CLAIMS AGAINST CZECHOSLOVAKIA

CZECHOSLOVAKIAN CLAIMS PROGRAM STATISTICS

Statutory authority: Title IV of the International Claims Settlement Act of 1949, 72 Stat. 527 (1958), 22 U.S.C. 1642–1642p (1964).

Number of claims: 4,024.
Amount asserted: $364,000,000.
Number of awards: 2,630.
Amount of awards: $113,645,205.41.
Amount of fund: $8,540,768.41.
Program completed: September 15, 1962.

In the Matter of the Claim of

Claim No. CZ–2696
Decision No. CZ–1

MIA FOSTER

Against the Government of Czechoslovakia

Claim denied where property on which claim based not owned by national of the United States at time of taking.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by MIA FOSTER, a national of the United States since her naturalization in the United States on December 4, 1952, based on the nationalization of her one-fourth interest in the property of a factory known as "Wiener Brothers" in Klatovy, Czechoslovakia.

The record before the Commission discloses that the property upon which this claim is based was nationalized by the Government of Czechoslovakia during 1948, prior to the date on which the claimant became a national of the United States.

Section 404 of the Act provides, *inter alia,* for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States.

Section 405 of the Act provides that:

> A claim under section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

Since the property upon which this claim is based was not owned by a United States national on the date of nationalization or other taking thereof, the claim must be and hereby is, denied.

The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.
November 13, 1959.

Nationality requirements.—As shown in the instant claim, the conclusion which the Commission had reached in previous claims programs through application of principles of international law was spelled out specifically as to claims against Czechoslovakia under Title IV of the 1949 Act. Under Section 405 a claim could not be allowed unless the property upon which it is based was owned by a United States national on the date of nationalization or other taking, and the claim was held by a United States national continuously thereafter until the date of filing with the Commission. This clear statutory requirement undoubtedly reduced the number of objections filed by claimants whose claims were denied by Proposed Decision for failure to fulfill the nationality requirements, and perhaps discouraged the filing of claims by persons not meeting those requirements. Nevertheless, one claim was denied on the ground that Section 404 provides only for the determination of claims of nationals of the United States, and claimant had not been a United States national at any time. (*Claim of Miroslav J. Svestka,* Claim No. CZ–4595, Dec. No. CZ–4, 17 FCSC Semiann. Rep. 183 (July-Dec. 1962).) In another instance the Commission found that each of two claimants owned a one-half interest in property which was nationalized on September 1, 1946. An award was made to one claimant, who had been a United States national since May 20, 1929, for the value of his one-half interest at the time of loss. The other claimant was not naturalized until December 19, 1949. Accordingly, the claim for her one-half interest in the property was denied, because it was not owned by a national of the United States on the date of loss. (*Claim of Vincenz Machowsky, et al.,* Claim No. CZ–4476, Dec. No. CZ–2185, 14 FCSC Semiann. Rep. 179 (Jan.-June 1961).)

Section 401 of the statute defined "national of the United States" as "(A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity." Thus, a claim filed by a corporation organized under the laws of Switzerland, based upon the taking of certain of its assets in Czechoslovakia, was denied on the ground that the claimant was not a national of the United States. (*Claim of Gleba A. G.,* Claim No. CZ–2773, Dec. No. CZ–2201, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).)

Where the owner of a claim against Czechoslovakia died prior to the filing of the claim, and the claim was filed by the duly appointed administrator under the will, the Commission limited the award to 34% of the value of the property at the time of its loss, inasmuch as 66% was inherited under the will by non-nationals of the United States, and that portion of the claim was not owned continuously by United States nationals from the date of loss to the date of filing the claim. The Commission held, consistent with the established rule under international law, that the nationality requirement for compensability is to be applied to the persons beneficially entitled to the claim or any part thereof, or to the proceeds therefrom, rather than to an executor, administrator, or trustee. (*Claim of National Bank of Westchester, White Plains, as Administrator With the Will Annexed, Estate of Meta Blum, Deceased,* Claim No. CZ–1872, Dec. No. CZ–3312, 17 FCSC Semiann. Rep. 251 (July-Dec. 1962).)

Direct and indirect stock interests.—Under Section 406(b) of Title IV, a claim based upon a direct ownership interest in a corporation which was nationalized, or the property of which was nationalized, could be allowed without regard to claimant's percentage of ownership; but a claim based upon an indirect ownership interest in the corporation which was nationalized, or the property of which was nationalized, was allowable under Section 406(c) only if at least 25% of the corporation was owned by United States nationals at the time of loss. In this respect, claims against Czechoslovakia received the same treatment from the beginning as did claims against Bulgaria, Hungary, Rumania, Italy, and the Soviet Union after the amendment of Section 311(b) of the Act on August 8, 1958. (See annotations to *Claim of Niagara Share Corporation,* appearing at page 184.) In the application of this principle, a claimant who owned only eight shares of stock in Zapadomoravske Elektrarny received an award for the value of his eight shares at the time of nationalization of the corporation. (*Claim of John Lukac,* Claim No. CZ–2510, Dec. No. CZ–2230, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).) Where a claimant and his wife owned 8,213 shares (34.9%) of a Delaware corporation which owned a 47.07% interest in a nationalized Czechoslovakian corporation, giving claimant and his wife a 16.43% indirect interest in the Czechoslovakian enterprise, the portion of the claim based upon this holding was denied because it appeared from the record that the total interest of United States nationals in the Czechoslovakian firm at the time of its nationalization was 17.466%, or less than the required 25%. The same claimant received an award for lesser interests in other nationalized enterprises which he owned directly, so that the 25% requirement did not apply. (*Claim of Eugene de Rothschild,* Claim No. CZ–3633, Dec. No. CZ–3536, 17 FCSC Semiann. Rep. 259 (July-Dec. 1962).)

In the Matter of the Claim of

ANGELA FROEHLICH LIPSON

Claim No. CZ–3386
Decision No. CZ–1383–A

Against the Government of Czechoslovakia

Presumption under Section 404, Title IV of the 1949 Act that real property with gross annual income of 15,000 Czech crowns or more was taken by Czechoslovakia on January 1, 1953 under Law 80/52 Sb. *rebutted by evidence of continuation of incidents of ownership.*

Law of situs (lex loci rei sitae) *determines ownership of real property. Marriage in France to a United States national did not effect conveyance of interest in real property under laws of Czechoslovakia in absence of agreement to that effect.*

Temporary measures effected by national administration of property in Czechoslovakia during reconstruction period after World War II distinguished from national administration of property in 1956 which constituted "taking" of property under Section 404.

FINAL DECISION

This is a claim in the amount of $200,000 against the Government of Czechoslovakia under Section 404 of Title IV of the International Claims Settlement Act of 1949, as amended, by ANGELA FROEHLICH LIPSON, a national of the United States since October 18, 1955, the date of her naturalization. The claim is based upon the nationalization or other taking by Czechoslovakia of an apartment house, also used as an office building, located at 27 Dlouha Street, in the center of the business district in the city of Prague.

The record before the Commission discloses that apartment buildings, of the type upon which this claim is based, fell within the purview of Law No. 80/52 *Sb.*, enacted by the Government of Czechoslovakia, effective January 1, 1953, which compelled owners of leased buildings with a gross rental income of 15,000 Czech crowns or more (presently 3,000 Czech crowns or more) to deposit the rent in special accounts with government agencies.

The record in this claim further reveals, that from January 1, 1959, the management of the building was taken over by the City Housing Administration for the First District of Prague and that surplus income from the property, if any, was to be used for repairs and maintenance of all buildings in the same District.

Section 404 of the Act provides, *inter alia,* for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization

or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 405 of the Act provides that:

> A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The Commission found that the property, upon which the claim was based, was taken by the Government of Czechoslovakia on January 1, 1953, which was prior to the date on which claimant became a national of the United States. The Commission further found that the action taken by the City Housing Administration on January 1, 1959, was nothing more than a mere formalization of the taking of claimant's property which occurred on January 1, 1953.

Accordingly, since the property upon which the claim was based was not owned by a national of the United States on the date of taking thereof, the claim was denied in a Proposed Decision issued by the Commission on September 7, 1960 and affirmed in its Final Decision dated March 20, 1961.

Thereafter, claimant's attorney petitioned to set aside the Final Decision on the ground that on the date of taking, claimant's husband, a native born citizen of the United States, owned an interest in the property in question by reason of his marriage to the claimant in France in 1951. The petition also requested that the Commission reconsider its Final Decision and its finding that the date of taking of the property was January 1, 1953.

Good cause being shown, claimant's petition was granted, the Commission's Final Decision dated March 20, 1961 set aside and a hearing scheduled at which claimant's attorney urged (1) that under French civil law, claimant's husband had acquired an interest in the property by virtue of the marriage in 1951, and (2) that the property in question had not been taken on January 1, 1953, since the claimant had enjoyed possession of the property and its fruits and income until October 23, 1956, the date the house was placed under national administration.

Under general principles of the conflict of laws, the provisions of the French civil code are not applicable to the facts in this claim. Since the real property upon which the claim is based is situated in Czechoslovakia, the law of the *lex loci rei sitae* determines the ownership of the property.

Only a few of the precedents that support this view will be cited:

> Land is held and alienated according to the law of the place where it is situated, and cannot be held or appropriated otherwise than according to the *lex loci rei sitae. U.S. v. Crosby,* 11 U.S. (7 Cranch) 115 (1812).
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> Title to real estate is governed by the laws of the place where it is situated. *Johnson v. McIntosh,* 21 U.S. 543 (1823); *Montgomery v. Samory,* 99 U.S. 482 (1878).
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> In matters pertaining to real property the law of the *situs* governs. *O'Donnell v. U.S.,* 91 F. 2d 14, cert. granted 58 S. Ct. 146, reversed 303 U.S. 501 (1937).
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> It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated. *United States v. Turkey,* Nielsen's Report (1937) pp. 674–675, in *American Board of Commissioners for Foreign Missions v. Turkey.*
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> The effect of a contract or title to land depends on the law of the land's *situs. Charles A. G. Forbes as Trustee v. Mexico,* Decision No. 29–B, American Mexican Claims Commission under the Act of Congress of December 18, 1942, pp. 198–201 (1948).
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> Ownership of real property is determined by the law of the *situs* of the property. *Claim of Manfred Sternberg,* Foreign Claims Settlement Commission's Decision No. Y–1527, Docket No. Y–1092 (1954).

