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

In the Matter of the Claim of VASO KRESOJEVICH 17189 Mansfield Avenue Detroit 19, Michigan Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-597 Decision No. 310-A

Counsel for Claimant:

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2101 Cadillac Tower
Detroit 26, Michigan

11-30-54

FINAL DECISION

A Proposed Decision has been entered in this claim in which an award has been made in favor of Vaso Kresojevich, claimant, in the amount of $3,149.95 plus interest in the amount of $82.33.

Subsequent to the issuance of the Proposed Decision, the claimant, through his attorney, filed an objection to the deduction for a life estate on the property recorded in favor of Smilja Kresojevich; and the Government of Yugoslavia filed a brief, as amicus curiae, and evidence as to the value of the property.

The claimant filed no evidence showing that the life estate was extinguished prior to the date of taking, and therefore there is no basis for altering the Proposed Decision in this respect.

Thirty days having elapsed since the claimant herein and the Government of Yugoslavia were notified of the Commission's Proposed

Decision on the above claim, and the brief and evidence filed by the Yugoslav Government having received due consideration, the Commission hereby adopts such Proposed Decision as its final Decision on the claim.

Dated at Washington, D. C. DEC 1 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for $26,505, by Vaso Kresojevich, a citizen of the United States since his naturalization on April 9, 1941, and is for the taking by the Government of Yugoslavia of land, a house, and a lime pit located at Besenovo, Yugoslavia, rents from the real property, bank stock and bank accounts. The claim with respect to the bank accounts was denied by Decision No. 310, and this decision will deal with the other items of the claim.

Certified extracts from the Land Register of the County Court of Ruma (Docket 436, Cadastral District of Manastir Besenovo, and Docket Nos. 373 and 629, Cadastral District of Besenovo), filed by the Government of Yugoslavia, and admissions of that Government, establish that claimant is the record owner of 16 parcels of land with an area of 20 yutars, 1106 square fathoms, with structures on one of the parcels. The land extract for Docket No. 139 (Cadastral District of Besenovo Selo) records ownership of a parcel of 270 square fathoms of land in the names of Peter and

Sava Klicaric. However, the Government of Yugoslavia concedes that claimant also owns this parcel and this Commission's investigator reports that while the cadastral records in Besenovo list this property in claimant's name, this fact was not reflected in the land records. The position of the Government of Yugoslavia is that although the record owner has acquired United States citizenship he has not lost Yugoslav citizenship; that the property is, therefore, exempt from nationalization; that no restrictive measures have been applied to it; and that it may be sold or otherwise disposed of in the same way as the property of any citizen of Yugoslavia.

The Government of Yugoslavia in its nationalization program enacted two nationalization laws. The first, the Nationalization Law of December 5, 1946 (Official Gazette No. 98, December 6, 1946), nationalized 42 kinds of "economic enterprises of general, national and republican importance," and did not include real property such as that claimed herein.

The second law, the Nationalization Law of April 28, 1948 (Official Gazette No. 35, April 29, 1948), nationalized additional kinds of "economic enterprises" and certain real property, including "all real property owned by foreign citizens," with certain stated exceptions not here applicable, and authorized the Ministry of Justice to "issue the necessary instructions for the transfer to the State of nationalized real property." Instructions issued on June 23, 1948, pursuant to such authority, contain the following definition of "foreign citizens" (Official Gazette No. 53, June 23, 1948):

> "IX. Our emigrants who have acquired foreign citizenship but who have not obtained a release from our citizenship, and who neither have a decree from the Ministry of the Interior stating that they have lost their citizenship nor that their citizenship was revoked, are not considered foreign citizens. Therefore the real property of such persons is not nationalized, regardless of the class of property and regardless of whether they are farmers or not."

Thus it appears that the Nationalization Law of April 28, 1948,

as construed by the Ministry of Justice of Yugoslavia under authority conferred in the Act itself, is not applied by the Government of Yugoslavia as a taking of property of "foreign citizens" if such citizens have not lost Yugoslav citizenship. Apparently the claimant has been held to be within that category, and we conclude that the property was not nationalized under the Nationalization Law of April 28, 1948, supra, as being foreign-owned.

In its report of November 4, 1953, the Government of Yugoslavia states: "The arable land is held by the Farmer Working Cooperative 'Jabuka' of Besenovo, as uninhabited land, and the house has been sub-let by the Municipal People's Committee, and the rent goes for the necessary repairs."

