

BARTHA CASE—DECISION No. 14 OF 30 MARCH 1953 ¹

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy

¹ *Collection of decisions*, vol. I, case No. 19.

pursuant to Article 83 of the Treaty of Peace and composed of Antonio Sorrentino, Representative of the Italian Republic, and Emmett A. Scanlan, Jr., Representative of the United States of America after due consideration of the relevant articles of the Treaty of Peace and the pleadings, documents and evidence and the arguments and other communications presented to the Commission by the Agents of the two Governments, and having carefully and impartially examined same, finds that it has jurisdiction to adjudicate the rights and obligations of the parties hereto and to render a decision in this case which is embodied in the present award.

Appearances: Mr. Francesco Agrò, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Carlos J. Warner, Agents of the United States of America.

STATEMENT OF THE CASE :

This case concerns a dispute which has arisen between the Government of the United States of America, acting on behalf of Mr. Alexander Bartha, and the Government of the Italian Republic in regard to the interpretation and application of Article 78 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947, and the agreements supplemental thereto or interpretative thereof. The object of the dispute is to obtain on behalf of Mr. Alexander Bartha, (hereinafter referred to as the claimant), compensation for the loss of certain personal property under circumstances which will be described hereinafter, and for such further or other relief as may be just and equitable.

The material facts are as follows:

The Embassy of the United States of America in Rome certified that the claimant is now and has been at all times since his naturalization on June 4, 1945 a national of the United States of America. On the same page but beneath the certification that the claimant was treated as enemy under the laws in force in Italy during the war.

In his Affidavit of Claim prepared on December 23, 1948 the claimant asserted that the household goods and personal effects which are the subject of this claim had been acquired by him by purchase and were valued at One Thousand Five Hundred Dollars (\$ 1,500). The evidence establishes that the subject household goods and personal effects were packed by the Freight Forwarding Agent Aubac, Vienna, into five (5) crates marked "A.B. 61, 62, 63, 64, 65" and shipped via truck on October 26, 1939 from Vienna to Trieste. The firm of Francesco Parisi, Freight Forwarding Agent, received and stored said shipment in its warehouse in Trieste for the claimant's account. Following Italy's entrance into the war on June 10, 1940, it was impossible for the claimant's property to be forwarded to the United States of America.

With the Affidavit of Claim there was submitted a certified copy (in the German language) of the packing list which contained over one hundred (100) different household items including linens, bedding, glassware, chinaware, silverware, kitchen utensils, et cetera. A translation of said packing list, showing the claimant's valuation of each item, expressed in both dollars and lire was submitted to establish the claimant's basis of evaluation of such property.

The Italian War Law (Royal Decree No. 1415 of July 8, 1938)¹ entered into force with respect to the United States of America on the outbreak of the war between the two governments. Said law in effect provides (Articles 3 and 6) that a national of the United States of America or a stateless person residing

¹ Royal Decree No. 1415, published in *Gazzette Ufficiale* No. 211 of September 15, 1938.

in the United States of America was to be considered by Italy as a person of enemy nationality; (Article 295) that property was subject to sequestration when it was owned by an enemy national or where there was a sound basis to suspect that the property was owned by an enemy national; and (Articles 309 and 310) that the holder in Italy of property owned by an enemy national must make a written declaration thereof to the Prefect within thirty (30) days from the effective date of said law.

Subsequently other laws were enacted in implementation of the Italian War Law, *supra*. One of these was Law No. 1944 of December 19, 1940¹ which provided (Article II) that an Italian national who was under obligation to make delivery of stocks, valuables or other property to an enemy national was forbidden to make such delivery, and (Article IX) that violation thereof was punishable by imprisonment and fine.

By letter No. 253695/DA dated April 12, 1943, the Office of Requisitions in the Ministry of Exchange and Currencies of the Italian Government issued instructions to the "General Warehouses" in Trieste regarding the chattels of emigrating Jewish refugees which had been stored in the Free Port of Trieste. Said instructions stated that the chattels of Jews emigrating from Germany and other countries and residing in enemy countries were to be considered as property suspected of enemy ownership and therefore subject to treatment under the provisions of the Italian War Law, *supra*. The "General Warehouses" were requested to declare to the Prefect of Trieste all such chattels stored with them in accordance with Article 309 of the Italian War Law and to issue instructions to all shipping agents and private individuals operating warehouses in the Free Port of Trieste to make similar declarations of Jewish property. Said letter shows that a copy thereof was furnished by the Ministry of Exchange and Currencies to the Office of Customs of the Ministry of Finance, to the General Accounting Office of the State, and to the Prefect of Trieste.

