

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

IN THE MATTER OF THE CLAIM OF

PAUL HIRSCH

Claim No. CZ-2-0097

Decision No. CZ-2-0666

Counsel for Claimant:

Delson & Gordon
Martin R. Ganzglass, Esquire
William Yoffee, Esquire

Oral Hearing held on April 25, 1984 at 2:00 p.m.

FINAL DECISION

This claim in the amount of \$119,488 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of pension benefits owed to the claimant's parents.

Claimant became a United States citizen by naturalization on August 22, 1946.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958.

By Proposed Decision issued September 22, 1983, the Commission denied this claim. Claimant objected and requested an oral hearing. Subsequently, counsel for claimant submitted additional

documentation and legal brief in support of the objection. At the time of the hearing oral argument was presented by William Yoffee, Esquire and the matter was taken under submission.

Before World War II claimant's father had been employed in Czechoslovakia. Upon his retirement, he was eligible for certain pension benefits from the Pension Institute of the Sugar Industry. These payments were made to him until sometime in 1939. Subsequently, claimant's father died in 1941.

By letter dated September 8, 1945 the Pension Institute of the Sugar Industry acknowledged that claimant's mother was entitled to certain sums totalling Kcs 134771.70 for funeral expenses for her husband's death, for the unpaid portion of her husband's pension until the date of his death, and for her widow's pension from June 29, 1941 until September 30, 1945. Payment of this amount, however, was not made at that time. In addition, claimant's mother received no widow's pension benefits prior to her death in November 1960. By written assignment dated October 31, 1960, claimant's mother executed an assignment of her interest in her claim against the pension institute to claimant PAUL HIRSCH and his sister, Frieda Landstein. Claimant asserts that Frieda Landstein died in 1977 and that he is her heir.

Originally the claim was for the amounts acknowledged in the aforementioned letter of September 1945 and the additional amounts which claimant's mother would have received between September 1945 and the date of her death in 1960.

Subsequent to the issuance of the Proposed Decision, claimant's counsel informed the Commission that in separate negotiations with the Government of Czechoslovakia that government had agreed to and had paid the amount acknowledged to have been due in the September 1945 letter and as to the remaining claim for payments assertedly due to claimant's mother after September 1945 this had been taken "under advisement." The present claim, therefore, is limited to the amounts which would have been payable to claimant's mother after September 30, 1945.

In its Proposed Decision the Commission denied this claim on several grounds. After reviewing the terms and legislative history of the Czechoslovakian Claims Settlement Act of 1981 and Title IV of the International Claims Settlement Act of 1949, as amended, the Commission held that such pension claims were excluded from the purview of Public Law 97-127. The Commission denied the claim on the additional ground that the record contained no evidence of a specific action by the Government of Czechoslovakia repudiating, cancelling, or annulling the subject pension rights between August 8, 1958 and February 2, 1982 so that there was no act which could be considered as a nationalization or other taking of property rights as is required by Public Law 97-127 for a claim to be compensable.

Counsel for claimant argues that the claim is not a claim for pension rights but rather a claim for claimant's inheritance of the estate of his mother. Counsel argues that this constitutes a "vested right." In the opinion of the Commission, whether claimant's right to claim was acquired by assignment, as originally asserted, or by inheritance, as is now suggested, claimant could only acquire that which his mother possessed which was a claim for monies assertedly due from the Government of Czechoslovakia for pension payments. Such a debt can constitute property, and a specific cancellation or repudiation of such a debt can constitute a taking of property.

Under Public Law 97-127 for a claim to be compensable, it must be established that property was nationalized or otherwise taken at some time between August 8, 1958 and February 2, 1982. There is no evidence or suggestion of any act on the part of the Government of Czechoslovakia between those two dates which would constitute a nationalization or other taking of property. For that reason alone, this claim cannot be held compensable.

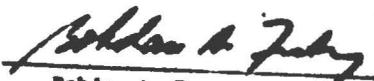
The Commission notes that its original additional ground to deny this claim on the basis that pension claims are outside the purview of the Czechoslovakian Claims Settlement Act of 1981

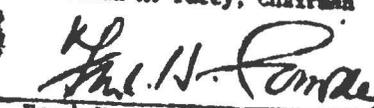
appears to be reinforced by the fact that the Government of Czechoslovakia considers this claim outside of the claims settlement agreement between the United States and Czechoslovakia which released the Government of Czechoslovakia for certain claims by the United States arising before February 2, 1982 as evidenced by the fact that the Government of Czechoslovakia agreed to make additional payment to claimant for pension amounts due as of September 1945 and took his remaining claim under advisement.

