FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

WALTER PETER MILEWSKI

Claim No. PO-5890

Decision No. 1921

Under the Polish Claims Agreement of 1960 and the International Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This claim, for $16,900, is based upon the asserted ownership and loss of certain personal property, consisting of money, a yacht, and personal effects. Claimant, WALTER PETER MILEWSKI, has been a national of the United States since his birth in the United States on July 6, 1910.

The record discloses that claimant was arrested on July 20, 1937, while on board his yacht, and was charged with attempting to smuggle out of Poland 60,000 zlotys found on his yacht. Claimant was tried in the Circuit Court of Gdynia and on September 23, 1937, found guilty. The Court sentenced claimant to ten months imprisonment and a fine of 9,000 zlotys and also confiscated the zlotys in question as well as his yacht. The sentence further provided for an additional 180 days imprisonment in the event claimant was unable to pay the fine. Claimant appealed from this sentence to the Court of Appeals at Poznan. On November 13, 1937, the said Court of Appeals upheld the decision of the Circuit Court with the exception that the ten months imprisonment imposed upon him was suspended for three years. The claimant appealed from the decision to the Supreme Court. On February 7, 1938, the Supreme Court rejected the appeal and sustained the decision of the Court of

Appeals. Upon appeal to the President of Poland, claimant was pardoned, the penalties were suspended, and he was permitted to leave Poland. However, the sentence of the court was not disturbed insofar as it effected a confiscation of 60,000 zlotys, the yacht and personalty on board.

Claimant alleges that he was not guilty of the charges of which he was convicted. He contends that the subsequent confiscation of the 60,000 zlotys, his yacht and $1,500 worth of personal property aboard said yacht constituted a taking of property within the meaning of the Polish Claims Agreement of 1960.

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 Polish Claims Agreement of 1960 (Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. & O.I.A. 1953, T.I.A.S. No. 4545 (1960)). That Agreement provides as follows:

> Claims to which reference is made in Article 1 and which are settled and discharged by this Agreement are claims of nationals of the United States for
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> (a) the nationalization or other taking by Poland of property and of rights and interests in and with respect to property;
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> (b) the appropriation or the loss of use or enjoyment of property under Polish laws, decrees or other measures limiting or restricting rights and interests in and with respect to property . . .; and
>
> (c) debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland. (Polish Claims Agreement of 1960, supra, Article II)

The sole issue herein is whether the confiscation of claimant's property under the circumstances constituted a nationalization, appropriation, or other taking of property for which Poland is responsible under the Polish Claims Agreement of 1960.

In making determinations of claims against Poland, the Commission is required 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." (Section 4(a), Title I of the International Claims Settlement Act of 1949, as amended; 64 Stat. 12).

The record includes files of the Department of State relating to this claim. In a letter of July 5, 1938, the Honorable Cordell Hull, then Secretary of State, referred to a long established principle of international law as follows: ". . . American nationals abroad charged with the infraction of the laws of the foreign country in which they happen to be, are subject to the legal proceedings of such country and it is not the general practice of this Department to consider making reclamation against a foreign government on behalf of an American citizen unless he has exhausted his legal remedies in the foreign country in question with the resulting denial of justice." Dealing with the case at hand, the Secretary of State went on to say: "Such a situation does not exist in the present case and the Department is not in a position to consider making representations to the Polish Government for the return of the funds forfeited under the sentence of the Court in this case."

The fact that reasonable men might have differed as to the court's findings or the sentence imposed on claimant does not change the rule that Americans abroad are responsible for their actions under the laws

of the countries they visit. That there was no denial of justice in this case is clearly established by the record.

No citations are needed for the proposition that a state has inherent authority to decree certain conduct to be criminal and to impose imprisonment, fines and forfeiture upon conviction. It is equally true that the prohibition against transfer of funds outside of a country is a legitimate exercise of sovereign authority.

One authority has stated that "An injury resulting from a breach of a local law does not entitle a citizen of his government's protection further than to secure him a fair trial and no unusual or excessive punishment." (Thorpe, International Claims, at 40 (1924)). Another authority explains the principle by saying that "confiscatory and similar actions are proper exercises of State-power, and may be regarded as a defense to any claims for restitution or damages . . . (1) when there is a forfeiture or a fine to punish or suppress crime." (Wortley, Expropriation in Public International Law, at 39 (1959)).

The Commission finds no basis for invoking any of the exceptions that apply in cases of this type under international law. Briefly stated, claimant was accused of a crime under the laws of Poland. He was given a fair trial and found guilty. There was neither a lack of due process nor unusual or excessive punishment. Poland had the sovereign right to impose penalties for the violation of its laws. In doing so under the circumstances in this case, it incurred no liability under international law and was not required to compensate claimant for its actions.

The Commission therefore finds that the confiscation of claimant's property by Poland was not a nationalization, appropriation, or other taking of property within the meaning of the Polish Claims Agreement of 1960. Accordingly, this claim is denied.

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

NOV 6 1963

Edward D. Re, Chairman

Theodore Jaffe, Commissioner

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections to this Proposed Decision are filed within 20 days of service thereof, the decision will, upon the expiration of 60 days after such service or receipt of notice, be entered as the Final Decision of the Commission unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. § 531.5 (e) and (g) (1961)).