

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Falco Case—Decision No. 200

12 December 1959

VOLUME XIV pp. 408-419



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

FALCO CASE—DECISION No. 200 OF 12 DECEMBER 1959¹

Claim for compensation for war damages and for exemption from special progressive tax on property—Active right to claim—Applicability of second part of paragraph 9 (a) of Article 78 of Peace Treaty—Treatment as enemy—Meaning and scope of expression “laws in force in Italy during the war”—State responsibility for acts of insurrectional Government.

Réclamation présentée au titre de l'article 78 du Traité de Paix — Indemnité pour dommages de guerre — Exemption d'un impôt extraordinaire progressif sur le patrimoine — Droit d'action — Applicabilité de la seconde partie du paragraphe 9 a) de l'article 78 du Traité de Paix — 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 insurrectionnel.

The Italian-United States Conciliation Commission established by the Government of the United States of America and the Italian Government, pursuant to Article 83 of the Treaty of Peace with Italy of February 10, 1947, composed of Messrs. Alexander J. Maturri, Representative of the Government of the United States of America, Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Italian Government and Georges Sauser-Hall, Professor Emeritus of international law at the Universities of Geneva and Neuchâtel (Switzerland), Third Member, chosen by mutual agreement between the United States and Italian Governments;

Having seen the Petition dated November 30, 1956, filed on the same date by the Agent of the Government of the United States of America with the Joint Secretariat of the Commission *versus* the Government of the Italian Republic in behalf of Mrs. Ada Falco Bolasco; claimant, and Renzo Falco, co-claimant.

Having considered the Answer filed by the Agent of the Italian Government on April 27, 1957;

Having seen the *Procès-verbal* of Non-Agreement dated May 17, 1957, signed by the Representatives of the two Parties to this dispute, wherein it is stated that recourse shall be made to a Third Member, as provided for by Article 83 of the Treaty of Peace and the Rules of Procedure of the Commission, for the purpose of resolving the disputed questions that have arisen in this case;

Having heard the Agents of the two Parties during the oral discussions of the case which were held in Rome, at the seat of the Commission, on April 3, 1959;

Having noted that the Agent of the United States, in his Petition, concluded by requesting:

That this Conciliation Commission

¹ *Collection of decisions*, vol. VI, case No. 270.

(a) Decide that both the claimant and the co-claimant are United Nations nationals within the meaning of the second sentence of paragraph 9 (a) of Article 78 of the Treaty of Peace, in that they were treated as enemy under the laws in force in Italy during the war;

(b) Decide that the claimant is (or the co-claimant, or both are) entitled to receive from the Italian Government under Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof two thirds of the sum necessary at the time of payment to make good the loss suffered as a result of the damages to property "A", hereinbefore described, which sum was estimated as of August 8, 1956 to be 14,857,500 lire, subject to any necessary adjustment for variation of values between that date and the date of final payment;

(c) Decide that the claimant is entitled to receive from the Italian Government under Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof the entire amount necessary at the time of payment to make good the loss suffered as a result of the damages to property "B", hereinbefore described, which sum was estimated as of August 8, 1956 to be 877,100 lire, subject to any necessary adjustment for variation of values between that date and the date of final payment;

(d) Decide that the claimant and the co-claimant are entitled under Article 78 of the Treaty of Peace to be exempted from the Extraordinary Progressive Patrimonial Tax on all of their properties in Italy; that the claimant is entitled to the refund of the first instalment of said tax collected from her by the Italian Government, in the sum of 185,944 lire and that both the claimant and the co-claimant are entitled to the refund of such other sums as they may have been heretofore or hereafter compelled to pay to the Italian Government in connexion with said tax;

(e) Decide that the claimant and the co-claimant are entitled to receive from the Italian Government the sum of 800,000 lire, representing the reasonable expense incurred by them in Italy in establishing their claim.

Having noted that the Agent of the Italian Government concludes his Answer by requesting that the Petition be declared inadmissible, or, in any event, rejected;

A. CONSIDERATIONS OF FACT:

1. The Petition submitted by the Agent of the United States Government on November 30, 1956, includes, in point of fact, three claims:

(a) The first concerns Mrs. Ada Falco Bolasco, the claimant, and her father, Renzo Falco, the co-claimant, jointly; this claim is directed at obtaining payment of compensation for the war damages suffered by two buildings in Italy, one of which the claimant owns in full, and in the other she has a remainder interest, the co-claimant having secured for himself a life interest therein.

