

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

IN THE MATTER OF THE CLAIM OF

GEORGE and RUTH MARIAN
122 East Ontario Street
Philadelphia 34, Pennsylvania

Claim No. RUM-30,611

Decision No. RUM-162

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72128-1

Counsel for Claimant:

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FINAL DECISION

This is a claim against the Government of Rumania under Section 303(2) of the International Claims Settlement Act of 1949, as amended. According to claimants' statement, certain property forming the basis of the claim was nationalized, liquidated, or otherwise taken from the claimants by the Government of Rumania in 1952. Claimants GEORGE and RUTH MARIAN allege that they became nationals of the United States by naturalization on November 11, 1954, and May 3, 1955, respectively.

In a Proposed Decision issued on June 26, 1957, the claim was denied on the ground that it was not owned by a national of the United States at the time that it arose. Claimants objected, alleging that they were not aware of the loss of their property until 1956, at which time they were United States nationals.

Awards may be granted under Section 303(2) of the Act for the failure of the Government of Rumania to:

"pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title [August 9, 1955], of property of nationals of the United States in . . . Rumania"

Among the requirements for eligibility, however, is that imposed by a well established principle of international law, that the property upon which the claim is based have been owned by a national or nationals of the United States at the time of loss, and the claim which arose from such loss have been owned by a United States national or nationals continuously thereafter. Inasmuch as international law requires United States nationality when the claim arises, rather than when the claimant becomes aware of the claim, no merit is found in the claimants' objection that they were ignorant of the loss until after becoming United States nationals.

In further objection to the Proposed Decision, claimants advanced a theory of continuous trespass, arguing that although the original trespass occurred while they were Rumanian citizens, it continued thereafter with a cause of action arising each day, entitling them to rental value from the dates of acquiring United States nationality. The Commission rejected a similar argument in its Final Decision in the Matter of Anna Todoroff, Claim No. BUL-1,124, Decision No. BUL-75, September 4, 1957, in the following language, which is equally appropriate here:

One of the avowed purposes of the requirement of continuous ownership by nationals of the espousing state, is that of preventing the creation of an international claim by transfer of the claimant's allegiance. In Moore's International Law Digest, Vol. VI, pp. 636-637, Secretary of State Fish is quoted as follows:

By adopting a foreigner, under any form of naturalization, as a citizen, this government does not undertake the patronage of a claim which he may have upon the country of his original allegiance or upon any other government. To admit that he can charge it with this burden would allow him to call upon a dozen governments in succession, to each of which he might transfer his allegiance, to urge his claim. Under such a rule the government supposed to be indebted could never know when the discussion of a claim would cease. All governments are, therefore, interested in resisting such pretensions.

To the same effect, Secretary Fish stated even more forcefully:

When your alleged injuries took place you were not a citizen of the United States, and therefore, under well-established canons of international law, it is not within the province of this Government to inquire whether your property was wrongfully or rightfully taken... It would be a monstrous doctrine, which this Government would not tolerate for a moment, that a citizen of the United States who might deem himself injured by the authorities of the United States or of any State, could, by transferring his allegiance to another power, confer upon these powers the right to inquire into the legality of the proceedings by which he may have been injured while a citizen.

Clearly, then, to find claimant eligible to compensation for deprivation of property since May 11, 1954 [or, in the instant case, since November 11, 1954], under presently alleged circumstances, would be to defeat the purpose of the rule. The rule is frequently stated variously as requiring that the claim be American in origin or in inception. Even under a theory of deprivation of use, the claim would have arisen, and had its origin or inception, when that deprivation first occurred. The Commission declines to sanction an evasion of the requirement of international law of ownership of the claim by a United States national at that time, by regarding a taking of property as a continuous taking.

At a hearing held on October 3, 1957, counsel for claimant made one further effort on claimants' behalf, by alleging that there had been no transfer of title to the Rumanian Government before claimants became United States nationals, but merely an illegal trespass by Rumanian nationals. A period of ninety days was allowed for the production of evidence in this or any regard. Having examined the material submitted within the allowed period, the Commission finds that claimants have failed to establish that there has been a taking of their property by the Government of Rumania between November 11, 1954 (when United States nationality was first acquired by one of the claimants) and August 9, 1955, the effective date of the Act.

Accordingly, for the reasons stated above, the Proposed Decision is affirmed, and the claim is denied.

Whitney Gilliland

Dated at Washington, D. C.

FEB 19 1958

Paul [unclear]

Henry J. Clay

COMMISSIONERS

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