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Giorgio Uzielli Case — Decision No. 229

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GIORGIO UZIELLI CASE — DECISION NO. 229 OF 29 JULY 1963 ¹

Exemption from extraordinary 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 — Exhaustion of local remedies — Non-application of general principle of — Expiration of time limit established in Memorandum of Understanding of 29 March 1957.

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 — Epuisement des recours internes — Non-application de la règle générale — Expiration de la période prévue pour la présentation des réclamations au titre de l'article 78 du Traité de Paix.

¹ *Collection of Decisions*, vol. VII, case no. 311.

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 with Italy of February 10, 1947, composed of Messrs. Leslie L. Rood, Representative of the Government of the United States of America, Antonio Sorrentino, Representative of the Government of the Italian Republic, and José de Yanguas Messia, Professor of International Law at the University of Madrid, designated as Third Member of the Commission by agreement between the two Governments,

Having considered the Petition, dated March 23, 1961, of the Agent of the Government of the United States of America filed on behalf of Giorgio Uzielli against the Government of the Italian Republic;

Having considered the Answer of the Agent of the Italian Government, dated November 8, 1961, and all other pleadings and documents filed by both Agents;

Having heard the oral arguments of the interested parties, holds:

I. CONSIDERATION OF FACT

1. Mr. Giorgio Uzielli submitted a claim to the Intendenza di Finanza of Florence, requesting exemption from the Extraordinary Progressive Patrimonial Tax because he was a national of the United Nations and invoking Article 78 of the Treaty of Peace in support of his request.

2. On July 5, 1948 the Intendenza di Finanza rejected the claim, whereupon, on January 8, 1960, the claimant submitted a claim to the Ministry of the Treasury (UBAN) and on March 15, 1960 he made an application to the Ministry of Finance, Direction of Special Finance.

3. In his Petition the Agent of the United States requested that the claimant be exempted from the payment of the Patrimonial Tax on the following grounds:

(a) That the claimant is an American national, naturalized on April 4, 1945;

(b) That the claimant was treated as enemy under the anti-semitic laws in force in Italy during the war in that the Prefect of Grosseto, under these discriminatory laws, issued Decree No. 3833 on November 16, 1943 which stated that it was urgently necessary to proceed with the immediate sequestration of all the property located in the province owned by nationals of the Jewish race. Following this decree the "Paganico Farm" owned by the "Società Civile Paganico" located at Civitella Paganico was sequestered. Mr. Giorgio Uzielli owned a considerable number of shares of stock of this Corporation.

4. In his Answer the Agent of the Italian Government contended that the Petition was inadmissible inasmuch as the claim submitted by Mr. Uzielli to the Intendenza di Finanza of Florence had been rejected and because a new claim was not submitted until after the time limit of June 28, 1957, established by the Memorandum of Understanding of March 29, 1957, for

the submission of claims, including requests for tax exemption, of United States nationals under Article 78 of the Treaty of Peace.

The Italian Answer added *ad cautelam* that "the foregoing exonerates us from examining another aspect of the claim, namely whether once the normal procedure for fiscal claims has been initiated but has not yet been closed (District Commission, Provincial Commission) and domestic fiscal offices have already taken under examination the merits of the claim, it is permissible to interrupt the normal evolution of the domestic procedure by resorting to an international jurisdiction."

II. CONSIDERATIONS OF LAW

1. *The eligibility of the claimants*

The Commission notes that the claimant became a United States national on April 4, 1945, that is, before the date of the Treaty of Peace but after the date of the Armistice. However, in the instant case, the eligibility of the claimant to avail himself of the benefits of the Treaty is based upon paragraph 9 (a) of Article 78 which states: "The term 'United Nations nationals' also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy."

This was the case of individuals belonging to the Jewish race. Decree No. 2 of January 4, 1944 of the Republic of Salo' ruled that "real property and annexes thereto, personal property, commercial enterprises and any other resource existing in the territory of the State and owned by nationals of the Jewish race . . . are confiscated in favor of the State." This decree was applied to the claimant by the sequestration of the Paganico Farm.