The Commission's records indicate that the law of the situs of the property, namely of Czechoslovakia, does not accord to a husband an interest in his wife's real property which she acquired prior to her marriage unless the spouses concluded a special agreement to that effect.[1]

No evidence has been submitted to show that claimant and her husband signed an agreement for the establishment of community property. The Commission, therefore, concludes that claimant's husband had no interest in the realty involved in this claim and that no claim accrued to him upon the taking of the property by Czechoslovakia.

The Commission has previously held that under the provisions of Law No. 80/52 *Sb.*, effective January 1, 1953, the owner of improved real property having a gross rental income of 15,000 Czech crowns or more per year was precluded from the free and unrestricted use of his realty and its fruits and, therefore, the

[1] Sections 22 and 29 of the Family Law of December 7, 1949, No. 265 Coll., effective January 1, 1950.

property has been considered as taken by the Government of Czechoslovakia on January 1, 1953. The record before the Commission, however, clearly establishes that this claimant was in possession and control of the property and enjoyed the fruits and income of the property upon which this claim is based until 1956, when the property was then placed under national administration. The question, therefore, presented is whether the presumption of a taking on January 1, 1953, the effective date of Law No. 80/52 *Sb.*, shall be applicable or whether the date of taking established by the facts in the claim, in this instance 1956, shall control.

The Commission reaffirms its previous determination that real property having a gross annual rental income of 15,000 Czech crowns or more was, by reason of Law No. 80/52 *Sb.*, presumptively taken on January 1, 1953; however, where the evidence of record indicates that claimant was in possession of the property subsequent to the date of January 1, 1953 enjoying the fruits of the property after that date, and that he was deprived of the possession of the property by subsequent action of the Government of Czechoslovakia, the date of such subsequent action shall be considered the date of taking of said property.

The claimant herein was in possession and control of the premises prior to January 1, 1953 and remained in such possession and control until October 23, 1956, when the property was placed under national administration.

Postwar Czechoslovakia legislation with respect to national administration of property commenced with Decree No. 5/45 *Sb.* of May 19, 1945 which provided for the placement under national administration of property considered essential to the national economy, and of property owned by absent persons and persons considered unreliable (not loyal) to Czechoslovakia. Often, such property had been alienated under duress by the occupying forces during World War II. A careful study of Decree No. 5/45 *Sb.* discloses that placement of property under national administration was originally considered by the Government of Czechoslovakia as a "temporary measure," to be terminated after the Czechoslovakian Government has ascertained whether such property should be returned "to the original owners, or confiscated, nationalized, or otherwise disposed of."

Pursuant to Law 128/46 *Sb.* of May 16, 1946, provision was made for the return of alienated property to "reliable" owners upon applications for restitution. All such proceedings were suspended on December 21, 1949, in anticipation of a claims settlement agreement with the United States. The Commission has consistently held that the date of taking in such cases is the

date of denial of such restitution, or December 21, 1949 in the event a petition for restitution was neither filed nor acted upon.

However, the action taken by the Government of Czechoslovakia, with respect to the property which is the subject matter of this claim is to be distinguished from similar action taken immediately following World War II. The record contains no evidence to show that this property was alienated during the war. The national administration in this case does not appear to have been a temporary measure as was the case during the period of reconstruction following World War II.

Evidence having been submitted to substantiate the fact that the property in question was placed under national administration as of October 23, 1956, the Commission holds that this action was merely another means of effecting a taking of property and finds, therefore, that said property was "taken" within the meaning of Section 404 of the Act on October 23, 1956 when national administration was imposed, without the payment of compensation.

The Commission concludes that the house, after deduction of the recorded mortgages, had a value of $20,000 at the time of taking and that the claimant is entitled to compensation under Section 404 of the Act in the said amount, plus interest as specified below.

In arriving at the value, the Commission considered the evidence submitted by the claimant, namely, the description, location and type of the property, the use made of the property and photographs thereof. In addition to the foregoing, the Commission gave consideration to the gross annual rental of the property and to the fact that in the year 1942 the Zemska Banka pro Cechy (Regional Bank for Bohemia), a government-owned bank in Prague, extended a loan of 400,000 crowns to the owner of the house, secured by a first mortgage.

Accordingly, for the reasons stated, it is ORDERED that the Proposed Decision of September 7, 1960 be modified by this revised Final Decision; and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ANGELA FROEHLICH LIPSON in the amount of Twenty Thousand Dollars ($20,000.00) plus interest thereon at the rate of 6% per annum from October 23, 1956 to August 8, 1958, the effective date of Title IV of the Act, in the amount of

Two Thousand One Hundred Fifty Dollars ($2,150.00) for a total award in the amount of Twenty-two Thousand One Hundred Fifty Dollars ($22,150.00).

Dated at Washington, D.C.
March 28, 1962.

Law of situs governing ownership of realty.—The instant claim originally was denied because the claimant did not become a national of the United States until October 18, 1955, and the Commission found that her property, an apartment house in Prague, Czechoslovakia, had been lost on January 1, 1953, the effective date of a law affecting buildings with an annual rental of 15,000 crowns or more in such a way as to amount to a constructive taking thereof. Upon consideration of additional evidence, the Commission determined that the loss had not occurred until October 23, 1956, when the building was placed under national administration, and granted an award. For further discussion of the effect of the law concerning buildings renting for 15,000 crowns or more, and the placing of property under national administration, respectively, see the annotations to *Claim of Alexander Feigler,* appearing at page 427, and to *Claim of Mary Dayton,* appearing at page 417.

The aspect of the *Lipson* claim of particular interest here is claimant's contention in objecting to the original denial of her claim, to the effect that her husband had acquired an interest in the Czechoslovakian property under French civil law at the time of their marriage in France in 1951; and that he had been a United States national on January 1, 1953, so that an award should be made for his interest even if the Commission adhered to its holding that the property was lost on that date. In this respect the Commission held that the French code was not for application because the property was located in Czechoslovakia. Under Czechoslovakian law, a husband acquired no interest, by reason of marriage, in real property which his wife had acquired prior to the marriage, in the absence of special agreement. Applying the *lex loci rei sitae,* the Commission held that the husband had no interest in the property in Czechoslovakia, and no claim for its loss.

Equitable ownership.—In another claim which had been denied because claimant had not been a national of the United States at the time of loss of his real property, claimant endeavored to join as a party claimant his brother, who had become a United States national at an earlier date. Claimant urged that although the property had been recorded in his name, he had acquired it for himself and his brother under an agreement between the two, so that his brother was equitable owner of a part of the property. The property was located in Slovakia which, at the time of loss, was governed by Hungarian Customary Law based largely upon the Austrian Civil Code. Under this law, legal possession of a

right in real property could be acquired only by a regular entry in the public books, and equitable ownership in real property was not recognized, with limited exceptions concerning heirs and grantees in written instruments duly executed and acknowledged. Since the asserted agreement between claimant and his brother had not been reduced to writing, acknowledged, and recorded, the Commission held that the brother acquired no interest in the property, and declined to permit his joinder in the claim. (*Claim of Joseph Singer,* Claim No. CZ–3993, Dec. No. CZ–2556, 15 FCSC Semiann. Rep. 20 (July-Dec. 1961).)

Where a property owner executed a "Notarial Deed" in the office of a Czechoslovakian attorney, transferring his property in equal shares to five members of his family, and the property was taken by the Government of Czechoslovakia a month later, an award was made to the transferees, the Commission finding that they were the owners of the property on the date of loss, although it had not yet been recorded in their names. (*Claim of Dagmar Kane, et al.,* Claim No. CZ–1368, Dec. No. CZ–2847, 17 FCSC Semiann. Rep. 281 (July-Dec. 1962).) In other instances the Commission found, on the basis of evidence before it in the form of various unrecorded instruments, that ownership of property passed to claimants, particularly where transactions occurred during the occupation of Czechoslovakia when restrictive laws imposed by German authorities prevented orderly transactions between the parties in interest. (*Claim of Betty Tomaska Papanek,* Claim No. CZ–3207, Dec. No. CZ–3534; *Claim of Katherine Szasz,* Claim No. CZ–3263, Dec. No. CZ–3341; *Claim of Frederick Zuckerman Reitler,* Claim No. CZ–3985, Dec. No. CZ–3542.)

Sales under duress.—A portion of a claim based upon an oil concession in Czechoslovakia granted by German occupation authorities to a German corporation which subsequently transferred 40% thereof to a wholly-owned subsidiary of the claimant corporation, was denied. On May 19, 1945 the Czechoslovakian Government decreed that all transfers of property were invalid if they occurred after September 29, 1938 under the pressure of the occupation or national, racial or political persecution. The Commission held that the granting of the concession to the German corporation was within the purview of the decree, and without legal force and effect, as was the later transfer of 40% to claimant's subsidiary. (*Claim of Socony Mobil Oil Co., Inc.,* Claim No. CZ–2739, Dec. No. CZ–3320, 17 FCSC Semiann. Rep. 290 (July-Dec. 1962).)

Silent partners.—A claim based upon a loss of property in Czechoslovakia belonging to an Austrian partnership in which claimant asserted a 50% interest as a silent partner (*stiller gesellschafter*), was denied. Under the Austrian Commercial Code, a silent partner has no proprietary interest in the partnership, his status being that of an unsecured creditor only. Although claimant's status later was changed to that of an official partner in the firm, the Commission held that there was no ownership of the property by a national of the United States at the time of its loss. (*Claim of Max Eisenstein,* Claim No. CZ–1153, Dec. No. CZ–2807, 17 FCSC Semiann. Rep. 229 (July-Dec. 1962).) In another instance, no award was made to a claimant who assertedly had

received a 42% interest in a partnership as gifts from the other partners, but whose name did not appear in the Commercial Register because it had been deemed advisable to treat him as a silent partner. The Commission held that he acquired no ownership interest in the partnership, but granted awards to other claimants who were active partners. (*Claim of Frederick Fraenkl, et al.,* Claim Nos. CZ–2989–91, Dec. No. CZ–3498.)

Procedures—Reopening of claims.—The *Lipson* decision provides an example of reopening a claim upon petition of the claimant and granting an award, after a previous denial of the claim by Proposed Decision had been affirmed by Final Decision. The Commission's regulations provided for the filing of such a petition, based upon newly discovered evidence, after the issuance of a Final Decision but not later than 30 days before the statutory date for the completion of the Commission's affairs in connection with the claims program.

