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

In the Matter of the Claim of	:	
MICHAEL and NICK ZUZICH 901 Magnolia Avenue Royal Oak, Michigan	:	Docket No. Y-732 Decision No. 1196
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	:	

Counsel for Claimant:

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PROPOSED DECISION OF THE COMMISSION

This is a claim for $6,000 by Michael and Nick Zuzich, citizens of the United States since their naturalization on April 29, 1925, and September 29, 1924, respectively, and is for the taking by the Government of Yugoslavia of a house and land described as "House Number 69, Selo Brest, Opcina Sela, Kotar Sisak, Zupanija, Zagreb".

An extract from the Land Register of the County Court of Sisak (Docket No. 124, Cadastral District of Brest Pokupski), filed by the Government of Yugoslavia, and admissions of that Government, establish that claimants are the record owners of two parcels of land, with a total area of 479 square fathoms, with a house on one of the parcels.

The position of the Government of Yugoslavia is that although the claimants as record owners have acquired United States citizenship they have 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". It 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 claimants, Michael and Nick Zuzich, have been held to be within that category, and we conclude that the property was not nationalized on April 28, 1948 because foreign-owned.

The Yugoslav Government further states in its report of May 29, 1953 that the property was then managed by the Farmer Working Co-operative "Sloga" of Brest, which spent a large sum of money repairing the house. This Commission's investigator confirms that in 1951, this Co-operative took control of the house and land and made considerable alterations to the house. The investigator adds that at the beginning of 1953, the Co-operative was disbanded and the Petrinja People's Committee took control of the property and continues to hold it.

By Article 1 of the Yugoslav Claims Agreement, the claims settled therein are limited to the taking of property by the Government of Yugoslavia between September 1, 1939 and July 19, 1948, the date of the Agreement. Even if the actions of the Co-operative and the Petrinja People's Committee were to be construed as "takings", they occurred subsequent to July 19, 1948 and, consequently, are not within the jurisdiction of this Commission.

The claimants, however, allege deprivation of their ownership rights prior to the date of the Agreement. They concede that their brother Frank (Franjo) Zuzich occupied the property with their consent until 1945, when he died. His death in that year is confirmed by the Yugoslav Government. The claimants further allege that after his death they were unable to determine what had happened to the property until they were informed by a local resident that either village officials or the Yugoslav Government had taken over the property, and they also allege that in 1946 they were informed by an official of the People's Committee of Brest that rents were neither being collected nor paid and claimants were advised to sell the property. The claimants allege that no authorization with respect to the property was given to anyone after their brother's death, and that they have received no income or other benefits from the property. Finally, claimants allege that since their brother's death

they have tried to sell the property and that in 1947 and 1948 a Mr. Stepan Car desired to buy the property, but Yugoslav authorities have not allowed him or any one else to purchase it.

This Commission's Field investigator confirms certain of these allegations, finding that immediately after the war the Brest People's Committee took claimants' house into custody, as no one appeared to claim it, and that since that time effective control of the property has been under a local organ of the Yugoslav Government or one of its sub-agencies.

The question for our determination, therefore, is whether under these facts there has been a taking of claimants' property by the Yugoslav Government within the meaning of Article 1 of the Agreement.

That Article refers to the "nationalization and other taking of property". It is clear in this case that there has been no formal nationalization of the property and the term "other taking" is not defined in the Agreement. Turning to the legislative history of the International Claims Settlement Act of 1949 (Public Law 455, 81st Congress), for the views of United States Government officials who testified with respect to the objectives of the Agreement with Yugoslavia, frequent reference is found in the Hearings and Reports of the Congressional Committees to the words "nationalization" 1/, "expropriation" 2/ "confiscation" 3/ and "other taking" 4/ of property, and that the lump sum of $17,000,000 was accepted in

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1/ Senate Report No. 800, 81st Congress, 1st Session, p. 10. Hearing on H.R. 4406, House of Representatives, 81st Congress, 1st Session, pp. 7, 14, 15.

2/ Senate Report No. 800, supra, pp. 3, 4.

3/ Senate Report No. 800, supra, p. 10. Hearing on S. 1074, U. S. Senate, 81st Congress, 1st Session, p. 14.

4/ Senate Report No. 800, supra, p. 10, Hearing on S. 1074, supra, pp. 13, 14; Hearing on H.R. 4406, supra, p. 14.

settlement of claims for which Yugoslavia was liable under international law. 5/ There also appears to have been a disposition on the part of Congress to avoid explicit interpretation of the words "other taking". Thus, in the Senate Report on the Bill to create the former International Claims Commission, it is stated: "The problem is essentially judicial . . . It is believed that consistent with the intent of the Yugoslav agreement, the specific application of 'other taking' should be left to the Commission." 6/ Nevertheless, the Report does express itself specifically with respect to the type of action to which these claimants' property has been subjected.