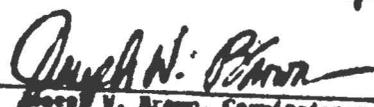
For the above reasons, the Commission affirms its original denial as its final determination on this claim.

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

JUN 20 1984


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision.

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

IN THE MATTER OF THE CLAIM OF

PAUL HIRSCH

Claim No. CZ-2-0097

Decision No. CZ-2-0666

Counsel for Claimant: Martin R. Ganzglass, Esquire

PROPOSED DECISION

This claim in the amount of \$119,488 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of pension benefits owed to the claimant's parents.

Claimant became a United States citizen by naturalization on August 22, 1946.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958.

The record indicates that the claimant, his sister, and his parents all resided in Vienna until the German annexation of Austria in 1938, at which time the family, because they were Czechoslovakian nationals, were allowed to leave Austria and resettle in Paris, France. The claimant's father, Ignace Hirsch,

had been an employee of the sugar factory in Diosek, Czechoslovakia, and received retirement benefits from the Pension Institute of the Sugar Industry, located in Prague. These payments were sent to Ignace Hirsch in Vienna until 1938 and thereafter to Paris until the Nazis occupied Prague in 1939 and the payments were discontinued. The record indicates that Ignace Hirsch died in France in June 1941.

The record includes a copy of a letter to the claimant's mother, Eugenie Hirsch, in France, from the Pension Institute of the Sugar Industry in Prague, dated September 8, 1945, advising her that she was entitled to the following benefits:

- (1) 5,094.00 crowns for the funeral payment after her husband's death,
- (2) 51,181.70 crowns for her widow's pension for the time period of June 29, 1941 to September 30, 1945,
- (3) 78,496.00 crowns for the unpaid part of her husband's pension.

The claimant asserts, however, that his mother did not receive any of the aforementioned sums nor any additional amounts that became due thereafter on her widow's pension. The record indicates that Eugenie Hirsch immigrated to the United States in 1946 and acquired United States citizenship on December 8, 1951. On October 31, 1960, prior to her death in 1960, Eugenie Hirsch executed an assignment of her claims against the Pension Institute of the Sugar Industry and the sugar factory in Diosek to her son, PAUL HIRSCH, and her daughter, Frieda Landstein. The claimant indicates that Frieda Landstein died in 1977, at which time he would have inherited her 50% interest in their mother's claims.

In the first Czechoslovakian claims program administered by the Commission under Public Law 85-604 (Title IV of the International Claims Settlement Act of 1949), which compensated eligible claimants for losses occurring prior to August 8, 1958,

the Commission held that the mere non-payment of pension benefits to a United States citizen did not constitute a nationalization or other taking of property absent an express repudiation, cancellation, or annulment of the pension rights by the Government of Czechoslovakia. (See Claim of LADISLAV KAREL FEIERABEND, Claim No. CZ-2529, Decision No. CZ-1423.) As stated by the Commission in that Decision:

"The legislative history of Title IV of the aforesaid Act indicates that Congress did not intend to include compensation of creditor claims for the non-payment of debts, unless a specific action of the Government of Czechoslovakia shows that such creditor's rights were annulled, abolished or cancelled. Representatives of the Department of State testified before both Houses of Congress that it was not the intention of the Government of the United States to include in a future agreement with Czechoslovakia payment of creditor claims and that the draft legislation before Congress which was subsequently enacted into law does not direct payment of such claims."

The "future agreement" referred to in the foregoing Decision was finally signed in Prague and came into effect on February 2, 1982. Under this agreement Czechoslovakia paid the United States \$81.5 million in full settlement and discharge of the claims of the United States Government and its nationals "based upon measures of nationalization, expropriation, disposition, or other restrictive measures involving takings of their properties rights, and interests . . ."

This agreement was reviewed and specifically approved by Congress in Public Law 97-127. Although Congress had been apprised of the Commission's previous denials of pension claims, the Congress in section 5(a) of Public Law 97-127 provided no new directions to the Commission in determining the validity of claims arising after August 8, 1958. Rather, identical language was included requiring that a loss occur from "the nationalization or other taking of property" by the Government of Czechoslovakia. Not only did inclusion of this identical language indi-

cate concurrence with the Commission's previous interpretation, but Congress went further and added section 11 of the Act specifically addressing the question of payment of social security benefits to United States residents. Section 11 contains no reference to the Commission, but rather directs the Secretary of State to prepare a report assessing the Czechoslovakian Government's compliance with the 1968 agreement on the reciprocal payment of social security benefits and to make recommendations to the Congress as to the courses of action the United States could take to achieve greater comparability and equity of benefits for the residents of the two countries.