Where an original claimant died after the issuance of a Final Decision denying his claim, and a successor in interest filed a petition to reopen the claim on the basis of newly discovered evidence, the petition was granted, the petitioner was substituted for the deceased claimant, and an award was made. This was done even though the petition was filed less than 30 days before the statutory end of the claims program, inasmuch as there was no statutory restriction upon the time for filing petitions to reopen, and the Commission was in fact able to consider and dispose of the petition before the program terminated. (*Claim of Rose B. Harris,* Claim No. CZ–3663, Dec. No. CZ–2144, 17 FCSC Semiann. Rep. 274 (July-Dec. 1962).) Where an award had been granted by Proposed Decision and affirmed by Final Decision, and thereafter additional information concerning the value of the property came to the Commission's attention as a result of an independent investigation, the claim was reopened on the Commission's own motion and the amount of the award was increased by Amended Final Decision. (*Claim of Alexander Schirger,* Claim No. CZ–4483, Dec. No. CZ–1877, 17 FCSC Semiann. Rep. 251 (July-Dec. 1962).)

In granting a petition to reopen a claim on the basis of newly discovered evidence, the Commission also permitted joinder of new claimants, such as children of the petitioner who also owned interests in the property and had been omitted inadvertently from the claim. (*Claim of Stefan Kapustik, et al.,* Claim No. CZ–4617, Dec. No. CZ–1151, 17 FCSC Semiann. Rep. 243 (July-Dec. 1962).) Where a claimant filed a petition to reopen his claim and the supporting evidence warranted an award for a property item not formerly claimed, the Commission included compensation for the additional item of property in the award made. (*Claim of Paul Stibrany, Administrator of the Estate of John Stibrany, Deceased,* Claim No. CZ–2425, Dec. No. CZ–2374, 17 FCSC Semiann. Rep. 276 (July-Dec. 1962).)

Hearing procedures.—Claimants had the right to object to Proposed Decisions, and to request oral hearing if desired. Even where claimant failed to appear at an oral hearing scheduled at his request, the Commission made a thorough review of the record, including any evidence submitted since the issuance of the

Proposed Decision, and increased the award where the evidence warranted such action. (*Claim of Joseph Timfeld,* Claim No. CZ–1982, Dec. No. CZ–284, 17 FCSC Semiann. Rep. 254 (July-Dec. 1962).)

Consolidated awards.—Section 408 of Title IV of the 1949 Act provided that with respect to any claim which at the time of award was vested in persons other than the person by whom the loss was sustained, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, indicating the respective interests of each, who then would participate in payments in proportion to their indicated interests, "in all respects as if the award had been in favor of a single person." Under Section 413, the Treasury Department was to make an initial payment in the amount of $1,000.00 on account of each award exceeding that amount, with later payments to be prorated, depending upon the total funds available and the total amount unpaid on all awards. Thus, where several persons inherited a claim from a decedent who owned the property at the time of its loss, they were granted a consolidated award rather than individual awards, so that they would share proportionately in one initial $1,000.00 payment rather than receive initial payments of $1,000.00 each. (*Claim of Helen Volcsko, et al.,* Claim No. CZ–3530, Dec. No. CZ–3270, 17 FCSC Semiann. Rep. 273 (July-Dec. 1962).)

Time for filing claims.—A number of claims under Title IV of the Act were denied because they were not timely filed. Section 411 provided that the Commission "shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication." By publication in the Federal Register on September 16, 1958, the Commission gave public notice that claims against the Government of Czechoslovakia under Title IV must be filed by August 1, 1959. By publication in the Federal Register on July 24, 1959, the Commission extended this time to September 15, 1959. Where claimants had given written indication, on or before September 15, 1959, of their intention to file claims under Title IV, their claims were entertained if official claim forms were executed and filed within a reasonable time thereafter. In the absence of any communication to the Commission on or before September 15, 1959, however, the Commission had no alternative to denial of claims filed thereafter, having prolonged the filing period to the full extent permitted by the statute. (*Claim of Alex Kovach,* Claim No. CZ–4930, Dec. No. CZ–2, 17 FCSC Semiann. Rep. 181 (July-Dec. 1962).) Objections were filed to the denial of a claim by Proposed Decision as untimely filed, the claimants pleading that the Government of Czechoslovakia had fraudulently concealed the fact of nationalization of their property until after the expiration of the filing period. The Commission affirmed the denial of the claim by Final Decision, stating that the statute permits no further extension of the filing period for any reason, however equitable and meritorious it may be. (*Claim of Edward George Trousil, et al.,* Claim Nos. CZ–5004, CZ–5005, Dec. No. CZ–1307.)

In the Matter of the Claim of

MARY HRUSOVSKY

Claim No. CZ–4177
Decision No. CZ–2949

Against the Government of Czechoslovakia

Prohibition against inheritance of real property by foreigners pursuant to laws of Czechoslovakia did not constitute a "taking" of property under Section 404, Title IV of the 1949 Act.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, in the amount of $3,255.29 by MARY HRUSOVSKY, a national of the United States by naturalization on June 7, 1948. The claim is based upon the loss of a house, land, meadows, orchard and vineyard in Smolenicka Nova Ves, interest in real property situated in Valtasur, and savings account No. 772 with the *Uverne druzstvo* of Valtasur, Czechoslovakia.

Section 404 of the Act provides, *inter alia*, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein, owned at the time by nationals of the United States.

The property in Smolenicka Nova Ves was owned by claimant's father, Stefan Studenc, who died on February 13, 1955 in Smolenicka Nova Ves. Pursuant to Section 4 of Law 139/47 *Sb.*[1] the State Notariat of Trnava, acting under authority of the probate court,[2] ordered by Decision D 139/55–38 of November 8, 1957 that the entire estate, being an agricultural enterprise, vest in Emilia Banic, one of the heirs because she was working the farm with her husband and was a member of the collective farm of Smolenice. According to Section 6 of Law 139/47 *Sb.* the amount of the compensation, payable to the bypassed heirs by the heir in which the inheritance vested, is to be determined by the court. The claimant takes the position that her intestate share in the estate was "taken" by the cited decision of the State Notariat.

It is not disputed that claimant might have been in better economic situation if she had received the real property instead of monetary compensation and in such respect may have sustained an injury. It is clear, however, that not all injuries suffered by a

[1] For the text of the pertinent provisions of Law 139/47 *Sb.* see Appendix attached hereto.
[2] Law No. 142/50 *Sb.*, the Code of Civil Procedure, as amended (1950) (Czech.), and Law No. 52/54 *Sb.* on Jurisdiction of State Notariats (1954) (Czech.).

national of one state in the territory of another state are compensable through an international claim. As the cases indicate, the claim must be founded upon some breach of duty or other international obligation. In other words, a state cannot be said to be "responsible" unless there is alleged some act or omission on the part of the state which is in violation of international law.[3] Consequently, the action of the State Notariat, complained of, would establish the responsibility of the State and amounts to a "taking" of property within the meaning of Section 404 of the Act only if such action was a breach of duty or other international obligation owed to the claimant by the Government of Czechoslovakia.

It is a settled principle of the common law that there can be no inheritance by, from or through an alien.[4] Therefore, at common law, on the death of a citizen who leaves only alien kindred, the real property of the citizen escheats, and the title vests in the state without inquest of office.[5]

The right of the sovereign to prohibit an alien from taking property within the jurisdiction of the state by testamentary or intestate succession is not restricted to common law only but is a universally recognized right of the nations as stated by Chief Justice Taney in the following:

> Now the law in question is nothing more than an exercise of the power which every state and sovereign possesses, of regulating the manner and term upon which property real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state.[6]

The common law rule was changed in many states of the Union by statute. The right to prohibit an alien from taking property through descent and distribution, however, was never denied. Treaty provisions regarding real property were therefore carefully phrased to preserve the traditional right of a state to determine for itself who could not acquire and hold land in its jurisdiction,[7] and the United States has not entered into any treaties which have completely deprived states of the power to legislate in this field.[8]

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3 Orfield and Re, Cases and Materials on International Law, at 498 (1955).
4 *Webb v. O'Brien*, 263 U.S. 313 (1932); *Levy v. M'Cartee*, 31 U.S. (6 Pet.) 102 (1832).
5 *Crane v. Reeder*, 21 Mich. 24, 4 Am. Rep. 430.
6 Re Estate of Marienios Apostolopoulos, (-Utah-, 250 Pac. 469); 48 A.L.R. 1328 (1926) citing *Mager v. Grima*, 49 U.S. (8 How.) 490 (1850).
7 See Meekinson Treaty Provisions for the Inheritance of Personal Property, 44 Am. J. Int'l L. 319 (1950).
8 *Ibid.* citing Gibson, Aliens and the Law (1940).

In view of the right of nations to prohibit an alien from acquiring title to property situated within their jurisdiction and also in the absence of an agreement between the United States and Czechoslovakia to the contrary, the Commission concludes that the Government of Czechoslovakia did not violate any international obligation by Decision D 139/55–38 of the State Notariat of Trnava, and that prohibiting a national of the United States from acquiring real property in Czechoslovakia by descent does not amount to a "taking" of claimant's property within the meaning of Section 404 of the Act. Accordingly, that portion of the claim based upon property allegedly inherited from Stefan Studenc and situated in Smolenicka Nova Ves, is denied.

With respect to the real property in Valtasur, the Commission finds that claimant owned a one-half interest in land registered in register liber 290 of Valtasur as lot 396, which was taken without compensation by the Government of Czechoslovakia when it merged this land into the local collective farm on November 8, 1952.

Lot 396 in Valtasur was purchased by claimant and her former husband, Vendelin Duris, for 18,000 *koruny* in 1921. Using the then prevailing rate of exchange, 1.3 cents for 1 *koruna*, the purchase price paid for the entire property equalled 234 U.S. dollars. In 1925, Vendelin Duris died and his one-half interest in the property was valued for probate purposes at 5,000 *koruny*. Converting the *koruna* into U.S. dollars at 3 *koruny* for 1 U.S. dollar, the value of the entire fee amounted to 300 U.S. dollars. In 1921 Czechoslovak *koruna* did not enjoy such stability as later and for that reason the purchase price paid does not necessarily furnish a reliable basis for the valuation of real property in Czechoslovakia. Moreover, the value assessed by Czechoslovak authorities for probate purposes reflects a conservative value. For these reasons the Commission is of the opinion that the value of farmland in the area of Valtasur is more correctly stated, in the land values prepared and published by the Federal Agency for Equalization of Burdens (*Bundesausgleichsamt*),[9] of the German Federal Republic, as 1260 *reichsmarks* ($315) per hectare. Based upon such information and also upon information and evidence collected in the course of adjudicating claims against the Government of Czechoslovakia pursuant to Title IV of the Act, the Commission finds that the value of claimant's one-half interest in the 3½ Hungarian *jutro* or 1.45 hectare of farmland in question was two hundred thirty dollars ($230.00), and concludes that claimant is entitled to compensation in such amount under Section 404 of the Act.

