FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

MARY HRUSOVSKY
41-67 74th Street
Elmhurst 73, New York

Claim No. CZ-4177

Decision No. CZ- 2949

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, in the amount of $3,255.29 by MARY HRUSOVSKY, a national of the United States by naturalization on June 7, 1948. The claim is based upon the loss of a house, land, meadows, orchard and vineyard in Smolenicka Nova Ves, interest in real property situated in Valtasur, and savings account No. 772 with the Uverne druzstvo of Valtasur, Czechoslovakia.

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein, owned at the time by nationals of the United States.

The property in Smolenicka Nova Ves was owned by claimant's father, Stefan Studenc, who died on February 13, 1955 in Smolenicka

CZ-6
CZ-11

Nova Ves. Pursuant to Section 4 of Law 139/47 Sb.[1] the State Notariat of Trnava, acting under authority of the probate court,[2] ordered by Decision D 139/55-38 of November 8, 1957 that the entire estate, being an agricultural enterprise, vest in Emilia Banic, one of the heirs because she was working the farm with her husband and was a member of the collective farm of Smolenice. According to Section 6 of Law 139/47 Sb. the amount of the compensation, payable to the bypassed heirs by the heir in which the inheritance vested, is to be determined by the court. The claimant takes the position that her intestate share in the estate was "taken" by the cited decision of the State Notariat.

It is not disputed that claimant might have been in better economic situation if she had received the real property instead of monetary compensation and in such respect may have sustained an injury. It is clear, however, that not all injuries suffered by a national of one state in the territory of another state are compensable through an international claim. As the cases indicate, the claim must be founded upon some breach of duty or other international obligation. In other words, a state cannot be said to be "responsible" unless there is alleged some act or omission on the part of the state which is in violation of international law.[3] Consequently, the action of the State Notariat, complained of, would establish the responsibility of the State and amounts to a "taking" of property within the meaning of Section 404 of the Act only if such action was a breach of duty or other international obligation owed to the claimant by the Government of Czechoslovakia.

It is a settled principle of the common law that there can be no inheritance by, from or through an alien.[4] Therefore, at common law, on

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1/ For the text of the pertinent provisions of Law 139/47 Sb. see Appendix attached hereto.

2/ Law No. 142/50 Sb., the Code of Civil Procedure, as amended, (1950) (Czech.), and Law No. 52/54 Sb. on Jurisdiction of State Notariats (1954) (Czech.)

3/ ORFIELD AND RE, CASES AND MATERIALS ON INTERNATIONAL LAW, at 498 (1955)

4/ Webb v. O'Brien, 263 U.S. 313, 68 L. ed. 318, 44 S. Ct. 112 (1932); Levy v. M'Cartee, 6 Pet. (U.S.) 102, 8 L. ed. 334 (1832)

the death of a citizen who leaves only alien kindred, the real property of the citizen escheats, and the title vests in the state without inquest of office.[5]

The right of the sovereign to prohibit an alien from taking property within the jurisdiction of the state by testamentary or intestate succession is not restricted to common law only but is an universally recognized right of the nations as stated by Chief Justice Taney in the following:

> Now the law in question is nothing more than an exercise of the power which every state and sovereign possesses, of regulating the manner and term upon which property real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state.[6]

The common law rule was changed in many states of the Union by statute. The right to prohibit an alien from taking property through descent and distribution, however, was never denied. Treaty provisions regarding real property were therefore carefully phrased to preserve the traditional right of a state to determine for itself who could not acquire and hold land in its jurisdiction,[7] and the United States has not entered into any treaties which have completely deprived states of the power to legislate in this field.[8]

In view of the right of nations to prohibit an alien from acquiring title to property situated within their jurisdiction and also in the absence of an agreement between the United States and Czechoslovakia to the contrary, the Commission concludes that the Government of Czechoslovakia did not violate any international obligation by Decision D 139/55-38 of the State Notariat of Trnava, and by prohibiting a national of the United

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5/ Crane v. Reeder, 21 Mich. 24, 4 Am Rep. 430

6/ Re Estate of Marienios Apostolopoulos, (-Utah-, 250 Pac. 469). 48 A.L.R. 1328 (1926) citing Mager v. Grima, 8 How. 490, 12 L. ed. 1168 (1850)

7/ See Meekinson, Treaty Provisions for the Inheritance of Personal Property, 44 AM. J. INT'L L. 319 (1950)

8/ Ibid. citing Gibson, Aliens and the Law (1940).

States from acquiring real property in Czechoslovakia by descent does not amount to a "taking" of claimant's property within the meaning of Section 404 of the Act. Accordingly, that portion of the claim based upon property allegedly inherited from Stefan Studenc and situated in Smolenicka Nova Ves, is denied.

With respect to the real property in Valtasur, the Commission finds that claimant owned a one-half interest in land registered in register liber 290 of Valtasur as lot 396, which was taken without compensation by the Government of Czechoslovakia when it merged this land into the local collective farm on November 8, 1952.

Lot 396 in Valtasur was purchased by claimant and her former husband, Vendelin Duris, for 18,000 koruna in 1921. Using the then prevailing rate of exchange, 1.3 cents for 1 koruna, the purchase price paid for the entire property equalled 234 U.S. dollars. In 1925, Vendelin Duris died and his one-half interest in the property was valued for probate purposes at 5,000 koruna. Converting the koruna into U.S. dollars at 3 koruna for 1 U.S. dollar, the value of the entire fee amounted to 300 U.S. dollars. In 1921 Czechoslovak koruna did not enjoy such stability as later and for that reason the purchase price paid does not necessarily furnish a reliable basis for the valuation of real property in Czechoslovakia. Moreover, the value assessed by Czechoslovak authorities for probate purposes reflects a conservative value. For these reasons the Commission is of the opinion that the value of farmland in the area of Valtasur is more correctly stated, in the land values prepared and published by the Federal Agency for Equalization of Burdens (Bundesausgleichsamt), 9/ of the German Federal Republic, as 1260 Reichsmark ($315) per hectare. Based upon

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9/ Verzeichnis der Gemeinde-Hektarsaetze mit Alphabetischem Kreisverzeichnis der Vertribungsgebiete. Bad Homburg, Suppl. 5 at 278. (1956) (Ger. Fed. Rep.)

such information and also upon information and evidence collected in the course of adjudicating claims against the Government of Czechoslovakia pursuant to Title IV of the Act, the Commission finds that the value of claimant's one-half interest in the 3 1/2 Hungarian jutro or 1.45 hectare of farmland in question was Two Hundred Thirty Dollars ($230.00), and concludes that claimant is entitled to compensation in such amount under Section 404 of the Act.

The Commission finds it unnecessary to make determination with respect to that portion of the claim based upon savings account No. 772 with the Uverne druzstvo of Valtasur because claimant stated in her letter of August 26, 1960 that the account was used by her daughters during their visit to Czechoslovakia and therefore her "claim for annulled money does not exist."

A W A R D

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part and an award is hereby made to MARY HRUSOVSKY in the principal amount of Two Hundered Thirty Dollars ($230.00) plus interest thereon at the rate of 6% per annum from November 8, 1952 to August 8, 1958, the effective date of Section 404 of the Act, in the amount of Seventy Nine Dollars and Thirty-Five Cents ($79.35), for a total award of Three Hundred Nine Dollars and Thirty-Five Cents ($309.35).

Dated at Washington, D. C.

JAN 3 1962

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson

Francis T. Masterson
Clerk of the Commission

A.K.B.

THIS DECISION WAS ENTERED AS THE COMMISSION'S FINAL DECISION ON FEB 5 1962

Francis T. Masterson

Clerk of the Commission