

1969

American Claims against Yugoslavia

Leonard von B. Sutton

Recommended Citation

Leonard von B. Sutton, *American Claims against Yugoslavia*, 3 INT'L L. 262 (1969)
<https://scholar.smu.edu/til/vol3/iss2/5>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

American Claims Against Yugoslavia

The spread of Communism into Eastern Europe following World War II resulted in the subsequent nationalization, confiscation and, at times, abandonment of much private property where such systems of government prevailed. Both native born Americans as well as naturalized citizens were affected by what occurred. As a result of the property seizures in Yugoslavia the governments of the United States and Yugoslavia entered into two Agreements to solve the problem arising out of the actions by the latter government. The first Agreement was in 1948 and the second in 1964.

History of the Agreements

On July 19, 1948, an Agreement¹ was signed between the governments of the United States of America and Yugoslavia according to which Yugoslavia paid into the United States Treasury \$17,000,000 in full settlement and discharge of claims of United States nationals against the government of Yugoslavia on account of the nationalization or other taking by Yugoslavia of American property which had occurred between September 1, 1939 and the above date. This Agreement also included payment of certain property claims of the government of the United States against Yugoslavia. It further provided that the trust fund was to be distributed among eligible claimants by an agency established by the United States Government for the purpose of adjudicating the claims. The decisions of that agency would be final and

* LEONARD von B. SUTTON, Chairman, Foreign Claims Settlement Commission of the United States; former Chief Justice of the Colorado Supreme Court; graduate of Colorado College (B.A.) and University of Denver Law School (LL.B.).

¹ Agreement with the Federal People's Republic of Yugoslavia regarding Pecuniary Claims of the United States and its Nationals, July 19, 1948 [62 Stat. 2658 (1948), T.I.A.S. No. 1803].

binding on all parties, except that the Yugoslav Government reserved the right to appear as *amicus curiae*.²

The International Claims Commission of the United States was established under the International Claims Settlement Act of 1949.³ One of its functions was to determine the validity and amount of claims for which the Agreement of July 19, 1948 had been concluded. Initially, the Commission was placed in the Department of State. On April 29, 1954, a Reorganization Plan Relating to the Establishment of a Foreign Claims Settlement Commission was transmitted to the Congress, which plan became effective July 1, 1954. It provided for the abolition of the International Claims Commission and another body known as the War Claims Commission and for the assignment of their respective functions to the new agency.

The determination of the claims against Yugoslavia under the above Agreement was completed by the statutory deadline of December 31, 1954. A total of 1,556 claims was filed. Awards amounting to \$18,817,904.89 exclusive of interest were made on 876 claims, 671 claims were denied and 9 claims were withdrawn before decisions were issued. All awards of \$1,000 or less were paid in full and those over that sum received approximately 93% of the principal amounts decreed to them with no payments made for interest and no costs allowed.

The actions of the Yugoslav Government resulting in nationalization, confiscation or expropriation of property were based, in substance, on the following Yugoslav decrees and laws:

- (a) *Nationalization*. Yugoslavia enacted during the period between 1946 and 1948 two laws for the nationalization of property;
- (1) The First Nationalization Law of December 5, 1946,⁴ under which all larger private economic enterprises were transferred to the State; and,
 - (2) The Second Nationalization Law of April 28, 1948,⁵ which transferred to the State smaller business enterprises and real

² *Ibid.*, Art. 9(b). It should be noted that copies of all decisions are furnished the Yugoslav Government under both the first and second programs.

³ Public Law 455, 81st Congress, 2d sess. (64 Stat. 12, 22 U.S.C. 1621 *et seq.*) approved March 10, 1950.

⁴ Law Regarding Nationalization of Private Economic Enterprises of December 5, 1946 [*Sl. List (Yugoslavia)*, No. 98, Item 677, December 6, 1946].

