

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

IN THE MATTER OF THE CLAIM OF

BORIS CHEPIGO

Claim No. Y2-0268

Decision No. Y2-
1368

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

Counsel for claimant:

Tynes, Turk, Michalek & Filer
by Jack J. Turk, Esq.

PROPOSED DECISION

This claim, in the amount of \$18,186.00, is based upon the asserted ownership and loss of property in Yugoslavia as follows:

- (1) Certain interest in the real properties recorded in land record Libers Nos. 4584 and 2100 of Zemun, as land parcels Nos. 4844/3 and 4857/4, respectively;
- (2) Personal property consisting of household furniture, furnishings, and silverware at No. 42 Knez-Mihajlova Street in Belgrade;
- (3) 60% Interest in the business "Jugoasbest" in Belgrade;
- (4) Bonds in the face amount of 68,000 dinars of the issue known as Obveznice Lutrijske 2-1/2% Drzavne Rente za Ratnu Statu of 1934;
- (5) One-half interest in the claim of 449,430 dinars against the Government of Yugoslavia; and
- (6) Proceeds of life insurance policy No. 10188 issued by the Prvo Srpsko Drustvo za osiguranje u. Belgradu, "Srbija".

Claimant, BORIS CHEPIGO, has been a national of the United States since his naturalization on December 15, 1952.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended, (64 Stat. 13 [1950], 22 U.S.C. §1623(a) [1964]), 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 judicial 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, [1965] 16 U.S.T. 1, T.I.A.S. No. 5750 [effective January 20, 1965].)

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 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 his claim. (FCSC Reg., 45 C.F.R. §531.6(d), as amended, 32 Fed. Reg. 412-13 [1967].)

(1) Real Property:

The certified extracts of land records show that claimant owned certain interest in the real properties recorded in Liber Nos. 4584 and 5549 of Zemun as land parcels 4844/3 and 4857/4, respectively. The land extracts, however, also show that the properties in question were taken by the Government of Yugoslavia on or before April 30, 1948.

The Commission has held that claims which arose prior to July 19, 1948 are expressly excluded under Article I(a) of the Yugoslav Claims Agreement of 1964. (See the Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, 1967 FCSC ANN. REP. 79 and the Claim of Mary Tscherne, Claim No. Y2-0865, 1967 FCSC ANN. REP. 85.)

(2) Personal Property:

No evidence has been submitted to establish claimant's ownership of the household furniture, furnishings, and silverware at No. 42 Knez-Mihajlova Street in Belgrade, its nationalization, or other taking by the Government of Yugoslavia, and its value.

(3) Partnership:

The submitted partnership agreement of May 22, 1940 indicates that claimant had certain interest on that date in the business known as "Jugoasbest" in Belgrade. There is, however, no evidence of record to indicate the nationalization or other taking of the business or its assets by the Government of Yugoslavia, the date of such action, and the value of such property as of the date of loss.

(4) Bonds:

A portion of the claim is based upon bonds in the face amount of 68,000 dinars of the issue known as Obveznice Lutrijske 2-1/2% Drzavne Rente za Ratnu Statu of 1934. There is no evidence of record that the claimant's right to obtain payment of principal and interest on these bonds was taken by the Government of Yugoslavia. The failure of that Government to redeem the bonds or pay interest thereon does not constitute a taking of claimant's property.

Moreover, the applicable principles of international law which the Commission must consider under Title I of the International Claims Settlement Act of 1949, as amended, and the traditional policy of the United States Government do not recognize as espousable claims against foreign governments for defaulted government bonds. Absent specific agreements or statutory provisions to the contrary, such claims are not compensable under the International Claims Settlement Act of 1949, as amended. (See Decisions No. 38, in Docket No. Y-362 of Owen A. Nash, and No. 352-A, in Docket No. Y-1561 of Jaro Miljus under the Yugoslav Claims Agreement of 1948, Settlement of Claims by the Foreign Claims Settlement Commission, pp. 36 et seq. [1949-1955]. See also Decision No. PO-1 in the Claim of Ignatius Pietrzak, Claim No. PO-1004 under the Polish Claims Agreement of 1960, 14 FCSC Semiann. Rep. 196 [Jan.-June 1961].) The view in these decisions is that a loan contract between a state and a foreign bondholder is not an international contract nor controlled by international law. Bondholders who purchase such obligations do so upon their own responsibility and at their own risk. In lump-sum agreements between governments for compensation of claims resulting from nationalization or other taking of property, claims of bondholders are deemed not to be included unless the agreement expressly so provides. No provision for Yugoslav Government bond claims appears in the Yugoslav Claims Agreement of 1964. Accordingly, the Commission concludes that the nonpayment of the bonds in question does not give rise to a valid claim under the Yugoslav Claims Agreement of 1964.