(b) The second claim concerns immunity, in favour of the claimant, from the Special Progressive Tax on Property established in Italy by Legislative Decree No. 143 of the Provisional Head of the State, dated March 29, 1947 and Law No. 828 of September 1, 1947.

(c) The third claim is directed at obtaining immunity from this same tax in favour of the co-claimant.

2. The buildings with respect to which Mrs. Ada Falco Bolasco believes she is entitled to receive compensation for war damages, are the following:

(a) A building located at Via Buniva 2, Turin, which was donated to her by her father, Renzo Falco, under deed drawn up on July 22nd 1939 by the notary Hilda Dorio at New York, filed with the notary Alessandro Billia, at Turin, and later amended by a deed dated October 17, 1939, drawn up by the latter notary. This donation is registered with Public Real Property Records (Conservatoria dei Registri Immobiliari di Torino) (cadastral heading). The donation of a remainder interest was made, the donor, Renzo Falco, having reserved for himself a life interest in the building, with exemption from providing security. It was furthermore conditioned upon the following termination clause:

This donation shall be *ipso jure* revoked . . . if and when, during the lifetime of the donor, the laws placing restrictions on the ownership of building by Italian nationals of the Jewish race should be repealed. (Exhibit 6 annexed to the Petition.)

As the donee was still a minor on the date the donation was made, the Tutelage Judge of Turin appointed Counsellor Buscaglino as her special guardian and authorized the acceptance of the donation "with the reservations and under the conditions referred to in the proceedings", on October 12, 1939.

When the racial laws were repealed in Italy, this building remained recorded under the name of Ada Falco Bolasco. The damages suffered by this building amount to 4,245,000 lire, revalued; by an increase coefficient of 3.5, to 14,857,500 lire in 1956.

(b) A building located at Via Artisti 22, Turin, which also originates from a donation made by Renzo Falco, the claimant's father, under deed drawn up by the notary Massa at Turin, dated September 29, 1938 (Exhibit 5); the records do not show that this deed was conditional, nor burdened by any right to a life interest; it must therefore be admitted that this donation transferred full ownership title.

The amount of the damages suffered by this building amounted to, as of September 27, 1948, 250,600 lire, which, revalued on the basis of an increase coefficient of 3.5, amounted to 877,100 lire in 1956.

Certain parts of the building located at Via Buniva 2 in Turin were sold by Mrs. Ada Falco Bolasco and Renzo Falco to Mrs. G. Prunetti-Scagliotti on February 16, 1952; the deed of sale reserves the right to receive war damage compensation to the sellers; hence, this right has not been alienated.

Mrs. Ada Falco Bolasco, on August 31, 1951, submitted to the Italian Ministry of the Treasury, through the medium of the Embassy of the United States of America, a claim for war damage compensation; but this claim was rejected, on November 8, 1952, on the grounds which shall be analysed in the considerations of law of this decision. Renzo Falco appears in this Petition only as co-claimant for the building located at Via Buniva 2, in which he has a life interest, and a conditional full ownership interest, in order to set aside, insofar as necessary, any doubts as to the ownership of the damaged property.

3. Under notice of assessment served on August 24, 1953, the Ufficio Distrettuale imposte dirette of Turin notified Mrs. Ada Falco Bolasco that she was to pay, under the Special Progressive Tax on Property, the amount of 1,942,000 lire, that is, 10.33% of her taxable property in Italy, estimated at 18,810,000 lire. The appeal made by the taxpayer to the Commissione Distrettuale per le Imposte Dirette at Turin, produced no results.

4. Under notice of assessment served on March 31, 1952, the Ufficio Distrettuale Imposte Dirette of Turin notified Renzo Falco, the co-claimant, that he was to pay, under the Special Progressive Tax on Property, the sum of

504,060 lire, that is, 8.13% of his taxable property in Italy, estimated to be 6,200,000 lire. The appeal made by him to the Commissione Distrettuale per le Imposte Dirette at Turin, was no more successful than the appeal submitted by the claimant.

5. Both parties in interest are of Italian origin; they took up permanent residence in New York (U.S.A.) immediately prior to the outbreak of World War II, and both acquired United States nationality by naturalization, to wit:

Mrs. Ada Falco Bolasco on May 21, 1945 and Renzo Falco on January 22, 1945.