Based upon this legislative history, the Commission affirms its previous holdings that the mere non-payment of pension benefits to a United States citizen does not constitute a nationalization or other taking of property absent an express repudiation, cancellation, or annulment of the pension rights by the Government of Czechoslovakia.

As pointed out to the claimant in a letter to him dated November 27, 1981 from the American Consul in Prague, Richard H. Wallen, all private pension institutions in Czechoslovakia were nationalized under law no. 98 of 1948 and incorporated into the State Institution for Social Security. In the claimant's letter of March 19, 1982 which he submitted to the Commission along with his statement of claim, PAUL HIRSCH argued that the nationalization of the Pension Institute of the Sugar Industry in 1948 should be considered a taking of his mother's pension rights. Regardless of the merits of this argument, a loss at that point in time would not be compensable under subsection 5(a) of Public Law 97-127 because it did not occur after August 8, 1958 and Eugenie Hirsch was not a United States citizen in 1948.

The attorney for the claimant subsequently sent a letter to the Commission, dated April 26, 1982, acknowledging that the pension rights involved herein must have been lost after August 8, 1958 in order to constitute a compensable claim under subsection 5(a) of the Act. The claimant's attorney asserts that PAUL HIRSCH made numerous inquiries to Czechoslovakian authorities following the 1968 agreement on the reciprocal payment of social security benefits, but was denied the right to any payments on the grounds that Eugenie Hirsch had died and her pension rights were not assignable. The Commission was referred by the claimant's attorney to a letter from the Czechoslovakian Pension Administration, dated November 7, 1974, advising PAUL HIRSCH that he did not qualify for pension benefits under Czechoslovakian law because he was not employed for enough years and did not work until the requisite retirement age. This letter makes no reference, however, to the pension benefits owed Eugenie Hirsch or any right of the claimant to receive such payments as his mother's assignee.

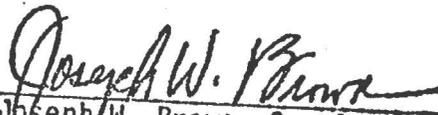
Based on the foregoing evidence, the Commission concludes that the claimant has failed to establish that he or his sister had any right under Czechoslovakian law to receive the pension benefits owed to their mother on the basis of the assignment executed by Eugenie Hirsch in 1960. Nor does this assignment by the claimant's mother of her claims against the Pension Institute of the Sugar Industry and the sugar factory in Diosek for the pension benefits owed to her confer upon PAUL HIRSCH a valid claim under Public Law 97-127 since the record contains no evidence of a specific action by the Government of Czechoslovakia repudiating, cancelling, or annulling the subject pension rights between August 8, 1958 and February 2, 1982, as required for compensation under subsection 5(a) of the Act.

For the foregoing reasons, the Commission determines that the instant claim is not compensable under subsection 5(a) of Public Law 97-127. Accordingly, this claim must be and it hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

SEP 22 1983


Joseph W. Brown, Commissioner


Frank H. Conway, 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.)

CZ-2-0097

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

IN THE MATTER OF THE CLAIM OF

MARTIN J. GUNTER

Claim No. CZ-2-0356

Decision No. CZ-2-0667

Hearing on the Record held on FEB 21 1984

FINAL DECISION

This claim in the amount of \$69,000 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of pension rights accrued by the father of the claimant.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958.

By Proposed Decision issued September 22, 1983, the Commission denied this claim on the ground that there was no evidence that the government of Czechoslovakia had nationalized or otherwise taken property after August 8, 1958, and in particular that there was no evidence that the government of Czechoslovakia had specifically repudiated an obligation to

pay pension benefits after August 8, 1958.

By letter dated October 6, 1983, claimant objected to the Proposed Decision and requested to amend the claim.

Although claimant had originally submitted evidence to the effect that his father's pension rights had been annulled in 1948, he now indicates that he believes his father attempted to obtain his pension rights upon reaching the age of 65 on June 18, 1954, and argues that the Commission should consider the nonpayment of pension after the request as a repudiation. However, even if the Commission were to accept this line of reason, it would not lead to the conclusion that there was a specific repudiation after August 8, 1958.

Claimant also requests consideration of a "modified" claim on the ground that from 1958 to 1972, the year of his mother's death, he contributed \$120 per month to their support in the United States, and apparently asserts the amount of \$20,200 should be the basis of an award.

While the Commission commends claimant for accepting the responsibility to help support his parents, this cannot form the basis for a compensable claim under Public Law 97-127, which requires that for a claim to be compensable the property owned by a United States citizen be nationalized or otherwise taken by the government of Czechoslovakia after August 8, 1958.

For the above reasons, the Commission has no alternative but to affirm its original denial as its final determination of this claim.

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

FEB 21 1984


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision.