

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

IN THE MATTER OF THE CLAIM OF

ANTON ZIC

Claim No. Y2- 0180

Decision No. Y2- 19

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

Counsel for claimant:

Samuel Herman, Esq.

Appeal and objections from a Proposed Decision entered on September 6, 1967. Oral hearing requested and held on April 23, 1968.

FINAL DECISION

The Commission issued its Proposed Decision in this claim on September 6, 1967 denying the same for the reason that claimant's property was taken by the Government of Yugoslavia on October 21, 1948 pursuant to a decision of the District Commission for Agrarian Reform for the Island of Krk, when neither claimant nor claimant's predecessor in interest, who then owned the property, were nationals of the United States.

Claimant, through counsel, objected to the Proposed Decision and requested a hearing. In his objections and at the hearing claimant contended that since 1943 certain land measuring 14,264 square meters in the vicinity of the town of Punat was owned by his mother, Ljubica Zic. By her Last Will she devised the property to the claimant. Claimant's mother died on November 21, 1960 and her Last Will was probated in 1961 before the Municipal Court in Krk. Claimant was declared by the Probate Court to be the owner of the land under the provisions of the Last Will. Thereafter, claimant took action in the local court to compel recordation of title, because the land at the time of purchase

in 1943 was recorded in the name of the Convent of Saint Benedict of Punat, and the transfer of title to his mother never was entered in the land books due to the wartime and postwar conditions then prevailing on the Island of Krk. This action ended on January 20, 1964 when the District Court of Rijeka, on appeal from the Public Prosecutor, dismissed claimant's petition to be recorded in the land books as owner of the property for the reason that the land was confiscated on October 21, 1948 by the local agrarian authorities and that the Yugoslav courts have no jurisdiction to settle disputes originating from actions under the agrarian reform laws.

Claimant's counsel further contended that the Commission erred in finding that the property was taken on October 21, 1948 when the local agrarian authorities confiscated the land as the property of the Convent, while, in fact, the land was owned by claimant's mother. It is urged that the action of the agrarian authorities must, therefore, be considered as a nullity. Claimant stressed the fact that the Probate Court of Krk on October 12, 1961 and the Municipal Court in Krk on November 27, 1963 confirmed that claimant inherited the property and that he is, therefore, entitled to record title to the land in his name. Claimant's counsel admits that the higher court reversed the opinion of the Municipal Court of November 27, 1963 but contends that this decision was based on jurisdictional and procedural grounds only. He states, however, that since the decision of the higher court was final, he had no further remedies before the authorities in Yugoslavia; and, as a result, he was finally deprived of the ownership and possession of the land from the time this decision was rendered.

At the hearing, claimant Anton Zic testified, among other things, that in 1943 his mother acquired the land; that she turned over possession to the claimant for a short time; that he left his home town before the end of the war; and that after the war he never returned home.

The mother, however, remained in Punat until her death in 1960 and, according to information received from her and other relatives, she enjoyed possession of the property until at least 1949, and perhaps later. After her death, the Probate Court in 1961 and the Municipal Court in Krk in 1963 recognized that claimant was the owner of the property.

Claimant further testified that he inherited other unimproved land in the town of Punat which he sold after the war for the equivalent of \$1.50 per square meter. The land which is the subject of the claim was taken over by the Municipality of Punat and in the late 1950's was improved by the Municipality for tourist purposes. Today it is in use as a camping site for motor vehicles owned by foreign tourists, thus yielding a substantial income to the Town of Punat.

Concluding his argument in support of the objections, counsel for claimant reduced the amount of the claim from the originally claimed sum of \$375,000 to \$85,584. This latter amount was computed on the basis of \$6.00 for one square meter of land.

The Commission has given full consideration to claimant's objections, his testimony and argument by counsel. On the basis of the entire record including claimant's testimony at the hearing, the Commission now finds the following:

The action of the Yugoslav agrarian authorities of October 21, 1948 was directed against the property owned by the Convent of Saint Benedict and not against the property of claimant's mother. At that time title to the land was no longer in the Convent but, on the basis of a deed duly and properly executed on August 16, 1943, in claimant's mother. That deed did not have to be recorded[✓] to be valid or in order to divest the Convent-grantor of its former title or right to possession. Both of those indicia of ownership were vested in the mother on the delivery of the deed. The order of confiscation, therefore, did not affect claimant's predecessor in interest and there was no need for the mother to appeal the original

seizure or to take any other action. Her title passed to the claimant upon her death in 1960 and this fact was confirmed by the Probate Court of Krk by decision No. O-276/60, dated December 12, 1961.