They have never lost their American nationality since then.

It is not denied that Renzo Falco is of the Jewish race.

However, his daughter, Mrs. Ada Falco Bolasco, is not Jewish. It is, in effect, indicated in the act amending the deed of donation, and its acceptance, dated October 17, 1939, that the claimant, who at that time was a minor, was of the Aryan race because she was the issue of a mixed marriage between her father and Elida Drollet, her late mother, who was an Italian national and did not profess the Jewish faith since prior to October 1, 1938 and whose children shall not, therefore, be considered as belonging to the Jewish race; this statement was made by Counsellor Jose' Benedetti, in behalf of his principal, Renzo Falco, before the notary Alessandro Billia of Turin, and which was repeated by the latter in the request submitted by him to the Tutelage Judge of Turin for the purpose of appointing a special guardian for the instant claimant during the notarial proceedings for the real estate donation (Exhibit No. 6). This statement caused no objection to be raised on the part of the Tutelage Judge and the Commission feels it is free to evaluate the scope thereof.

B. CONSIDERATIONS OF LAW:

6. Under the terms of Article 78, paragraph 4 (a), second sentence, of the Treaty of Peace with Italy signed on February 10, 1947 and which came into force on September 13, 1947:

In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Italy, he shall receive from the Italian Government compensation in lire to the extent or two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered.

Article 78, paragraph 6 of this Treaty says:

United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Italy by the Italian Government or any Italian authority between September 3, 1943, and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

Following the decision of the French-Italian Conciliation Commission of August 29, 1949, No. 32¹ (*Recueil*, fascicule I, pp. 99 *et seq.*), it is no longer disputed between the signatory Parties to the Treaty of Peace that the special taxes established in Italy by Legislative Decree No. 143 of March 29, 1947 and Law No. 828 of September 1, 1947, fall under the provisions of Article 78, paragraph 6 of the Treaty of Peace. Within the limits of this provision, the

¹ Volume XIII of these *Reports*.

exemption from the Special Progressive Tax on Property was acknowledged in Italian-American intercourse, by note dated June 13, 1950, addressed by the Ministry of Foreign Affairs of the Italian Republic to the Embassy of the United States of America in Rome (see Decision of the Commission dated September 24, 1956 in the Levi case, No. 96).¹

Article 78, paragraph 9 (a) of the aforesaid Treaty gives the following definition of "United Nations nationals":

"United Nations nationals" means individuals who are nationals of any of the United Nations . . . provided that the said individuals . . . also had this status on September 3, 1943, the date of the Armistice with Italy.

The term "United Nations nationals" also includes all individuals . . . which, *under the laws* in force in Italy during the war, *have been treated as enemy*. (Emphasis supplied.)

7. The Italian Ministry of the Treasury, in a letter written to the Embassy of the United States of America on November 8, 1952, rejected the claim of Mrs. Ada Falco Bolasco for war damage compensation, which the Embassy had submitted to the Ministry, for lack of the right to claim since the claimant's real property was not sequestered under the War Law and the claimant herself was not a United Nations national either on the date of the Armistice or on the date on which the damage occurred, and, lastly, she was not considered as enemy within the meaning of the Italian legislation in force during the war.

In his Answer dated April 27, 1957 to the Petition filed by the Agent of the United States, the Agent of the Italian Government makes a brief reference to the Italian Representative's dissenting opinion in the Treves case (No. 95)² to which he had already directed attention in the Fubini case (No. 272)³ and comprised in his arguments the various grounds on which the claims of the parties in interest are based, that is, both those concerning war damage compensation and those concerning fiscal immunity.

8. It is clear that neither the claimant nor the co-claimant fulfill the conditions of Article 78, paragraph 9 (a), sub-paragraph 1 of the Treaty of Peace in order that the nationality of the United States, which they acquired in 1945 by naturalization, may confer upon them an active right to claim, as nationals of the United States, because neither of them was already vested with this quality on September 3, 1943, the date of the Armistice, because the United States nationality which they possessed on September 15, 1947, the date of the coming into force of the Treaty of Peace, is not considered to be sufficient under the terms of Article 78, paragraph 9 (a), sub-paragraph 1 thereof.

