

## **INVESTIGATION INTO THE INSURANCE SECTOR**

The Commission paid particular attention to the compulsory purchase of Jewish assets in the insurance sector, taking into account the considerable importance this aspect of the question has been given by international public opinion.

The composition of the Commission itself is a tangible sign of such attention: a qualified member of the National Association of Insurers, representing the entire Italian insurance market, has been on this from the start.

In order to study this specific sector, it was primarily necessary to define the period of time and space to be taken into consideration, specifying this more closely than the general frame of reference.

The rights deriving from an insurance contract take on the nature of credit rights in legal terms, meaning these could have been affected by the anti-Jewish laws only starting from 10 January 1944 – the date in which dlgs 2/1944 of 4 January “New directives regarding property owned by citizens of Jewish race”, came into force – and limited to that part of the national territory under the control of the RSI.

Indeed, as is known, only the cited legislative decree, at art. 1.c), for the first time also took into consideration the credit rights of Italian citizens of “Jewish race” and assimilated subjects – tightening the grip of the increasing persecutory legislation. It provided for the written report of such rights by debtors to the competent Head of Province by territory (art. 2) and prohibited their payment in any form (art. 5), in expectation of the relative confiscation provision (art. 7 and 8) and their subsequent payment into the State coffers (art. 14).

It must therefore be excluded that the credit rights boasted of in Italy by insured Jews could have been the object of forcible conveyance provisions of any kind before this period (January 1944 – April 1944).

This does not mean that the Fascist persecutory legislation and the tragic phenomenon of the deportations were not able to directly and indirectly cause serious prejudices to insured Jews– even before January 1944 – causing difficulties, obstacles and at times the real impossibility of asserting their rights, to the point of erasing all memory of the existence of insurance cover in their favour by survivors of the Holocaust or their descendants.

It must be noted that an insurance contract is a wagering contract, in the sense that the insurer is usually bound to make payment only if and when the inferred risk under guarantee should actually take place.

Only with reference to some life insurance products (not pure risk: whole of life case; life with counterinsurance; mixed) may it be worthwhile for the wagering nature of the contract to be relative

rather than absolute, in the sense that only the time at which the insurer makes the due payment is uncertain, it being understood that a payment will in fact be made.

These forms of not pure risk life insurance allow the contracting party to stop the regular payment of premiums and remain insured for a proportionally reduced sum compared to that originally agreed (so-called discount value) – which the insurer will pay on verification of the risk inferred under guarantee: death during the life of the contract or remaining alive at its expected expiry – or to exercise the so-called surrender right: that is, to ask immediately (and so in advance) for payment of the reduction value, after application (precisely because in advance) of a fixed discount rate.

A precise and real economic value (the credit right of the contracting party/beneficiary for a sum equal to the value of the matured surrender value) is, so to speak, therefore incorporated into these particular life insurance policies, and this can theoretically be appropriated regardless of the inferred risk under guarantee taking place.

In the light of the above, the Commission directed its enquiries as follows:

- a) regarding damage insurance, whose wagering nature is always absolute, by seeking possible provisions by the RSI to confiscate the credit rights of insured Jews arising following verification of the insured risks;
- b) regarding life insurance, whose wagering nature may only be relative, as seen:
  - on one hand, by seeking possible provisions by the RSI to confiscate the credit rights of insured Jews arising both following verification of the insured risks and following the simple maturing of the surrender values;
  - on the other, by seeking the existence of insurance relationships not affected by the RSI's confiscation provisions, but remaining "unresolved" in the postwar years, in the sense that the insured Jews never made requests to the insurers for payment. The relationships in question, when the existence of these can be ascertained, would actually incorporate a precise economic value and it could be reasonably supposed that the insured Jews were no longer able to exercise the rights deriving from these for reasons related in some way to the tragic event of the Nazi-Fascist persecution.

To this end the Commission compiled a special questionnaire, with the full cooperation of the National Association of Insurers, which was subsequently sent to all insurance companies operating in Italy.

