

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

In the Matter of the Claim of

MILE SMILJANIC and
ANA SMILJANIC
13127 Lincoln Street
Highland Park 3,
Michigan

Docket No. Y-402

Decision No. 740

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

PROPOSED DECISION OF THE COMMISSION

This is a claim for \$17,120 which is asserted to be the value of a three-story brick building and land recorded in the Belgrade Land Register in Docket No. 4146 as Lot No. 2459/120, House No. 4 with yard, at the corner of Djerdap and Mike Mitrovich Streets, Belgrade, Yugoslavia, said to have been taken by the Yugoslav Peoples Court II, Belgrade, in September 1945. The claimants, husband and wife, each claim a one-half (1/2) interest in the property.

Claimant Mile Smiljanic has been a national of the United States since December 3, 1928, the date on which he was naturalized by the United States District Court at Detroit, Michigan. Claimant Ana Smiljanic was naturalized on July 12, 1949, by the same court.

Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949 it is required, as one of the conditions precedent to the maintenance of a claim thereunder,

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April 23, 1951*

*affirmed
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4/19/54*

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that the claimant shall have been a national of the United States at the time of Yugoslav nationalization or other taking of the property. Since Ana Smiljanic did not become a national of the United States until 1949, long after the alleged taking, she has no legal standing upon which to prosecute her portion of the claim. Her claim, therefore, is denied.

The evidence of record shows that the above-described property was jointly owned by Frank Auslaender and Anna Auslaender, husband and wife, pursuant to a sales contract dated March 3, 1941. The property was later confiscated by Axis occupation authorities, pursuant to racial discrimination measures, and the right of resale was vested by those authorities in one Nikolaus Virt as a "commissioned administrator." Under date of April 22, 1942, in a sales contract, Nikolaus Virt, "Pursuant to the authorization contained in the Decree of July 22, 1941 amending the Decree regarding Jews and Gypsies of May 30, 1941," purported to sell the property to claimants. The decree of the Circuit Court for the City of Belgrade II directing entry of ownership in claimants also refers to the seller, Nikolaus Virt, as the "Commissary, Administrator of the real-estate property of Frank Anslender and Ana, Hebrews."

On November 12, 1945, pursuant to a decree of the People's County Court for the IVth Precent in Belgrade, following the re-establishment of the Yugoslav Government, the property was restituted to the Auslaenders.

By correspondence under date of May 25, 1953, in reference to this claim, the Government of Yugoslavia advises that the property was purchased by claimants during the German occupation from the

Commissary for confiscated Jewish property; that the transaction was in aid of the occupier's plundering purposes in seizing property of persons of Jewish origin; that, after liberation, the property was restituted to the original owner, without compensation to the holder; and that, under these circumstances, the property cannot be viewed as having been "taken" by the Government of Yugoslavia, with the result that the claim is unfounded.

(3) In recognition of the illegal measures in force during the German occupation in the acquisition of properties, the United Nations issued a declaration on January 5, 1943, to which both the United States and Yugoslavia were parties, in which they reserved the right "to declare invalid any transfers of, or dealings with, property, rights and interests" in territories under enemy occupation (Declaration Regarding Forced Transfers of Property in Enemy-Controlled Territory). That Declaration also contained "a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled."

Even before that declaration, several governments-in-exile had issued decrees to the effect that measures as to property adopted by the occupying power were to be considered null and void. Such decrees were issued by the Belgian Government on January 10, 1941, the Polish Government on November 30, 1939, and by the Yugoslav Government under date of May 28, 1942. In World War I, changes of title to ownership effected under political pressure or by means of military contingencies in occupied France and Belgium were not recognized by the French and Belgium authorities after the occupation, and special laws were passed

invalidating contracts entered into during the occupation period.

Lemkin, Axis Rule in Occupied Europe, pp. 40-41.

To the same effect as the United Nations Declaration is Resolution 7 of the 1943 London International Law Conference:

"A person who acquires, even in good faith, any property, rights or interests which are or have been situated in occupied territory or are the property of nationals of that country will, if his acquisition of them is derived directly or indirectly from acts of the occupant or his associates or agents, not acquire an internationally valid title thereto as against the true owner unless such title is valid by the law of the occupied country as applied by the reconstituted authorities after the liberation of the country."