⁵ Law on Amendments and Additions to the Law Regarding Nationalization of Private Economic Enterprise of April 28, 1948 [*Sl. List (Yugoslavia)*, No. 35, Item 269, April 29, 1948].

property owned by foreign citizens, with certain notable exceptions.⁶

- (b) *Confiscation.* Effective February 6, 1945, property belonging to Germans, persons of German origin, war criminals and certain absent persons was confiscated. Authorization was given in subsequent laws to confiscate abandoned property, property of Yugoslav Army officers who refused to return to their homeland, and property of those convicted of crimes against the people, sabotage, speculation, and excessive war profits.⁷
- (c) *Expropriation.* Laws enacted in 1945 and 1946 authorized local officials to expropriate property of larger land owners for the purpose of agrarian reform and for property needed for public purposes.⁸ The takings under the agrarian reform laws, however, were more in the nature of confiscations because no compensation was allowed for the property so taken.⁹ On the other hand, in other

⁶ Generally, real property of dual citizens (those who had acquired United States nationality but had not lost Yugoslav nationality) was excluded from nationalization.

⁷ See the following:

- (a) Decree on the Transfer into State Ownership of Property Belonging to Germans, Persons of German Nationality, and War Criminals of November 21, 1944 [*Sl. List (Yugoslavia)*, No. 2, Item 25, February 6, 1945]; and Law Confirming and Amending the Decree on the Transfer into State Ownership of Enemy Property, State Administration of Property Belonging to Absent Persons and Sequestration of Property Alienated by Force by the Occupation Authorities [*Sl. List (Yugoslavia)*, No. 63, Item 450, June 8, 1946].
- (b) Law on Property Which the Owners Had to Abandon During the Occupation and Property Taken from Them by the Occupiers and Their Helpers [*Sl. List (Yugoslavia)*, No. 36, Item 319, May 29, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 64, Item 454, August 9, 1946].
- (c) Law on the Loss of Citizenship of Officers and Non-Commissioned Officers of the Former Yugoslav Army Who Refused to Return to Their Homeland and of Members of Military Units Who Served under the Occupiers and Fled Abroad [*Sl. List (Yugoslavia)*, No. 64, Item 607, August 28, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 86, Item 602, October 25, 1946].
- (d) Law Regarding Criminal Offenses against the People and State [*Sl. List (Yugoslavia)*, No. 66, Item 619, September 1, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 59, Item 416, July 23, 1946].
- (e) Law against Illicit Speculation and Economic Sabotage [*Sl. List (Yugoslavia)*, No. 26, Item 241, April 25, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 66, Item 382, July 12, 1946].
- (f) Law on Confiscation of War Profits Acquired During the Period of Enemy Occupation [*Sl. List (Yugoslavia)*, No. 36, Item 320, May 29, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 52, Item 355, June 28, 1946].

⁸ Law on Agrarian Reform and Resettlement [*Sl. List (Yugoslavia)*, No. 64, Item 65, August 28, 1945]; and Amendments thereto [*Sl. List (Yugoslavia)*, No. 24, Item 152, March 22, 1946].

⁹ Claim of Dinko Ivelich et al., Docket No. Y-839, and Claim of John Ruppert, Docket No. Y-710.

expropriation cases, compensation was generally granted by the Yugoslav Government itself.¹⁰

Between 1948 and 1958, the government of Yugoslavia continued to nationalize, expropriate and confiscate individually-owned property of United States nationals, but only in exceptional cases and on a smaller scale. On December 26, 1958, legislation was enacted by the Yugoslav Government which made all apartment buildings having more than two apartments, and all building lots in cities and towns suitable for the construction of houses¹¹ subject to nationalization.

It can be seen from the brief summarization above that not all private property in Yugoslavia has even yet been seized by the government; that it has taken many years for most of it to pass into public ownership; and that in some cases it has been paid for, albeit, probably on a lower basis of value than condemnations would be in the United States. That there is any private property, however, left in Yugoslavia in the form of private homes and apartments, in small farms and in certain small businesses, comes as a surprise to most Americans.