The companies directly concerned in the research were identified as those operating – particularly in the life insurance sector – in the period the anti-Jewish legislation was in force (1938-45) or which, subsequently, were actively or passively involved in operations of takeover, amalgamation or portfolio transfer with companies operating in the said 1938-45 period. The companies to whom

the questionnaire were directed were initially asked whether they were in possession of documentation relating to the provisions for the confiscation of certain liquid and collectable credits deriving from life or damage insurance contracts of which the holders were at the time qualified as being of “Jewish race”.

The life insurance companies alone were then asked if they were in possession of evidence that would show that there were contracts current in the 1938-45 period registered to subjects at the time qualified as being of “Jewish race” for which they had not had to make any payment (so called “unresolved” relations).

In order to simplify the complex work of the companies receiving the questionnaire, the ANIA put the list of Jews deported from Italy, taken from the book by L. Picciotto-Fargion, *Il libro della memoria (Gli ebrei deportati dall'Italia 1943-1945)*, Milan, 1991, at their disposal on a special magnetic storage medium.

The ANIA was also at the full disposal of the companies involved in the research for any clarification required.

The questionnaire was sent to all companies operating in Italy in 1999; a total of 246.

Responses to the questionnaire were received from 115 of these. In terms of the percentage of premiums collected in the year of reference 1999, they represented 85% of the market.

Of the 131 companies that did not respond, 121 were not operating in the years 1938-45 considered by the questionnaire.

Of the ten companies that did not respond and that were, however, operating in the years 1938-45, none of these provided life insurance in 1939. Regarding insurance against damages, these ten companies, in terms of percentage of premiums collected in 1939, represented about 3% of the market.

In order to then check the validity of the research, the first 14 companies on the insurance market in 1939 were then identified, taken from the official data of the Insurance Division of the Ministry of Corporations. 1939 was in fact the last year for which it is possible to reconstruct the market share held by each individual company: from 1940 until 1946 there is only aggregate data on the entire life and damage insurance market – and therefore not pertinent to requirements.

The 14 companies considered, in terms of percentage of premiums collected in 1939, represented 94% of the life market and 58% of the damages market.

All 14 companies – albeit in some cases having undergone name changes in the meantime – responded to the Commission’s questionnaire.

In terms of reliability, the research carried out by the Commission took in almost all the companies operating in the period the anti-Jewish legislation was in force, particularly in the life insurance sector, which most interests us here.

The results of the research were, however, fairly modest.

But it must be noted that companies are required to hold documentation relating to contracts for a period of no less than ten years from the date of the last registration, on the basis of the laws in force in Italy and dating from that time (see, in general, art. 2214 and 1110 of the Civil Code and, with specific reference to insurance companies, art. 22, 49 and 72 of rd 63/1925 of 4 January “Regulation for the implementation of rdl 966/1923 of 29 April, concerning the practice of private insurance”).

So, in the vast majority of cases, once the term provided for by law had expired, the documentation concerned was destroyed.

Only six of the companies indicated situations – or particular aspects or hints – of other kinds and of potential interest to the Commission’s work in their responses to the questionnaire.

These were: Alleanza Assicurazioni; Assicurazioni Generali; Axa Assicurazioni; INA, Istituto Nazionale delle Assicurazioni; GAN Assicurazioni (at the time the Italian representative of the French insurance company “Phenix”); RAS (Riunione Adriatica di Sicurtà).

These companies were invited by the Commission to take part in a hearing in Rome on 1 February 2000.

The hearing allowed the various positions to be looked at more closely in an atmosphere of total cooperation, though most of these proved to be of little significance.

The representative of GAN Assicurazioni confirmed that the company did not have any documentation dating from the time under consideration (the oldest policy of which there is any record in its archives being from 1951). He then noted that in 1998 a quite generic request was received, through a Tel Aviv solicitor, regarding a life insurance contract that a Jewish Holocaust victim who was born and died in Poland had supposedly taken out with the Italian representative of the “Phenix” company.

The representative of Axa Assicurazioni referred to the chance residual survival within the company of material concerning life insurance policies current in the 1938-45 period that had remained “unresolved”.