Therefore, they can benefit by the quality of "United Nations nationals" only if they can establish that "they were treated as enemies under the laws in force in Italy during the war".

The admissibility of their claims depends thereon.

It is necessary to refer to the Conciliation Commission's well established jurisprudence on the conditions which must be fulfilled, in order that, under the terms of the Treaty of Peace, a person can be considered as having been "treated as enemy" with the result of making him or her a "United Nations national".

¹ *Supra*, decision No. 145, p. 272.

² *Supra*, decision No. 144, p. 262.

³ *Infra*, decision No. 201, p. 420.

It is required:

(a) that there has been a positive and concrete course of action on the part of the Italian authorities actually subjecting a person, who, juridically, was not vested with the nationality of any one of the Allied and Associated Powers, to measures which were applicable against enemy nationals: this jurisprudence was clearly established in Decisions No. 167, the Società Generale dei Metalli Preziosi case (French-Italian Commission)¹ No. 20, the Flegenheimer case,² and, above all, in Decision No. 22, the Bacharach case³;

(b) that the treatment as enemy have occurred on the basis of the legislation in force in Italy during the war, consisting not only in the Italian War Law of July 8, 1938 and the legislative acts amending or completing it, but also in all such other legal provisions as were aimed at subjecting persons who were affected thereby to measures which were substantially equivalent to those concerning enemy nationals; this jurisprudence, which was outlined in the Bacharach case, was subsequently developed further in the Treves case (No. 95),⁴ Levi case (No. 96)⁵ and Wollemborg case (No. 109)⁶ Decisions, the three of them dated September 24, 1956, and confirmed, on this date, by the Decision of the Commission in the Fubini case (No. 272)⁷

9. *On the claims of Mrs. Ada Falco Bolasco*

For the purpose of establishing that the claimant was treated as enemy during the war by the Italian authorities, the Agent of the Government of the United States refers to two letters written by the Turin branch of the Banco di Roma.

The claimant had 2,500 Società Italgas shares on deposit with this Bank as well as a checking account showing a credit balance of 7,292 lire.

In its first letter, dated March 24, 1942, written to Counsellor Benedetti, attorney for Renzo Falco, the co-claimant, the Bank advised that it had declared the subject property to the Prefecture of Turin, with the following notation:

This declaration is made in that it is not possible to ascertain whether or not Falco Ada is, at this date, still in possession of Italian nationality.

The letter indicates that claimant's property was frozen under the war legislation.

In its second letter, dated September 12, 1955, written to Renzo Falco the Bank said that the claimant, who was in New York at that time, had been declared by the Bank to be vested with United States nationality because it had not been possible to verify whether or not she was still an Italian national.

The Agent of the Government of the United States believes that these letters are evidence of the fact that the claimant was treated as enemy, in application of Articles 309 and 311 of the Italian War Law of July 8, 1938 (No. 1415) which provisions were substituted by the stricter ones of Law No. 1994 of December 19, 1940 on the treatment of enemy-owned property and on business relations with persons of enemy nationality. He concludes therefrom that the claimant is entitled to the benefits provided by the Treaty of Peace for persons who were "treated as enemies" under the laws in force in Italy during the war.

The Commission has given this argument very careful consideration.

¹ Volume XIII of these *Reports*, decision No. 167.

² *Supra*, decision No. 182, p. 327.

³ *Supra*, p. 187.

⁴ *Supra*, decision No. 144, p. 262.

⁵ *Supra*, decision No. 145, p. 272.

⁶ *Supra*, decision No. 146, p. 283.

⁷ *Infra*, decision No. 201, p. 420.

Article 309 of the War Law No. 1415 of July 8, 1938, obligated private persons in Italy, who were the debtors of persons of enemy nationality or who held in custody property owned by the latter, to declare them in writing to the Prefect, as was done by the Banco di Roma, in connexion with Mrs. Ada Falco Bolasco's securities and credit balance. This declaration was to be followed by an attachment by the authorities, within the time-limit of thirty days, failing which, the property could be forwarded or payment could be made to the parties entitled to such property or payment (Article 311 of the War Law).