By letter No. 254944/DA dated May 6, 1943, the Office of Requisitions in the Ministry of Exchange and Currencies of the Italian Government requested the Prefect of Trieste to sequester the chattels of Emigrating Jewish refugees which had been declared on April 22, 1943 in the "General Warehouses" in Trieste. On May 11, 1943, by Decree No. 1100/12409, issued in accordance with the Italian War Law, the Prefect of Trieste placed under sequestration said chattels and designated as Sequestrator Dr. Bruno de Steinkuehl. In the Decree of Sequestration, the powers, duties and responsibilities of the sequestrator were defined.

By circular letter No. 1100/12948 dated May 19, 1943, the Prefect of Trieste also ordered the shipping agents and private individuals operating private and public warehouses in Trieste to declare chattels in storage with them which were owned by Jews emigrating from Germany and other countries. In this circular letter it was stated that a declaration should be made by the warehousemen even in those instances where it might be questionable whether a specific lot of property was owned by a Jew who resided in an enemy country, since it was the duty of the Sequestrator to inspect the property and to determine for each lot the ownership of such property and the residence of such owner.

Three days later, on May 22, 1943, Dr. Bruno de Steinkuehl, as sequestrator, addressed a registered letter to the shipping agents and private individuals operating public or private warehouses in Trieste, which letter read as follows:

Subject: Sequestered chattels belonging to Jews—Registered
By Decree No. 1100/12409 of the R. Prefecture, dated the 11th instant, all

¹ Law No. 1944, published in *Gazzetta Ufficiale* No. 48 of February 25, 1941.

chattels belonging to Jews emigrated to enemy countries have been placed under sequestration in accordance with the order of the Ministry of Exchange and Currencies. The undersigned has been appointed sequestrator.

In compliance with said decree, I first of all request that you consider the above-mentioned chattels in your possession or in your custody as sequestered and they are not to be disposed of or taken away. Furthermore, I request you to let me have in due course by registered covering letter the following data:

1. Original documents related to each individual lot of goods stored with you or with the "General Warehouses" in your name (original letters, bills of lading, shipping orders, name of consignees, last address in your possession, in summary all documents suitable for identifying the individual lots in your possession). You shall make a true copy of the original of each document. This copy signed by you will be retained by the sequestrator, whereas the original will be returned to you after examination.

2. If possible, a list of the various items contained in each individual lift van, together with an approximate indication as to the value of said items, should you have had an appraisal made, either privately or officially.

3. A list of all expenses incurred by you in connexion with the goods from the time of their arrival (railroad freight charges and other expenses to be paid on delivery included) up to and including May 11, 1943/XXI, together with an indication as to further monthly expenses. This list shall be prepared separately for each individual lot of goods, and in such a manner that the following information with respect to each individual owner stands out clearly: data regarding ownership, expenses incurred up to the time of preparation of the list and any further estimated monthly expenses, and finally, wherever possible, the approximate value of the articles contained in each individual lift van.

As far as my taking delivery of the sequestered goods is concerned, you are advised that the formalities will be agreed upon between each of you individually and the undersigned, as soon as I am in possession of the information requested of you in the above-mentioned three paragraphs.

(Signed) Bruno de STEINKUEHL

After his designation on May 11, 1943, the Sequestrator quickly became involved in a great deal of work. The documents covering each lot of suspected Jewish property in the Free Port of Trieste, when omitted by the warehousemen and shipping agents, had to be examined. The Sequestrator tabulated the pertinent information regarding each lot and subsequently compiled lists of such property; a photostatic copy of the list which is pertinent here was presented in evidence in Case No. 13, *The United States of America ex rel. Isadore Gettinger vs. The Italian Republic* (Decision No. 12¹ of this Commission) and reference thereto has been made by the claimant Government in the Petition filed in this case; the sixth entry on page 113 of said list covers the five cases (weighing 514 kilograms) containing the subject household goods and personal effects and shows that the claimant probably was residing at that time in the United States of America.

On January 12, 1944, the German High Commissioner in the Operation Zone "Adriatic Coast Territory" issued his order No. III/4/81 to the warehousemen in the Free Port of Trieste, including the claimant's freight Forwarding Agent, Francesco Parisi, said order has been fully set out in Decision No. 10² of this Commission (Case No. 15, *The United States of America ex rel. Fred O.*

¹ *Supra*, p. 133.

