

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

In the Matter of the Claim of

ELISA HEINRICH, Executrix
of the Estate of OTTO HEINRICH, Deceased
19 1/2 Murphy, North Carolina

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

Docket No. Y-1654

Decision No. 1397

Counsel for Claimant:

PAUL NEUBERGER
551 Fifth Avenue,
New York 17, New York

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$228,243.98 by Elisa Heinrich, Executrix of the Estate of Otto Heinrich, deceased. Otto Heinrich became a citizen of the United States by naturalization on August 15, 1946, and is alleged to have died on February 28, 1948, in New York. The claimant has been a citizen of the United States since her naturalization on December 9, 1946. The claim is for the taking by the Government of Yugoslavia of the "Ukod" Plywood and Veneer Manufacturing Company of Susak, in which Otto Heinrich had an alleged 60% interest as a shareholder, and of the "Nihag" Lumber Corporation of Zagreb, in which he had an alleged 50% interest as a shareholder.

The Commission finds it established by certified copies of court decrees filed by the Government of Yugoslavia, and admissions of that Government, that the enterprises "Ukod" and "Nihag" were confiscated by a criminal sentence of the People's District Court for the City of Zagreb, dated November 26, 1945 (No. KZ 563/45), which sentence was affirmed by a judgment of the Supreme Court of Croatia (No. K. 143-1946), dated February 21, 1946. The confiscation was based on

Article 10 of the Law Regarding Criminal Offenses Against the People and the State of August 25, 1945 (Official Gazette No. 66 of September 1, 1945) and on Article 9 of the Law Against Illicit Speculation and Economic Sabotage of April 23, 1945 (Official Gazette No. 26 of April 25, 1945).

A reading of the aforesaid sentence of the District Court of Zagreb of November 26, 1945, reveals that the court ruled, inter alia, as follows:

"At the same time, the entire property of the firm . . . 'Ukod', Susak, as well as of the firm 'Nihag', Inc., Zagreb, Industry for Trade in Lumber, subsequently 'Bilogora', Inc., Zagreb, with all the real and movable property, stock shares and other property, which may be found wheresoever, is declared confiscated."

From this sentence an appeal was taken to the Supreme Court of Croatia, which, on February 21, 1946, affirmed the aforesaid sentence and stated, regarding the confiscation order, as follows:

"The pronounced sentence for the confiscation of the property of the enterprises . . . 'Ukod' and 'Nihag' (subsequently 'Bilogora') is justified and in accord with the principle of the responsibility of legal persons for prohibited acts of their agents, generally accepted by our laws (Article 9 of the Law Against Illicit Speculation and Economic Sabotage, Article 13 of the Law on the Confiscation of War Profits, the latter drawing no line of discrimination between responsibility of physical and legal persons)."

Article 10 of the Yugoslav Confiscation Law of June 9, 1945 (Official Gazette No. 40 of June 12, 1945) which was in effect from June 12, 1945 to August 6, 1946, recites: "When the sentence of confiscation becomes final, the State becomes the legal owner of the confiscated property."

It is apparent that the sentence confiscating the property of the enterprises "Ukod" and "Nihag" became final when the Supreme Court of Croatia dismissed the appeal and affirmed the sentence

of the lower court. This date was February 21, 1946.

In the Statement of Claim claimant alleges that the date of taking is December 6, 1946, under the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 6, 1946). Subsequently she filed a certified extract from the Commercial Register, Susak, referring to a Decree of the Ministry of Finance of January 6, 1947, cancelling the registration of "Ukod" and a certified copy of the minutes of January 28, 1947, of a commission acting for the County Court of Susak in the "execution of the confiscation" of the property of "Ukod". She has also filed a certified copy of a decree of the County Court of Susak, dated April 30, 1947, ordering the registration of the ownership of certain real property changed in the Land Register from "Ukod" to the Government of Yugoslavia.

The proceedings which followed the finality of the sentence were in the nature of an execution. The minutes of the County Court of Susak of January 28, 1947, show that this court merely carried out the provisions of the sentence KZ 563/45 of November 26, 1945, by taking an inventory on the premises of the "Ukod" enterprise as of April 21, 1945, "the date when that enterprise had been taken by the People's Committee for the purpose of administration and exploitation."

The Law Regarding Nationalization of Private Economic Enterprises of December 5, 1946, supra, had no effect on the enterprises "Ukod" and "Nihag". On December 5, 1946, these enterprises were already confiscated and could not pass into State ownership, because they were at such time already in State ownership.

We, therefore, conclude that the date of taking was February 21, 1946, the date on which the confiscation sentence of the lower court became final.

As stated above, Otto Heinrich became a national of the United States on August 15, 1946. 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 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 Otto Heinrich was not a national of the United States at the time of taking, neither his claim nor that of his successor in interest based on such claim was settled by the Agreement of July 19, 1948, and it is not, therefore, within the jurisdiction of this Commission.

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

OCT 21 1954

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In the Matter of the Claim of

ELISA HEINRICH, Executrix
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Under the Yugoslav Claims Agreement
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Settlement Act of 1949

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Docket No. Y-1654

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Counsel for Claimant:

PAUL NEUBERGER, Esquire
16 West 46th Street
New York 36, New York

FINAL DECISION

Otto Heinrich became a United States citizen by naturalization on August 15, 1946 and died on February 28, 1948. This claim was filed by the Executrix of his estate, and is for the taking by the Government of Yugoslavia of the entire property of the enterprises, "Ukod" Plywood and Veneer Manufacturing Company of Susak and "Nihag" Lumber Corporation of Zagreb, in which enterprises Otto Heinrich is alleged to have owned shares of stock.

The Proposed Decision of the Commission denied the claim upon the ground that when the foregoing two enterprises were confiscated (taken) by the Government of Yugoslavia, Otto Heinrich was not a United States national.

Thirty days have elapsed since both claimant and the Government of Yugoslavia were duly served with a copy of such Proposed Decision. The Government of Yugoslavia has not filed a brief as

amicus curiae or notice of its intention to do so. Claimant has filed objections and requested a hearing which was held at the office of the Commission on November 22, 1954. Claimant did not appear at the hearing but Zvonko Valentekovic testified in her behalf. His testimony, the brief filed by claimant's attorney and all other evidence in the matter having received due consideration, the Commission hereby adopts the Proposed Decision as the Final Decision on this claim.

Dated at Washington, D. C. DEC 15 1954