The rules contained in Articles 309 *et seq.* of the War Law of 1938 were broadly developed and made stricter by Italian Law No. 1994 of December 19, 1940. In Article 1 thereof, the obligation to declare enemy property in Italy was made more extensive; Article 22 of this law specifically states that Article 311 of the War Law of 1938 ceased to be applied while, Article 2 provides:

... Italian nationals who are debtors, no matter on what grounds, of sums of money owed to enemy nationals, wherever they may be residing, or are bound to make delivery of securities of valuables in favour of these aforesaid enemy nationals, are absolutely forbidden to fulfill their obligations.

There does not seem to be any doubt that, following the enactment of the provisions of Law No. 1994 of 1940, a mere declaration entailed the freezing of property owned by enemy nationals in Italy, because the latter, whether creditors or owners, no longer had disposition thereof, under reservation of a specific authorization of the Minister of Finance in special circumstances. This law in fact differs, on an important point, from the preceding War Law No. 1415 of 1938 in that, under this latter law, the declaration made to be Prefect only caused a thirty-day deferment of the payment of the credits or the delivery of the property and, unless sequestration was ordered by the authorities concerned within this time-limit, private individuals could proceed with making such payment or delivery. According to the Law of 1940, No. 1994 the mere declaration of property or credits entailed, on the contrary, prohibition on the part of the debtors to pay any sums due or deliver any property over to their owners.

All persons subjected to this prohibition were nevertheless "authorized to deposit any such sums as were owed by them to enemy nationals, or any securities or valuables they were to deliver to the aforesaid persons, with the Bank of Italy or with any other Bank empowered to act as agent for the Bank of Italy . . ." (Article 3, Law No. 1994 of 1940); but this deposit also entailed a blocking of these properties and valuables by the Bank of Italy, and hence by the Government, in that this Bank was a State organization. Any breach of these obligations met with very severe penalties so that it is undeniable that these measures were of a discriminatory nature.

Nevertheless, in the instant case, one cannot overlook the fact that, in its declaration, the bank had expressed some doubt on the American nationality of the claimant. It is neither deniable, nor denied, that on the date her property was frozen in 1942, Mrs. Ada Falco Bolasco had preserved her Italian nationality and that she was vested with no other; she was not, therefore, an enemy national and did not fulfil the condition of the law in force in Italy for the purpose of being treated as enemy. However, the prefectural authorities of Turin took no action on the Bank's observation.

The Commission holds that it cannot possibly admit that the claimant was treated as enemy in application of Article 295 of the War Law No. 1415 of 1938; this Article reads as follows:

sequestration . . . can be ordered also with regard to property in connexion with which there is sound reason to suspect that it belongs to enemy nationals, even though it appears to be recorded in the name of persons of another nationality.

It was therefore aimed at cases where enemy property was held in custody by Italian or neutral intermediary persons, and not the cases which the Commission is called upon to deal with, namely of an error of the nationality of the party entitled. It is therefore not admissible that the claimant was treated as a suspected person under the War Law.

At all events, Article 295 only concerns sequestration of enemy property and, under Article 296, "sequestration is ordered by the Prefect, by decree that is effective on the day of issue thereof". Now, it is not denied that the declaration of the claimant's property made to the Prefecture of Turin, in accordance with the letter of the Banco di Roma of March 24, 1942, was never followed by a decree of sequestration, so that it is not even possible to establish the date beginning from which Mrs. Ada Falco Bolasco's property and credit balance are alleged to have been subjected to measures depriving her of her control thereof.

On the other hand, the Commission cannot find that the argument of claimant's counsel contained in his memorandum of September 14, 1956 (page 3 of Annex 2 to the Petition) is correct, namely, his assertion that Mrs. Ada Falco Bolasco was considered as enemy in Italy and treated as such under Article 3, chapter 2 of War Law No. 1415, which provides:

For the purpose of this law, one is considered as an enemy national . . . 2. who, subsequent to the implementation of the law, acquires the nationality of an enemy State, even though he at the same time possesses the Italian nationality or the nationality of another State.

This provision is not applicable to the claimant for the evident reason that, naturalized in the United States on May 21, 1945, she acquired the nationality of this State only after the cessation of hostilities which came to an end, in actual fact, upon the death of Mussolini, which occurred on April 28, 1945, and the capitulation of the German forces in Italy from April 29 through May 2, 1945; the acquisition of the right to American nationality occurred therefore too late to confer upon her the status of enemy national.

