

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ESTATE OF MARIA ROGALE, DECEASED  
ADOLF ROGALE  
STEFANIE GEBAUER

Claim Nos. Y2-0021  
Y2-0897  
Y2-0898

Decision No. Y2- 13

Under the Yugoslav Claims Agreement of 1964  
and Title I of the International Claims  
Settlement Act of 1949, as amended

Appeal and objections from a Proposed Decision entered September 6, 1967

Oral Hearing held on December 5, 1967.

FINAL DECISION

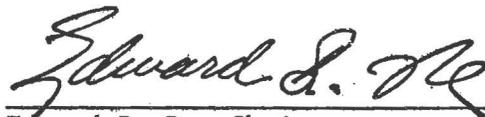
Under date of September 6, 1967, the Commission issued its Proposed Decision denying these claims for the reason that the property upon which they are based was not owned by a national of the United States at the time of nationalization by the Government of Yugoslavia, a requirement for an award imposed by Article I and Article II of the Yugoslav Claims Agreement of November 5, 1964. Claimants objected to the Proposed Decision and requested an oral hearing. No additional evidence was submitted.

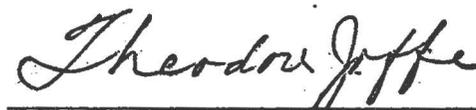
Full consideration having been given to the entire record, including claimants' objections and arguments presented at the oral hearing, it is

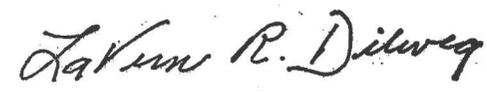
ORDERED that the Proposed Decision be and it is hereby affirmed.

Dated at Washington, D. C.  
and entered as the Final  
Decision of the Commission

14 DEC 1967

  
Edward D. Re, Chairman

  
Theodore Jaffe, Commissioner

  
LaVern R. Dilweg, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ESTATE OF MARIA ROGALE, DECEASED  
ADOLF ROGALE  
STEFANIE GEBAUER

Claim Nos. Y2-0021  
Y2-0897  
Y2-0898

Decision No. Y2- 13

Under the Yugoslav Claims Agreement of 1964 and Title I of the International Claims Settlement Act of 1949, as amended.

PROPOSED DECISION

These claims are based upon the asserted ownership and loss of real property and personal property located in Kocevaska Reka, Koce and Crni Potok, Yugoslavia. Claimants, ADOLF ROGALE and STEFANIE GEBAUER, state that they have been nationals of the United States since their naturalization on November 17, 1942, and June 24, 1930, respectively. MARIA ROGALE, who died on June 19, 1967 subsequent to the filing of her claim, was a national of the United States since her naturalization on June 11, 1959. Johan Rogale and Josef Rogale, predecessors in interest herein were not nationals of the United States at the time of their deaths on June 29, 1956, and October 24, 1953, respectively.

Under Section 2(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. §1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement of November 5, 1964 and the Commission is directed to apply the following in the following order:

- (1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity.

Among other things, the Agreement provides as follows:

Article I. (a) The Government of Yugoslavia agrees to pay and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interests in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

Article II. The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement. (Agreement between the Government of the United States and the Government of the Socialist Federal Republic of Yugoslavia Regarding claims of United States Nationals, November 5, 1964, which entered into force on January 20, 1965, 16 U.S.T. & O.I.A. 1965, T.I.A.S. No. 5750 (1964).)

Thus where property was owned by a natural person at the time of its nationalization or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of nationalization or other taking which must also have occurred between July 19, 1948 and the date of the Agreement.

The evidence submitted in support of these claims includes pertinent extracts from the land register and a copy of a sales contract.

Based on all the evidence of record, the Commission finds that the real property was nationalized or otherwise taken by the Government of Yugoslavia from those persons and on those dates hereinafter set forth:

1. Twenty-one parcels of unimproved real property located in Kocevaska Reka and recorded in the land register of Kocevaska Reka land record liber number 21, were owned by Maria Rogale on August 8, 1948, the date of the decision of the local court whereby title to said property was granted to the Government of Yugoslavia and so recorded on May 5, 1949;

2. Fifteen parcels of unimproved real property located in Kocevaska Reka and recorded in the land register of Kocevaska Reka, register No. 79, were owned by Maria Rogale on August 20, 1948, the date of the decision of the local court whereby title to said property was granted to the Government of Yugoslavia and so recorded on May 14, 1949;

3. Eleven parcels of unimproved real property located in Koce and recorded in the land register of Koce, register No. 46, were owned by Johan Rogale on September 3, 1946, the date of the decision to take the property based upon the law of confiscation of enemy property of November 21, 1944, effective February 6, 1945, and recorded in the name of the Government of Yugoslavia on October 18, 1946;

4. Two parcels of unimproved real property located in Koce and recorded in the land register of Koce, register No. 219, were owned by Johan Rogale on September 3, 1946, the date of the decision to take said property based upon the law of confiscation of enemy property of November 21, 1944, effective February 6, 1945, and recorded in the name of the Government of Yugoslavia on October 18, 1946;