The material in question is inconsistent and full of gaps: its examination, in any case, did not result in the names of any subjects at the time qualified as being of “Jewish race”.

The representative of Alleanza Assicurazioni recalled primarily that in the period in question the company was going through a period of restructuring and so of low production.

At that time the company, in any case, worked almost exclusively in the sector of “popular policies”, highly standardised products not requiring medical checks, of a fixed value and duration and with regular monthly payments of a modest sum.

This said, the Alleanza representative referred to the chance survival of a certain number of boxes containing contractual material of various kinds also relating to the 1938-45 period. In illustrating the nature of this material in more detail, however, the company representative pointed out the lack of technical or administrative indications of use in reconstructing the concrete details of the contractual relationships.

The representative of INA recalled firstly that, at the request of the Commission, his company had openly permitted consultation of its historic archive by the designated personnel. The Commission was at the time trying to confirm the insurance positions of some Italian Jews whose existence had accidentally been discovered from another source in the course of its enquiries. Such research, however, being focused on the names of those concerned, was negative as the INA archive is organised on the basis of policy numbers.

Only when the Commission was able to supply the policy numbers was INA able to verify their fate, confirming that four of them had been settled and one not.

In confirming the absence of useful documentation at the company, the INA representative did, however, point out that, in examining the list of names of Italian Jews supplied by the ANIA, the company had noticed the presence of two names, previously insured with INA, whose policies were settled in 1998 following the request of the beneficiaries, after a fair reconsideration of their payment. INA declared that it is its practice, even in the absence of its own archive documentation, to proceed in any case with settlement of contracts registered to victims of the Holocaust, solely on the basis of the documents the beneficiaries are able to produce.

The case of Assicurazioni Generali and RAS is more complex and worthy of attention, due to the greater amount of material in these company’s archives, even though this is again anything but systematic and complete.

The Generali representatives recalled that the data relating to policies that had remained “unresolved” from 1942 to 1966, as shown by the expiry and damage report registers, had been put onto magnetic storage medium in order to identify policies held by Jews that had not been settled. This data was then compared with that of about 12,000 names in the *Libro della memoria*, also on magnetic storage medium, with the lists of names from the *Gazzetta Ufficiale* of 22 May 1968 (compensation to Italian citizens following l 404/1963 of 6 February), and with the list of confiscations from Jewish citizens kindly supplied by the Prime Minister’s office.

This work allowed a list to be drawn up of people of Jewish religion insured with Assicurazioni Generali whose policies appeared not to have been settled: about 60 contracts out of about 25,000 that were analysed. About one third of these concerned Jews who died during deportation and is the result of comparisons based on the identity of personal details (name, surname, date of birth). Another third concerns Jews who died during deportation and is the result of a specific study of compatibility based on the simple matching of names and surnames. The last third concerns expelled, emigrated or dispersed Jews and was identified on the basis of notes appended at the time to the policies in application of the persecutory laws.

Generali was assisted in this work by the Centre for Contemporary Jewish Documentation in Milan. Generali has stayed in close contact with the Union of Jewish Communities and discussions are currently under way to define the situation in Italy. Generali declares that it has taken into account the criteria on the revaluing of credits approved by the International Commission on Holocaust Era Insurance Claims (ICHEIC).

The company does not, however, have any specific documentation on the effects of the dlgs 2 /1944 of 4 January regarding the confiscation of credit rights: it has only sparse information on this, regarding a few cases relating to life insurances, so only a copy remains of the exchanges of correspondence with the agencies in view of a confiscation provision that did then not eventuate.

The RAS representatives described the inquiries made by the company on what remains of its own archives, under the control of an independent auditor (Reconta Ernst & Young).

At first the data from the registry archive was compared with the list of Italian Holocaust victims, taken mainly from the often mentioned *Libro della memoria*; the results obtained were then crossed with the list of policies that remained “unresolved”, which also includes life insurance policies taken out in the period 1921-43.