Lastly, no measures were adopted against her by the authorities of the Italian Social Republic after the Armistice, either because they never admitted that she belonged to the Jewish race, or because their attention was never directed to her case.

The question as to whether or not claimant was treated as enemy in 1942 must therefore be resolved negatively, in the Commission's opinion, because if discriminatory measures were in fact taken against her property these were not taken under the Italian legislation in force during the war, but, in view of her Italian nationality, the only one with which she was vested at that time, in opposition with the aforesaid legislation. This Commission has no intention of being satisfied with a formal proof of application of the subject Italian law, but must reserve for itself the right of searching as to whether or not the measures objected to were materially in conformity with the Italian legislation in force during the war. The Commission reaches the conclusion that this was not so in the instant case.

The Commission does not believe that this conclusion is invalidated by the fact that the unblocking of the claimant's property could be affected only following the authorization given by the Ministry of the Treasury, in its letter dated July 4, 1946 (No. 157.142). The text of this letter—the existence of which

is admitted in the Banco di Roma's letter of September 12, 1955—could not be attached to the records by the Italian Office of Allied and Enemy Property; it is merely the question of a formal procedure that must be followed, for procedural purposes, in all cases of unblocking, even if the blocking occurred in contrast with the laws in force in Italy during the war, and which in no way affects the merits of the case.

10. As treatment as enemy is not in conformity with the legislation in force in Italy during the war, the claimant is not entitled to benefit either by compensation for the war damages suffered by her real property in Italy or by the exemption from the Special Progressive Tax on the property she owns in that country, because she does not fulfill the conditions of Article 78, paragraph 9 (a) sub-paragraphs 1 and 2 of the Treaty of Peace.

11. *On the claim of Renzo Falco*

The Petition filed by the Government of the United States, concerning the co-claimant, is also based on the fact that he was treated as enemy under the laws in force in Italy during the war; in this connexion, his position is not the same as that of his daughter.

Renzo Falco was a creditor of the Turin branch of the Banco di Roma in the amount of 17,012.25 lire and he had deposited several shares of stock with this bank, valued at 48,975 lire. In 1944 this property was declared by the aforesaid bank to the Istituto di San Paolo, E.G.E.L.I.'s deputy for handling property owned by persons of the Hebrew race, and blocked in favour of the aforesaid Istituto di San Paolo by decree of the Head of the Province of Turin, dated September 12, 1944, No. 23.520/557 in accordance with letter dated December 6, 1944 written by the Istituto di San Paolo (see letter of the bank written on September 12, 1955, Exhibit No. 12). This property was ultimately unblocked.

Renzo Falco was also the owner of a plot of land located in the municipality of Valtornanzo (Province of Aosta) which was confiscated by decree of June 2, 1944 (No. 5731 of the Head of the Province of Aosta. This confiscation appears from the annexes attached to a previous claim for war damage compensation submitted by the party in interest, on the basis of Article 78, paragraph 4 of the Treaty of Peace, which claim was rejected by the Ministry of the Treasury because of the lack of the active right to claim on the part of the party in interest, but which was subsequently submitted to the Italian-United States Conciliation Commission; the Commission, following an agreement reached by the Representatives of the two Governments, settled the case in stating that "Renzo Falco is entitled to receive from the Government of the Italian Republic, under Article 78 of the Treaty of Peace, the sum of 1,500,000 lire". (Decision of September 30, 1955, case No. 143.)

The blocking of Renzo Falco's securities and bank valuables, as well as the confiscation of his real property were effected under the legislation in force in Italy during the war, that is, the legislation enacted, after the Armistice, by the Italian Social Republic.

Point 7 of the policies of the program approved by the First Assembly of Republican Fascism in the month of November 1943, affirmed that: "persons of the Jewish race are aliens. During the war they are enemy nationals." This concept found its full development in Legislative Decree No. 2, of January 4, 1944, published in *Official Gazette* No. 6 of January 10, 1944. Article 1 thereof provides that Italian nationals of the Jewish race in Italy are deprived, in the Italian territory, of the right of being the owners of real property and of being in possession of securities, valuables, credits and interest ownership, whatever the nature thereof; Article 7 provides that all their property located in the territory of the State shall be confiscated in behalf of the State and handed over

to E.G.E.L.I. for management, and, in accordance with Article 8, that the Head of the Province, having jurisdiction over the territory concerning each particular item of property, is the competent authority for ordering, by decree, that these severe measures be adopted.

