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Ruspoli-Droutzkoy Case—Decision No. 170

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RUSPOLI-DROUTZKOY CASE—DECISION No. 170 OF
15 MAY 1957¹

Claim for compensation under Article 78 of Peace Treaty—Nationality of claimant—Dual nationality involving American women married to Italian national—Dissolution of marriage—Loss and re-acquisition of nationality of origin—Test of dominant nationality.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Nationalité du réclamant — Double nationalité — Acquisition d'une autre nationalité par mariage — Dissolution du mariage — Perte et rétablissement de la nationalité d'origine — Critères admis par la Commission pour établir la nationalité dominante.

The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace and composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and José de Yanguas Messia, Professor of International Law at the University of Madrid, Third Member chosen by mutual agreement between the United States and Italian Governments,

On the Petition filed by the Agent of the Government of the United States of America on February 6, 1952 *versus* the Government of the Italian Republic in behalf of Mrs. Maria Theresa Droutzkoy.

I. THE FACTS

On November 10, 1948 the Embassy of the United States of America in Rome submitted to the Ministry of the Treasury of the Italian Republic, in behalf of Mrs. Eugenia Berry Ruspoli, a national of the United States of America, a claim based on Article 78 of the Treaty of Peace with Italy for compensation for the damage, destruction and loss of real and personal property located at Nemi, Italy and owned by Mrs. Ruspoli.

By letter dated November 10, 1949 the Italian Ministry of the Treasury rejected the claim on the grounds that Mrs. Ruspoli, under Italian law, was deemed to be an Italian national by virtue of her marriage to Prince Ruspoli, an Italian citizen. Because a dispute existed between the two Governments the American Agent, on February 6, 1952, submitted this case to the Commission on behalf of Maria Theresa Droutzkoy, also a United Nations national and successor to the late Eugenia Berry Ruspoli. Subsequently other pleadings were filed relating to the question of Mrs. Ruspoli's nationality.

As is revealed by the record, the decedent was born in the United States of America, at Oak Hill, Georgia, on October 19, 1869, thereby acquiring United States nationality. On May 7, 1889 she married Henry Burton, also

¹ *Collection of decisions*, vol. IV, case No. 26.

a United States national. Three years later Mr. Burton died and in his will he named his wife as his heir, leaving her a considerable fortune.

In March 1901 she married Enrico Ruspoli, an Italian national, at Washington, D.C. before the Nuncio of the Holy See. As a result of said marriage Eugenia Ruspoli became an Italian citizen and lost her American citizenship. The couple went to Italy and rented an apartment in Rome. They travelled a great deal throughout Europe and probably America. It is established that Mrs. Ruspoli was in America at the time of purchase of the Castle at Nemi, in 1902. The castle was purchased in her husband's name and, it is assumed, with the funds supplied by Mrs. Ruspoli.

Mr. Ruspoli passed away on December 4, 1909 and in his will he left most of his property, including the castle at Nemi, to his family. Much litigation was had concerning the title to the castle. The matter was finally settled by agreement in 1916 and Mrs. Ruspoli obtained title thereto together with all the personal property therein.

Mrs. Ruspoli arrived in America, for the first time since her husband's death, on March 26, 1910. She remained there for ten months and then returned to Italy. Thereafter she made many trips between America and Italy. The first American passport issued to her was dated September 21, 1915 and in the application for same filed with the American Embassy, Rome, she stated she was temporarily sojourning in Rome and that her permanent residence was at Oak Hill, in the State of Georgia. She also stated that she was applying for the passport for the purpose of returning to Georgia. She applied for and received many other American passports thereafter, the last of which was issued on April 26, 1950.

It is evident that Mrs. Ruspoli did a great deal of travelling in her lifetime and that a considerable portion of her travels, after her marriage to Mr. Ruspoli, was made between Italy and the United States. During the period of both World Wars she lived in America and returned to Italy only after the cessation of hostilities.

In 1929 she legally adopted her niece, the claimant herein, in the Surrogate's Court of the City of New York. In the legal proceeding she listed her residence as New York City. Residence in New York was a necessary prerequisite to give the Court jurisdiction.

On April 29, 1938 Mrs. Ruspoli re-registered in the Register of Inhabitants of Rome as coming from Oak Hill. She paid the fee charged to aliens transferring their residence to Rome and exhibited her American passport, the number of which was duly noted.