In an affidavit of December 21, 1949, claimant swore that the "Yugoslav Government confiscated the property and sub-let to tenants who for four years have not paid any rent . . ." This Commission's investigator reports that possession of the property has been held by local authorities since March 1948 and that rents have been collected by the local People's Committee.

While Yugoslav authorities may have been initially justified in taking custody of the property as uninhabited to prevent its derelict-tion, here there has been no attempt to return it to the control of the owner, no accounting to him of its use or income, no recognition whatever of his ownership rights other than to allow him to retain naked legal title. Under these facts, we hold that there has been a taking of property or of rights and interests in and with respect to property by the Government of Yugoslavia within the meaning of Article 1 of the Claims Agreement and that claimant is entitled to compensation for the reasons set out in Decision No. 1196 (In the Matter of the Claim of Michael and Nick Zuzich, Docket No. Y-732).*

* A copy of this Decision is enclosed.

In the absence of explicit information on the point it will be assumed that the date of taking was March 15, 1948.

The claimant has submitted no corroborating evidence of value. An investigator for this Commission has appraised the properties as follows:

Docket No. 373, Besenovo Selo	:	45,845 dinars
Docket No. 629, Besenovo	:	100,288 "
Docket No. 436, Manastir Besenovo	:	12,934 "
Docket No. 139, Besenovo Selo	:	1,740
Total		160,807 dinars

The properties registered under Docket No. 436, Manastir Besenovo, and Docket No. 373, Besenovo Selo, record life tenancies on one-fourth of each property in favor of Smilja Kresojevich. In an affidavit of September 17, 1954, claimant swears that this person is his mother, that she is living and that she is 70 years of age. He further swears that she has no interest at this time in the property as "he had paid off her interest in 1929." However, the entries in the land extracts are dated December 5, 1931, on the basis of a decision of the County Court of Ruma dated March 14, 1931. A deduction for these encumbrances will therefore be made.

According to claimant's affidavit the life tenant would have been 63 years old on the date of taking. The claimant's interests in the property recorded under these two Docket Numbers were remainder interests, and the value of these interests must be determined.

The Commission does not have actuarial and income data with respect to Yugoslavia and so far as it has been able to determine, reliable data for Yugoslavia is not available. It has, therefore, adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3½% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 3 and 4, 1952 for the collection of gift and estate

taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 81.10 (i).) According to that method of valuation a remainder interest in property which is subject to a life estate of a person aged 63 years is valued at 35.911% of the entire estate. Therefore, since the values of the encumbered properties are 12,934 dinars (Docket No. 436) and 45,845 dinars (Docket No. 373), the remainder interests are 4,644.73 dinars and 16,463.40 dinars, respectively, a total of 21,108.13 dinars.

In addition, the land extract for Docket No. 629, Besenovo, by an entry of May 2, 1940, records a mortgage in the amount of 970.26 dinars at 4.5% interest in favor of the "Commissariat for Unification of Land, First Instance" of Vukovar. No evidence has been filed indicating that the mortgage has been satisfied. In the circumstances, we are of the opinion that a deduction for the mortgage must be made. In arriving at this decision we have not failed to consider that the claimant may be obligated to satisfy the debt for which the mortgage was given as security. However, the likelihood that the claimant herein, or that any claimant whose Yugoslav property was mortgaged, will be called upon to do so seems sufficiently remote as to be practically non-existent. A suit on the mortgage may be barred by time limitations; the mortgagee, if a Yugoslav financial institution, has either been nationalized or liquidated; the mortgagor and the mortgagee may not know the whereabouts of each other; the mortgagor and mortgagee may reside in different countries with the result that suit or payment may be impracticable; any recovery by the mortgagee from the mortgagor may be limited to 10% of the debt because of the pre-war debt devaluation law of October 27, 1945 (Law on Settlement of Pre-War Obligations, as amended, Official Gazette No. 88, November 13, 1945; Official Gazette No. 66, August 16, 1946); or, finally, the mortgagee, if a citizen of the United States, may look to this Commission for compensation for the loss of his security.

The Commission, in its determination of claims against Yugoslavia,

is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding mortgages. We have found no applicable decisions of arbitral tribunals, international of domestic, having responsibility for the determination of claims which were satisfied by the payment of a lump-sum. (Because of the comparatively recent acceptance of lump-sums in settlement of large blocks of international claims, it is doubted that there are reported decisions directly in point.)

