

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

IN THE MATTER OF THE CLAIM OF

SPASOYE YEFREMOVICH

Claim No. Y2-0427

Decision No. Y2-1011

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

Counsel for Claimant:

George Jovanovich, Esq.
Samuel Herman, Esq.

Appeal and objections from a Proposed Decision entered on September 4, 1968.

Oral argument on November 26, 1968 by Samuel Herman, Esq. for claimant.

FINAL DECISION

By Proposed Decision issued September 4, 1968 the Commission found that claimant was the owner of a one-half interest in certain improved real property designated as House listing No. 32 at Grobljanska Street in Belgrade which was confiscated by the Government of Yugoslavia on or before April 6, 1946, the date of recordation of the confiscation in the land extract and that claimant had a one-half interest in certain unimproved real property and a brick kiln designated in libers Nos. 469 of Smedervo, No. 287 of Kolari, and No. 335 of Vranovo which were confiscated by decision No. KON.-1146 of the County People's Court of Smederevo on February 21, 1946. Claimant became a national of the United States on November 11, 1954, a date subsequent to the nationalization of the above properties. Accordingly, the property was not owned by a national of the United States when it was taken. In addition, 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 Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, 1967 FCSC ANN. REP. 79 and Claim of Mary Tscherne, Claim No. Y2-0865, 1967 FCSC ANN. REP. 85.) For the foregoing reasons this claim was denied in its entirety.

Claimant objected to the Proposed Decision and contended that the property could not be confiscated pursuant to Article 28 of the Law concerning confiscation since claimant was not subject to it. Accordingly, the decree was based on substantial error and was not binding on the Commission. It follows, therefore, that the confiscated property was held in constructive trust by the Yugoslav authorities and constructively taken on December 26, 1958, pursuant to the Law on Nationalization of Buildings for Rent and of Building Lots, to which the claimed property was subject.

At the oral hearing counsel contended, as an additional argument, that the subject claim was controlled by the Claim of Joseph Maurin, Claim No. Y2-1770, Decision No. Y2-0244, namely, that when a claimant, directly or indirectly, has possession or possession and management of property at a time subsequent to the date on which the Government of Yugoslavia had nationalized, or otherwise taken said property, as determined by the Commission, then said original taking date must be set aside and a new one determined.

Accordingly, the sole issue is whether the Commission can find a date of taking of the property other than the date determined in the Proposed Decision, based on facts that occurred subsequent to the determined date and which evidence that a taking, in fact, could not have occurred in the first instance.

At the oral hearing claimant testified that his relatives managed the property in Belgrade until 1955. His wife testified that she left Yugoslavia in 1955; that she was physically present at the confiscation hearing in 1946 and that she was given a portion of farmland and a share of the corn crop until her departure. Counsel was granted time to procure an affidavit from claimant's brother in Argentina, the owner of the second one-half of the property, as to possession and management of the properties. This affidavit is now part of the record.

Full consideration has been given to the entire record including the affidavit of Dragoslavo Jefremovic, the brother of claimant and the owner of the second one-half of the subject property; and the arguments presented by counsel.

In the first instance, counsel had suggested the theory of "constructive trust". Where confiscation was involved, this theory was predicated upon the fact that the proposed taking date was erroneous since the facts upon which the decree of nationalization was based were false. It was averred that claimant was not an enemy of the people; could not freely return to Yugoslavia; had not freely renounced his Yugoslav citizenship for another, etc. Counsel urged the Commission to declare that any nationalization decree based on erroneous facts was a nullity and not binding and that the confiscated property was held in constructive trust by the Yugoslav authorities and constructively taken on December 26, 1958, pursuant to the Law on Nationalization of Buildings for Rent and of Building Lots, to which the claimed property was subject.

The Commission has had the theory of constructive trust presented to it on several prior hearings but has not accepted or applied it. (Claim of Elena Gojich, Claim No. Y2-1415, Dec. No. Y20537 and Claim of Lotte Weissman, Claim No. Y2-1210, Dec. No. Y20426.)

In a further argument counsel has urged the Commission to find that the subject claim is controlled by the Claim of Joseph Maurin (supra).

In the Maurin claim the Commission in its Proposed Decision denied the portion of the claim based on farmland, forestland and improvements which survived destruction during World War II on the ground that this property was confiscated by the Government of Yugoslavia on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944, which is prior to the period covered by the 1964 Agreement.