The Report states:

> "The term 'other taking' in the Yugoslav Claims Settlement Agreement of 1948 is understood to be used in a broad generic sense. 'Nationalization' is in fact a specific form of 'taking' of property. 'Other taking' is designed to include all other deprivation or divesting of property rights for which compensation is properly allowable under the principles of international law, justice and equity. The Commission is not required narrowly to construe any portion of the proposed act, nor the term 'other taking'.
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> "It is known that some property owners were effectively deprived of property rights by Yugoslav authorities without formal nationalization. 'Nationalization' under Yugoslav law called for compensation to be paid in accordance with Yugoslav law. Property and property rights have also been confiscated without compensation by Yugoslav authorities, placed under informal or formal sequestration, held under administration or put in the possession or control of others. Actual transfer of title in a normal sense may not have occurred, yet holders of property may have been effectively deprived of ownership rights. 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." 7/

5/ Senate Report No. 800, supra, p. 3; Hearing on S. 1074, supra, p. 26.

6/ Senate Report No. 800, idem.

7/ Senate Report No. 800, supra, p. 10.

While this Commission is free to construe the term "other taking", the quoted passage is significant since it was largely based on the testimony of State Department representatives, some of whom had taken part in the negotiations leading to the Claims Agreement.

In the instant case, the property has been under the control and management of organs of the Yugoslav Government continuously since 1945. A state is liable for the wrongful acts of its officers from which it derives a benefit and the taking of private property for the public use or benefit has always been an accepted ground for an international claim for compensation. (Borchard, The Diplomatic Protection of Citizens Abroad, p. 184 and cases there cited.) While Yugoslav authorities may have been initially justified in taking custody of the property as abandoned at the end of the war, there has here been no attempt to return it to the control of its owners, no accounting to them of income, no recognition whatsoever of their ownership rights other than allowing them to retain naked legal title. Even where the original taking of property is lawful, its unreasonable detention has been held to warrant an award (Baldwin (U.S.) v. Mexico, April 11, 1839, Moore's Arb. 3235; Shaw (U.S.) v. Mexico, April 11, 1839, ibid. 3265; Bischoff (Germany) v. Venezuela, Feb. 13, 1903, Ralston, 581 - all cited in Borchard, idem., f.n. 3).

Even were we to confine ourselves to a strict legal construction of these circumstances, and concede that the property was not taken from claimant because he is still the owner of the property under the law of the situs, Article 1 of the Agreement is not limited to

the taking by the Government of legal title to property. The Agreement specially refers to "the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property". (Emphasis supplied). We have little difficulty in concluding that claimants' rights and interests in and with respect to property have been effectively taken from them since 1945.

We hold, therefore, that claimants' property or rights and interests in and with respect to the property involved were taken by Yugoslavia and, in the absence of explicit information on that point, it will be assumed that the date of taking was May 7, 1945, the end of the European phase of World War II.

One further question remains to be resolved. In its report on this matter, the Yugoslav Government states that claimants can now dispose of the property on the same conditions as any other citizens of Yugoslavia and to this end should apply to the Farmer Working Co-operative "Sloga" in Brest. Thus, the Yugoslav Government appears in effect to be offering restitution while the claim here is for the value of the property. However, once it is established that the Yugoslav Government took the property within the period covered by the Agreement, it is not warranted in taking unilateral action to compensate claimants in some degree by restoring their property unless they waive dollar compensation by this Commission and accept restitution. The fact that claimants have filed a claim for compensation of course militates against the notion that they are willing to accept restitution. Moreover, since the settlement of this claim was effected by an Agreement with Yugoslavia, it would not appear that the Yugoslav

Government could thereafter elect to settle it by restitution unless such method of settlement is acceptable to the claimant and to the Government of the United States. We hold, therefore, that claimants are eligible to receive compensation under the Agreement, and the only remaining question is the value of the property.

The claimants have filed no corroborating evidence of value. An investigator for this Commission has appraised the land at 6,988 dinars and the house at 59,280 dinars, on the basis of 1938 values.

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 or rights and interests in and with respect to property which were taken by the Government of Yugoslavia was 66,268 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 $1,506.09.*

AWARD

On the above evidence and grounds, this claim is allowed and awards are hereby made to Michael Zuzich and Nick Zuzich, claimants, each in the amount of $753.05 with interest thereon at 6% per annum from May 7, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, each in the amount of $148.67.*

Dated at Washington, D. C.

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

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Counsel for Claimant:

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FINAL DECISION

Thirty days having elapsed since the claimant(s) herein and the Government of Yugoslavia were notified of the Commission's Proposed Decision on the above claim, and the claimant(s) having filed no objections thereto, and a brief filed by the Government of Yugoslavia having received due consideration, such Proposed Decision is hereby adopted as the Commission's Final Decision on the claim.

Done at Washington, D. C. NOV 24 1954