It is in application of these provisions of the laws in force in Italy during the war that Renzo Falco's rights over his property located in Italy were impaired, whereas the measures adopted against Ada Falco Bolasco's rights were taken in contrast with the laws in force in Italy during the war and could not bring about the conditions foreseen by Article 78, paragraph 9 (a), sub-paragraph 2 of the Treaty of Peace conferring the quality of "United Nations national" on persons who did not fulfil the conditions of nationals of one of the United Nations, at the critical dates specified in Article 78, paragraph 9 (a), sub-paragraph 1 of the Treaty.

The Agent of the Italian Government denied that Article 78, paragraph 9(a), sub-paragraph 2 was applicable to the case of Renzo Falco, in his Answer of April 27, 1957, wherein he principally invoked three grounds of law which have been exhaustively examined by this Commission in its decision, of this date, in the Fubini case (No. 272)¹, which confirms the Commission's case law in the Treves (No. 95),² Levi (No. 96)³ Wollemborg (No. 109)⁴ and Feldman (No. 23)⁵ cases, to which specific reference is made herein. The Commission does not therefore deem it necessary to repeat in full the grounds on which these decisions were based, and will confine itself to pointing out:

(i) The argument invoked by the Honourable Agent of the Italian Government, maintaining that only treatment as enemy imposed on a person before the Armistice of September 3, 1943 under the laws in force in Italy must come under consideration, would result in an amendment of the very text of Article 78, paragraph 9 (a), sub-paragraph 2 of the Treaty of Peace, which the Commission does not consider itself authorized to bring about, by virtue of the fundamental rules of the law of nations on the interpretation of treaties between States.

(ii) The argument invoked by the aforesaid Agent that the expression "laws in force in Italy during the war" contained in Article 78, paragraph 9 (a), sub-paragraph 2 does not include the laws, decrees and acts enacted by the Italian Social Republic after the Armistice, is contrary to the principle of effectiveness admitted in the Law of Nations and by virtue of which when a local Government and an insurrectional Government share power in a State, the laws enacted by each one in the parts of the territory which they respectively occupy are considered as laws in force, which obtain validity, under the Law of Nations, from the effective power which each of the two Governments exercises over the territory wherein it is in a position to assure the execution of its determinations. The result is that, in all parts of Italy subjected to the power of the Italian Social Republic, the legislative acts of this Republic fall within the concept of "laws in force in Italy during the war", contained in the aforementioned Article of the Treaty of Peace; this was the intent of the signatory Powers, such as can flow from a teleological interpretation of this provision which aims at extending the benefits of the Treaty of Peace to persons whose property, rights or interests sustained damages under the laws in force in Italy during the war.

¹ *Infra*, decision No. 201, p. 420.

² *Supra*, decision No. 144, p. 262.

³ *Supra*, decision No. 145, p. 272.

⁴ *Supra*, decision No. 146, p. 283.

⁵ *Supra*, decision No. 28, p. 212.

(iii) The contention of the aforesaid Agent that the expression "laws in force in Italy during the war" cannot be made to include the provisions contained in the racial discrimination provisions on the grounds that these have no connexion with the contingencies of war and that they did not concern enemies, but Italian nationals, disregards the scope and meaning of Decrees No. 1390 and 1630 of September 5 and 23, 1938, which were the starting points of a series of legislative measures enacted in hatred of the Jews and persecutions which were rendered stricter by the fundamental policy which inspired the Italian Social Republic to declare that persons of the Jewish race were aliens and that, during the war, they were enemy nationals; this hostility found its expression in the Law Decree No. 2 of January 4, 1944, which was applicable in all of the territory subjected to the Italian Social Republic, which gave rise to a considerable number of decrees by Heads of Provinces, based on the rule that "Jews are considered to be the subjects of an enemy State" (see, among other decrees, that of December 28, 1940 of the Head of the Province of Brescia sequestering the haberdashery stores of Vittorio Coen, *Official Gazette of Italy* of January 8, 1944), so that the connexion between racial persecution and the war cannot be denied.

The Commission is therefore of the opinion that Renzo Falco was treated as enemy under the laws in force in Italy during the war and that, as a result, he has the quality of "United Nations national" within the meaning of Article 78, paragraph 9 (a), sub-paragraph 2 of the Treaty of Peace.