The Commission, therefore, concludes that claimant was the owner of the land from November 21, 1960, the date of the death of his mother, until January 20, 1964, when the District Court of Rijeka dismissed claimant's action to clear title for the reason that the trial court had no authority to settle disputes originating from decisions rendered under the Yugoslav laws of agrarian reform. After this decision was rendered, claimant had no further remedy and his right to assert a claim under the Yugoslav Claims Agreement of 1964 arose on January 20, 1964. Claimant has been a national of the United States since August 26, 1958, and this claim is, therefore, compensable under that Agreement.

This claim is to be distinguished from the Claim of Estate of Anton Schenborn, Deceased, Claim No. Y2-0474, decided this date, where the Commission held that the propriety of the action of the Yugoslav Government in confiscating property under the Decree of November 21, 1944 (S1. List [Yugoslavia], No. 2, Item 25, February 6, 1945) was not subject to review by the Commission. In that claim, the Commission found that the owner of the property was a United States national at the time of taking and that the property was confiscated as enemy property on February 6, 1945 under the aforesaid Decree. Claimant in the Schenborn claim urged that the Commission ignore this confiscation and consider that claimant remained the equitable owner of the property until November 5, 1964, the date of the Yugoslav Claims Agreement. The Commission, however, found that the confiscation in Schenborn's case was an action directed against the claimant, who was the record owner of the property; that Schenborn failed to file a claim under the Yugoslav Claims Agreement of 1948 under which relief could have been granted; and that Schenborn also failed to institute any action before

Yugoslav authorities in order to set aside the alleged wrongful confiscation of his property. The Commission, therefore, concluded that the Schenborn claim arose on February 6, 1945, the effective date of confiscation, and that the claim was not compensable under the Yugoslav Claims Agreement of 1964, which excludes claims that originated prior to July 19, 1948.

Claimant in the instant claim has failed to submit any documentary evidence concerning the value of the land except by having presented the deed of August 16, 1943 which shows that claimant's mother and the Convent of Saint Benedict stipulated that the value of the property, at the time of acquisition, for tax purposes was 20,000 Italian lire, or, at the rate of exchange prevailing in 1943, approximately \$1,000.00. Claimant testified that the value of the property was higher at the time of acquisition and that same had been substantially enhanced due to the fact that the Town of Punat improved the land and constructed tourist facilities for automobile camping on the land. The Commission has given consideration to claimant's testimony that he recently sold vacant land in the center of the Town of Punat for approximately \$1.50 per square meter. It is of the opinion that the improvements made on the land by the Town of Punat and the facilities constructed for tourist purposes are not to be included in the compensation for claimant's loss of land, inasmuch as such investments were not made by this claimant and the funds available for reimbursement are to be used only to compensate not to enrich claimants. Based upon the entire record and upon information on value for similar property in most areas on the Adriatic coast of Yugoslavia, the Commission finds that the land, at the time of taking, was worth \$1.00 per square meter or \$14,264 for the entire tract of 14,264 square meters.

Accordingly, claimant is entitled, under the Agreement, to compensation in that amount.

The Commission has decided that in granting awards on claims under the Yugoslav Claims Agreement of 1964, interest shall be allowed at the rate of

6% per annum from the date of loss to January 20, 1965, the date on which the Agreement entered into force and effect. (See Claim of Alexis G. Basic, Claim No. Y2-0522.) Accordingly, the amount of the award will be increased to that extent.

In view of the foregoing, it is

ORDERED that in final disposition of this claim, the Proposed Decision of September 6, 1967 be and the same is hereby reversed, and that the claim be allowed to the extent set forth below.

A W A R D

An award is hereby made to ANTON ZIC in the principal amount of Fourteen Thousand Two Hundred Sixty-Four Dollars (\$14,264.00), with interest thereon at 6% per annum from January 20, 1964, the date the claim arose, to January 20, 1965, the date on which the Yugoslav Claims Agreement entered into force, in the sum of Eight Hundred Fifty-Five Dollars and Eighty-Four Cents (\$855.84).

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

JUN 19 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

ANTON ZIC

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

Claim No. Y2-0180

Decision No. Y2- 19

Counsel for claimant:

Cammarano & Cammarano

PROPOSED DECISION

This claim for \$375,000.00 is based upon the asserted ownership and loss of certain real property located in Punat, Yugoslavia. Claimant, ANTON ZIC, states that he became a national of the United States by naturalization on August 26, 1958.