In its Amended Proposed Decision in the Maurin case, the Commission stated:

"Upon review of the entire record in this claim, the Commission finds that there is contradictory information as to the date of taking of the property. Evidence has been submitted showing a taking of the subject property in 1946 under the Enemy Property Law of November 21, 1944. There is conflicting evidence that this entry may have been made in 1954, referring back to 1946, because in 1950 claimant's agent in possession inquired from the authorities as to the status of the title of his land and was advised that it belonged to claimant and that taxes on the land for the years 1948, 1949 and 1950 were unpaid. Claimant's agent in possession paid these taxes and remained in possession and paid taxes until 1954. In 1954 a consolidation of the properties in the area where this property was located was undertaken by the Government for administrative purposes. In connection with this consolidation, a record was then made showing a title to this property in the claimant and referring same back to the 1946 date.

In passing certain types of enemy lands into State ownership, the Enemy Property Law of November 21, 1944, which became effective as of February 6, 1945, did not in fact result in the taking over of all properties of the type described in said decree, per se. The reason for this is that a factual determination as to the status of the persons owning property in Yugoslavia had to be made before the decree became operative. The decree itself, as revised in 1946, made certain exemptions more definite, thus even more clearly demonstrating that the decree would not become automatically effective.

In these circumstances, it is the finding of the Commission that claimant had effective title to the property until January 28, 1954, at which time he was a citizen of the United States and that the taking, therefore, come within the purview of the Yugoslav Claims Agreement of 1964."

Thus, it is seen that in the Maurin claim the agent of claimant was in possession of the subject property for almost nine years after the property had been "taken", coupled with an attornment by the Government of Yugoslavia to claimant as owner during this period. Claimant continued to pay taxes as owner for some six years upon orders of the Yugoslav Government.

According to the affidavit of claimant's brother, said brother has not been on the property since September 8, 1944. His information is based on the reports of a "nephew" who was to "manage" the property. No receipts for rent or paid taxes, no correspondence and no bills for the period 1944 to 1959 to evidence a possession and management of property have been submitted. The tenants for the two businesses and the two apartments are unidentified. What constituted management and the length of time of such control is not established.

The conclusion in paragraph 2 of the affidavit is at odds with the interpretation given to the status of claimant's wife in the Decision of February 21, 1946 in the file. In said decision claimant's wife was granted 2,000 dinars a month as support. She was to receive this at the cashier's office of the administration of People's Property of the People's Committee of Smederevo. In the same decision the petition of claimant's wife to have her husband's share exempt from confiscation was denied.

The Commission finds that the subject claim is not within the purview of the Maurin decision for the following reasons:

1. There is no contradictory taking record.
2. There is no claimant's agent on the property.
3. There is no proof of payment of taxes to the Yugoslav Government by the asserted owner.
4. There is no attornment by the Yugoslav Government to claimant as owner after a taking.
5. The factual determination of the status of the person owning the property, enemy, etc., was made before the decree became operative.

The Commission further finds that the probative value of the evidence submitted in support of the objections and the testimony adduced at the oral hearing does not warrant findings other than those determined in the Proposed Decision. Accordingly, it is,

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

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

MAR 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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Counsel for claimant:

George Jovanovich, Esq.

PROPOSED DECISION

This claim, in the amount of \$75,000.00, is based upon the asserted ownership and loss of improved and unimproved real property located in Yugoslavia. Claimant, SPASOYE YEFREMOVICH, has been a national of the United States since his naturalization on November 11, 1954.

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.

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 this Agreement.

The evidence submitted by claimant in support of his claim includes an extract from the land records of Belgrade, liber no. 890 and decision no. KON-11/46 of the County People's Court of Smederevo dated February 21, 1946.

Based on all the evidence comprising this claim, the Commission finds that claimant was the owner of a one-half interest in certain improved real property designated as House listing no. 32 at Grobljanska Street in Belgrade which was confiscated by the Government of Yugoslavia on or before April 6, 1946, the date of recordation of the confiscation in the land extract. Claimant was not then a national of the United States.

The Commission further finds that claimant had a one-half interest in certain unimproved real property and a brick kiln designated in libers no. 469 of Smedervo, no. 287 of Kolari, and no. 335 of Vranovo which were confiscated by decision no. KON.-11/46 of the County People's Court of Smederevo on February 21, 1946. Claimant was not then a national of the United States.

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 Claim of Eugenia D. Stupnikov, Claim No. Y2-0071, and Claim of Mary Tscherne, Claim No. Y2-0865.)

In view of the foregoing, the Commission finds that claimant has failed to establish that his rights and interests in and with respect to the subject property were nationalized or otherwise taken by the Government of Yugoslavia between November 11, 1954, the date of his naturalization, and January 20, 1965, the effective date of the Agreement. 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.

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

SEP 4 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).)