[9] *Verzeichnis der Gemeinde-Hektarsaetze mit Alphabetischem Kreisverzeichnis der Vertribungsgebiete. Bad Homburg,* Suppl. 5 at 278. (1956) (Ger. Fed. Rep.)

The Commission finds it unnecessary to make determination with respect to that portion of the claim based upon savings account No. 772 with the *Uverne druzstvo* of Valtasur because claimant stated in her letter of August 26, 1960 that the account was used by her daughters during their visit to Czechoslovakia and therefore her "claim for annulled money does not exist."

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part and an award is hereby made to MARY HRUSOVSKY in the principal amount of Two Hundred Thirty Dollars ($230.00) plus interest thereon at the rate of 6% per annum from November 8, 1952 to August 8, 1958, the effective date of Section 404 of the Act, in the amount of Seventy-Nine Dollars and Thirty-Five Cents ($79.35), for a total award of Three Hundred Nine Dollars and Thirty-Five Cents ($309.35).

Dated at Washington, D.C.
January 3, 1962.

PARTIAL TRANSLATION OF LAW NO. 139/47 *Sb.*
(*Sbirka Zakonu* No. 62 of August 6, 1947)

Section 1

(1) Pursuant to inheritance proceedings agricultural property shall be divided among heirs only if the aggregate size of an agricultural unit exceeds:

(a) in the area of beet economy—5 hectares;
(b) in the area of grain economy—8 hectares;
(c) in the area of potato economy—10 hectares;
(d) in the area of pasture and hay economy—15 hectares; (referred to hereinbelow as "minimum permissible area").

(2) If the quality of the property involved in the proceedings does not correspond to the general economy in the area, or if the property is situated in different economic areas, the probate court shall request the advice of the appropriate Federation of Farmers' Cooperatives as to which economy sector should be applicable to the agricultural property in question.

(3) An agricultural property can be divided below the minimum permissible area among co-heirs only if the recipients of the inheritance would own, together with the inherited property, the minimum permissible area; otherwise, such a division below the minimum permissible area can be granted only for especially important reasons, as, for instance, whose orchards, vineyards, hops groves, etc. are part of the estate.

(4) Co-ownership of agricultural land may be permitted in the subdivision of agricultural property only if the physical shares corresponding to the ideal shares of the land, exceed the minimum permissible area.

(5) If the inheritance consists of agricultural property which does not exceed the minimum permissible area or where a division of the estate is possible only by allocating land of a lesser size so that ownership or co-ownership would be created which would include such lesser size, a determination as to how such property should descend to the heirs based upon the provisions of this law shall be made by the courts.

(6) The Government shall issue regulations for the designation of agricultural areas specified under subdivision (1).

Section 4

(1) If an agricultural property described in Section (1), subdiv. 5 is involved, the probate court shall attempt to bring about an agreement among the co-heirs as to who shall take over the property or how the property should be divided within the scope of Section (1); if no agreement can be reached, the court shall issue a decree in lieu thereof.

(2) If agricultural property other than that described in Section (1), subdiv. 5 is involved, the general rules regarding inheritance within the meaning of Section (1), subdiv. 1, 2 and 4 shall prevail.

Section 5

In determining the distributees called to inheritance by intestacy, consideration shall be given whether the distributee will work on the agricultural property himself and whether he has the qualifications to carry out the profession of a farmer. The court shall establish who is the distributee under the law of intestacy. If one or more heirs entitled to take the inheritance are considered to be qualified as farmers the transfer of farm property shall be determined according to the following principles if there are no other impediments to the inheritance:

(a) Priority shall be given to older heirs over younger ones. Close relatives shall always have a priority over more distant ones and natural children over adopted ones.

(b) If the deceased had no descendants the surviving spouse shall be considered as an heir and in Slovakia even in the case if she is not called to inheritance by law, except when the marriage was dissolved for the surviving spouse's fault.

In essence, Section 6 provides that the court shall determine the amount the heir to whom the inheritance is granted has to pay (eventually in the form of a mortgage) to the bypassed intestate heirs.

Acquisition of ownership by inheritance.—Proprietary interests in property, the subject of claims filed under the 1949 Act, were

often acquired by claimants through testamentary succession or intestate distribution. Accordingly, questions of nationality and ownership, loss, and value of property often had to be resolved affirmatively with respect to the interests of both the claimants and their predecessors-in-interest. Additionally, in the course of reaching its decisions, the Commission had to identify the heirs under an applicable will or pertinent intestacy law, and/or determine the nature of the property inherited.

Probate administration under Czechoslovakian intestacy laws presented unique factual situations in claims filed pursuant to Title IV. The *Hrusovsky* claim was based, in part, upon interests in an agricultural enterprise located in Czechoslovakia, assertedly inherited by claimant from her father. Under Law 139/47 *Sb.* governing intestate distribution of agricultural property, the probate authority determined the distributees of the estate by considering whether the heir qualified as a farmer who would continue to work the farmland. The court then determined the amount of compensation payable to bypassed heirs by the heir in whom the inheritance vested. Thus, a farmer was given priority over nonfarmers and nonresidents in the distribution of an agricultural estate, and the value of the intestate share of bypassed heirs was satisfied by compensation, including money, other than interests in the estate property. The claimant herein, one of the bypassed heirs, asserted that her intestate share in the estate property was "taken" by the Government of Czechoslovakia. It was argued that the decree of the State Notariat, vesting the entire estate in one of the heirs who qualified under the provisions of Law 139/47 *Sb.*, "took" property within the meaning of Section 404 of the Act, because it prohibited claimant, a national of the United States, from acquiring any estate property by descent.

In rejecting claimant's contentions, the Commission noted that "not all injuries suffered by a national of one state in the territory of another state are compensable through an international claim." Rather, a claim based on the loss of property within the meaning of Section 404, would prevail only if the action by the State Notariat "was a breach of duty or other international obligation owed to the claimant by the Government of Czechoslovakia." The Commission recognized that the administration of an international claims program is predicated on some act or omission on the part of the offending state in violation of international law. Under international law and usage as cited in *Hrusovsky,* the Government of Czechoslovakia, in the exercise of its sovereign power over real and personal property within its dominion, could regulate the class of heirs who may take under specified factual situations, prohibit aliens from taking property through descent and distribution, and prescribe the nature of any interests that might pass by way of testamentary succession or intestate distribution. The Commission therefore concluded that the Government of Czechoslovakia did not violate any international obligation by the decision of the State Notariat, and a prohibition against a national of the United States acquiring real property in Czechoslovakia by descent would not constitute a "taking" of that person's property within the meaning of Section 404 of the Act.

In a similar situation, the decision by the local probate au-

thority in Czechoslovakia indicated that claimant's mother died intestate and that, contrary to claimant's assertions and an unrecorded prior agreement between heirs submitted in support thereof, her entire estate consisting of interests in improved farmland passed to claimant's father, a resident of Czechoslovakia. The father was ordered to pay claimant the value of his intestate share. The Commission found that, at best, claimant had a debt claim against his father for his share in the mother's estate, and denied the claim on the ground that the record evidence did not establish that claimant inherited any interests in the subject property or that any property owned by him was nationalized or otherwise taken by the Government of Czechoslovakia. (*Claim of Stephen Dvoraczky,* Claim No. CZ–4490, Dec. No. CZ–1582.)

On the other hand, where claimant established that he inherited, as sole heir, the property of his father, mother, sister, and aunt, an award was granted for the value of the property when taken by the Government of Czechoslovakia. (*Claim of Ernest G. Wollish,* Claim No. CZ–2830, Dec. No. CZ–3126.) Similarly, where claimant's father and predecessor-in-interest died subsequent to the taking by the Government of Czechoslovakia of property owned by him, the Commission found that the father's claim for compensation was inherited by the claimant under the father's will. (*Claim of Mary Krainock,* Claim No. CZ–3814, Dec. No. CZ–3187, Order and Amended Proposed Decision.)

While applying the law of the *situs* with respect to inheritance of real property, as to personal property the Commission applied the law of the domicile of the deceased. Where an original claimant owned real property in Czechoslovakia which was nationalized, and died intestate subsequent to the filing of his claim with the Commission, while domiciled in the State of Texas, the Commission substituted his widow and daughter as parties claimant, applying Texas law on intestacy under which the widow inherited a one-third interest and the daughter a two-thirds interest in the claim. Although the claim was based upon a loss of real property, the loss had occurred prior to the death of the original claimant. His heirs inherited personal property in the form of a claim based upon the loss, rather than the real property itself; and the law of the domicile was for application rather than the law of the *situs.* (*Claim of Ruth Wayne, et al.,* Claim No. CZ–1267, Dec. No. CZ–2631.)

As in the case of other essential elements of a claim, the burden of proof with respect to inheritance of property was on the claimant. Where claimant averred that he had inherited certain improved real property but submitted no evidence in support thereof, the claim was denied. (*Claim of Carl H. Haas,* Claim No. CZ–3757, Dec. No. CZ–3287.) Another claimant received an award for the value of a 3/10 interest in a house in Czechoslovakia which she had inherited from her husband in 1945, and which had been taken by the Government of Czechoslovakia in 1949. She asserted title to an additional 3/20 interest in the house, allegedly inherited from her father-in-law who had owned a 6/10 interest during his lifetime. However, claimant failed to submit evidence to establish the existence of facts under which she would

have inherited an interest in the property from her father-in-law, and this portion of the claim was denied. (*Claim of Mary Anne Lipper,* Claim No. CZ–3439, Dec. No. CZ–2433, 14 FCSC Semiann. Rep. 156 (Jan.-June 1961).)

An interesting issue was presented in a claim filed pursuant to Title IV in which wartime occurrences had so depleted an Austrian family foundation, created under a will, that its objectives were frustrated; and the remaining assets of the foundation were then taken by the Government of Czechoslovakia.

The evidence of record established that the "Alois Schweiger Foundation for His Fellow Countrymen and Relatives" was created under the will of Alois Schweiger for the purpose of helping his relatives and indigent persons in his native city. According to the provisions of the will and subsequent stipulations approved by the appropriate Czechoslovakian authority, a Board of Trustees, controlled by senior relatives of the testator, was charged with administering the property of the Foundation, consisting of real property located in Czechoslovakia, cash, and securities, and with paying fixed portions of the income to needy relatives and to certain classes of indigents, regardless of relationship. During World War II, Germany confiscated the assets of the Foundation, and disposed of all but one apartment house and a bank account which were taken by the Government of Czechoslovakia in 1945. The Commission reasoned that, as of the time of the taking, the charitable purposes for which the Foundation was established had been terminated and were impossible of accomplishment, and that the Foundation, as such, did not exist except as a legal fiction, being nothing more than an empty shell. The Commission was therefore confronted with the question as to the proper person or persons entitled to claim compensation for the confiscated property nominally held by the Foundation.

