

TUCCIARONE CASE—DECISION No. 188 OF 12 FEBRUARY 1959 ¹

¹ *Collection of decisions*, vol. VI, case No. 256.

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. Matturri, 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 June 30, 1950, to the Italian Ministry of the Treasury by Concetta Tucciarone through the Embassy of the United States of America at Rome.

On September 1, 1951, the Ministry informed the Embassy that the claim was rejected because the claimant's Italian nationality prevails over her American nationality, which she acquired in 1938, in the application of Article 78 of the Treaty of Peace, especially in light of the fact that her husband was solely an Italian national until he also acquired American nationality in 1945, more than a year after the damage occurred. Subsequently, the claim was again submitted to the Ministry for re-examination and the Ministry once again rejected it.

The Agent of the United States filed a Petition with the Commission on July 12, 1956, in which he alleged the following facts: the claimant, an Italian at birth, married an Italian national in 1913; on November 21, 1938 she became a naturalized American citizen; she resided in the United States for fifteen years prior thereto and continuously from 1933 to the aforesaid date of naturalization; she continued to reside thereafter in the United States until 1948 when she went to Italy and remained there for two years; her husband was naturalized as an American on February 26, 1945 and is still an American citizen; she seeks compensation for the loss, as a result of the war, of personal property located in five apartments of a building situated in Scauri.

On August 17, 1956, the Italian Agent filed an Answer in which he alleged that the claim had not been officially rejected and therefore the Commission lacks jurisdiction since no official controversy exists.

On October 30, 1956, the Ministry of the Treasury sent official communication to the American Embassy rejecting the claim on the following grounds: The claimant has failed to prove the existence and ownership of the personal property which is said to have furnished apartments owned by the claimant's husband and damaged because of the war; investigations revealed that Mr. Tucciarone filed a claim with the Intendenza di Finanza of Latina, in December 1956, for damages done, as a result of the war, to this very same real and personal property.

The Commission, on April 17, 1957, ordered the Italian Agent to produce the documents on which said rejection was based. On July 2, 1957 the Italian Agent filed the documents in compliance with the said Order.

CONSIDERATIONS OF LAW:

The Commission finds that the claimant and her husband have 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. Thus this case comes within the meaning of paragraph 7 (c) of the Mergé Decision (*The United States of America ex rel. Florence Strunsky Mergé vs. The Italian Republic*, Decision No. 55)¹ in which the American nationality shall be considered

¹ *Supra*, p. 236.

prevalent. Therefore, since Mrs. Tucciarone's American nationality was her dominant one during the pertinent dates of the Treaty she is entitled to compensation for the damages to her property in Italy as a result of the war.

However, in order to obtain the benefits of Article 78 it is also necessary for the claimant to sustain the burden of proving not only the existence and ownership of the property but also the fact that said property was damaged or lost as a result of the war. The Commission, after having examined all the records of the case, finds that the claimant has failed to prove the existence, ownership or loss of the property and therefore,

DECIDES:

1. That the Petition filed by the Agent of the United States of America on behalf of Concetta Tucciarone *née* Carcone is rejected.
2. This Decision is final and binding.

Rome, February 12, 1959.

*The Representative of the
United States of America*

Alexander J. MATTURRI

*The Representative of the
Italian Republic*

ANTONIO SORRENTINO