As hereinabove noted, the Government of Yugoslavia has declared invalid the title acquired by claimants from the occupant.

These declarations are in accord with the concepts expressed through the years by countries, courts and various tribunals on the illegal acts of occupant-plunderers. /

The view of the United States was clearly and pointedly stated in a situation which arose during the Civil War. In 1862, certain shares of stock in a South Carolina corporation, held by loyal citizens of the United States, were sequestered and sold under a statute of the Confederate congress as the property of "alien enemies" and new certificates of stock were issued to the purchasers. In 1866, following United States occupation of South Carolina, restoration was made to the original holders. In the litigation which arose, it was held, in Dewing v. Perdicaries, 96 U.S. 193, 195 (1877), (1) that the new certificates issued under the Confederacy gave no title either to the purchasers or their assignees and should

be cancelled, and (2) that the purchasers and their assignees could claim no indemnity from the company. "Nothing is better settled," said the court, "in the jurisprudence of this court than that all acts done in aid of the rebellion were illegal and of no validity. The principle has become axiomatic. It would be a mere waste of time to linger upon the point for the purpose of discussing it . . . The transactions here in question were clearly within the category thus denounced. The order of sequestration, the sale, the transfer, and the new certificates were all utterly void. They gave no rights to the purchasers, and took none from the loyal owners. In view of the law, the rightful relations of both to the property were just the same afterwards that they had been before. The purchasers had not then, and they have not now, a scintilla of title to the stock. The transferees can be no better off than their vendors."

Chief Justice Marshall, speaking for the Supreme Court in United States v. Percheman, 7 Pet. 51, 86 (1833) said, in reference to the treaty of 1819 with Spain ceding the Floridas:

" . . . it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property remain undisturbed."

And, as stated by Mr. Bayard, Secretary of State, on March 20, 1886, "The Government of the United States, therefore, holds that titles derived from a duly constituted prior foreign government to which it has succeeded are 'consecrated by the law of nations' even as

against titles claimed under its own subsequent laws . . . Title to land and landed improvements, is, by the law of nations, a continuous right, not subject to be divested by any retroactive legislation of new governments taking the place of that by which such title was lawfully granted." Moore, International Law Digest, Vol. I, p. 422 (1906).

/ Deprivation of private property rights because of race and without provision for compensation by a government which was created and maintained by hostile foreign military forces constitutes a sufficiently clear offense to international law, justice and morality as to need no elaborate exposition. In the matter at hand, the several legends and other references in the documents incident to the sale to claimants clearly indicated, and gave ample warning of, the (3) circumstances under which the property was acquired and sold. It would appear that claimants were fully aware of these circumstances, but seemingly elected to take the risks involved. Apart from the question of good or bad faith, which is given no weight in our decision, it is quite clear that claimants did not acquire valid title under the laws of Yugoslavia or suffer a deprivation of property by Yugoslavia which would constitute a basis for compensation under the Yugoslav Claims Agreement of the principles of international law. /

In view of the foregoing, this claim must be, and hereby is, denied.

Dated at Washington, D. C.

APR 9 1954

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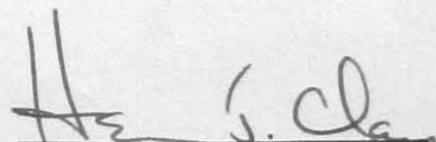
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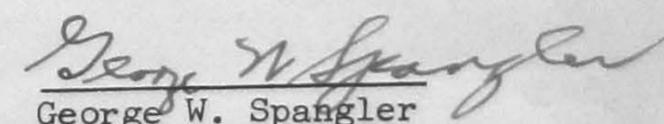
Under the Yugoslav Claims Agreement
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FINAL DECISION

Thirty days, or such extended time as may have been granted by the Commission, having elapsed since the Claimant herein was 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. June 17, 1954.


Henry J. Clay
Acting Chairman


George W. Spangler
Acting Commissioner