12. *On the financial and fiscal effects on the claims of both the claimant and co-claimant.*

The refusal to acknowledge in Mrs. Ada Falco Bolasco the quality of a "United Nations national" has the effect of depriving her of any right to compensation for the war damages suffered by the building located at Via Artisti 22, Turin; of which she is sole and full owner. It also entails the consequence that she is not entitled to be exempted from the Special Progressive Tax on Property, in connexion with this building and her possessions in securities and checking account with the Turin branch of the Banco di Roma.

The position of the second building, located at Via Buniva 2, which was the subject of a notice of assessment dated August 20, 1953, served by the III Ufficio Distrettuale delle Imposte Dirette of Turin on Mrs. Ada Falco Bolasco, is more doubtful in that the claimant is not, in point of fact the owner. The annulment clause encumbering her father's act of donation of this building actually materialized with the repeal of the racial laws in Italy, so that the donation is, in fact, automatically revoked under the terms of the act of donation of July 22, 1939, as modified on October 17, 1939 (Exhibit No. 6) so that Renzo Falco has again acquired full and sole ownership title. As Renzo Falco became a co-claimant for the purpose of being prepared to meet this very eventuality, the Commission has no difficulty in according to him, personally, in connexion with this building, the right, assured to him by Article 78 of the Treaty of Peace, to receive war damage compensation and to be exempted from the payment of the Special Progressive Tax on Property, leaving the party in interest to make the necessary adjustments with the Italian fiscal authorities. This same immunity must be allowed to the co-claimant in connexion with this other property, particularly his valuables and checking account credit balance with the Turin branch of the Banco di Roma.

13. Claimant and co-claimant request that, under Article 78, paragraph 5 of the Treaty of Peace and Article 13, sub-section (vi) of the Rules of Procedure, they be paid by the Italian Government the sum of 800,000 lire as reimbursement of the reasonable expenses sustained by them in establishing their

claims. The Commission reserves unto itself the right of making a final decision on this point.

On the foregoing grounds,

DECIDES,

with a majority vote, the Italian Representative dissenting on certain questions of principle, that:

1. As Mrs. Ada Falco Bolasco was not treated as enemy under the laws in force in Italy during the war, she does not possess the quality of a "United Nations national" within the meaning of Article 78, paragraph 9 (a), second sub-paragraph of the Treaty of Peace with Italy of February 10, 1947, which came into force on September 15, 1947.

2. It therefore follows that she is not entitled to claim compensation for the war damages suffered by the building located at Via Artisti 22, Turin, of which she is sole and full owner.

3. She is not entitled to be exempted from the Special Progressive Tax on Property assessed on the value of the building located at Via Artisti 22, Turin, as well as on her bank securities and checking account, and she cannot claim reimbursement of all the sums heretofore advanced to the Italian Government, for this tax, following adjustment of her notice of assessment.

4. As Renzo Falco was treated as enemy under the laws in force in Italy during the war, he has the quality of a "United Nations national" within the meaning of Article 78, paragraph 9 (a), second sub-paragraph of the aforesaid Treaty.

5. It therefore follows that he is entitled to receive, in lire, from the Italian Government; as compensation under Article 78, paragraph 4 (a) of the Treaty of Peace, two-thirds of the sum necessary, at the time of payment, to make good the loss suffered as a result of the war damages sustained by the building, of which he is the sole and full owner, located at Via Buniva 2, Turin.

6. The Italian Government shall submit, within the absolute time limit of three months from the date on which this decision is notified, their observations on the amount of compensation to be allowed to Renzo Falco for the war damages referred to in paragraph 5 above.

7. Renzo Falco is entitled, under Article 78, paragraph 6 of the Treaty of Peace to be exempted from the Special Progressive Tax on Property in connexion with all the property owned by him in Italy, particularly on the value of the building, of which he is the owner, located at Via Buniva 2, Turin, and on all securities and checking accounts, and he is eventually entitled to receive a refund of any and all such sums as he may have heretofore been forced to pay, to date, to the Italian Government in connexion with this tax.

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

DONE in Rome at the seat of the Commission, Via Palestro 68, on this 12th day of December 1959.

The Third Member

Georges SAUSER-HALL

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO