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**Tucciarone Case—Decision No. 188**

12 February 1959

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with the property records under this number. The Commission holds that this argument is unfounded.

The property records certificate dated November 16, 1957 submitted by the United States Agent, shows that the underground room which was added to map 1135-1 under No. 3282 in 1884, was subsequently transferred to the rural property records.

Conversely, in the more recent records, No. 3282 no longer refers to the ground room (see copy of note of transcription dated January 21, 1924 in favour of the claimant, following inheritance from the mother and grandmother).

In any event, the Commission considers as decisive the reference made in the 1933 deed of sale to De Nardis' long-term lease rights; from the documents submitted it appears that these rights encumbered the entire building at Via Madonna della Pace and not the ground room originally registered under No. 3282.

In any event it appears that the deed, at the time the transcription was made in favour of Luigi Giudici and Maria Colapietro, was interpreted in the sense appearing from the note of transcription connected therewith and introduced in the records of the case.

Consequently, the claimants have failed to prove that they are still the owners of the building for which they request war damage compensation, and, therefore, the Commission

DECIDES :

That the Petition filed by the Agent of the United States of America in behalf of Messrs. Angelo and Giuseppe Colapietro is rejected.

This Decision is final and binding.

Rome, February 4, 1959.

*The Representative of the  
United States of America*

Alexander J. MATTURRI

*The Representative of the  
Italian Republic*

Antonio SORRENTINO

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TUCCIARONE CASE—DECISION No. 188 OF 12 FEBRUARY 1959 <sup>1</sup>

Claim for compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Cases of American women married to Italian nationals—Test of dominant nationality—Reference to Decision No. 55 rendered in Mergé case—War damages—Burden of proof—Failure to prove existence and ownership of property and damage thereto—Rejection of claim.

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Demande en indemnité présentée au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Double nationalité — Cas des femmes américaines mariées à des ressortissants italiens — Recherche de la nationalité dominante — Recours aux principes établis par la décision n° 55 rendue dans l'affaire Mergé — Dommages de guerre — Fardeau de la preuve — Défaut de preuve quant à l'existence, la propriété et la perte des biens — Rejet de la demande.

<sup>1</sup> *Collection of decisions*, vol. VI, case No. 256.

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 June 30, 1950, to the Italian Ministry of the Treasury by Concetta Tucciarone through the Embassy of the United States of America at Rome.

On September 1, 1951, the Ministry informed the Embassy that the claim was rejected because the claimant's Italian nationality prevails over her American nationality, which she acquired in 1938, in the application of Article 78 of the Treaty of Peace, especially in light of the fact that her husband was solely an Italian national until he also acquired American nationality in 1945, more than a year after the damage occurred. Subsequently, the claim was again submitted to the Ministry for re-examination and the Ministry once again rejected it.

The Agent of the United States filed a Petition with the Commission on July 12, 1956, in which he alleged the following facts: the claimant, an Italian at birth, married an Italian national in 1913; on November 21, 1938 she became a naturalized American citizen; she resided in the United States for fifteen years prior thereto and continuously from 1933 to the aforesaid date of naturalization; she continued to reside thereafter in the United States until 1948 when she went to Italy and remained there for two years; her husband was naturalized as an American on February 26, 1945 and is still an American citizen; she seeks compensation for the loss, as a result of the war, of personal property located in five apartments of a building situated in Scauri.

On August 17, 1956, the Italian Agent filed an Answer in which he alleged that the claim had not been officially rejected and therefore the Commission lacks jurisdiction since no official controversy exists.

On October 30, 1956, the Ministry of the Treasury sent official communication to the American Embassy rejecting the claim on the following grounds: The claimant has failed to prove the existence and ownership of the personal property which is said to have furnished apartments owned by the claimant's husband and damaged because of the war; investigations revealed that Mr. Tucciarone filed a claim with the Intendenza di Finanza of Latina, in December 1956, for damages done, as a result of the war, to this very same real and personal property.

The Commission, on April 17, 1957, ordered the Italian Agent to produce the documents on which said rejection was based. On July 2, 1957 the Italian Agent filed the documents in compliance with the said Order.

#### CONSIDERATIONS OF LAW:

The Commission finds that the claimant and her husband have 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. Thus this case comes within the meaning of paragraph 7 (c) of the Mergé Decision (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Decision No. 55)<sup>1</sup> in which the American nationality shall be considered

<sup>1</sup> *Supra*, p. 236.

prevalent. Therefore, since Mrs. Tucciarone's American nationality was her dominant one during the pertinent dates of the Treaty she is entitled to compensation for the damages to her property in Italy as a result of the war.

However, in order to obtain the benefits of Article 78 it is also necessary for the claimant to sustain the burden of proving not only the existence and ownership of the property but also the fact that said property was damaged or lost as a result of the war. The Commission, after having examined all the records of the case, finds that the claimant has failed to prove the existence, ownership or loss of the property and therefore,

DECIDES:

1. That the Petition filed by the Agent of the United States of America on behalf of Concetta Tucciarone *née* Carcone is rejected.
2. This Decision is final and binding.

Rome, February 12, 1959.

*The Representative of the  
United States of America*

Alexander J. MATTURRI

*The Representative of the  
Italian Republic*

Antonio SORRENTINO

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GANAPINI CASE—DECISION No. 196 OF 30 APRIL 1959<sup>1</sup>

Compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Cases of dual nationality involving American women married to Italian nationals—Test of dominant nationality—Reference to principles established by Decision No. 55 handed down in Mergé Case—Nationality of the “head of the family”—Scope of this expression.

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Indemnisation au titre de l'article 78 du Traité de Paix — Nationalité du réclama-  
nant — Double nationalité — Cas des femmes américaines mariées à des ressortis-  
sants italiens — Recherche de la nationalité dominante — Recours aux principes  
établis par la décision n° 55 rendue dans l'affaire Mergé — Nationalité du «chef  
de la famille» — Portée de cette expression.

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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.

<sup>1</sup> *Collection of decisions*, vol. VI, case No. 283.