The fact that the three horsemen of nationalization, confiscation and expropriation took so long to cover the route to state socialism, nevertheless, resulted in new claims of Americans against the government of Yugoslavia for takings which occurred since July 19, 1948, which date was the termination date of claims under the prior program. Thus, on November 5, 1964, the governments of the United States and Yugoslavia concluded a new Claims Agreement to cover losses from July 19, 1948 up to the date of the new accord.¹² This instrument provides for the payment by Yugoslavia of \$3,500,000¹³ for the settlement and discharge of claims of United States nationals arising out of the later nationalizations or other takings of property.

On January 15, 1967, the Foreign Claims Settlement Commission began the processing of claims covered by the second Agreement. This was done under the original provisions of Section 4(a) of Title I of the International Claims Settlement Act of 1949, as amended, by pub-

¹⁰ Basic Law on Expropriation [*Sl. List (Yugoslavia)*, No. 28, Item 209, April 4, 1947]; and Law on Expropriation [*Sl. List (Yugoslavia)*, No. 12, March 20, 1957]. A case in point is the Claim of Mary Nartnick, Docket No. Y-1550, which was denied because claimant obtained compensation in Yugoslavia.

¹¹ Law on Nationalization of Buildings for Rent and of Building Lots of December 26, 1958 [*Sl. List (Yugoslavia)*, No. 52, Item 890, December 31, 1958].

¹² 16 U.S.T. 1, T.I.A.S. No. 5750, effective January 20, 1965.

¹³ Annual payments by the Government of Yugoslavia to the Government of the United States are made in installments of \$700,000 each; three of these have been made so far with the remaining payments to be made on January 1, 1969 and January 1, 1970.

International Lawyer, Vol. 3 No. 2

lishing a notice in the Federal Register¹⁴ in regard to regulations governing the administration of the program and the filing of claims. The time for filing was fixed as of July 15, 1967, but this deadline was subsequently extended to January 15, 1968.¹⁵

Commission Decisions

The Commission decisions under the 1964 Agreement have followed, by and large, the precedents adopted in the previous proceedings under the Yugoslav Claims Agreement of 1948, and, to the extent applicable, in the proceedings administered under the Polish Claims Agreement of 1960.¹⁶ In some instances new concepts were introduced in the second program where the circumstances so required. In a number of cases the Commission adopted a more liberal view than in the previous program in the interpretation of actions taken by the Yugoslav Government in order to extend the eligibility of claimants and to afford a greater number of applicants the benefits of the Agreement. The following categories of problems and decisions related thereto demonstrate some of the issues decided by the Commission.

(a) United States Nationality of Claimants

Article II of the Yugoslav Claims Agreement of 1964 (*supra*) provides that:

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.

In the *Claim of Eugenia D. Stupnikov*, Claim No. Y2-0071, it appeared that claimant had become a national of the United States on January 3, 1955. The Commission found that her property was nationalized or taken on May 18, 1946, at which time claimant was not a national of the United States. Moreover, the claim arose prior to the date specified in the 1964 Agreement, namely, prior to July 19, 1948. The claim was, therefore, denied with the Commission applying the

¹⁴ FCSC Reg. 45 C.F.R. 531.1(e), 32 Fed. Reg. 430 (1967).

¹⁵ 32 Fed. Reg. 15641 (1967).

¹⁶ 11 U.S.T. 1953, T.I.A.S. No. 4545, effective July 16, 1960.

terms of the Agreement as to date of loss and the international law principle of nationality as to the person.¹⁷

Denials were issued in the *Claims of Henry Beck*, Claim No. Y2-1104, and *Elisabeth Beck*, Claim No. Y2-1105. In those cases the claimants became citizens of the United States on September 17, 1965. The Commission found that if any property they may have owned was taken between July 19, 1948 and January 29, 1965, it was taken from persons who were not then United States nationals and the claims were thus not compensable. If any property was taken from the claimants after September 17, 1965, such a taking would have occurred at a time not within the scope of the Agreement and would not be compensable thereunder.

In the *Claim of Maria Wildmann*, Claim No. Y2-0340, claimant became a United States national on December 27, 1957. She admitted that her property was taken by the government of Yugoslavia as German-owned property under the Yugoslav Law on Enemy Property, effective February 6, 1945; but she contended that she was not a person of German ethnic nationality and that the taking of her property was based on a mistaken identity and was, therefore, null and void. She urged that the taking in 1945 be ignored and that the property should be deemed to have been taken under a Yugoslav law enacted in 1958 which affected all owners regardless of their ethnic background. The Commission rejected this view and found that at the time of the effective taking of the property claimant was not a national of the United States and that the claim arose prior to the date specified in the 1964 Agreement, viz., prior to July 19, 1948. Accordingly, the claim was denied.

Another denial occurred in the *Claim of Milosava Glomazich*, Claim No. Y2-0828. There the claim was filed by the widow of a United States national who died in 1956. The evidence disclosed that the decedent was a United States national from November 11, 1918 until his death, but that the beneficiaries of his estate, who were the claimant and her children, were and always had been aliens. The Commission held that the national character of a claim asserted by a decedent's estate is determined by the nationality of the individuals holding a beneficial interest therein rather than by the nationality of the decedent or the record holder of the claim, such as an executor,

¹⁷ It is a well recognized concept, and crucial to many decisions of the Commission, that a claimant against a foreign government for losses incurred in such programs must have been a national of the adjudicating state at the time of the loss.

administrator or trustee. Since the beneficiaries of the estate were aliens, this claim was neither covered by the Agreement, nor compensable under settled principles of international law. It may be noted that claims of aliens who have never acquired United States nationality have always been denied. See, for example, the *Claim of Nikolaus Russ*, Claim No. Y2-1698.

(b) Claims Based on Nationalization of Property

The Commission has taken the position that the laws of nationalization enacted by the Yugoslav Government in 1946 and 1958 were not self-executing. Thus, where a claimant has been able to establish that the decrees or decisions of the local authorities nationalizing property were issued after July 19, 1948, the Commission used the date of the decree vesting the property as the date of taking, even though the instrument itself may have also stated that the property passed to the State at a date prior to July 19, 1948.

Thus, in the *Claim of Dorothea Blum*, Claim No. Y2-0536, the decree of the local authorities was dated October 5, 1960, but the property—an apartment house—was said to have been taken retroactively as of April 28, 1948. The Commission held that the claimant had remained the owner of the real property up to the time the decree of taking issued, and concluded that the claim arose on October 5, 1960. Since claimant had been a national of the United States since 1952, the claim was allowed.

Similarly, in claims based on takings of property under the Yugoslav Nationalization Law of December 26, 1958, the Commission has held that the takings took place at the time when the local authorities actually designated specific properties and the extent of the nationalization. In this connection it should be noted that in the majority of nationalization actions under the law of December 26, 1958, certain portions of apartment houses, for example, were exempted from nationalization and remained in private ownership.¹⁸ This principle was applied in the *Claim of Alexis G. Bacic*. Claim No.

¹⁸ *Supra*, note 11. The law of December 26, 1958 provides in Article 17 that "in a nationalized building . . . at the request of the owner and by his choice, one of the apartments, or two apartments, if they do not have together more than four rooms, shall be left as property of the previous owner." If the exempted apartment or apartments are not occupied by the owner, the local housing authorities will assign tenants. In practice, at the time of nationalization, tenants other than the owner have usually been in possession under previous housing assignments. Only rarely was an American owner in control of his own apartments, since in the usual case he had emigrated to the United States. Thus, the property right retained

Y2-0522, where the Commission found that the property was nationalized on April 12, 1960, by virtue of the final decision rendered by the Nationalization Commission of the People's Committee of Savaki Venac in Belgrade, and not on December 26, 1958, when the Law on Nationalization of Buildings for Rent and of Building Lots became effective.

In a few instances claims before the Commission show that the local authorities had failed to issue nationalization decrees during the period of time specified by the Agreement (i.e., by January 20, 1965). In those cases the Commission has held that it would not be equitable to deny the claim, and fixed the date of nationalization, in accordance with the Yugoslav nationalization decisions which referred back to the basic law directing such action.¹⁹ E.G., see *Claim of Milorad Stankovich*, Claim No. Y2-1459.)

On the other hand, where it was evident that the property was nationalized prior to July 19, 1948, and the claimant was unable to present any proof to the contrary, the claim had to be denied. Thus, in a claim presented by a stockholder of an industrial corporation (Corporation for Iron Industry in Zenica), the records disclosed that the company was nationalized on December 5, 1946, pursuant to the Law on Nationalization of Private Economic Enterprises of that date. The Commission concluded that the claim arose prior to the date specified in the Yugoslav Claims Agreement of 1964. Moreover, claimant at the time of nationalization was not a national of the United States. Accordingly, the claim was denied on both grounds. (*Claim of Maria S. Schlein*, Claim No. Y2-0880.)

(c) Value

With respect to the valuation of property, the Commission in its first program concluded that the pre-war (1938-1939) values reflect a better and fairer basis for the appraisal of property than war time and post-war inflationary periods. It therefore has used that period as the point of reference for valuation purposes when the pre-war dinars were converted into United States dollars at the official rate of exchange of 44 dinars for \$1.00. (See *Claim of Alexis G. Bacic*, *supra*.) Thus, where claimants could produce sales contracts concluded during the period preceding World War II, the purchase prices listed in such pre-war

is generally somewhat illusory and the Commission makes suitable allowances for the reduced value in its awards.

¹⁹ *Supra*, note 11.

contracts have constituted an appropriate basis for the evaluation of the property. (See *Claim of Dorothea Blum, supra.*) Where these sales contracts have not been available as evidence, values have been based on appraisals made by experts appointed by the Yugoslav Government, by experts appointed by the claimants themselves, or even on investigations in the field ordered by the Commission itself. It is the totality of all the proper evidence available to the Commission which determines a final valuation. In this manner the values of similar properties in the same area are kept the same in different claims. (E.g., see *Claim of Jacqueline Eugene Zvetich*, Claim No. Y2-1227.)

(d) Mortgages and Exemptions

Paragraph 3 of the Interpretative Minutes to the Yugoslav Claims Agreement of 1964 provides the following:

Rights and interests in and with respect to properties which are mortgaged or otherwise encumbered by an owner or the owners thereof are covered and settled by this Agreement for the amount of the equity or value remaining after deduction of the principal amount of such mortgage or other encumbrance.

As a result of the quoted wording, which the Commission considers a directive, it has deducted from awards, where appropriate, the amount of mortgages recorded in the land books at the time of the nationalization or taking of the property. The value of these mortgages in dinars was computed at the applicable exchange rate of the dinar *at the time of the nationalization*, taking into consideration that mortgages in pre-war dinars were reduced to post-war dinars at the rate of 10:1 in accordance with the Yugoslav Law on the Settlement of Pre-War Obligations of November 13, 1945, as amended. (E.g., see the *Claim of Milushka Binder*, Claim No. Y2-0163.)

Paragraph 2 of the above noted Interpretative Minutes also provides the following:

Properties or parts thereof which have been exempted from nationalization or other taking by the Government of Yugoslavia in accordance with the laws of Yugoslavia are not covered or settled by this Agreement.

