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Di Curzio Case—Decision No. 184

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DI CURZIO CASE—DECISION No. 184 OF 20 JANUARY 1959¹

Claim for compensation under Article 78 of Peace Treaty—War damages sustained by enemy property in Italy—Evidence of existence, ownership and loss of personal property—Value of Acts of Notoriety as a form of proof—Reference to Decision No. 11 rendered in Amabile case—Jurisdiction of Conciliation Commission—Article 83 of Peace Treaty—Want of jurisdiction to adjudicate claim not previously presented to Italian Government.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre subis par des biens ennemis en Italie — Preuve de l'existence, de la propriété et de la perte de biens mobiliers — Valeur d'actes de notoriété comme moyen de preuve — Rappel de la décision n° 11 rendue dans l'affaire Amabile — Compétence de la Commission de Conciliation — Article 83 du Traité de Paix — Incompétence de la Commission de connaître d'une réclamation non antérieurement présentée au Gouvernement italien.

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, is acting on a Petition filed on March 22, 1957 by the Agent of the Government of the United States of America on behalf of the claimants, Nazereno Di Curzio and Vitalina Di Curzio, his wife *versus* The Italian Republic;

The claim of Nazereno Di Curzio was presented to the Italian Ministry of the Treasury on June 30, 1953. The Ministry, by letter dated March 15, 1956, informed the Embassy that the claim had been rejected because the claimant had failed to prove his ownership of the real property in question and had not submitted any evidence to prove the existence, value and loss of the personal property.

On March 22, 1957 the Agent of the United States of America presented a Petition to the Commission on behalf of the claimants, Nazereno Di Curzio and his wife, Vitalina Di Curzio, in which he alleges that Vitalina Di Curzio had failed to present her claim to the Italian Ministry of the Treasury because of a misunderstanding on the part of her legal representative in Italy. The United States Agent requests the Commission to consider and adjudicate her claim. The claimants are each one-half owner of a parcel of real property located in Frosinone, Italy which was damaged during the war. The claimant, Nazereno Di Curzio, was also the owner of personal property located in Frosinone, Italy which he claims was lost as a result of the war.

CONSIDERATIONS OF LAW :

The evidence presented by Nazareno Di Curzio clearly establishes that he is the one-half owner of the real property which he alleges was damaged during

¹ *Collection of decisions*, vol. VI, case No. 277.

the war, the other half being owned by his wife, the co-claimant, Vitalina Di Curzio. With regard to the personal property, of which Nazereno claims to be the sole owner, the only form of proof offered is his own self-serving declaration in the original claim and an Act of Notoriety, signed by four persons, attesting to the fact that he was the owner and that said personal property was lost as a result of the war.

The Commission considered the value of Acts of Notoriety as a form of proof in its Decision No. 11 (*The United States of America ex rel Norma Sullo Amabile vs. The Italian Republic*, Case No. 5)¹. The Commission held, therein, that said acts could be received into evidence but that it was a matter for the Commission to decide the amount of weight which would be given to them. In the case at bar the Commission, after having considered all the evidence presented, concluded that the claimant, Nazereno Di Curzio, has failed to establish the existence, ownership and loss of the personal property.

The co-claimant, Vitalina Di Curzio, has never presented her claim to the Italian Government. Her failure to do so, as is explained in the Petition, was caused by a misunderstanding on the part of her legal representative in Italy. The Petition, in effect, requests the Commission to overlook her failure to present her claim to the Italian Government and to assume that a dispute between the two Governments has arisen with regard to said claim.

Article 83 of the Treaty of Peace, which gave rise to the creation of this Commission, clearly defines the jurisdiction of Conciliation Commissions. Paragraph 2 of said Article states that the Commission "shall have jurisdiction over all disputes which may thereafter arise between the United Nation concerned and Italy in the application or interpretation of Articles 75 and 78. . ." Vitalina Di Curzio has the right to receive and the Italian Government has the obligation to pay for the damages incurred to her property as a result of the war under the provisions of Article 78. However, before the matter can be presented to this Commission it is necessary that the facts prove to be such as to allow the Commission to exercise its jurisdiction. The Treaty of Peace specifically grants jurisdiction to the Commission only in those cases in which a dispute has arisen. The framers of the Treaty clearly spelled this out when they entitled Article 83, "Settlement of Disputes". In the past, all of the disputes arose by presentation of the claim to the Italian Government, followed either by their rejection on legal or factual grounds or by the claimant's rejection of the Italian Government's offer of settlement. It is pointed out that in the case at bar the Italian Government has never had the opportunity to examine Vitalina Di Curzio's claim prior to the presentation of her Petition and, therefore, it was never placed in a position to either recognize or deny its obligation under the Treaty. Therefore, the Commission concludes that it lacks jurisdiction to adjudicate this phase of the Petition.

Nazereno Di Curzio requested an award of 104,000 lire for the damages done to the portion of real property owned by him. The Italian Government appraised said damages at 18,000 lire. The Commission, after having examined the records of the case and acting in the spirit of conciliation, awards the sum of 50,000 lire for real property damage, and

DECIDES :

1. The claimant, Nazereno Di Curzio, is entitled to receive from the Government of the Italian Republic under the provisions of Article 78, for the damages to the portion of real property owned by him, the sum of fifty thousand (50,000)

¹ *Supra*, p. 115.

lire in full settlement of his claim, without any reduction of one-third as may be applicable under said Article 78.

2. Nazereno Di Curzio's claim for personal property damages is rejected.

3. The claim of the co-claimant, Vitalina Di Curzio, is rejected without prejudice.

4. The amount stated in paragraph No. 1 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 final and binding and its execution is incumbent on the Government of the Italian Republic.

Rome, January 20, 1959.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

GRANIERO CASE—DECISION No. 186 OF 20 JANUARY 1959¹

Claim for compensation under Article 78 of Peace Treaty—Dual nationality—Determination of dominant nationality—Treatment as enemy—Burden of proof—Obligation of claimant—Failing proof of establishing treatment as enemy under laws in force in Italy during war—Rejection of claim.

Demande d'indemnité au titre de l'article 78 du Traité de Paix — Double nationalité — Détermination de la nationalité dominante — Traitement comme ennemi — Charge de la preuve — Obligation du réclamant — Non-production par le réclamant de preuve suffisante pour établir qu'il a été traité comme ennemi aux termes de la législation en vigueur en Italie pendant la guerre — 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 inter-

¹ *Collection of decisions*, vol. VI, case No. 241.