

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

In the Matter of the Claim of

ESTATE OF JOSEPH KREN, DECEASED, ✓
BY MAGDALENA KREN, EXECUTRIX ✓
336 East 53rd Street ✓
New York, New York ✓

Docket No. Y-660

Decision No. 1171

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

ok
2/23/54

PROPOSED DECISION OF THE COMMISSION

OK
9/20/54
any

This is a claim for \$15,000 by Magdalena Kren as Executrix of the Estate of Joseph Kren, deceased, and is for the taking by the Government of Yugoslavia of improved farm land and agricultural equipment located in or near Stara Cerkev, Yugoslavia. Joseph Kren was a naturalized citizen of the United States from March 11, 1940 until his death on April 21, 1948.

As evidence of her right to represent the estate of Joseph Kren, deceased, Magdalena Kren has filed a certified copy of Letters Testamentary issued to her on May 10, 1948, by the Surrogates Court in and for the County of New York of the State of New York, (and certification dated May 12, 1952, stating such letters had not been revoked).

The Commission finds it established by certified extracts from the Land Register of the County Court of Kocevje (Docket Nos. 226, 232 and 892 of the Cadastral District of Stara Cerkev) and admissions of that Government that Joseph Kren owned 51 parcels of land with a total area of 33.9724 hectares of land when they were taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945) as amended on July 31, 1946 (Official Gazette No. 63 of August 6, 1946).

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Claimant has filed a certified copy of the will of Joseph Kren, deceased, which was admitted to probate on May 6, 1948. Under the terms of this will Magdalena Kren was the residuary legatee and devisee and as such would have succeeded to the property claimed. Magdalena Kren has been a national of the United States since December 13, 1948.

From the foregoing it is understood that Joseph Kren's property was taken on February 6, 1945; that he died testate on April 21, 1948, seised of a claim; that under the terms of the will Magdalena Kren would have succeeded to this claim; and that Magdalena Kren did not become a national of the United States until December 13, 1948.

Since Magdalena Kren was not a citizen of the United States on April 21, 1948 (the date of her husband's death), the question presented is whether she is eligible to receive an award under the Yugoslav Claims Agreement of July 19, 1948 in view of the fact that the claim herein lacked continuity of American citizenship from the date of the taking of the property by the Government of Yugoslavia (February 6, 1945) to the date the Agreement was signed (July 19, 1948).

The Agreement is not definite as to whether a non-national of the United States who does not acquire United States nationality until subsequent to the signing of the Agreement on July 19, 1948, but who succeeds to a claim prior to that time which was owned by a national of the United States at the time of its origin, shall be eligible for compensation under the Agreement.

In order to resolve this question it is, therefore, necessary to look to the negotiations leading up to the Agreement, the International Claims Settlement Act of 1949, and any other available data. The Commission obtains no assistance from the history of the negotiations. The International Claims Settlement Act of 1949 provides in Section 4 (a) that in deciding claims, the Commission shall apply "(1) the provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity."

Thus, the Commission feels impelled to follow "the applicable principles of international law" in deciding this question.

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It is a well settled principle of international law that to justify diplomatic espousal, a claim must be national in origin; that it must, in its inception, belong to those to whom the state owes protection and from whom it is owed allegiance (Borchard, The Diplomatic Protection of Citizens Abroad, p. 666). Further, although the national character will attach to a claim belonging to a citizen of a state as its inception, the claim ordinarily must continue to be national at the time of its presentation, by the weight of authority (Borchard, supra, p. 666), and there is general agreement that it have a continuity of nationality until it is filed (Feller, The Mexican Claims Commission, p. 96). That it must continue its national character until its settlement or decision will also be shown by cases cited subsequently.

As a rule, the Government of the United States refuses to espouse claims which have not continued to be impressed with American nationality from the date the claim arose to the date of its settlement (Hackworth, Digest of International Law, vol. 5, p. 804). Thus, in its form, "Application for the support of Claims against Foreign Governments," issued by the Department of State on May 19, 1919, and revised on October 1, 1924, the following language appears in Paragraph 6:

"Moreover, the Government of the United States, as a rule, declines to support claims that have not belonged to claimants of one of these classes [those who have American nationality or who are otherwise entitled to American protection] from the date the claim arose to the date of its settlement." Quoted in Eagleton, The Responsibility of States in International Law, p. 269.