In evaluating exempted apartments for the purpose of reducing the respective awards to a monetary figure, the Commission has considered that under the laws and regulations prevailing in Yugoslavia, the apartments cannot be used by the claimants who reside in the United States as long as they are occupied by tenants; that the income

from the rent is negligible and that the value of such apartments amounts only to a fraction of the price which could be obtained for the apartment if it were free for the use of the owner. Based on these facts, the Commission has concluded that this type of apartment has a value of 25% of a free apartment as evaluated in pre-war dinars. This value (25% of the pre-war value of such an apartment expressed in dinars) is, therefore, deducted from an award where appropriate. (E.g., see *Claim of Simon S. Romano*, Claim No. Y2-0108.)

(e) Claims Based on Other Takings of Property

One claimant inherited land which was in the possession of his mother at her death in 1960. Due to wartime and post-war conditions, the title had never been recorded in the land books in her name and remained recorded in the name of the former owner, a convent. In 1948, all the lands of the convent were confiscated under the provisions of the Yugoslav laws on agrarian reform,²⁰ including the land which continued to remain in the possession of claimant's mother until 1949. When the expropriation was challenged by the son after the death of the mother in 1960, the Yugoslav Probate Court recognized that the claimant had inherited the property and that he became the owner of the land; but, on appeal it was held that, due to the fact the courts have no jurisdiction in disputes originating from proceedings which arise under the agrarian reform laws, the claimant's action to clear his title should be dismissed. This latter event happened in 1964. The Commission held that the property was owned by the claimant from the date of death of his mother to the date claimant's action was finally dismissed, and allowed the claim. (See *Claim of Anton Zic*, Claim No. Y2-0180.) It is interesting to note that this claim would not have been compensable had the Commission held that the property was taken from claimant's mother in 1948, because she was never a national of the United States.

Another claimant who was a citizen of the United States since 1929, owned some farm property in Yugoslavia which was confiscated in 1945 as property owned by a person of ethnic German origin under the Yugoslav laws on enemy property.²¹ However, claimant's brother in

²⁰ Law on Agrarian Reform and Colonization in the territory of the Republic of Croatia of November 24, 1945 [*Sl. List (Yugoslavia)*, No. 80, November 28, 1945]. Claimant's mother died on January 21, 1960 and "... she enjoyed possession of the properties until at least 1949, and perhaps later."

²¹ *Supra*, note 7(a).

Yugoslavia, acting as agent for the American owner, had retained possession of the property until it was seized in 1954 and had paid property taxes on it until that time. It was only in 1954 that the confiscation decree was implemented and the possession transferred to the State. The Commission therefore held that this property was taken in 1954 and that the claim was compensable under the 1964 Agreement. (*Claim of Joseph Maurin*, Claim No. Y2-1770.)

Where property was confiscated by Yugoslav authorities under the 1946 Law on Citizenship of Officers Who Refused to Return to Their Homeland, the Commission likewise held that the property was taken on the date when claimant's father, who was acting as the agent of the claimant, surrendered possession and the property was transferred to the State. (*Claim of Dragutin Veljkovic*, Claim No. Y2-1281.)

On the other hand, where claimant lost possession of his property in 1945 under the Yugoslav Laws on Enemy Property and failed to file a claim under the 1948 Agreement, even though he was entitled to do so, and also failed to petition for restitution of the property in Yugoslavia, the Commission held that the claim does not come under the provisions of the later 1964 Agreement. In such a case, the taking of the property in 1945 was held to be final and the claimant was excluded from compensation because he lost it before July 19, 1948. (*Claim of Estate of Anton Schenborn, Deceased*, Claim No. Y2-0474.)

Where property was taken under expropriation (condemnation) proceedings which took place after January 20, 1954, the Commission has likewise held that such a claim is not compensable under the 1964 Agreement because it took place after the date specified in the Agreement. (E.g., *Claim of Zdena Stefanija Lawrence*, Claim No. Y2-0635.) And, where property was nationalized or otherwise taken prior to July 19, 1948, and a claim for compensation was allowed under proceedings instituted under that Agreement, the Commission has denied claims in which additional payment was sought, or a request was made for the re-evaluation of the evidence. The Commission held that claims of this type are excluded under the 1964 Agreement. (*Claim of Mary Tscherne*, Claim No. Y2-0865, and *Claim of George F. Roth*, Claim No. Y2-1536.)