Since the Foundation's charter contained no provisions governing its termination or the disposition of assets should it be unable to perform or complete its responsibilities, the Commission examined the civil law of the *situs* in effect at the time of the confiscation (Austrian General Civil Code of 1811, as amended) and authoritative legal exposition thereof. The Commission concluded that since the purposes for which the Foundation had been created had become impossible of attainment, the trust had failed, and title to the property in question, in the name of the original trustees, reverted to heirs of the testator; and that such heirs were the owners of the property at the time of its taking by the Government of Czechoslovakia. Claimants, as those next of kin surviving who were nationals of the United States, were granted awards for the loss of their interests in the property. (*Claim of Ernest Schweiger, et al.,* Claim No. CZ–3040, Dec. No. CZ–3202, Final Decision, 17 FCSC Semiann. Rep. 286 (July-Dec. 1962).)

In a related claim, also filed by descendants of Alois Schweiger, the Commission set aside its original Final Decision denying the claim, on the basis of the findings contained in the *Claim of Ernest Schweiger, et al., supra,* and granted an award to one of the claimants who satisfied the nationality requirements of Section 404 for the loss of interests in the assets of the Foundation. (*Claim of the Estate of Richard Schweiger, Deceased, et al.,* Claim No. CZ–3287, Dec. No. CZ–3033.)

Life estates and remainder interests.—Claimed property interests were subject to increment or diminution, as warranted by record evidence establishing interests in the subject property held by persons other than the claimants. Mortgage interests, as an illustration, are discussed in the annotations to *Claim of Kurt Schuster,* appearing at page 410. Another instance is that involving life estates. In one such claim, the evidence of record established that the mother of several claimants, herself a claimant, had a life estate created under a "Gift Agreement" relating to a one-half interest in certain improved real property taken by the Government of Czechoslovakia. The life estate of the mother and resultant remainder interests in the other claimants constituted "property" within the meaning of Section 401(3) of the Act. The related claims were consolidated and a single decision was issued, granting awards to the claimants and evaluating their life and remainder interests by use of the Makehamized mortality table, as discussed in the annotations to *Claim of Anny Aczel,* appearing at page 81. (*Claim of Emil Rojko, et al.,* Claim Nos. CZ–3453, CZ–3454, CZ–3455, and CZ–3457, Dec. No. CZ–2354, 17 FCSC Semiann. Rep. 216 (July-Dec. 1962).)

Similarly, where decedent died intestate leaving real and personal property in Czechoslovakia, the Commission found, in accordance with the law of the *situs,* that his children inherited the stated property in equal shares, subject to a life estate in favor of the decedent's widow, and evaluated the life and remainder interests by use of the Makehamized mortality table. (*Claim of Mary Plaus, et al.,* Claim No. CZ–1108, Dec. No. CZ–2931.)

In the Matter of the Claim of

SKINS TRADING CORPORATION

Against the Government of Czechoslovakia

Claim No. CZ–3978
Decision No. CZ–734

Claims based on unsecured debts of nationalized concerns in Czechoslovakia denied under Section 404, Title IV of the 1949 Act in absence of annulment or repudiation thereof by Czechoslovakia. Taking of debtor's property did not constitute taking property belonging to creditor.

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404 of the International Claims Settlement Act of 1949, as amended, by SKINS TRADING CORPORATION, a New York corporation. The claim is based upon a sum of money allegedly owed to the claimant by the firm of Arnstein & Pick

of Na Maninach 315, Prague VII, Czechoslovakia, a company assertedly nationalized by the Government of Czechoslovakia. Claimant contends that the nationalization of this company by the Government of Czechoslovakia constituted a taking of its property within the meaning of Section 404 of the Act.

Section 404 of the Act provides, *inter alia,* for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

Section 404 of the Act does not purport to compensate United States nationals for every kind of loss or damage suffered by them as a result of action by the Government of Czechoslovakia but embraces only those claims which arose out of the nationalization or other taking of property of United States nationals. A majority of the Commission has consistently held in this regard that the nationalization of a debtor company does not constitute a taking of the property of a creditor of the nationalized company, where there has been no annulment or repudiation of the debt.[1] Obviously, a showing that property has been taken is a *sine qua non* for an award under a provision of law which affords relief solely for the "nationalization or other taking" of property. There is no showing in the instant claim that the debt which forms its res was ever annulled by the Government of Czechoslovakia so as to constitute a taking of the claimant's property;[2] and a mere failure on the part of the Government of Czechoslovakia to pay a debt will not give rise to a compensable claim under Section 404 of the Act.

The Commission also rejects the contention that even though the nationalization of a corporation is not a taking of its creditors' property, the nationalization results in a loss to the creditors, giving rise to a claim under section 404 "for losses resulting from the nationalization or other taking . . . of property." This argument is negated by the specific expressions in the Committee reports of both houses of Congress that the purpose of the legislation is to compensate United States citizens whose property was nationalized or otherwise taken subsequent to World War II by the Government of Czechoslovakia. This statement of purpose excludes a claimant who suffered a loss as a result of the taking of another person's property, unless he has succeeded to that person's claim. Even were this not so, such a claim would be

[1] *Claim of Universal Oil Products Company,* Claim No. RUM-30531, Dec. No. Rum-547.
[2] *Claim of John Stipkala,* Claim No. CZ-1616, Dec. No. CZ-135.

defeated by the weight of authority under international law to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are not the proximate result of the wrongful act, and are too remote or indirect to sustain an award to the creditor.[3] Wartime events, postwar economic conditions, foreign currency control restrictions, and chaotic conditions in general very likely played a greater role in weakening the claimant's ability to collect the debt than did nationalization of the debtor. Final straws are not to be equated with proximate cause in the circumstances here under consideration.

Additionally, a reading of the legislative history of Section 404 of the Act leads to the conclusion that it was Congressional intent to exclude therefrom ordinary debt claims.

In testimony before the respective committees of the two Houses of Congress, the position of the Department of State was that: "The United States Government, in its negotiations with the Government of Czechoslovakia, has been seeking a lump-sum compensation settlement for the nationalization or other taking by that Government of American-owned property, not for creditors' claims." Pointing out that Congress could, if it wished, provide compensation for creditor claims (as, indeed it did, for certain limited Bulgarian, Hungarian, and Rumanian creditor claims in Title III by adding section 303(3)), the representatives of the Department said it "wishes to point out the basis upon which the Department has been negotiating with Czechoslovakia, and that such payments to creditors out of the limited fund would result in a diminution of recovery to the nationalization claimants."

The House and Senate Committee reports[4] on the bills which became Public Law 85–604 and added Title IV to the Act, show unmistakably that the Congress did not wish to provide compensation under section 404 for creditor claims, but elected to utilize available funds as partial compensation for those claims which had been the subject of negotiations between the two Governments. Thus in the House Report, it is said, "At the present time, negotiations are being conducted with Czechoslovakia with respect to *claims which are the subject of this legislation,* with a view to obtaining a lump-sum settlement from that nation of all *such claims.* Unless an agreement is entered into before the expiration of 1 year after enactment covering *such claims,* the funds for the payment of *such claims* will be derived from the proceeds of the sale by the United States of

[3] *Claim of European Mortgage Series B Corporation,* Claim No. HUNG–22020, Dec. No. HUNG–1605.

[4] H.R. Rep. 2227, 85th Cong., 2nd Sess. (1958); S. Rep. 1794, 85th Cong., 2nd Sess. (1958).

certain Czechoslovakian steel mill components. . . ." (Emphasis supplied.) The claims which are the subject of this legislation then are the claims which were (and are) the subject of negotiation, and do not include creditor claims.

Additionally, the following paragraph from the Senate Report on the bill is significant in showing the clear intent to restrict creditor claims to those authorized under section 403 and not to compensate such claims under section 404:

> The committee recognizes that by limiting actions in the United States Court of Claims under section 403 to the claims of persons who have been deprived of property without just compensation it may not be affording relief to persons, such as creditors, who may have valid claims against Czechoslovakian debtors. It believes, however, that if any portion of the proceeds referred to in section 402 were allowed to be used for the satisfaction of creditors or other persons whose claims are not based upon an actual interest in the steel mill equipment or its proceeds, this action would deplete, perhaps seriously, the amounts which could be recovered by Americans whose property was nationalized by Czechoslovakia.

For the foregoing reasons, this claim must be, and it hereby is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.
May 23, 1960.

Creditor claims.—The instant claim afforded the precedent for many ensuing decisions in which ordinary debt claims against Czechoslovakian debtors, not secured by mortgages on real property or by any other security, were deemed not to be within the scope of Title IV of the Act and were denied, in the absence of a repudiation or annulment of the debt by the Government of Czechoslovakia. The decision includes background material from the legislative history of the Title, showing the intention of the legislators to exclude ordinary debt claims from compensation. However, where a nationalized Czechoslovakian firm was merged into a national enterprise which subsequently acknowledged its indebtedness and agreed to pay, but thereafter the Czechoslovakian Government refused to authorize a transfer of funds on the ground that the obligation had been settled under a Czechoslovakian-Swiss Agreement of 1949 (which was not true), the Commission granted awards despite its general rule as to creditor claims under Title IV, concluding that the action of the Czechoslovakian Government constituted an annulment of the debt claim. (*Claim of Ella Wyman, et al.,* Claim Nos. CZ–4347 and CZ–4348, Dec. No. CZ–3529.)

In the absence of such annulment, claims based upon unsecured debts, such as dividends and loans payable, were denied under the general rule expressed in the claim of *Skins Trading Corporation.* (*Claim of Ann A. Unger, et al.,* Claim Nos. CZ–3137, CZ–3138 and CZ–3142, Dec. No. CZ–3538, 17 FCSC Semiann. Rep. 262 (July-Dec. 1962).)

A claim derived through a corporation which was a creditor of a Czechoslovakian company was also denied on the basis of the general rule that debt claims of unsecured creditors are not compensable under Title IV. (*Claim of Marietta J. Poras,* Claim No. CZ–3020, Dec. No. CZ–3528, 17 FCSC Semiann. Rep. 256 (July-Dec. 1962).)