The practice of the State Department in conformity to this principle is illustrated in a letter of August 11, 1926, addressed to an attorney of a company in connection with a claim allegedly incurred

by a requisition by Italian authorities. The letter stated:

" . . . it is assumed that this Insurance Company was a foreign corporation, in which case there would be a break in the continuity of American ownership of this claim . . . The Government of the United States, as a rule, declines to present claims through diplomatic channels that have not belonged to American claimants, from the date the claim arose to the date of its settlement." Quoted in Hackworth, supra, p. 805. ✓

Similarly, where an American claimant died subsequent to the submission of his claim to the Japanese Government, leaving his Japanese wife as his sole heir and as executrix under his will, the Department of State refused to espouse the claim longer since "ownership of the claim" had "passed to . . . [the] Japanese wife." (M.S. Department of State, file 494.11 Barstow, Ebenezer, cited in Hackworth, idem.)

The rule of continuity of nationality in a claim has also been followed by international tribunals. The United States - Mexican and Spanish - Mexican Commissions followed this traditional rule without deviation, and the "rule is implicit in the provision in all the Rules of Procedure requiring the nationality of the owner or owners of the claim from the time of origin to the date of filing to be set forth in the memorial" (Feller, supra, p. 96). ✓ And the British - Mexican Commission stated that "a claim must be founded upon an injury or wrong to a citizen of the claimant Government, and that title to that claim must have remained continuously in the hands of citizens of such Government until the time of its presentation for filing before the Commission." (Case of F. W. Flack, Decisions and Opinions of Commissioners, p. 80 at 81, cited in Feller, idem.) ✓ Following this principle in the Case of Edgardo Trucco (Decision No. 1, unpublished), the latter Commission dismissed a claim for damage to property which had belonged to a British subject at the time of the injury but which had been left by will to a Mexican national prior to the filing of the claim. (Cited in Feller, idem.) ✓ Further, both the British - Mexican Commission in the

Case of Minnie Stevens Eschauzier (Further Decisions and Opinions, p. 180) and the French - Mexican Commission in the Case of Maria Guadalupe A, Vve. Markassuza (Sentence No. 38, unpublished) required continuous nationality not only until the date of filing but subsequently to the date of the award. (Cited in Feller, supra, p. 97.) In the former case it was stated at p. 182:

"A state may not claim a pecuniary indemnity in respect of damages suffered by a private person on the territory of a foreign state unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided.

"Persons to whom the complainant state is entitled to afford diplomatic protection are for the present purpose assimilated to nations.

"In the event of the death of the injured person, a claim for a pecuniary indemnity already made by the state whose national he was can only be maintained for the benefit of those heirs who are nationals of that state and to the extent to which they are interested." (Quoted in Ralston, supra, p. 77.)

And in the Geadell case (Decisions and Opinions, 55) a claim of British origin which did not preserve that character until its presentation before the same Commission, as the residuary legatee of the claim was an American woman, was rejected even though the executor of the testator's estate was a British subject. (Cited in Ralston, idem, and in Hackworth, supra, p. 805.)

The instant claim lost its American nationality upon the death of Joseph Kren on April 21, 1948, and thereafter was impressed with the nationality of a non-citizen of the United States. It is clear, then, that under the policy of the United States this claim would not be espoused by it against Yugoslavia. Further, there is ample authority under the decisions of international tribunals that a claim must have a continuous national character from the date of its origin to the date of settlement.

We are satisfied that the negotiators of the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, were aware of the policy of the United States Government and established principles of international law and had they desired to depart from them would have inserted appropriate provisions in the Agreement. Since they did not, we conclude that a claim to be within the jurisdiction of this Commission must be owned by American nationals from the date the claim arose to the date the Agreement was signed.

For the foregoing reasons this claim is denied in its entirety.

Dated at Washington, D. C.

AUG 23 1954

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FINAL DECISION

Thirty days, or such extended time as may have been granted by the Commission, having elapsed since the Claimant(s) herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above Claim, and no objections thereto or notice of intention to file brief or request for hearing having been filed, or, if filed, no further evidence or other representations having been offered pursuant to the opportunity duly afforded therefor, such Proposed Decision is hereby adopted as the Commission's final decision on this Claim.

Done at Washington, D. C.

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