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Ganapini Case— Decision No. 196

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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

GANAPINI CASE—DECISION No. 196 OF 30 APRIL 1959¹

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.

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.

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.

¹ *Collection of decisions*, vol. VI, case No. 283.

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 April 30, 1949, to the Italian Ministry of the Treasury by Orsola Racchetti Ganapini through the Embassy of the United States of America in Rome.

The Italian Ministry of the Treasury, by letter dated November 9, 1953, informed the Embassy that the claim had been rejected on the grounds that the claimant, naturalized as an American in 1929, re-acquired her original Italian nationality following her residence in Italy from 1930 to 1940 and by virtue of her marriage to an Italian national.

On December 28, 1955 the Agent of the United States again submitted the claim to the Ministry of the Treasury for its reconsideration and alleged the following facts: the claimant, who was born in Italy, went to the United States in 1920; in 1929 she became an American citizen and resided in the United States continually, except for brief visits to Italy, until 1952; her husband, an Italian citizen, went to Italy in 1937 because of ill health and has remained there ever since; she supported her husband from 1937 on because his health did not permit him to work; she also supported her daughter who resided with her father in Italy; the claimant resided in Italy from 1952 to 1955 because of illness.

The Ministry of the Treasury again rejected the claim on the grounds that her family, which she supported by her work in the United States, resided in Italy and thus the centre of her family and economic interests was in Italy.

On April 10, 1957 the Agent of the United States filed a Petition with the Commission and alleged, in addition to the foregoing facts, that the claimant's real property in Italy was completely destroyed as a result of the war. The Answer of the Agent of the Italian Government reaffirms the opinion of the Ministry of the Treasury and requests that the claim be rejected.

CONSIDERATIONS OF LAW :

In paragraph 7 of the Mergé Decision (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Decision No. 55) it is stated: "It is considered that in this connexion the following principles may serve as guides" . . . for determining the dominant nationality of individuals vested with both nationalities at the same time, i.e., the Italian and American nationalities. In sub-paragraph (c) of the aforesaid paragraph reference is made to the nationality of the head of the family; but if the husband should be normally considered as the head of the family, there are nevertheless certain instances in which, even though this principle holds firm, it must be adapted to the particular circumstances of the case.

This is the proposition occurring in the instant case wherein it has been ascertained that Mrs. Ganapini, who supported her husband and daughter from 1937 to 1952, actually was the head of the family.

Having noted that during the entire period specified above the claimant has worked and resided uninterruptedly in the United States and that the business interests and the professional life of the family were established, therefore, in the United States, the Commission holds that the claimant's American nationality should be considered as dominant, wherefore she is entitled to receive the compensation provided for in Article 78 of the Treaty of Peace.

The Commission has examined the evidence submitted by both Agents with

regard to the damages sustained by the claimant and, after having taken into consideration the devaluation of the lira since the presentation of said evidence, finds that the said damages sustained by her amount to 6,700,000.00 (six million seven hundred thousand) lire and therefore

DECIDES:

1. That the claimant, Orsola Racchetti Ganapini, 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 4,666,667.00 (four million six hundred sixty six thousand six hundred sixty seven) lire, representing two thirds of the sum of 6,700,000.00 (six million seven hundred thousand) lire, as compensation for the damages suffered by her property in Italy as a result of the war.

2. That the claimant is also entitled to receive the sum of 300,000.00 (three hundred thousand) lire as reimbursement for the expenses sustained in the preparation of her claim.

3. That the total of the sums specified in paragraphs 1 and 2 above shall be paid within 60 (sixty) days of the date on which the Government of the United States 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 30, 1959.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

BAER CASE—DECISION No. 199 OF 12 DECEMBER 1959¹

Compensation for war damages caused to enemy property—Exemption from special progressive tax on property—Active right to claim under Article 78 of the Treaty of Peace—Claimant naturalized “United Nations national” subsequent to 3 September 1943—Whether this date implied in second part of paragraph 9 (a) of the aforementioned Article—Interpretation of treaties—Principles of—Good faith—Treatment as enemy—Meaning and scope of expression “laws in force in Italy during the war”—State responsibility for acts of local *de facto* Government.

Indemnité pour dommages de guerre subis par des biens ennemis — Exemption d'un impôt extraordinaire sur le patrimoine — Droit d'action ouvert par l'article 78 du Traité de Paix — Acquisition par le réclamant du statut de « ressortissant des Nations Unies » à une date ultérieure au 3 septembre 1943 — Question de savoir si cette date est tacitement prévue par la seconde partie du paragraphe 9 a) de l'article 78 du Traité — Interprétation des traités — Principes d'interprétation — Bonne foi — Traitement comme ennemi — Signification et portée de l'expression « législation en vigueur en Italie pendant la guerre » — Responsabilité de l'Etat en raison d'actes d'un gouvernement de fait local.

¹ *Collection of decisions*, vol. VI, case No. 284.