States Conciliation Commission in the Mergé Case (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Case No. 3, Decision No. 55¹) and further documented the following facts:

On June 21, 1927, Mrs. Salvoni, an American by birth, married Ippolito Salvoni, an Italian national, and thereby also acquired Italian citizenship. After her marriage, she and her husband spent many years in the United States during which period her husband became an immigrant to the United States and was engaged in business there. In 1937 the claimant, with her husband, went to Italy to visit relatives. Before leaving the United States her husband had applied for and received a re-entry permit. From 1937 they both resided in Italy up to date of her death in 1951. She also submitted evidence to show that due to an operation that she had for cancer in 1940 she could not return to the United States. Immediately after the war she repeatedly attempted to obtain from the United States Government a permit for her husband to return to the United States but was unsuccessful in so doing. In addition thereto, there were numerous letters showing her attachments to America and her desire to return thereto, as well as affidavits filed with the American Consular offices in Italy. Most of her investments were in America and the only income she received were from trusts established at American banks and administered there.

The Italian Ministry of Foreign Affairs, by letter dated May 28, 1956, informed the Agent of the United States that the rejection of the claim had been reconfirmed. Thereupon, the Agent of the United States Government filed a Petition stating that Mrs. Salvoni's nationality was predominantly

¹ *Supra*, p. 236.

American on the relevant dates of the Treaty of Peace and that the Italian Government in the light of the decision of the Italian-United States Conciliation Commission in the Mergé Case, had erroneously rejected the claim. The Agent of the Italian Government, having deposited his Answer, merely confirmed the opinion submitted by the Ministry of the Treasury in that the claimant is to be considered of dominant Italian nationality.

CONSIDERATIONS OF LAW:

It is not denied that under Italian Law the claimant is an Italian national as she acquired same as a result of her marriage to an Italian national; likewise, it is not denied that under the legislation of the United States she has preserved her United States nationality. The case of American women married to Italian nationals was given explicit consideration in the above-cited Decision in the Mergé Case and it was set down as one of the guiding principles that in these cases United States nationality shall be deemed as prevalent when 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.

In examining the facts of the case at bar, the Commission holds that Mrs. Salvoni cannot be considered to have been dominantly a United States national within the meaning of Article 78 of the Treaty of Peace, as interpreted in the Mergé Decision, because the family did not have its habitual residence in the United States and the interests and personal professional life of the head of the family were not established there. In fact, Mrs. Salvoni came to Italy in 1937 and resided there until her death in 1951. During the war her husband was "recalled"—and the Commission must assume from this evidence that he was recalled to the Italian Armed Forces. She further stated as a reason for residing in Italy that she wanted to be near her husband who had his business there and would return to the United States as soon as circumstances would permit. From the facts it would seem that if she wanted to return to the United States before or after the war she would have had ample opportunity to do so. As a matter of fact, in a letter written to the Washington Loan and Trust Company, Washington, D.C., dated September 13, 1940, she apparently foresaw the possibility of war and asked for a year's income in advance. It is obvious that her intention, irrespective of her sentiment, was to be with her husband in Italy during those times. Her intention obviously continued after the war as can be seen from her correspondence and the fact that she did not return to America.

Inasmuch as Mrs. Salvoni, for the foregoing reasons, cannot be considered to be dominantly a United Nations 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, acting on behalf of Mrs. Salvoni's successors in interest, is not entitled to present a claim against the Italian Government, and therefore

DECIDES:

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

Rome, May 9, 1957.

*The Representative of the
United States of America*
Alexander J. MATTURRI

*The Representative of the
Italian Republic*
Antonio SORRENTINO