Pensions and related claims.—Mere nonpayment of contractual retirement benefits due to claimant from the Central Union of Agricultural Cooperatives in Prague, an agency of the Czechoslovakian Government, was not considered a taking of property within the scope of Title IV in the absence of annulment or cancellation of the creditor's rights, and the claim was denied. (*Claim of Ladislav Karel Feierabend,* Claim No. CZ–2529, Dec. No. CZ–1423, 17 FCSC Semiann. Rep. 207 (July-Dec. 1962).) Nonpayment of retirement annuities due under the Czechoslovakian National Insurance Act of 1948 also was deemed as not constituting a taking of the property within the scope of Title IV of the Act. (*Claim of Charles Simonek,* Claim No. CZ–3147, Dec. No. CZ–2299, 14 FCSC Semiann. Rep. 174 (Jan.-June 1961).)

However, where a creditor's claim for salary, severance pay, pension, and similar benefits was expressly repudiated, the claim was allowed. (*Claim of Toni Felix,* Claim No. CZ–2097, Dec. No. CZ–2322, 17 FCSC Semiann. Rep. 231 (July-Dec. 1962); *Claim of Ervin P. Hexner, et al.,* Claim Nos. CZ–2408, CZ–3255, and CZ–3290, Dec. No. CZ–2470, 17 FCSC Semiann. Rep. 266 (July-Dec. 1962); and *Claim of Joseph Smolik,* Claim No. CZ–4032, Dec. No. CZ–3417.)

Bank deposits.—On November 1, 1945 the Government of Czechoslovakia introduced a monetary reform by Decree of the President No. 91/45 *Sb.* and replaced the old currency with new *koruna* at the ratio of 1 : 1. At the same time, all bank accounts in old *koruna* in Czechoslovakia were blocked. In 1947 all such accounts were transferred to a special Currency Liquidation Fund, and were annulled, effective June 1, 1953, by Law 41/53 *Sb.* The Commission held that the blocking of accounts in 1945 did not constitute a nationalization or other taking of property, but that the annulment on June 1, 1953 of all bank accounts established prior to November 15, 1945 was a taking of property. Awards were made on claims or portions of claims based upon such "old *koruna*" deposits. (*Claim of John Stipkala,* Claim No. CZ–1616, Dec. No. CZ–135, 17 FCSC Semiann. Rep. 191 (July-Dec. 1962).) Bank deposits in "new *koruna,*" established after November 1, 1945, were not blocked in 1945 or annulled in 1953. Many holders of such accounts suffered financial loss as a result of the gradual depreciation in value of the new *koruna,* but recognizing that a state is not liable under international law for fluctuations in the value of its currency, the Commission denied claims based upon such losses. (*Claim of Karolin Furst,* Claim

No. CZ–1381, Dec. No. CZ–682, 17 FCSC Semiann. Rep. 199 (July-Dec. 1962).)

Some bank accounts were transferred during World War II by order of the occupation authorities to a so-called Property Office for the liquidation of Jewish-owned property in Bohemia-Moravia. A claimant contended that after the war such funds came into the hands of the Government of Czechoslovakia and that they should have been restored to the original owners by that government. However, the Commission found that the Government of Czechoslovakia never controlled these funds and could not restore them to the owners, and denied the claim on the ground that it had not been established that the bank account had been taken by the Government of Czechoslovakia after January 1, 1945. (*Claim of Alice Korter, Executrix of the Estate of Karl Korter, Deceased,* Claim No. CZ–2570, Dec. No. CZ–2943, 17 FCSC Semiann. Rep. 233 (July-Dec. 1962).)

Bonds.—Czechoslovakian Government bonds expressed in domestic currency (*koruna*) were blocked in 1945 and annulled by the Government of Czechoslovakia by a decree effective June 1, 1953. The cancellation of the creditor right was considered by the Commission as a taking of property which gave rise to a compensable claim. (*Claim of Claire L. Claus,* Claim No. CZ–1082, Dec. No. CZ–683, 17 FCSC Semiann. Rep. 201 (July-Dec. 1962).) However, bonds issued by the Czechoslovakian Government or by municipal subdivisions thereof, expressed in United States dollars, were not annulled by the aforesaid decree. The Government of Czechoslovakia undertook negotiations with representatives of bondholders, and agreements were reached which extended the due date and reduced the interest rates of the bonds. Accordingly, the claims expressed in United States currency were denied. (*Claim of Charles H. Sisam,* Claim No. CZ–1551, Dec. No. CZ–397, 17 FCSC Semiann. Rep. 197 (July-Dec. 1962).)

Also denied were claims concerning bonds expressed in gold francs issued prior to World War I by private Austro-Hungarian railroads for which Czechoslovakia had assumed servicing under a special agreement concluded in 1925. In 1950 a new agreement was signed between the bondholders and the Government of Czechoslovakia in which the latter promised to resume payment of interest. While the Government of Czechoslovakia failed to resume such payments, new negotiations started which had not been concluded by 1962. The Commission held that these bonds had not been repudiated or annulled, and that claims based upon such bonds were not compensable. (*Claim of Dora Frankenbusch,* Claim No. CZ–2474, Dec. No. CZ–2380.)

A claim based upon so-called lottery bonds (Czechoslovakian State Premium Housing Lottery Bonds of 1921) was denied because the record indicated that the Czechoslovakian Government invited all holders of such bonds to present them for payment by December 31, 1949. Claimant had been afforded an opportunity to present his bonds for payment and had declined to do so. The Commission held that his loss in connection with the bonds was not one resulting from nationalization or other taking of property. (*Claim of Emil Bohadlo,* Claim No. CZ–1734, Dec. No. CZ–379, 17 FCSC Semiann. Rep. 196 (July-Dec. 1962).)

Life insurance policies.—Claims based upon life insurance policies were treated in a similar way as those based upon bank accounts. Life insurance policies were blocked by the Government of Czechoslovakia as of December 31, 1945. The cash value of the policies was placed in blocked accounts, and the accounts were annulled on June 1, 1953. The Commission considered the proceeds of such life insurance policies to have been taken by the Government of Czechoslovakia, and granted awards based upon the cash value of policies as of December 31, 1945. (*Claim of Mary Anne Lipper,* Claim No. CZ–3439, Dec. No. CZ–2433, 14 FCSC Semiann. Rep. 156 (Jan.-June 1961).)

In the Matter of the Claim of

Claim No. CZ–1438
Decision No. CZ–2373

KURT SCHUSTER

Against the Government of Czechoslovakia

Mortgage on real property constituted "property" under Section 401(3), Title IV of the 1949 Act. Cancellation of mortgage pursuant to Law 31/47 Sb., *effective March 17, 1947, constituted a "taking" of mortgagee's property rights under Section 404. Claim based on interest due under real property mortgage prior to annulment or taking of mortgage by Czechoslovakia denied under Section 404 because claimant failed to establish that mortgage interest was also taken by Czechoslovakia. Award increased by interest at rate of 6% per annum from date of taking to August 8, 1958, date of enactment of Section 404.*

PROPOSED DECISION

This is a claim in the amount of $45,990.00 against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, by KURT SCHUSTER, a national of the United States since April 7, 1933.

The claim is based upon a mortgage on improved real property located at Frydlant, Czechoslovakia, plus interest thereon from 1934, and for loss of personal property.

Section 404 of the Act provides, *inter alia,* for the determination by the Commission, in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, including any rights or interests therein, owned at the time by nationals of the United States.

It follows from the congressional mandate to the Commission that there must be a showing, among other things, that the Government of Czechoslovakia *nationalized or otherwise took* the claimant's property, in order for the Commission to act favorably on the claim. A study of the laws which were in effect in Czechoslovakia with respect to mortgages reveals that pursuant to Law No. 31/1947 *Sb.* of March 17, 1947, mortgages recorded on property confiscated by the Government of Czechoslovakia under Law No. 108/45 *Sb.* were assumed by the Fund of National Reconstruction, an agency of the Czechoslovakian Government,[1] and cancelled.[2]

The Commission finds that claimant was the owner of a mortgage in the principal sum of 90,000 Czech crowns given to secure a loan on improved real property known as No. 789, Frydlant, Czechoslovakia; that the mortgage was recorded in the land register of Frydlant under Liber No. 1580; that the real property, subject to the lien of said mortgage, was taken by the Government of Czechoslovakia pursuant to Decree No. 108/45 *Sb.*, which authorized the confiscation without compensation of property of persons of German ethnic origin; and that the value of the mortgaged property was in excess of the value of the subject mortgage.

The Commission further finds that the subject mortgage was an interest in property within the meaning of Section 401(1) of the Act which defines property as "any property, right, or interest" and that such mortgage was taken by the Government of Czechoslovakia without compensation upon the enactment of Law No. 31/1947 *Sb.*, effective March 17, 1947.

The Commission, therefore, concludes that claimant is entitled to compensation in the amount of 90,000 Czech crowns plus interest as specified below at the rate of $1.00 for 50 crowns for such taking under Section 404 of the Act.

With respect to that portion of the claim based on interest from 1934, no evidence has been submitted to establish that any interest that may have accrued on the mortgage either prior to or subsequent to the date of the confiscation of the subject real property was taken by the Government of Czechoslovakia. Consequently, the portion of the claim based on interest from 1934 is denied. On the other hand, interest from March 17, 1947, the date of cancellation of the mortgage, to August 8, 1958, the date of enactment of Title IV of the Act, is being allowed at the rate of 6% per annum.

Claim is also asserted for loss of furniture, furnishings and personalty stored in House No. 789, Frydlant, Czechoslovakia. In this connection, the records before the Commission disclose that

[1] Section 2, Subsection (1) of Law No. 31/1947 *Sb.*, effective March 17, 1947.
[2] Section 2, Subsection (4) of the aforesaid Law No. 31/1947 *Sb.*

the Czechoslovakian authorities advised the American Embassy at Prague on January 1, 1949 that the personal belongings of the claimant had been shipped to Germany under the supervision of Richard Bilik, who signed the proper declarations, and who acted on behalf of the claimant herein, on March 9, 1947 and June 8, 1948, respectively. In view thereof, and since the record fails to establish that the subject personal property was nationalized or otherwise taken by the Government of Czechoslovakia, this portion of the claim is denied.

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to KURT SCHUSTER, claimant herein, in the principal amount of One Thousand Eight Hundred Dollars ($1,800.00), plus interest thereon at the rate of 6% per annum from March 17, 1947 to August 8, 1958, the effective date of Title IV of the Act, in the amount of One Thousand Two Hundred Thirty Dollars and Thirty Cents ($1,230.30), for a total award in the amount of Three Thousand Thirty Dollars and Thirty Cents ($3,030.30).