The existence of a single policy with the contracting party of Jewish religion remaining unsettled was shown on the basis of the registry data (name, surname and date of birth), for which RAS offered the current value of 100% of the insured capital, calculated using the revaluing criteria approved by the International Commission on Holocaust Era Insurance Claims (ICHEIC).

This offer is now being considered by a solicitor appointed by the Milan Jewish Community, the current beneficiary of the contract.

RAS does not, however, have documentation on the effects of dlgs 2/1944 of 4 January, regarding the confiscation of credit rights.

The end result of the enquiry is therefore the virtually total – even if physiological and foreseeable – disappearance of the companies’ pertinent contractual documentation.

So it is fairly difficult to try to make any evaluation, even solely indicative, of the level reached in Italy of the compulsory dispossession of Jews in the specific sector of insurance. A similar conclusion must also be reached regarding the damages caused indirectly to Jews; firstly as a result of the real impediments made to the exercise of their rights, and secondly as a result of the policies themselves being forgotten by the survivors and their heirs.

The confiscations of Jews' credit rights deriving from insurance contracts in particular – a phenomenon that must be primarily considered with reference to the surrender values of life insurance policies – certainly took place in a limited period of time (January 1944 – April 1945) and in a restricted area (that of the RSI).

It is difficult, however to ascertain precisely what legal difficulties and practical obstacles were mounted by the insurance companies to counter the Salò authorities' claims to directly exercise the surrender right of the life policies in place of the Jewish policy-holders, even though these are clearly shown by various documents found during the research.

The Fascist Federation of Insurance Companies sent the following instructions to the companies by way of its circular 24442/37 of 17 April 1944 on this:

“Companies must report life insurance policies whose surrender right has matured in cases where it is possible to show that the contracting party and the beneficiary are of Jewish race, in accordance with dl 2/1944 of 4 January–XXII.

In any case, however, insurance companies must report the sums that, following the surrender of life insurance policies, must be paid to people of Jewish race, in the terms prescribed by art. 2 of dl XXII/1944 of 4 January. These amounts will remain in bond awaiting the confiscation decree”.

The Federation then distinguished between life policies that had matured but whose surrender value had not been claimed by the policy holder and life policies that had been claimed.

Regarding the former, the Federation quoted the obligation of companies to report these when it was possible to show that both the contracting party and the beneficiary were Jews.

Regarding the latter, the Federation emphasised the obligation to report and the prohibition against payment, in expectation of the confiscation decree, when the beneficiary was Jewish.

On the basis of these indications, the question of the rights of the Salò authorities to exercise the power of surrender in place of the contracting party had remained fairly uncertain, such that in March 1945 – that is, a few days before the end of the tragedy – the EGELI formally complained to the RSI's Ministry of Finance about the non-collaborative attitude taken by the insurance companies and, especially, by Assicurazioni Generali and RAS, asking for official confirmation of

the fact that “the surrender may also be made by the EGELI in the interests of the State and that confiscation of the policies also includes the surrender right”.<sup>1</sup>

Another EGELI letter from the end of March 1945<sup>2</sup> shows, furthermore, that to a request for surrender from the corporation, the Milan agency of Assicurazioni Generali again protested that, on the basis of the quoted circular of the Federation No. 2442/37 of 1944 (the citation is taken from the EGELI letter) “insurance companies would be obliged to report the sums owed to Jews following their exercise of the surrender right, for confiscation of the sums themselves; with which it must be assumed that, in the case of the confiscation of life policies for which the insured Jew has not previously requested surrender, the EGELI on behalf of the State Property Administration does not have the right to exercise the surrender and collect its relative value”.

It does not seem arbitrary to conclude that the phenomenon of forced dispossession of Jews in the insurance sector did not reach the same extremes in Italy as it did in Germany and in places directly under German occupation.

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<sup>1</sup> ACS, MF, *SBE*, b. 13, fasc. 5, letter from the EGELI to the Minister of Finance on 8 March 1945.

<sup>2</sup> *Ibid.*, letter from the EGELI to the Milan office of Assicurazioni Generali on 28 March 1945.