

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

IN THE MATTER OF THE CLAIM OF

JOSEPH JANOUT

Claim No. CZ-2-0616

Decision No. CZ-2-1481

PROPOSED DECISION

This claim in the amount of \$2,295.00 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 buildings and land in Rozsedly and family heirlooms in Prague.

The evidence of record establishes that claimant became a United States citizen by naturalization on March 29, 1960.

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, at a time when it was owned by a United States national.

At the time of filing this claim, claimant asserted the loss of family heirlooms and real property consisting of house no. 23 and lot, a fruit garden and agricultural fields in the village of Rozsedly. Claimant stated that the property had been owned by his sister, Marie Janoutova, a non-United States citizen, who died in Prague on June 15, 1973. Claimant also stated that the house was demolished "more than 30 years ago" because the authorities in Rozsedly needed the land to widen a road.

In an effort to assist the claimant in substantiating his claim, the Commission forwarded a request to the Government of Czechoslovakia for information about the subject property. The Czechoslovakian Government responded to the Commission's request by letter dated July 6, 1983. The response stated that house no. 23 in Rozsedly had been torn down in 1961. It also stated that the "agricultural land [has been] used by a socialist organization since 1955 in accordance with governmental decree no. 50/1955."

With respect to the destruction of the house in 1961, claimant has indicated that the house was destroyed by the authorities so that a road could be widened. The Commission therefore concludes that control over the plot of land on which house no. 23 sat was assumed by the authorities at the time that they demolished the house.

Based upon the foregoing, the Commission concludes that the house, plot of land, and garden were taken by the Czechoslovak authorities in 1961, and that the agricultural land was taken by the authorities in 1955. The owner of the property on both of those dates was claimant's sister, Marie Janoutova, who was not a United States citizen. Since subsection 5(a) of the Act authorizes the Commission to grant awards only for the loss of property occurring after August 8, 1958, and at a time when it was owned by a United States national, the Commission finds that the loss of the subject property in 1955 and 1961 is not compensable under the Act.

With respect to the family heirlooms, the evidence of record indicates that claimant's sister died in Prague in 1973. As the claimant was the only heir to her estate, and since he resided in the United States, the sister's home was examined by a State Notary, sealed, and later liquidated. Among her belongings were several pieces of jewelry whose value was appraised by the executor at 1601 crowns. After the liquidation of the rest of her estate and the payment by the claimant of inheritance taxes, the pieces of jewelry were handed over by the State Notary to a friend of

the claimant in Prague for temporary safe keeping. The claimant has submitted documentation indicating that he had advised the State Notary that he authorized the friend, Mr. Karel Randak, to represent him in the liquidation of his sister's estate.

On June 4, 1980, Karel Randak attempted to send the jewelry to the claimant by registered letter. He marked the envelope as containing documents and did not disclose that there was jewelry contained therein and did not obtain a customs clearance or pay the duty that was required under Czech law to send the jewelry out of the country. Customs inspectors discovered the true contents which were seized by the authorities. Randak was subsequently convicted of violating export restrictions. Claimant has forwarded a verdict and justification dated May 25, 1981 which sets forth the court's decision finding a violation of laws of circulation of goods in contact with a foreign country according to paragraph 124 of the criminal law.

By letter dated December 6, 1983, claimant submitted the following information:

"In his last letter of July 26, 1982, I received information from Randak on his appeal. The verdict was abolished, according to Law 24 it was dropped. We are no longer dealing with a threat of public interest. The letter (packet) was not mentioned. Justification was annulled."

From the evidence submitted, it is clear that property owned by claimant has been taken by Czechoslovak authorities. The relevant question is whether this taking was in violation of international law. If the action taking the property were lawful under accepted principles of international law, then no valid claim arises against the Government of Czechoslovakia.

Under well established principles of international law, a State has the right to enforce its own domestic laws, even if such enforcement causes harm to a citizen of another country or

results in the seizure of property. As set forth in RESTATEMENT OF THE LAW, Foreign Relations Law of the United States, Section 197:

197. Police Power and Law Enforcement

(1) Conduct attributable to a State and causing damage to an alien does not depart from the international standard of justice indicated in section 165 if it is reasonably necessary for

. . .

(b) The enforcement of any law of the State (including any revenue law) that does not itself depart from international standard.

Another authority explains the principle by saying that "confiscatory and similar actions are proper exercises of the State power, and may be regarded as a defense to any claim for restitution or damages. . . (1) When there is a forfeiture or a fine to punish or surpress crime." (Wortley, Expropriation in Public International Law, at 39 (1959)). The Commission has consistantly adhered to this rule of international law. (Claim of Herbert Hamann, Claim No. G-0135, Decision No. G-0041; Claim of Walter Peter Milewski, Claim No. PO-5890, Decision No. PO-1921.)

In the instant claim, therefore, the Czechoslovak authorities had the sovereign right to seize the packet sent by Karel Randak in violation of the country's export restrictions.

The remaining question is whether the information forwarded by claimant indicating that the verdict was "abolished" and "dropped" affects the legallity of the original seizure of the property. The Commission holds that it does not. The Commission does not have before it the details concerning the reasons for the subsequent court action involving the criminal case against Mr. Randak. Claimant writes that "the letter (packet) was not mentioned." Nations, including the United States, generally have laws which allow the seizure of property when there is an attempt to import or export such property in violation of that nation's laws. Whether or not such a nation chooses to criminally prosecute the individual responsible for the attempted export of property or, as in this case, subsequently overturns a criminal

verdict is unrelated to the right of the sovereign to confiscate the property itself. Therefore, the subsequent reversal of Mr. Randak's conviction does not make illegal the original seizure of the property.

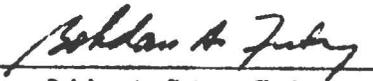
While the Commission sympathizes with Mr. Randak's good intentions in attempting to forward family jewels to the claimant, and recognizes that the seizure of these goods was not the result of any action on the part of the claimant, the Commission is required under the law to grant awards only where there is a seizure of property not in accord with accepted standards of international law.

For the above reasons, this claim must be and 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.

JUN 20 1984

  
Bohdan A. Futey, Chairman

  
Frank E. 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.

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-2-0616