At the advent of World War II Mrs. Ruspoli returned to America and had money sent to her at the American Express Co. in Rome to pay for her voyage. But the money was blocked as soon as it reached Rome because it belonged to an American citizen. When she finally did leave Italy on September 4, 1941 her Italian money was seized at the border in accordance with Italian law because she was an alien.

The Italian Ministry of the Interior, on September 30, 1930, declared that Mrs. Ruspoli was an Italian citizen and that a certificate could be issued accordingly.

In 1941 Mrs. Ruspoli returned to the United States and remained there until 1946. She subsequently returned to Italy several times until her death in 1951 in New York.

II. THE ISSUE

It is not disputed between the parties that the claimant was born an American citizen and that upon her marriage to Prince Ruspoli she lost that citizenship

and became solely an Italian citizen. Thereafter, Mrs. Ruspoli remained solely an Italian national until the death of her husband in 1909. The dispute between the two Governments arises from the interpretation of the facts thereafter.

1. Position of the Government of the United States of America:

Mrs. Ruspoli regained her American citizenship pursuant to the provisions of Section 3 of the Act of March 2, 1907 which reads as follows:

That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a Consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

The United States Government claims that Mrs. Ruspoli regained her citizenship under the provision “. . . by returning to reside in the United States . . .” and offers several alternative dates on which she had met the condition. In any event, when she applied for a passport in 1915 she specifically stated that she wanted it “for the purpose of returning home at Oak Hill, Georgia” and for the purpose of residing there and fulfilling her duties of citizenship”. The year 1915 was the first time that American passports were required and the first time Mrs. Ruspoli applied for one. The American Agent argues that 1915 was the latest date on which Mrs. Ruspoli could have re-acquired her American citizenship but it is probable that she re-acquired it sooner.

In the Brief of the claimant's American counsel there is also developed the argument that Mrs. Ruspoli never lost her American citizenship by virtue of her marriage to an Italian national in 1901. Said argument is based on the common law interpretation of American law prior to the enactment of the Act of March 2, 1907.

The American Government also argues that Mrs. Ruspoli lost her Italian citizenship at least in 1915, when her transfer of residence to the United States is unquestionable, under the provisions of Article 10 of the Italian Law of June 13, 1912 which provides as follows:

An alien who marries an Italian national acquires Italian nationality. She preserves it also in widowhood unless, by maintaining or transferring her residence abroad, she re-acquires her nationality of origin.

In any event, the American Agent points out, if the Commission should find that Mrs. Ruspoli was in possession of both American and Italian nationality the facts indicate that her dominant nationality was American. To this end, he points out the many ties she had with America; her preference of America during both World Wars; the fact that she travelled with an American passport continuously since 1915; that she always was considered an American by the American authorities; that on many occasions the Italian authorities also considered and treated her as an American national.

2. Position of the Italian Government:

Mrs. Ruspoli never lost the Italian citizenship she acquired when she married her Italian husband. Article 10 of the Italian Law of 1912 imposes two conditions for loss of Italian citizenship, to wit: transfer or residence abroad and re-acquisition of citizenship of origin. While the latter may be questionable, there is no doubt that under Italian law Mrs. Ruspoli did not transfer her

residence abroad, and thus did not lose her Italian citizenship. At the very least she is to be considered as a dual national.

However, the Italian Government also contends that under American law Mrs. Ruspoli did not re-acquire her American nationality of origin. In support of this they submit a Brief of their American Counsel on the interpretation of American law.

The Italian Government also argues that, in the alternative, Mrs. Ruspoli was dominantly an Italian national under the interpretation rendered in the decision of the *Mergé* case. This they say is substantiated by the facts which show Mrs. Ruspoli's almost continuous residence in Italy (in Rome or in the castle at Nemi), her re-registration as a resident of Rome in 1938 and the application for the Italian citizenship which was subsequently granted.

In either alternative, sole Italian nationality or dominant Italian nationality, the Petition should be rejected.

III. CONSIDERATIONS OF LAW:

1. Although, from a chronological standpoint, the legal exhibits submitted in compliance with the Order of July 6, 1955, represent thus far the ultimate stage of the procedure followed by the Commission, it is nevertheless necessary to consider them first because they are the basis of a previous question, namely, the determination of the point at issue.

Until the American attorney of Mrs. Droutzkoy submitted his Exhibit, both parties agreed in admitting that Mrs. Ruspoli, an American born national, had lost her American nationality when she acquired Italian nationality as a result of her marriage to Prince Ruspoli. The Brief of this attorney contends that the decedent, Mrs. Ruspoli, never lost her American nationality even though she married an Italian subject.

He bases this assertion on the fact that, under the American "common law", which was in force prior to the Act of March 2, 1907, American women who married aliens did not lose their nationality of origin. To prove his allegations he cites the *Shanks v. Dupont* Case, concerning the marriage of a woman born in North Carolina, to a British officer.

It is not sufficiently proved that the decision in this case is binding and constitutes case-law. Even less, when said case-law should have a derogatory effect on a rule generally accepted in the United States and confirmed by the law of 1907, according to which, prior to the enactment of the law of September 22, 1922, an American woman who married an alien lost her American nationality.

Even supposing that the allegation of the claimant's attorney had a substantive basis, its admission in the proceedings would still be opposed by the limits set to the disputed issue by the Agents of the two Governments and by the Commission itself in its Order of July 6, 1955, whereby both Agents were directed to "submit citations of American judicial decisions and of qualified legal writings with reference to the interpretation of that part of the United States citizenship law of March 2, 1907, which refers to the re-acquisition of the nationality of origin by the American woman who 'returns to reside' in the United States after the dissolution of her marriage to an alien, and with reference to the provisions of subsequent laws which specifically refer to the instant case".

The theory developed by claimant's attorney is in clear contrast with this Order, in compliance with which it was submitted and cannot, therefore, be accepted.

2. Neither can one admit the American Agent's alternative allegation, that is, that Mrs. Ruspoli was treated as enemy under the last sub-paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace.

No convincing proof has been submitted to the Commission in this connexion.

3. As it is established that Mrs. Eugenia Berry lost her American nationality when she married Prince Ruspoli, the matter should not be investigated as to whether or not she recovered her nationality of origin when she became a widow.

The American applicable text is Section 3 of the law of March 2, 1907 under which a woman who marries an alien can, upon the dissolution of her marriage, re-acquire her American nationality by either one of the following three procedures: (1) registering, if abroad, as an American national, with a United States Consular Office within one year; (2) returning to reside in the United States; (3) if residing in the United States at the time of the dissolution of her marriage by continuing to reside there.

The application of the first of these three procedures should be excluded because, although Mrs. Ruspoli registered with the United States Consular Office in Rome, she did so on August 10, 1915, that is six years after the death of her husband, which occurred on December 4, 1909, whereas the first of the procedures provided for by the law requires that the entry in the Consular Register be made within one year of the dissolution of the marriage.

Neither is the third procedure for re-acquiring nationality applicable in that Mrs. Ruspoli, upon the dissolution of her marriage, resided in Italy and not in the United States.

There remains to be determined as to whether or not Mrs. Ruspoli recovered her American nationality under the second procedure provided for by the law of 1907, that is "by returning to reside in the United States".

Under this rule two elements must of necessity be present in order that Mrs. Ruspoli could be entitled to re-acquire her American nationality: The *animus* and the *facto*. The first is an act of intent; while the latter is a physical fact.

The key to the interpretation lies in the meaning of the phrase "returning to reside". Does it require a sojourn of a certain length of time or just the mere fact of going to the United States with the intent of establishing residence there?

The citations submitted to this Commission do not reveal either the requirement of a certain length of time, or any concrete and specific determination as to its duration, had it been required. As a result, whatever time-limit were to be adopted, would be arbitrary. The only matter which, from a physical and material standpoint appears to be an indispensable and necessary requisite, is the transfer to the United States, even if conditioned upon the element of intent, which must be made evident by sufficiently clear outward signs.

In concurrence with this criterion it cannot be admitted that Mrs. Ruspoli re-acquired her American nationality following her first trip, in 1910, to the United States after she became a widow, because no express statement was submitted by her to assert that this trip was made for the purpose of re-acquiring her American nationality.

The trip made by the decedent in 1915 is different because that voyage was preceded by her formal statement made at the American Consulate in Rome that she intended to re-acquire her American nationality.

In this statement Mrs. Ruspoli asserted, under oath, that she intended to return to the United States "within two months, for the purpose of residing there and fulfilling her duties of citizenship", and that she wished to have a

passport (which was issued to her) for the purpose of returning home at Oak Hill, Georgia.

This statement, together with her transfer to America, to her home in Georgia in 1915, represents the *animus* and the *facto* required by the second of the procedures provided for by the law of 1907 for the re-acquisition by Mrs. Ruspoli of her American nationality.

4. It should now be established whether or not Mrs. Ruspoli lost her Italian nationality as a result of having re-acquired her American nationality.