Under Section 4(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.

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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).)

Claimant submitted documentation in support of his claim, which discloses the following facts:

Claimant's mother, Ljubica Zic, a citizen of Yugoslavia during her lifetime, acquired on August 16, 1943 by a deed in writing from the Convent of St. Benedict (Benko) in Krk, Yugoslavia, certain real property registered in Liber No. 90 of the cadastral district of Punat on the island of Krk, consisting of a land parcel numbered 223, described as a meadow measuring 14,264 square meters. On the same date, namely, on August 16, 1943, Ljubica Zic executed a last will and testament devising parcel No. 223 to her son Anton, the claimant herein. However, due to wartime conditions then prevailing in occupied Yugoslavia, the transfer of the land was not registered in the land records of the court, and the land remained registered in the name of the Convent. Meanwhile, Ljubica Zic took possession of the land and, subsequently, turned over possession to the claimant.

On October 21, 1948, the District Commission for Agrarian Reform and Colonization for the island of Krk confiscated all land owned by the Convent of St. Benedict of Krk, which included parcel No. 223 then still recorded in the name of the Convent. On October 31, 1948, the District Court in Krk ordered the transfer of ownership of the aforesaid parcel in the land books from the Convent to "General People's Property".

The record indicates that in 1953 claimant emigrated to the United States. On November 21, 1960 claimant's mother died. Her last will and testament was probated by the appropriate municipal court in Krk and claimant was declared owner of the real property in question by a decree of that court dated October 12, 1961, No. 0-276/60.

However, claimant was unable to obtain recordation of his title in the land books and, therefore, instituted an action to clear title.

In 1962 the Public Prosecutor for the District of Rijeka in the litigation instituted by the claimant requested that claimant's action be dismissed due to the fact that the property in question had been confiscated in 1948 and that claimant was not entitled to be declared heir to the property. On November 27, 1963, the Municipal Court of Krk rendered a judgment, No. P 70/62-11, in which the Court stated in substance, that at the time of the agrarian reform, claimant's mother, Ljubica Zic, was the lawful owner of the land parcel No. 223, even though her ownership had not been recorded in her name. Therefore, the decree of the agrarian reform authorities confiscating the land of the Convent of St. Benedict in Krk did not legally affect parcel No. 223. The Court reiterated claimant is now the heir to that parcel and ordered that claimant be recorded in the land books as the owner of the property.

From this judgment the Public Prosecutor took an appeal to the District Court of Rijeka. The latter Court in a decision dated January 20, 1964 reversed the judgment of the lower court and ordered the dismissal of claimant's action to clear title, for the reason that the courts have no authority to settle disputes concerning matters within the exclusive jurisdiction of the Commission of Agrarian Reform.

No further action was taken by the claimant in this matter before the Yugoslav authorities but a claim for compensation of the loss was filed with the Commission under the Yugoslav Claims Agreement of 1964.

Upon due consideration of the entire record, the Commission finds that the land parcel No. 223 was taken by the Government of Yugoslavia pursuant to the decision of the District Commission for Agrarian Reform for the island of Krk on October 21, 1948, and that Ljubica Zic learned about this decision on March 10, 1949 from the local People's Committee of the Community of Punat. She took no action to contest the validity of the decision of the Agrarian Reform Commission and consequently the decision became final. The Commission further finds that the decree of the probate court in Krk of October 12, 1961, in which claimant was declared to be the heir of the property, did not constitute a restitution of the property to the claimant, and that claimant's subsequent attempt to obtain title through court action ultimately failed.

Accordingly, the Commission concludes that the claim for the loss of the property arose on October 21, 1948, when neither claimant's mother nor claimant were nationals of the United States. The Commission has held that under recognized principles of international law and under Article II of the Yugoslav Claims Agreement of 1964 a claim is compensable only if the property, upon which the claim is based, was owned by a national of the United States on the date of nationalization or other taking of the property. (See the Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, Dec. No. Y2-2.)

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-0532, 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.)

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).

Accordingly, the Commission finds that claimant's rights and interests in and with respect to the property which is the subject of this claim were


not owned by a national of the United States at the time of nationalization or other taking. Therefore, this claim is not a claim of a national of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964; and it is, accordingly, denied.

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

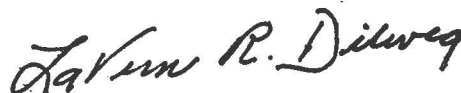
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Edward D. Re, Chairman



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).)