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

In the Matter of the Claim of FRANCIS J. N. WINDISCH-GRAETZ 350 East 57th Street New York 22, New York Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-1333 Decision No. 1455

Counsel for Claimant:

COUDERT BROTHERS
777 - 14th Street, N. W.
Washington, D. C.

PROPOSED DECISION OF THE COMMISSION

This is a claim for $4,800,917.00 by Francis J. N. Windisch-Graetz, a citizen of the United States since his naturalization on March 17, 1947, and is for the taking by the Government of Yugoslavia of two castles with surrounding lands and buildings; personal property located in and used in connection with the castles, and for the loss of income from these properties.

The two properties of Hoerberg (Podsreda) and Wisell (Biseljsko) are located in Slovenia, in that part of Yugoslavia called "Banovina Drava" before World War II. Claimant alleges that the properties were taken by force by the Government of Yugoslavia in May 1945 ("management" having been taken in May 1945) and that title was taken by that Government on April 28, 1948, the effective taking date under the Second Nationalization Act (Official Gazette No. 35 of April 29, 1948).

The Commission finds it established by certified extracts from the Land Registers of the District Courts of Sevnica, Brezice, and Smarje Pri Jelsah (Docket Nos. 185, 196, 272, 293, 294, 387, and 388, 182 and 352, 205 and 411, 148 and 170, 500, 288, 336, 470 and 666,

and 22, 25, 298 and 355, Cadastral Districts of Podsreda, Krize, Kunsperk, Zagaj, Imeno, Bukovje, Trebce, Susica and Oresje, filed by the Government of Yugoslavia, and admissions of that Government that claimant did own the real properties claimed and the personal property on the premises, when they were taken by the Government of Yugoslavia on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944 (published in Official Gazette No. 2 of February 6, 1945).

According to the decision, Opr. No. 214/45/117/45 issued September 3, 1945 by the Local Confiscation Commission in Smarje Pri Jelsah, the entire property of the claimant passed to State ownership on the basis of Sections 1 and 2 of Article I of the Enemy Property Law of November 21, 1944, it being decided by that Commission that claimant was a person of German nationality.

Sections 1 and 2, Article I, of the Enemy Property Law read as follows:

> "On the day when the Decree becomes effective, there shall pass into State ownership:
>
> 1) All the property of the German Reich and its citizens situated in the territory of Yugoslavia;
>
> 2) All the property of persons of German nationality, with the exception of those Germans who participated in the units of the People's Liberation Army and in Partisan Units of Yugoslavia, or who are citizens of neutral States without having shown a hostile attitude during the occupation;"

Article 12 thereof provides: "This Decree goes into effect upon its publication."

On March 6, 1946 the District Court in Kosko-Brezice affirmed the aforementioned decision of the Local Confiscation Commission.

Claimant has stated that he was born in Gonobitz, South Styria, Austrian Monarchy, on November 4, 1896, and that in 1919 he became an Italian citizen through annexation of the family residence by Italy. While it may be contended that the basis of the decision by

the Yugoslav courts, i.e., that claimant was a citizen of the German Reich or of German nationality, was contrary to the actual facts, the Commission must find that the validity or propriety of those proceedings does not control the determination of the claim. Where property has actually been taken by the Government of Yugoslavia under a claim of ownership, it would constitute a "taking" within the meaning of the Yugoslav Claims Agreement even if this had been accomplished without legal proceedings of any kind or even without a statutory basis for it in Yugoslav law. The Yugoslav Claims Agreement expressly contemplated that claims thereunder would be compensated if the property involved had been taken by any means other than nationalization or other legal process, assuming, of course, that other conditions precedent, such as United States nationality, have been met.

As was stated in the report (No. 800) of the Senate Committee which approved the International Claims Settlement Act of 1949: "It is known that some property owners were effectively deprived of property rights by Yugoslav authorities without formal nationalization." Both the Agreement and the International Claims Settlement Act contemplated that the effective deprivation of ownership or other property rights by Yugoslav authorities, through any means, would be compensable. The same report also says: "Since the Yugoslav Agreement covers the period of September 1, 1939 to July 19, 1948, the intent was undoubtedly to encompass all actual deprivations of property." Many legitimate claimants would be deprived of their intended rights under the Agreement if the Commission were to hold that they had no claims for the deprivation of their property unless such deprivation could be regarded as a "legal" one. The Commission cannot, without doing violence to the Agreement and injustice to

many claimants, adopt a "floating" test for establishing the date of taking which would vary from case to case, as the peculiar "equities" of each case might incline it.

In this case, according to the claimant's own statements, the property in question was taken by force in May 1945. The September 3, 1945 Court decision of the Local Compensation Commission was affirmed by the District Court and the taking became effective as of February 6, 1945 under the Enemy Property Law.

As stated above, claimant Francis J. N. Windisch-Graetz became a national of the United States on March 17, 1947. The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), who were nationals of the United States "at the time of nationalization or other taking" (Article 2). It expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). Since the claimant herein was not a national of the United States at the time of taking, his claim was not settled by the Agreement of July 19, 1948, and it is not, therefore, within the jurisdiction of this Commission.

The claim is, accordingly, denied in whole.

Dated at Washington, D. C.

NOV 3 1954

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

In the Matter of the Claim of FRANCIS J. N. WINDISCH-GRAETZ 350 East 57th Street New York 22, New York Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-1333 Decision No. 1455

Counsel for Claimant:

COUDERT BROTHERS
777 Fourteenth Street, N.W.
Washington, D. C.

FINAL DECISION

On November 3, 1954 this Commission issued its Proposed Decision denying the claim herein on the ground that the claimant was not a national of the United States at the time of the taking of the property involved.