Dated at Washington, D.C.
June 7, 1961.

Mortgages.—Just as in claims against Yugoslavia under Title I of the 1949 Act the Commission held that unsecured creditors' claims were not within the purview of the Yugoslav Claims Agreement of 1948 (*Claim of Virginia Howard,* appearing at page 115), but that mortgages constituted "rights and interests in and with respect to property" (*Claim of Manfred Sternberg,* appearing at page 62), the Commission held in *Claim of Skins Trading Corporation* (page 405) that claims based upon unsecured and unrepudiated debts are not compensable against Czechoslovakia under Title IV, but granted an award in the instant claim based upon a mortgage. The evidence established that claimant was the owner of a mortgage recorded in the appropriate land register, given to secure a loan on improved real property. The real property forming the security was taken by the Government of Czechoslovakia under Decree No. 108/45 *Sb.*, authorizing the confiscation without compensation of property owned by Germans, Hungarians, and by persons considered "illoyal" to Czechoslovakia. Pursuant to Law No. 31/1947 *Sb.*, mortgages recorded on property confiscated under the aforementioned Decree were assumed by an agency of the Government of Czechoslovakia and cancelled. The Commission found that the subject mortgage "was

an interest in property" within the meaning of Section 401(3) of the Act, which was "taken by the Government of Czechoslovakia without compensation upon the enactment of Law No. 31/1947 *Sb.*," and concluded that claimant was entitled to an award for the amount of the mortgage, evaluated as of the time of such taking.

In a similar situation, the Commission made an award based upon the loss of a recorded mortgage. In addition to the loss of the mortgage, a portion of the claim was based on charges permitted under the mortgage or loan agreement to cover costs and fees expended by the creditor in the event it became necessary to institute court action or foreclosure proceedings. The Commission denied this portion of the claim on the ground that the charges constituted a contingent security, and that no evidence had been presented to establish that any such action or proceedings had ever been instituted, or that any such expenses were ever incurred. (*Claim of Anna Maria Schatten,* Claim No. CZ–2161, Dec. No. CZ–2315, 17 FCSC Semiann. Rep. 215 (July-Dec. 1962).)

Under the laws of Czechoslovakia, a mortgage had to be registered in order to be legally valid and effective. No lien on real property existed unless it was first entered in the real estate register and secured by the mortgage. The record in a claim based, in part, upon a loan stated to have been secured by a mortgage, disclosed that the mortgage was not recorded in the local land register. The Commission found that the creditor had only a personal claim against the debtor, which claim being based upon an unsecured debt was not compensable under Section 404, and denied this portion of the claim. (*Claim of August Housedorf, et al.,* Claim No. CZ–1236, Dec. No. CZ–2404.)

Generally, claims involving mortgages were denied when the evidence of record failed to establish the existence of a valid mortgage or a "taking" thereof by the Government of Czechoslovakia. Thus, a claim based on a promissory note assertedly secured by a mortgage on real property was denied for the reasons that claimant had not established that she had a valid mortgage, and further, that the transaction was a private one between claimant and her debtors, with the loss not involving any act for which the Government of Czechoslovakia was responsible. (*Claim of Marie Gramke,* Claim No. CZ–2216, Dec. No. CZ–2136.)

Valuation of mortgages.—Mortgages more often were involved in claims filed by the mortgagors—i.e., by the owners of property which had been nationalized, and which had been encumbered by mortgages at the time of such taking. In such a case the mortgage was of importance in determining the amount of the award. In calculating the value of a claimant's equity in the property, the total value of the property at time of taking was reduced by the value of the mortgage at that time. This often raised the question of whether the underlying debt secured by the mortgage had been satisfied. In one claim, the record disclosed that a mortgage was recorded as an encumbrance on real property. Claimant submitted an affidavit in which he stated, *inter alia,* that prior to his leaving Czechoslovakia in July 1938 he paid the entire outstanding balance of the mortgage. No corroborating evidence was submitted. The Commission found the evidence of record to be

insufficient to establish payment of the mortgage, and concluded that the amount of the mortgage was to be deducted in calculating the award. (*Claim of Ernest Lowenstein, et al.*, Claim No. CZ–2419, Dec. No. CZ–2381, 17 FCSC Semiann. Rep. 221 (July-Dec. 1962).) A claimant's contention that it was to be assumed that regular installment payments were made on a mortgage on his property, and that no deduction should be made in determining the value of his equity, was rejected in another claim where no supporting evidence had been submitted. (*Claim of Anne Liese Lee*, Claim No. CZ–1639, Dec. No. CZ–318.) The Commission's experience, involving many mortgages on real property in Czechoslovakia, provided no basis for a presumption of regular reduction of principal.

Interest on the mortgage.—In the *Schuster* claim, claimant as mortgagee alleged a loss of interest assertedly due under the subject mortgage prior to its cancellation, but submitted no evidence in support thereof. Accordingly, the Commission was constrained to deny this portion of the claim and limit the award to the unpaid principal amount of the mortgage, since evidence of record failed to establish that any interest which may have accrued on the mortgage was in fact "taken" by the Government of Czechoslovakia.

Interest on awards.—On the other hand, the Commission concluded that interest should be allowed on the award, consistent with the inclusion of interest in all certifications of awards under Section 404, at the rate of 6% per annum from the date of loss to August 8, 1958, the effective date of enactment of Title IV. Since claimant did not receive prompt and adequate payment on the date the claim arose, he was entitled to compensation for the loss of the use of such money, in terms of interest to the effective date of settlement.

In the Matter of the Claim of

Claim No. CZ–4113
Claim No. CZ–4123
Decision No. CZ–1022

MARY DAYTON, ET AL.

Against the Government of Czechoslovakia

Effective date of nationalization of Czechoslovakian corporations under Decree 100/45 Sb. *was October 27, 1945 for purposes of Section 404, Title IV of the 1949 Act. Retention of national administration after that date, or subsequent disposition of corporation, did not change date of nationalization. Promise by Czechoslovakia to compensate for nationalization of corporation did not change date of nationalization or loss to later date.*

FINAL DECISION

The Commission issued its Proposed Decision on these claims on June 30, 1960, a copy of which was duly served upon the claimants.

The Commission held, in the said Proposed Decision, that with regard to certain property said to have been inherited by PAUL DAYTON from his sister, the record lacked evidence to support a finding of ownership by PAUL DAYTON, and nationalization or other taking by the Government of Czechoslovakia subsequent to July 25, 1946, the date when he became a national of the United States; that certain personalty had been pilfered during the German occupation; and that all other property in the claims was lost through nationalization on October 27, 1945, under Decree 100/45 *Sb.*, or by confiscation before either of the claimants became nationals of the United States, and accordingly, the claims were denied.

Claimants objected to so much of the Proposed Decision as held that "Akciova Spolecnost pro prumysl textilni ve Dvur Kralove" was nationalized by the Government of Czechoslovakia on October 27, 1945, and that other property was confiscated by the Government of Czechoslovakia before the claimants became nationals of the United States, raising the issues of the effective dates of such takings, specifically contending that Decree 100/45 *Sb.*, was not self-executing and that "Akciova" was not nationalized until national administration was cancelled on January 4, 1947, that certain agricultural land was not confiscated by the initial decree of 1945, but on March 28, 1948, when the last appeal was dismissed, and further, that the remaining property subject of the objections, was under national administration until December 31, 1949, and that this should be found to be the date of taking by the Government of Czechoslovakia.

Full consideration having been given to the objections of claimants and to the arguments both written and oral, of their counsel, and of other counsel on the same issues, presented at a hearing held on November 18, 1960, and continued on January 11, 1961, the Commission is of the opinion that these claims must be denied.

A study of the language of Decree No. 100/45 *Sb.*, and of later decrees regarding property nationalized thereunder, leads to the inescapable conclusion that when an enterprise was nationalized under Decree No. 100/45 *Sb.*, ownership thereof passed to the State on October 27, 1945. We find nothing in the fact that an enterprise was under national administration before October 27, 1945, to prevent the vesting of ownership in the State on that date under the decree. The retention of a national administrator beyond October 27, 1945, and his removal at a later date, do not

alter the fact of State ownership since October 27, 1945. Subsequent decrees announcing the inclusion of a particular enterprise under Decree No. 100, or transferring the enterprise to a national enterprise, afford no basis for holding that the nationalization was not effective until such actions were taken. The effective date of nationalization under the decree was October 27, 1945, and the State's ownership of the property began at that time. (See *De Reitzes-Marienwert v. C.I.R., 21 T.C. 846.*) That is the date of nationalization or other taking of the property within the meaning of Section 405 of the Act, which requires ownership by a United States national on that date if a claim is to be compensable.

Where property nationalized under Decree No. 100/45 *Sb.* was that of a corporation, the corporation must have been a national of the United States as defined in the Act on October 27, 1945, in order to satisfy the requirement of Section 405. If the corporation was not a national of the United States, a stockholder may file a claim based upon the loss of corporate assets, under the sanction of Section 406(b), which reads:

> A claim under section 404 of this title, based upon a direct ownership interest in a corporation, association, or other entity for loss by reason of the nationalization or other taking of such corporation, association, or other entity, or the property thereof, shall be allowed, subject to other provisions of this title, if such corporation, association, or other entity on the date of the nationalization or other taking was not a national of the United States, without regard to the per centum of ownership vested in the claimant in any such claim.

Where a stockholder is a claimant, it is he, of course, who must have been a national of the United States on October 27, 1945, in order to satisfy the requirement of Section 405.

The Commission is not persuaded by the argument that in view of the provisions of Decree No. 100/45 *Sb.* promising compensation to corporations whose property was taken, there was no loss to the stockholders on the date of nationalization, and no claim arising under international law at that time. (See *De Reitzes-Marienwert v. C.I.R., supra; United States v. S. S. White Dental Mfg. Co.*, 274 U.S. 398 (1927); *Eric H. Heckett v. C.I.R.*, 8 T.C. 841; *Weinmann v. United States*, 278 U.S. 474 (1928).) The effective date of nationalization under Decree No. 100 was October 27, 1945; and in view of the requirement of Section 405 of the Act, a stockholder in a corporation whose assets were taken under that decree, must have been a national of the United States on that date if he is to receive compensation as a claimant under the Act for the loss resulting from the nationalization. Subsequent acquisition of United States nationality will not suffice, even

though it be followed by a taking by the Government of Czechoslovakia of the stock certificates, since their value as measured by the worth of the enterprise which was taken on October 27, 1945, was lost on that date.