It is our view that justice and equity to all claimants require a deduction for mortgages under the circumstances involved in the claims before us, whether the property was taken before or after the above-mentioned Yugoslav debt settlement law became effective. The lump-sum of $17,000,000 has been provided for the satisfaction of all claims. As the claims filed aggregate many times that amount, the fund may be insufficient to pay all claims allowed in full. In these circumstances we believe we are obligated to limit our awards to actual proven losses and not to make awards for contingent losses which may never materialize. We also believe that when many claimants have to share in a fund which may prove inadequate, one claimant should not receive a windfall or be enriched at the expense of other claimants. That would be the case if a claimant who was awarded the full value of his property made no payment on the mortgage, or satisfied the mortgage debt by payment of only 10% of the mortgage pursuant to the Yugoslav debt settlement law. Accordingly, we hold that, in the absence of evidence that a mortgage of record has been satisfied, a deduction for the mortgage must be made in order to reflect the actual amount of claimant's loss. We find that the proper amount to deduct for the mortgage, including interest, in this claim is 1,101 dinars and that amount will, therefore, be deducted from the value of the property.

As to the claim with respect to the lime pit, this Commission's

investigator reports that he questioned claimant's uncle, Zika Kresojevich, regarding it, and that the latter stated that while there is lime in the entire section called "Mutalj," at no time was any lime exploited from the claimant's property. Since claimant has not met the burden of proof, this item of the claim is denied.

Claimant also asks compensation for the loss of rents from the land for ten years at the rate of $200 per year.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act of 1949 to apply (1) the terms of the Agreement with that country and (2) the applicable principles of international law, justice and equity, in that order. The Agreement between the Governments of the United States and Yugoslavia contains no specific provision regarding loss of use of property, loss of profits, and the like. Generally, international and domestic arbitral tribunals in the determination of international claims allow compensation for indirect damages such as loss of use of property, loss of profits and the like, if such losses are reasonably certain and are ascertainable with a fair degree of accuracy. They do not allow compensation for indirect damages if they are conjectural or speculative or not reasonably certain or susceptible of accurate determination. See Borchard, Diplomatic Protection of Citizens Abroad, Sections 172, 173 and cases cited therein.

We are of the opinion that it has not been proven that it was reasonably certain that the profits expected or any profits would have been realized by claimants. The claim for such profits must therefore be denied. However, claimants may be compensated in terms of interest for the loss of the use of the compensation he was entitled to receive on the date the property was taken, from the date of taking to the date of payment by the Government of Yugoslavia. Both the Agreement with Yugoslavia and the International Claims Settlement Act contemplate the allowance of interest by the Commission for the delay in payment of compensation by the Government of Yugoslavia.

With respect to the claim for stock, the claimant filed with the Department of State an uncertified copy of a receipt dated July 18, 1931, from the Privileged Agrarian Bank, A.D., Belgrade, to the effect that 10,000 dinars had been deposited in his account for 20 shares of the Bank's stock. Permanent stock certificates were to be issued claimant as soon as they were printed. No other evidence as to the ownership of the stock has been filed.

In Decision No. 211-A, In the Matter of the Claim of Nick Nankovitch (Docket No. Y-1319), we found that the fair and reasonable value of the stock in this Bank was $2 per share and that the Bank passed into State ownership pursuant to the Decree of September 25, 1946 (Official Gazette No. 78/46). Thus, the amount involved with respect to this item of the claim is only $40. While the claimant has requested the Commission generally to secure evidence in support of his claim, the small amount at issue does not warrant an investigation by our Field Branch in Yugoslavia to determine whether the stock was owned by claimant on the date of taking. We hold that claimant has failed to prove ownership on the date of taking, and this item of the claim is denied.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of all property of claimant which was taken by the Government of Yugoslavia was 138,598 dinars as of the year 1938.* That amount converted into dollars at the rate of 44 dinars to $1, the rate adopted by the Commission in making awards based upon 1938 valuations, equals $3,149.95.*

Claimant's attorney has requested the Commission, in writing, to determine his fees. However, no fee agreement nor other evidence upon which to make such a determination has been filed, and the request is denied.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to Vaso Kresojevich, claimant, in the amount of $3,149.95 with interest thereon at 6% per annum from March 15, 1948, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of $82.33.*

Dated at Washington D. C.
OCT 12 1954

* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 to 1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.