

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

In the Matter of the Claim of

JOHN MAICHEN
1031 Seneca Avenue
Brooklyn 27, New York

Docket No. Y-260

Decision No. 62-A

*OK
JW
27, 1954*

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

Counsel for Claimant:

JOSEPH A. MITSCHERL
66-10 Forest Avenue
Ridgewood, Queens 27, New York

*alc.
AZ
11-3-54*

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** 4 1954

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$6,000 by John Maichen, a citizen of the United States since his naturalization on July 5, 1927, and is for the taking by the Government of Yugoslavia of a bank account and real property registered under Docket No. 23, Crni Potok, Yugoslavia. The claim with respect to the bank account was denied by Decision No. 62, and the instant decision deals only with the claim for real property.

Extracts from the Land Register of the County Court of Kocevje (Docket No. 23, Cadastral District of Crni Potok), filed by the claimant and the Yugoslav Government and the report of this Commission's investigator establish that claimant is the record owner of 58 parcels of land with an area of 20,4829 hectares, with structures on one of the parcels.

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; that it may be sold or otherwise disposed of in the same way as the

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property of any citizen of Yugoslavia; and that it is being managed by local authorities "considering the property had been deserted."

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, as being foreign-owned.

However, this Commission's investigator reports that since 1945 the property has been under the effective control of the local People's Committee of Kocevje and that the land was being farmed by a private farmer assigned by the People's Committee. He further reports that the private farmer and those inhabiting claimant's house pay rent directly to the administration set up by local authorities to manage the property of foreigners and Yugoslav citizens living abroad. While Yugoslav authorities may have been initially justified in taking custody of the property as abandoned at the end of the war to prevent its dereliction, there has here been no attempt to return it to the control of its owner, no accounting to him of its use or income, no recognition whatsoever of his ownership rights other than allowing him to retain naked legal title. Under these facts, we hold that there has been a taking of the property or rights and interests in and with respect to the property within the meaning of Article 1 of the Claims Agreement and that claimant is entitled to compensation for the reasons set forth in Decision No. 1196, In the Matter of the Claim of Michael and Nick Zuzich (Docket No. Y-732).^{*} In the absence of explicit information on this point, it will be assumed that the date of taking was May 7, 1945, the end of the European phase of World War II.

Claimant has filed no corroborating evidence of value. An investigator for this Commission has appraised the land at 115,322 dinars and the house at 29,376 dinars on the basis of 1938 values.

In appraising the house, the investigator deducted 20% for war damage. It is understood therefrom that the property was damaged by military action before the property was taken and not by Yugoslav authorities. In any event, no evidence indicating otherwise has been filed.

* A copy of this decision is enclosed.

The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property" (Article 1). It is our view that damage to property by military action is not a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for losses of that kind were not settled by the Agreement of July 19, 1948, and are not within the jurisdiction of this Commission. Accordingly, the deduction for war damages was proper.

The land extract records life estates in favor of Jozefa Majhin and Magdalena Majhin. However, the claimant has filed death certificates showing they died on January 25, 1945, and January 1, 1939, respectively. Since these life tenancies were, therefore, extinguished prior to the date of taking, they will be disregarded.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of claimant's property or rights and interests in and with respect to property which were taken by the Government of Yugoslavia was 144,698 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 \$3,288.59.*

DECISION

On the above evidence and grounds, this claim is allowed to the extent indicated and an award is hereby made to John Maichen, claimant, in the amount of \$3,288.59 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, in the amount of \$649.25.*

Dated at Washington, D. C.

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* 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.