As American law is applicable in connexion with the re-acquisition of her nationality of origin, Italian law must be referred to in connexion with the loss of her Italian nationality.

The pertinent rule here is that contained in Article 10 of the Law No. 555 of June 13, 1912, under which "an alien woman who marries an Italian national acquires Italian nationality. She preserves it also in widowhood unless, by maintaining or transferring her residence abroad, she re-acquires her nationality of origin".

The Third Member accepts the arguments propounded by the Hon. Italian Member on this Commission during the hearing held at Madrid in February 1957 (the third, devoted to this case), namely, that the expression of residence specified in Article 10 must be interpreted in accordance with Italian legislation.

It can therefore be stated that Mrs. Ruspoli did not fulfil all the necessary conditions required for losing Italian nationality, under Italian legislation.

The instant case involves, therefore, a case of dual nationality which comes under the principles established in the Strunsky Mergé Decision.¹

5. Hereunder are the facts which have been alleged and have not been denied, as far as their correctness is concerned; although they are differently valued by both parties to this dispute in connexion with the effects thereof on the re-acquisition of nationality:

(a) The existence of *jus soli* and *jus sanguinis* in the original American nationality of Mrs. Eugenia Berry, born in 1869 in American territory and coming from a typically American family, the family of Captain Thomas, her father, whose closest relatives preserve their American nationality and continue to reside in the territory of the United States.

(b) Her education and her stay in the United States during the first thirty years of her life.

(c) Her marriage, in 1889, performed in the Catholic ritual, to Mr. Henry Burton, a North American citizen, who died in 1892 and who had named his wife as the sole heir to his large fortune. This fortune was increased one year later by the fortune left to her by her father which included property, and business established in America.

(d) Her second marriage to Mr. Enrico Ruspoli on March 2, 1901, in Washington, before the Papal Nuncio.

(e) The transfer to Italy of Mr. and Mrs. Ruspoli. They rented an apartment in the Palazzo Colonna at Rome, where they established their residence, although they travelled frequently abroad.

(f) The marriage lasted only eight years and no children were born.

(g) Her conduct following the dissolution of her marriage, and especially:

(i) Mrs. Ruspoli's two prolonged stays in America which coincided with World War I and World War II, critical circumstances in which a

¹ *Supra*, Decision No. 55, p. 236.

preference clearly stands out, in view of the fact that fear of danger is not a valid reason, because an ocean trip was far from being devoid of danger with the threat of submarines.

- (ii) The continued use of American passports, which were issued to her in the years 1915, 1916, 1918, 1921, 1923, 1925, 1927, 1932, 1938, 1941, 1946.
- (iii) The fact that in 1929 she performed in New York, and under American law, such an intimate family act as that of adopting her niece, Maria Theresa Droutzkoy Ruspoli.

All the foregoing points are not lessened in value by the fact that in June 1941 a friend of Mrs. Ruspoli, Baroness Rossi Rugi, requested a certificate of Italian nationality for Mrs. Ruspoli because it is not proved that Baroness Rossi Rugi acted as attorney for Mrs. Ruspoli.

The repeated signs of preference for the bond with the country of origin, first and after the interlude of her second marriage which lasted eight years, when examined in the light of the "Considerations of Law" of the Decision rendered in the Mergé Case (No. 7, letter *d*), lead the majority of the Commission to conclude that Mrs. Ruspoli's dominant nationality was American.

The preliminary question should therefore be settled in the sense that the Petition submitted by the Government of the United States of America in behalf of Mrs. Maria Theresa Droutzkoy, Mrs. Ruspoli's successor in interest, is to be declared to be admissible, without prejudice to the further investigation to be made on the existence and extent of the damages claimed.

Whereas the Italian Member disagrees with some of the statements made in this Decision, the majority Commission

DECIDES:

1. The Petition submitted by the Agent of the Government of the United States of America in behalf of Mrs. Maria Theresa Droutzkoy is admissible.

2. A time-limit of six months, beginning from the date on which this Decision is notified, is accorded to the Agent of the Government of the Italian Republic within which to submit an Answer on the question of the amount of compensation for damages claimed in behalf of Mrs. Maria Theresa Droutzkoy.

3. The Agent of the Government of the Italian Republic shall deposit, together with the Answer specified in paragraph 2 above, the evidence on which said Answer is based.

Rome, May 15, 1957.

The Third Member

JOSÉ DE YANGUAS MESSIA

*The Representative of the
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Alexander J. MATTURRI

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