(5) Debt Due from Government of Yugoslavia:

Evidence submitted by claimant indicates that on October 28, 1942 claimant had a one-half interest in a claim of 449,430 dinars against the then government of Yugoslavia. Claimant did not submit evidence to establish that his right to collect the amount due was taken by the Government of Yugoslavia. The Commission restates its position that

the mere nonpayment of the obligation does not give rise to a valid claim under the Yugoslav Claims Agreement of 1964 for the reasons discussed above.

(6) Life Insurance Policy:

It is alleged by claimant that he had a life insurance policy with the Prvo Srpsko Drustvo za osiguranje u Belgradu, "Srbija" with a cash surrender value of 25,000 dinars as of February 1944. It is admitted by claimant that the Drzavni Osiguravajuci Zavod, the agency of the Government of Yugoslavia which took over the claimant's policy, tendered 6,500 dinars in full settlement of the claim on November 8, 1957. However, claimant was unable to receive that amount "by mail", apparently because of the refusal of the Government of Yugoslavia to transfer the 6,500 dinars to claimant in the United States in the form of United States dollars.

The Commission's records disclose that on September 21, 1946 the Yugoslav Ministry of Finance issued Regulations for the Settlement and Conversion of Obligations Arising from Prewar Life Insurance Policies (Sl. List [Yugoslavia], No. 79, Item 561, October 1, 1946). Articles 3 and 4 of the Regulations provided for the recomputation of the policies expressed in prewar currency, based upon the payment of premiums prior to the war in dinars and during the war in occupation currency. As a result, in most cases, the amounts of the insurance policies were reduced; but the insured persons were entitled to increase the amount of the premiums, if they so wished, in order to increase the insured amount in the postwar currency. If the insured person did not survive the war, the regulations provided for the payment of the insured amount at a sliding scale and, where the amount to be paid was larger than 25,000 dinars, payment could be tendered in monthly installments. On December 5, 1946, all private insurance companies were nationalized (Sl. List [Yugoslavia], No. 98, Item 677, December 6, 1946). The affairs of the

private insurance companies were transferred to a State insurance institute which continued the business and carried out the obligations of the former private insurance companies.

The Commission finds that the conversion of the insurance policies expressed in prewar dinars into policies expressed in postwar dinars, and the subsequent reduction of the face amount of the policies did not constitute a nationalization or taking of claimant's property and such action does not create a claim compensable under international law.

(See the Claim of Anton and Frances Tabar, Docket No. Y-580, Decision No. 55, published in "Settlement of Claims by the Foreign Claims Settlement Commission of the United States", page 35 (1954), where a similar revaluation of bank accounts on a sliding scale was held not to constitute a taking of property within the meaning of the Yugoslav Claims Agreement of 1948; and the Claim of Petar B. Martin, Claim No. Y2-1180, where the Commission held that claims based on revalued bank accounts are not compensable under the Yugoslav Claims Agreement of 1964.) The Commission further finds that the nationalization of the private insurance companies did not affect the rights of the owners of the life insurance policies since a state insurance agency took over the obligations of the insurance companies, as set forth in the Regulations of September 21, 1946.

Even assuming that the Commission should consider that claims arose in favor of the claimant by the actions of the Yugoslav Government of September 21, 1946 or of December 5, 1946, such claims would not be compensable under the Agreement of 1964 which excludes claims originating prior to July 19, 1948. Moreover, as stated above, claimant at that time was not a national of the United States, which fact excludes him from the benefits of the 1964 Agreement.

It is noted that the refusal of the Government of Yugoslavia to permit the export of its currency does not constitute a taking of

claimant's property because the exercise of such a power is inherent in the right of a State to regulate its own currency. This ruling was expressed by the Commission in several decisions too numerous to be cited.

By Commission letters of July 13 and December 4, 1967, claimant was advised of the scope of the Agreement. Also, suggestions were made as to the type of evidence necessary to establish a compensable claim and the sources from which it may be obtained. In the letter of latter date, claimant was also informed that unless evidence were submitted within 90 days, it would become necessary to determine the claim on the basis of the record then available. Further information was furnished to claimant orally on August 10 and December 5, 1967, and September 17, 1968. The time for the submission of supporting evidence was extended until November 1, 1968. However, no further evidence has been received except the two extracts of land record, Liber Nos. 4584 and 5549, of Zemun, mentioned above.

In view of the foregoing, the Commission finds that claimant has failed to establish that the property upon which this claim is based was nationalized or otherwise taken by the Government of Yugoslavia between July 19, 1948 and January 20, 1965, the period covered by the Agreement, on a date when such property was owned by a national of the United States, as required for compensation. Accordingly, this claim must be and it is hereby denied in its entirety.

The Commission deems it unnecessary to consider other elements of this claim.

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

DEC 18 1968

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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].)