² *Supra*, p. 111.

Winter vs. The Italian Republic) and is incorporated herein by reference. On March 6, 1944, in compliance with the aforesaid order, the five cases containing the property owned by the claimant were delivered by the Firm of Francesco Parisi to German authorities who issued on that date an official Receipt thereof. Afterwards, the claimant's property can not be traced.

On April 27, 1950 the Embassy of the United States of America in Rome submitted to the Ministry of the Treasury of the Italian Republic the documented claim of Mr. Alexander Bartha, based on Article 78 of the Treaty of Peace.

On June 15, 1951 the Petition of the United States of America in this case was filed with the Commission. The Petition alleges that the failure of the Government of the Italian Republic to make a determination of this claim constitutes in effect a rejection of the claim resulting in a dispute between the two Governments submissible to the Conciliation Commission established under Article 83 of the Treaty of Peace. With a statement of the foregoing facts as a premise, the Petition concludes by requesting the Commission to find that a dispute regarding this claim exists between the two Governments; that the claimant is a "United Nations national" within the meaning of this term as used in Article 78 of the Treaty of Peace (the claimant having been treated as enemy under the laws in force in Italy during the war when the five cases containing his personal property were blocked as enemy property) and that the claimant is entitled to receive from the Government of the Italian Republic in lire the equivalent of the sum necessary at the time of payment to make good the loss suffered (which amount was estimated by the claimant on December 23, 1948 to be One Thousand, Five Hundred Dollars (\$ 1,500.00)), as well as such other relief as may be just and equitable.

In the answer of the Italian Republic filed with the Commission on July 21, 1951 it is denied that a "dispute" regarding this claim exists between the two Governments within the meaning of Article 83 of the Treaty of Peace; it is also maintained that evidence is lacking in this case not only to establish that the claimant was a "United Nations national" within the meaning of that term as defined in the second sentence of paragraph 9 (a) of Article 78 but also to establish what nationality the claimant possessed prior to the date (June 4, 1945) on which he became a national of the United States of America. The Answer of the Italian Republic concludes by requesting the Commission to reject as inadmissible the Petition in this case and subordinately to grant the Italian Government additional time to complete its investigation.

The Commission issued an order on August 8, 1951 granting an additional period of seventy-five (75) days to the respondent Government within which to complete its investigation and to file a full and complete Answer.

On October 25, 1951 the Agent of the Italian Republic filed with the Commission a supplementary Answer which it is stated that, if the Commission "considers as proven that before the damage occurred Mr. Alexander Bartha was a national of one of the United Nations or that he has been treated as enemy—purely on a hypothetical basis,—the loss sustained by the claimant can be properly evaluated at Five Hundred Thousand (500,000) Lire.

On December 22, 1951 the Agent of the United States of America filed a Request for an Award, maintaining that the evidence submitted with the Petition clearly establishes that the claimant is a "United Nations national" on September 3, 1943 or on the date of the damage, and that the evaluation of Five Hundred Thousand (500,000) Lire, *supra*, is the amount considered as necessary by the Italian Republic to liquidate this claim *only* in the event that it is determined by the Conciliation Commission that the claimant is a "United Nations national" within the meaning of that term as used in Article 78

of the Treaty of Peace. Following this statement, the Agent of the United States of America requested an opportunity to consider further the questions involved.

On June 25, 1952 the Agent of the United States of America informed the Commission that the claiming Government did not desire to submit in this case either additional evidence or a brief, and requested that the claimant's rights be determined on the basis of the pleadings.

The only issue in dispute in this case is whether the claimant is a United Nations national within the meaning of this term as used in paragraph 9 (a) of Article 78 of the Treaty of Peace. The Petition filed on June 15, 1951 by the Agent of the United States of America asserts that:

The claim is one of a number of similar claims filed by the Embassy under Article 78 of the Treaty on behalf of nationals of the United States who emigrated from Germany or Austria to the United States because of the racial persecution to which they were subjected by the Nazi régime:

and later

. . . that Alexander Bartha, now a national of the United States, formerly Austrian or stateless, . . .

