

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Spaulding Case—Decision No. 148

21 December 1956

VOLUME XIV pp. 292-294



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SPAULDING CASE—DECISION No. 148 OF
21 DECEMBER 1956¹

Claim for compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Criteria laid down by Conciliation Commission in order to establish dominant nationality—Reference to Decision No. 55 rendered in Mergé Case—Claimant considered of dominant Italian nationality—Rejection of claim.

Demande en indemnisation présentée au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Double nationalité — Critères admis par la Commission de Conciliation pour établir la nationalité dominante — Référence à la Décision n° 55 rendue dans l'affaire Mergé — Prévalence de la nationalité italienne — 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. Maturri, 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 the 20th day of May 1949, to the Ministry of the Treasury by Alice Orpha Spaulding Paolozzi through the Embassy of the United States of America.

The Italian Ministry of the Treasury, by letter dated February 13, 1952, informed the Embassy that the claim had been rejected on the ground that the claimant, an American national by birth, acquired Italian nationality on October 31, 1938, by marriage to an Italian citizen.

On December 28, 1955 the American Embassy requested the Italian Ministry of the Treasury to reconsider the claim in light of the decision of the Italian-United States Conciliation Commission in the Mergé Case (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Case No. 3, Decision No. 55²) and further documented the following facts:

On October 30, 1938, the claimant, an American citizen, married Lorenzo Paolozzi, an Italian citizen, in Rome, Italy, and thereby also acquired Italian citizenship. The claimant and her husband lived in Italy until June, 1939, whereupon she returned to the United States to await the birth of her first child. In March, 1940, she returned to Italy where she purchased some property in Lucca and Rome. From that date to May 1943, she lived intermittently

¹ *Collection of decisions*, vol. IV, case No. 255.

² *Supra*, p. 236.

between Italy and Switzerland. Mrs. Paolozzi went to Switzerland in July 1941, to await the birth of her second child. Thereafter, she returned to Italy and returned permanently to Switzerland in May 1943. From Switzerland she returned to the United States in July 1945, and made only occasional trips to Italy thereafter. In her travels between Italy and Switzerland, during the period of the war, the claimant apparently used only her Italian passport. It is also apparent the claimant's husband remained in Italy until 1944 when he joined his wife in Switzerland.

The Italian Ministry of Foreign Affairs, by letter dated May 19, 1956, informed the Agent of the United States that the rejection of the claim had been reconfirmed. Thereupon, the Agent of the United States Government filed a Petition stating that the claimant's nationality was predominantly American on the relevant dates of the Treaty of Peace and that the Italian Government in light of the Decision of the Italian-United States Conciliation Commission in the Strunsky Mergé Case, erroneously rejected the claim.

The Agent of the Italian Government, having deposited his Answer admitting that the claimant is in possession of both Italian and United States nationality, argued that since the facts do not come under Section 7 (c) of the Mergé Decision, which states:

With respect to cases of dual nationality involving American women married to Italian nationals, the United States nationality shall be prevalent in cases in which the family has 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.

the prerequisites of dominant American nationality are lacking, therefore, the claimant is to be considered of dominant Italian nationality.

CONSIDERATIONS OF LAW:

It is not denied that under Italian Law the claimant is an Italian national as she acquired same as a result of her marriage to an Italian national; likewise, it is not denied that under the legislation of the United States she has preserved her United States nationality. The case of women married to Italian nationals was given explicit consideration in the above-cited Decision in the Mergé Case and it was set down as one of the guiding principles that in these cases United States nationality shall be deemed as prevalent when the family has 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.

In examining the facts of the case at bar, the Commission holds that Mrs. Alice Orpha Spaulding Paolozzi cannot be considered to be dominantly a United Nations national within the meaning of Article 78 of the Treaty of Peace, as interpreted in the Mergé Decision, because the family did not have its habitual residence in the United States and the interests and personal professional life of the head of the family were not established there. In fact, Mrs. Paolozzi was married in Italy in 1938. From that point to May of 1943, when she established her permanent residence in Switzerland prior to her departure for America, she resided in Italy and went to America only long enough to have her child born there. The other times she left Italy, in her trips to Switzerland, she apparently travelled under an Italian passport exclusively. It is obvious that her Italian citizenship was dominant in that she remained in Italy and Switzerland with her husband, the head of her household, practically continuously from the date of her marriage until she returned to the United States in 1945.

Inasmuch as Mrs. Paolozzi, for the foregoing reasons, cannot be considered to be dominantly a United Nations national within the meaning of Article 78 of the Treaty of Peace, the Commission is of the opinion that the Government of the United States of America, acting on behalf of Mrs. Paolozzi, is not entitled to present a claim against the Italian Government, and therefore

DECIDES:

1. The Petition of the Agent of the United States of America is rejected.
2. This Decision is final and binding.

Rome, December 21, 1956.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

Antonio SORRENTINO

ZANGRILLI CASE—DECISION No. 149 OF
21 DECEMBER 1956¹

Compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality—Criteria laid down by Conciliation Commission in order to establish dominant nationality—Reference to Decision No. 55 rendered in] Mergé Case—Claimant's United States nationality deemed as prevalent.

Indemnisation au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Double nationalité — Critères admis par la Commission de Conciliation pour établir la nationalité dominante — Référence à la Décision n° 55 rendue dans l'affaire Mergé — Prévalence de la nationalité américaine du réclamant.

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. Maturri, 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

¹ *Collection of decisions*, vol. IV, case No. 228.