Objections were filed on behalf of the claimant, a hearing was duly held, and briefs have been filed by the claimant. It is contended by the claimant that the confiscation decision or decree by which the property passed to State ownership on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945) did not have the effect of depriving the claimant of all of his property and that there remained to him an equitable or beneficial interest which was taken automatically by the Second Nationalization Act (Official Gazette No. 35 of April 29, 1948). Since the claimant became a citizen of the United States

on March 17, 1947, it is asserted that he is entitled to compensation under the Yugoslav Claims Agreement of 1948 for the taking of such "rights and interests in and with respect to property" as he had upon April 28, 1948.

In support of this position the claimant attacks the validity of the Decree of the Local Confiscation Commission, supra, and contends that under well recognized principles of international law, the Foreign Claims Settlement Commission should give no faith or credit to the findings of fact and legal conclusions as to the status of the claimant and his properties which were set forth in that decree. Claimant further asserts that the Confiscation Commission lacked jurisdiction, its findings were based upon false evidence, and it failed to follow the procedural requirements of Yugoslav internal law so that its findings are appealable. For all these reasons, it is asserted, the claimant retained a right to set the Decree aside and recover possession and title to his property; ergo, he retained an interest which survived until April 28, 1948. Under this theory, as the claimant puts it, this Commission should determine for itself whether or not the claimant was a German citizen or a person of German nationality within the meaning of the Enemy Property Law of 1944, and on the basis of such determination, whether or not that law operated to take his property from him.

The Commission does not subscribe to the claimant's theory as to its right and duty to investigate and determine the validity or propriety of the Yugoslav proceedings by which property was taken. As stated in the Proposed Decision, where property has actually been taken by the Government of Yugoslavia under a claim of ownership, it would constitute a "taking" within the meaning of the Yugoslav

Claims Agreement even if this had been accomplished without legal proceedings of any kind or even without a statutory basis for it in Yugoslav law. The Yugoslav Claims Agreement expressly contemplated that claims thereunder would be compensated if the property had been taken by any means other than nationalization or other legal process, assuming, of course, that other conditions precedent, such as United States nationality, have been met. That all actual deprivations of property were intended to be encompassed in the Agreement was made crystal clear in the report (No. 800) of the Senate Committee which approved the International Claims Settlement Act of 1949. The hearings of that Committee provided further support for the conclusion that this Commission was not to be concerned with the legality of the manner of taking of property. As a State Department representative testified in the hearings (p. 14, Hearings before a Sub-Committee of the Committee on Foreign Relations, United States Senate, S.1074):

> "'Other taking' was put in [the Agreement] to give breadth to the scope of determination of the Commission so that they would not be bound by technical aspects and terms of the Yugoslav law, so that they could make a realistic determination of whether the property had been taken." (Emphasis supplied.)

It may be noted that there is no dispute that the claimant herein was deprived of his property in 1945, as was admitted by the claimant in his claim and again in the brief.

Claimant contends that "under well recognized principles of international law" this Commission should inquire into the validity of the Confiscation decree, the competency of the local court or commission, the accuracy of its findings, etc. An examination of the citations provided in support of this position discloses that

the cases are concerned with impeachment of naturalization, i.e., where an allegation of naturalization is traversed. There is no question that this Commission, as all international tribunals, must inquire into the eligibility of the claimants before it, and in so doing is not bound by the findings of local courts and may assert and exercise the right to determine for itself the citizenship of claimants from all the facts presented. To inquire into the question of a possible denial of justice, however, is another matter. In practice, governments have on occasion protested against the judgments of foreign courts which they considered grossly unjust when they affected their own nationals. In this instance, the claimant herein was not a national of the United States at the time of the decree complained of, so that inquiry into an alleged injury, on the ground of denial of justice, would be contrary to precedent. As stated in Hackworth, Digest of International Law, Vol. V, p. 802:

> "Until the right of the claimant to the protection of the state whose assistance is invoked has been established, there is no occasion to consider the facts and law of the case for the purpose of determining whether there is a just grievance against a foreign state."

Hackworth illustrates this principle (at pages 802-803) by citing Edgar A. Hatton (United States v. Mexico) Opinion of the Commissioners (1929) 6, 7, wherein intervention was denied to claimants who, at the time of the alleged injury, had filed their declaration of intention to become citizens of the United States, as had the claimant herein.

Indeed, the Commission finds it somewhat of a paradox to speak of a denial of justice in this case. The Yugoslav Claims Agreement itself was negotiated to provide recompense for injury to citizens

of the United States. Claimant now asks the Commission to inquire into an alleged illegal taking before he was a citizen of the United States and to set it aside or disregard it so that he may be considered injured later by a taking subsequent to the attainment of citizenship. The denial of justice appears to have been, arguendo, that he was injured or wronged too soon. The hair-splitting argument of the claimant that he is not alleging denial of justice but merely asserting that this Commission must scrutinize all legal proceedings affecting property rights, even prior to citizenship, in order to determine if any property interest remains in the claimant at the time of citizenship, is not persuasive. As the claimant's counsel admitted to the Hearing Examiner, this theory would require the Commission to inquire into proceedings as far back as 1900 or 1850.

Additionally, claimant's argument assumes that if the local confiscation decree were set aside or did not operate to divest claimant of his entire interest in the property, what he did retain was taken automatically upon the passage of the Second Nationalization Law in 1948. Such assumption is not necessarily correct as the Commission pointed out in its Amended Final Decision in the Matter of Angelina Evasovitch Pobrica, Docket No. 967, Decision No. 454.

For all the foregoing reasons, the claimant's objections are rejected and the Commission hereby adopts its Proposed Decision as its Final Decision on the claim.

Done at Washington, D. C.

DEC 3 0 1954