The Commission will take judicial notice of the Eleventh Regulation (enacted on November 25, 1941) of the German Reich Citizenship Law which provided that all Jews possessing German nationality and residing outside the German Reich *ipso facto* lost their German nationality (*Reichgesetzblatt Jahrgang 1941—Teil 1, No. 133, Erste Verordnung zum Reichsbürgersetz, vom 25 November 1941*). Moreover, the Commission does not doubt that the claimant emigrated from Austria to the United States of America because of the anti-Semitic measures introduced in Austria following the annexation of Austria by the German Reich in 1938, and that he established his residence in the United States of America in 1939 or 1940. The Commission finds, however, that the record in this case is barren of any evidence to establish what nationality the claimant possessed prior to June 4, 1945, and more particularly whether the claimant was "Austrian or stateless" prior to the date on which he acquired the nationality of the United States of America.

It is the contention of the claiming Government that the claim presented in behalf of the claimant is meritorious.

. . . because the Italian authorities blocked the shipment of the claimant's household goods and personal effects as enemy property on May 22, 1943, the claimant, who was originally Austrian and thereafter presumably stateless, is included in the term "United Nations nationals" as used in paragraph 9 (a) of Article 78 since he is an individual who under the laws in force in Italy during the war had been treated as enemy.

The second sentence of paragraph 9 (a) of Article 78 of the Treaty of Peace reads as follows:

The term "United Nations nationals" also includes all individuals, associations or corporations which under the laws in force in Italy during the war have been treated as enemy.

It is clear from the evidence that, acting under the Italian War Law, the competent Ministries of the Italian Government in Rome, the Prefect of Trieste, and the Sequesterator of Jewish property in Trieste issued instructions to the "General Warehouses", the private warehousemen and the shipping agents, who held in storage in the Free Port of Trieste the chattels of Jewish refugees

suspected of residing in enemy countries, that such chattels were to be considered as enemy property, subject only to the orders of the Italian authorities. The effect of these measures was to deny to the claimant any control over his property which was stored in the Free Port of Trieste.

That the firm of Francesco Parisi declared the claimant's household goods and personal effects as enemy property in accordance with Article 309 of the Italian War Law, and submitted the pertinent documents to the Sequestrator for his examination can not be doubted. The evidence establishes that the claimant's property was included on the list of Jewish property lying in private warehouses in the Free Port of Trieste, and that such list was prepared by the Sequestrator named in accordance with the Italian War Law. The Commission finds that this fact alone is sufficient to establish that the claimant's property was treated as enemy property under the laws in force in Italy during the war and to bring the claimant within the meaning of the term "United Nations nationals" as defined in the second sentence of paragraph 9 (a) of Article 78. Since Mr. Alexander Bartha is now a national of the United States of America, it follows that the claiming government is entitled to submit a claim in his behalf under the provisions of Article 78 of the Treaty of Peace.

Having reached the foregoing conclusion, and having noted that the Agents of the two Governments are agreed that the claimant's property can be properly evaluated at Five Hundred Thousand (500,000) Lire, the Commission finds that, under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace as implemented on February 24, 1949 by the Exchange of Notes between the two Governments, the claimant is entitled to receive as compensation for the loss suffered by him Five Hundred Thousand (500,000) Lire.

No evidence having been submitted that any previous payment has been made to the claimant for war damages to the personal property which is the subject of this claim, the Commission, acting in the spirit of conciliation,

HEREBY DECIDES:

1. That in this case there exists an international obligation of the Government of the Italian Republic to pay the sum of Five Hundred Thousand (500,000) lire under Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof in full and complete settlement of the claim of Mr. Alexander Bartha, a national of the United States of America, for the loss in Trieste during the war of personal property owned by him;
2. That the payment of this sum in lire shall be made in Italy by the Government of the Italian Republic upon request of the Government of the United States of America within thirty (30) days from the date that a request for payment under this Decision is presented to the Government of the Italian Republic;
3. That the payment of this sum in lire shall be made by the Government of the Italian Republic free of any levies, taxes or other charges and as otherwise provided for in paragraph 4 (c) of Article 78 of the Treaty of Peace;
4. That in this case an order regarding costs is not required, and
5. That this Decision is final and binding from the date it is deposited with the secretariat of the Commission, and its execution is incumbent upon the Government of the Italian Republic.

This Decision is filed in English and in Italian, both texts being authenticated originals.

DONE in Rome, this 30th day of March, 1953.

*The Representative of the
United States of America
on the
Italian-United States
Conciliation Commission*

signed Emmett A. SCANLAN, Jr.

*The Representative of the
Italian Republic
on the
Italian-United States
Conciliation Commission*

signed ANTONIO SORRENTINO