2. *Claims presented pursuant to Italian law and the Petition before the Commission*

There is no doubt that resort to the remedies provided by Italian law by the damaged claimant, does not rule out the right of the claiming Government to present the controversy before the Conciliation Commission under Articles 78 and 83 of the Treaty of Peace.

A doubt, however, can arise and has been submitted to the Commission, with respect to the legal possibility of starting proceedings before the Commission without having previously exhausted the possibilities offered by Italian law.

"Le dommage subi par une personne privée, qu'il ait sa source dans la violation d'un contrat, ou dans un délit," — Witenberg stated at the Academy of International Law at the Hague — "ne peut faire l'objet d'une réclamation recevable que si la personne privée lésée n'avait devant les Tribunaux de l'Etat défendeur aucune voie de droit qui lui permît d'obtenir réparation ou si celles qui étaient effectivement ouvertes ont été inutilement épuisées." (Witenberg, *Recueil des cours à l'Académie de droit international de La Haye*, vol. 41, p. 50.)

International proceedings in that case were, however, merely subsidiary to the domestic proceedings, and consequently were subordinate to the exhaustion of the remedies provided by the domestic legislation of the State in question; this was because, the claim being of a private domestic nature, international proceedings were admissible only in the case of denial of justice by the appropriate agencies of the State.

The case before us is entirely different. The normal jurisdiction for disputes arising in the implementation of Article 78 of the Treaty of Peace is

the Conciliation Commission established under Article 83 of the Treaty which reads: "Any disputes which may arise in giving effect to Articles 75 and 78 and Annexes XIV, XV, XVI, XVII, part B, of the present Treaty shall be referred to a Conciliation Commission consisting of . . ."

The jurisdiction of the Commission is therefore specific and direct, and not merely subsidiary to domestic Italian jurisdiction. To subordinate this *ad hoc* international jurisdiction to the requirement of the prior exhaustion of the remedies provided by Italian laws, would be contrary to any sound legal criterion.

3. *The Memorandum of Understanding of March 29, 1957 as it affects this case*

The Memorandum of Understanding of March 29, 1957 evidently met the joint requirements of both Governments of putting an end within a short time to the disputes arising out of the implementation of Article 78. And this, besides assuring decisions and payments, also guaranteed the Italian Government against the uncertainty of possible new claims so many years after the signing of the Treaty of Peace.

All claims filed prior to June 28, 1957, the time limit established in the Memorandum, whether with the domestic agencies or with the Commission, were known to the Italian Government and therefore have to be considered admissible for the purpose of the Memorandum.

Inversely, claims not falling within those referred to in the preceding paragraph are not admissible, for the reasons set forth above and in view of the fact that the sum of 950 million lire, which the Italian Government promised to pay within the time limit of three months, under paragraph 2 of the Memorandum, was logically calculated on the basis of the claims already known and claims which would be filed within the established time limit, and not on the basis of claims which were completely new and impossible to foresee.

In consideration of the foregoing, the Commission,

HEREBY DECIDES

1. That the claimant was treated as enemy under the laws in force in Italy during the war and is a United Nations national within the meaning of paragraph 9 (a) of Article 78 of the Treaty of Peace.

2. That the Italian Government, under paragraph 6 of Article 78 of the Treaty of Peace, shall exempt the claimant from the payment of Extraordinary Progressive Patrimonial Tax on any of his property in Italy and shall, within 60 days from the date of notification of the decision, refund any sum paid by the claimant on account of the tax.

3. That this decision is definitive and binding and its execution is incumbent upon the Italian Government.

MADRID, July 29, 1963

The Third Member

(JOSÉ DE YANGUAS MESSIA)

*The Representative of the
United States of America*

(Leslie L. ROOD)

*The Representative of the
Italian Republic*

(Antonio SORRENTINO)