(f) Bank Accounts and Bonds

A claim for the loss of bank accounts was denied because the Commission held that generally no bank accounts were taken by the Yugoslav Government between July 19, 1948, and January 20, 1965,

the dates specified under the Agreement. (See *Claim of Petar B. Martin*, Claim No. Y2-1770.)

Also, claims for the non-payment of bonds issued prior to World War II by Yugoslavia were denied because the record indicated that the Government provided for the partial payment of bonds under Agreements concluded with the Foreign Bondholders Protective Council of New York. The Commission also pointed out in that case that the failure of a government to pay bonds, or interest thereon, in the absence of repudiation or confiscation of the bonds, does not constitute a taking of property. (See *Claim of Victor Zentner*, Claim No. Y2-0054.)

(g) Land Nationalized, but Improvements Excluded from Nationalization

Numerous claims have been asserted for the loss of improved real property where the record indicated that only the land was nationalized but the improvements remained in private ownership. The improvements in such cases usually consisted of smaller houses designated for the use of a family and not for rental purposes.

Where such homes were not nationalized, the Commission has allowed compensation only for the loss of the land, inasmuch as the owner is free, under Yugoslav law, to sell or otherwise dispose of his house. (*Claim of Radoje Nikolitch*, Claim No. Y2-1769.)

(h) Insurance Policies

Claims for the loss of the proceeds from pre-war life insurance policies have been denied for the reason that Regulations of the Yugoslav Ministry of Finance for the Settlement and Conversion of Obligations Arising from Prewar Life Insurance Policies, put into effect on October 1, 1946,²² provided for a reduction of the face amounts but not for a cancellation or confiscation of the policies or proceeds. The Commission has not deemed the reduction to be in the nature of a nationalization or taking of the policies or of the proceeds and such a reduction was not considered to give rise to a claim under international law. Moreover, in cases so far considered, such action took place prior to the time covered by the Agreement of 1964. (E.g., *Claim of Ladislav J. Bevc*, Claim No. Y2-0218.)

²² *Sl. List (Yugoslavia)*, No. 79, Item 561, October 1, 1946.

(i) Pensions, Social Security and Retirement Benefits

Some claimants, former Yugoslav Government employees, have asserted claims for the recovery of contributions to the Government pension fund into which they had paid their shares prior to World War II and during the war. They also claimed their rights to retirement benefits to which they would have been entitled had they remained in service and retired. Other claimants have asserted losses for social security benefits based upon payments of contributions of private employers to certain pre-war pension and social security funds. The Commission has found that, absent specific confiscation of such rights, claimants are still entitled to payment of pensions, retirement and social security benefits from Yugoslavia. This is so because a recent Yugoslav law, entitled the Yugoslav Law on Retirement Insurance of 1964,²³ provides that foreign citizens residing permanently abroad are entitled to these benefits, if the foreign country of their residence grants the same right to Yugoslav citizens. The Commission has held that the United States recognizes such rights to nationals and other residents of Yugoslavia and has concluded that claims for pension and retirement benefits are not compensable under the Agreement. (E.g., *Claim of Ladislav J. Bevc, supra.*)

(j) Property Taken Under Article 7 of the Yugoslav Abandoned Property Law of 1946

The only known issue of importance in this program, not yet decided by the Commission, relates to claims for property which was confiscated during the German occupation of Yugoslavia and not returned to the former owners, and which passed to the Government of Yugoslavia by operation of law. The validity of such transfers under Article 7 of the Yugoslav Abandoned Property Law of 1946²⁴ has been challenged by certain claimants as being null and void under international law. It has been urged that the Commission therefore should find a constructive trust and a date of taking under the later Yugoslav legislation.