5. Two parcels of improved real property located in Kocevski Reka and recorded in the land register of Kocevski Reka, register No. 290, were owned in equal shares by Johan Rogale and Maria Rogale on July 16, 1948, the date of the decision whereby the 1/2 interest of Maria Rogale was granted to the Government of Yugoslavia and recorded in the name of the Government of Yugoslavia on October 18, 1948. The 1/2 interest of Johan Rogale was also taken by the Government of Yugoslavia and so recorded on December 18, 1954;†

6. Two parcels of real property located in Kocevski Reka and recorded in the land register of Kocevski Reka land record liber No. 39, were owned by Josef Rogale on August 29, 1948, the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on April 14, 1949;

7. Eleven parcels of unimproved real property located in Crni Potok and recorded in the land register of Crni Potok land record liber No. 200, were owned by Josef Rogale on May 5, 1948, the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on June 25, 1948;

8. One parcel of unimproved real property located in Koce and recorded in the land register of Koce, register No. 263, was owned by Josef Rogale on March 21, 1948, the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on June 21, 1948;

9. Five parcels of unimproved real property located at Kocevski Reka and recorded in the land register of Kocevski Reka land record liber number 306, were owned by Josef Rogale on August 29, 1948 the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on April 14, 1949.

10. Three parcels of unimproved real property located in Kocevski Reka and recorded in the land register of Kocevski Reka land record liber No. 50, as being owned by George Pirstl on August 20, 1948, the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on May 14, 1949. This property was sold to Josef Rogale by sales contract dated April 15, 1940 at Brooklyn, New York, but the transfer was not recorded in the land register of Kocevski Reka;

11. Thirty-seven parcels of unimproved real property and two parcels of improved real property located at Kocevaska Reka and recorded in the land register of Kocevaska Reka (land record liber No. 51, as being owned by George Pirstl on August 30, 1948, the date of the decision whereby title to said property was granted to the Government of Yugoslavia and so recorded on May 14, 1949. This property was sold to Josef Rogale by sales contract dated April 15, 1940 at Brooklyn, New York, but the transfer was not recorded in the land register of Kocevaska Reka.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of this claim. (FCSC Reg., 45 C.F.R. §531.6(d), as amended, 32 Fed. Reg. 412-13 (1967).)

A portion of these claims is based upon the asserted ownership and loss of personal property. However, no evidence has been submitted to corroborate a taking of personal property by the Government of Yugoslavia from nationals of the United States during the period covered by the Agreement. Accordingly, the portion of these claims based upon personalty is denied.

For a definition of the term "nationals of the United States," reference is made to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (supra), which provides that:

The term "nationals of the United States" includes  
(1) persons who are citizens of the United States, and  
(2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

As to item (1), the term citizen of the United States includes all persons born or naturalized in the United States, and subject to the jurisdiction thereof (U.S. Const. Amend. XIV, § 1). Also, a person does not become a citizen of the United States by way of naturalization until the procedure of naturalization is fully complied with and the order divesting the person of his former nationality and making him a citizen is signed by the judge of the court having jurisdiction (Petition of Sproule, D.C. Cal. 1937, 19 F. Supp. 995).

As to item (2), the Commission has held that persons who though not citizens of the United States owe permanent allegiance to the United States are those who were born in certain outlying insular possessions of the

United States or born elsewhere of parents already possessing that status and does not include an alien who resides in the United States, who is an employee of the United States Government and has sworn allegiance thereto. (See the Claim of Edward Krukowski, Claim No. PO-9532, Dec. No. PO-927, 21 FCSC Semiann. Rep. 27 [July-Dec. 31, 1964].) Neither does it include a person who in the course of applying for his United States citizenship filed a declaration of intention and a petition of naturalization and took certain oaths. (See the Final Decision in the Claim of Walter Ludwig Koerber, Claim No. W-3917, Decision No. W-1322.)

The Commission finds that the property which is the subject of these claims was nationalized or otherwise taken by the Government of Yugoslavia on the dates specified when the former owners were not nationals of the United States.

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436 Dec. No. PO-286, 16 FCSC Semiann. Rep. 30 [Jan.-June 1962]. and the Claim of Vlad Metchik, Claim No. PO-1907, Dec. No. PO-314, 17 FCSC Semiann. Rep. 45 [July-Dec. 31, 1962], the Commission held that the principle of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another state, which has also been expressed as requiring that the aggrieved person be a national of the espousing state at the time the claim or loss accrued or arose, applies to claims authorized under Section 4(a) of Title I of the International Claims Settlement Act, as amended (supra). At the time these claims arose, they were not claims of nationals of the United States and therefore they could not be espoused by the Government of the United States or settled and discharged by the Yugoslav Claims Agreement of November 5, 1964.

Accordingly, the Commission finds that claimants' rights and interests in and with respect to the property which is the subject of these claims were not owned by nationals of the United States at the time of nationalization or other taking. Therefore, these claims are not claims of nationals

of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964, and they are, accordingly, denied.

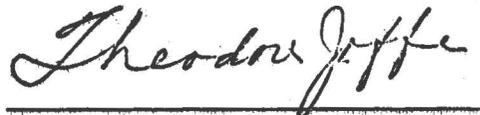
The Commission deems it unnecessary to consider other elements of these claims.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

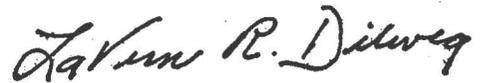
SEP 6 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the Decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

Y2-0021  
Y2-0897  
Y2-0898