(k) Miscellaneous Claims

One claim in the Yugoslav Program was denied because the property was located in Rumania and a taking of a claimant's property

²³ *Sl. List (Yugoslavia)*, No. 51, December 30, 1964.

²⁴ *Supra*, note 7(b).

in that country cannot be attributed to actions of the Yugoslav Government. (*Claim of Mary Elizabeth Allar*, Claim No. Y2- 1603.)

Claims where the evidence does not support a claimant's allegations that he owned property in Yugoslavia, and that the property was nationalized or taken by the Government of that country, are not compensable inasmuch as the burden of proof on all questions concerning ownership, loss and value of the property is on the claimant. (*Claims of Anna Maria Kuebler*, Claims No. Y2-0235 and No. Y2-0339.)

The Commission has the power, when good cause is shown, to permit the late filing of claims in the present program when justice and equity would be served thereby.²⁵ This is different from the Cuban claims program where the statute itself sets a closing date of not later than three years after the final date for the filing of claims.²⁶ Therefore, what is a timely filing date here is subject to interpretation by the Commission. In this regard it has provided that:

Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.²⁷

Thus, where the last filing date was January 15, 1968, a written notice of intent filed before that date would allow a claimant to file the actual claim any time up to February 15, 1968.

In the *Claim of Mae Yakovlevich*, Claim No. Y2- 1859, the Commission, however, went even further under its equitable powers and after its Proposed Decision denying the right to file was issued, it reversed itself on an internal appeal. Following the taking of additional evidence and oral argument, it issued its order to permit a filing. The facts there were that the jointly owned property was in the possession of the claimant's mother, a Yugoslav national, in Yugoslavia. The mother, following nationalization, pursued, on behalf of *all the owners*, their claim for compensation through Yugoslav channels. The claimant was told by her Yugoslav attorney that was the proper procedure. The Yugoslav Government, however, eventually held it could not grant any payment to the foreign (i.e., American) interest holder. That information came to claimant only after January 15, 1968, viz., on January 30,

²⁵ Section 4(a), Title I of the International Claims Settlement Act of 1949 as amended [64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1958)] (Yugoslav Program).

²⁶ Section 510, Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. § 1643-1643K (1964), as amended 79 Stat. 988 (1965)] (Cuban Program).

²⁷ § 531.1(h).

1968. She then, on the same day, called her sister in Washington, D.C. to contact the Commission, secured claim forms and filed a written claim on February 12, 1968. The evidence was that the claimant, who had been ill of cancer for several years, did not know about the Yugoslav program filing dates until her claim was denied in Yugoslavia. Under the circumstances described, since the claim itself was actually filed before the end of the 30 day period, the Commission waived its written notice provision, since it was nonstatutory, due diligence having been shown after the claimant knew the facts.

Conclusion

From what has been described it can be seen that an infinite variety of problems is continually presented for the Commission's consideration in programs such as the one under the Second Yugoslav Agreement.

In the first Yugoslav program there were 1,556 claims filed totaling \$148,472,773.91. The principal amount allowed was \$18,817,904.89 on 876 claims. Because of lack of proof, nationality of claimants and other grounds 43% of the claimants were unsuccessful. Those who were successful were paid, as mentioned previously, approximately 93% of the principal amounts awarded, although they did not receive anything on account of interest or, as is usual, no awards for costs. In the second (current) program there have been 1,874 claims filed for a total of \$96,059,811.75. As of August 14, 1968, awards have been granted in 134 of those cases for a total of \$1,661,691.92. In addition, interest in the amount of \$514,152.89 has also been awarded and again no costs. The percentage of claims disallowed to the above date in the second program is 87% compared to the 43% disallowed in the first program. It should be noted, though, that the percentage of awards to denials has climbed sharply in the closing months of each previous claims program.

The Commission, prior to the recent Congressional cut in its fiscal 1969 budget, had set July 15, 1969 as the termination date for the second Yugoslav program. Even with a severe personnel loss, it still hopes to meet that deadline.