Regarding claimants' property which the Commission found was confiscated by measures other than Decree No. 100/45 *Sb.*, it was urged by claimants that the filing of appeals from confiscatory decrees postponed the effective dates of taking. The Commission has fully considered the arguments made in support of this contention, and affirms its holding that the takings occurred before the claimants became nationals of the United States. The Commission does not decide whether the result might be different in a case where a claimant establishes that after the issuance of the decree of confiscation and pending the determination of his appeal from such decree, he remains in possession and control of the property, utilizing the fruits thereof. In the instant case, such circumstances have been neither alleged nor established. With respect to the contention that title continues in claimant until an entry of change of ownership is officially recorded, the Commission has held consistently that where a government takes property by public announcement, title passes at once and does not remain in the former owner until the ministerial act of recording has been accomplished.

The Commission, having carefully considered the entire record, concludes that the claims must be denied. Accordingly, for the reasons stated above, it is

ORDERED that the Proposed Decision is affirmed as the Commission's Final Decision and the claims are denied.

Dated at Washington, D.C.
February 20, 1961.

Taking of property.—Losses of property in Czechoslovakia occurred on various dates, as a result of many different governmental actions. The results of the Commission's study of the entire field were formulated in a number of Panel Opinions, summarized below.

Panel Opinion No. 3 concerned claims based upon loss of agricultural property which arose generally from the application of Czechoslovakian agrarian reform laws, principally Laws No. 44/48 *Sb.* and 46/48 *Sb.*, both dated March 21, 1948. Neither provided for an immediate or automatic transfer of title to the land. It was concluded in this Panel Opinion that title to land expropriated under the agrarian reform laws did not pass to the

state by operation of law, but passed upon the issuance of a decision by local authorities applying the provisions of the law to a designated property. The claim arose on that date, and not on some possible later date of recording in the land register.

In Panel Opinion No. 4, the transfer of property into cooperatives or collectives under the agrarian reform laws was considered as amounting to a deprivation of the right of the owner to dispose of the property and to enjoy the benefits thereof. The practical effect was a permanent loss of the property; and this was construed as a taking of the property under Section 404 of the Act, the claim arising on the date the local authorities ordered the property turned over to the cooperative or collective.

Panel Opinion No. 5 concerned itself with the major nationalization decrees in Czechoslovakia. The first of these, Decree No. 100/45 *Sb.* nationalizing mining and heavy and medium-sized industry, Decree No. 101/45 *Sb.* nationalizing key enterprises in the food industry, Decree No. 102/45 *Sb.* nationalizing banking corporations, and Decree No. 103/45 *Sb.* nationalizing insurance companies, were published on October 27, 1945, which was found to be the date that ownership of the enterprises passed to the state. In the same manner, the state obtained ownership of enterprises on January 1, 1948 under Decree Nos. 114, 115, 118, 120, 121, 122, 123, 124, and 125, taking smaller industrial concerns, commercial and construction companies, printing plants, hotels, inns, health resorts, wholesale trade companies, and travel agencies. Foreign trade and international transportation companies were taken under Decree No. 119/48 *Sb.*, on the publication date of the Order of the Minister of Foreign Trade with respect to each company. The effective date of the Decree was deemed to be the date of taking for Decree No. 126/48 *Sb.* (breeding and seeding establishments, June 3, 1948), Decree No. 249/48 *Sb.* (agricultural and forest research institutions, November 19, 1948), Decree No. 311/48 *Sb.* (domestic transportation companies, December 22, 1948), and Decree No. 185/48 *Sb.* (medical and nursing institutions, January 1, 1949).

Certain governmental actions of 1945 and later are the subject of Panel Opinion No. 6. Decree No. 5/45 *Sb.* of May 19, 1945 provided for the placement under national administration of property considered essential to the national economy, and of property owned by absent persons and persons considered unreliable (not loyal to Czechoslovakia). Placing property under national administration was considered originally as a temporary measure, to be ended when the government decided whether to nationalize the property, return it to the rightful owners, or dispose of it otherwise; and applied to a large extent to property which had been alienated as a result of wartime persecution. However, beginning in 1948 some businesses were placed under national administration for the purpose of their liquidation. The panel concluded that placing property under national administration did not constitute a taking of property within the meaning of Section 404, except where a national administrator was appointed specifically for liquidation, in which case there would have been a taking of the property on the date of the order placing the property under national administration.

Decree No. 12/45 *Sb.* of June 21, 1945 and Decree No. 108/45 *Sb.* of October 25, 1945 ordered the confiscation of property of Germans, Hungarians, and persons not loyal to Czechoslovakia. Takings under these decrees were deemed effective on the date of decision of local authorities with respect to the property in question.

Decree No. 128/46 *Sb.* of May 16, 1946 provided for restitution proceedings in Czechoslovakian courts. Persons found unreliable were not eligible for restitution of property. Where property had been placed under national administration and restitution was denied, the date of the decision denying restitution was considered the date of loss. On December 21, 1949, restitution proceedings were suspended by the Czechoslovakian Government in anticipation of a claims agreement with the United States; and no action was taken thereafter. December 21, 1949 was considered the date of loss where a claimant's application for restitution was never acted upon, or where restitution was never applied for. On the other hand, if there was an outright confiscation or nationalization of property before or during restitution proceedings, the claim arose on the date of such actual taking of the property.

Panel Opinion No. 7 initiated a concept of constructive taking of property under Section 404 of the Act. Law 80/52 *Sb.* of January 1, 1953 compelled owners of buildings, other than one-family dwellings, with a gross annual rental of 15,000 crowns or more, to deposit the rent in special accounts which were used largely for the payment of taxes, and the remainder for repairs. The panel concluded that this should be considered a constructive taking of the property on January 1, 1953, at which time the owner was precluded from the free and unrestricted use of the property and its fruits, even though he remained the record owner. A subsequent nationalization or confiscation of the property would not alter this date of loss; but in case of an earlier nationalization or confiscation of the property, the earlier date would be the date of loss.

Determination of the date of loss of property was a decisive element in many claims, in view of the requirement of ownership by a United States national on that date. It also provided the date from which interest was to be computed in claims resulting in awards. The conclusions reached in the Panel Opinions were not binding upon the Commission or its staff, but served as guidelines only. For the most part, they later became holdings of the Commission as decisions were rendered on claims involving the various decrees and factual situations described.

Date of loss under major nationalization decrees.—In the *Dayton* claim, a corporation which had been placed under national administration on an earlier date, was nationalized by Decree No. 100/45 *Sb.* effective October 27, 1945. The claim was denied inasmuch as claimants, who owned stock in the corporation, were not nationals of the United States on the date of loss. The earlier placing of the property under national administration, as a temporary measure, was not deemed a taking of the property by the Government of Czechoslovakia. Had it been, the claim still would have been denied for lack of United States ownership at the time of loss. Claimants urged that the nationalization

decree was not immediately effective, and that the property was not taken until it was removed from national administration on January 4, 1947. The Commission held, however, that property taken under Decree No. 100/45 *Sb.* passed to the State on October 27, 1945, and that the retention of a national administrator beyond that date did not alter the fact of State ownership of the property since October 27, 1945. In a claim similarly denied because the claimant stockholders were not United States nationals on October 27, 1945 when a corporation was nationalized under Decree No. 100/45 *Sb.*, the Commission rejected a contention that the taking did not occur until 1946 when the property was transferred to a national enterprise which had been created by the Czechoslovakian Government. The Commission found this transfer to have been merely a change in control of the property within the State. In the same decision, the Commission held that the date of loss was not altered by the fact that the nationalization decree contained a promise to pay compensation in the form of bonds, which promise was not fulfilled. The Commission held that the promise of compensation was illusory, and the loss occurred on October 27, 1945. A subsequent loss of the stock certificates did not alter the result, since their value was lost on October 27, 1945 when the corporation was nationalized, and the certificates then became worthless. (*Claim of Ralph M. Wyman, et al.*, Claim Nos. CZ–4345, CZ–4350, CZ–4353, CZ–4355, CZ–4356, Dec. Nos. CZ–2771–5 (17 FCSC Semiann. Rep. 277 (July-Dec. 1962).) Another claimant who owned stock in a corporation nationalized under Decree No. 100/45 *Sb.* on October 27, 1945 when he was not yet a United States national, urged the Commission to find that his loss occurred on a later date in view of Decree 95/45 *Sb.* of October 20, 1945 which required the deposit of shares of stock in Czechoslovakian corporations, and Decree 41/53 *Sb.* under which such shares were annulled. The Commission adhered to its holding that the loss occurred on October 27, 1945, stating that when the corporation was nationalized the shares of stock became merely evidence of a claim for compensation for such loss. (*Claim of Herbert G. Graetz, as Executor of the Estate of Emma Graetz, Deceased*, Claim No. CZ-3381, Dec. No. CZ–1421, 17 FCSC Semiann. Rep. 206 (July-Dec. 1962).)

National administration of property.—The *Dayton* claim provides an instance in which an early placing of property under national administration under Decree 5/45 *Sb.* of May 19, 1945 was deemed a temporary measure within the original purpose of the law, and not a nationalization or other taking of the property. Where property was placed under national administration for the first time on October 4, 1956, long after the 1946 provisions for restitution of property to its rightful owners and the 1949 suspension of all restitution proceedings, the Commission held the action to be a method of effecting a taking of the property, even though it remained recorded in claimant's name, and granted an award for the loss. (*Claim of Renata Estes*, Claim No. CZ–4115, Dec. No. CZ–3192, 17 FCSC Semiann. Rep. 245 (July-Dec. 1962).) However, where a business enterprise had been placed under national administration on September 27, 1950 for the purpose of liquidation, and following liquidation an amount repre-

senting the value of the firm was deposited in a bank account in claimant's name, the Commission found that the amount thus paid constituted adequate compensation and denied the claim. (*Claim of Robert Oser, et al.*, Claim Nos. CZ–2747, CZ–2748, CZ–2758, CZ–2800, CZ–4042, Dec. No. CZ–1767, 17 FCSC Semiann. Rep. 208 (July-Dec. 1962).)

Where the assets of a corporation were taken by the Government of Czechoslovakia on August 11, 1945 before claimant, a stockholder, became a United States national, the Commission denied the claim despite a showing that an entry was made in the Commercial Register reflecting a resolution of October 30, 1951 to liquidate the enterprise, and the deletion of its name from the register on February 25, 1954. The loss to the stockholders occurred when the assets first were taken, on August 11, 1945. (*Claim of Ludvik Kanturek,* Claim No. CZ–2730, Dec. No. CZ–2250, 17 FCSC Semiann. Rep. 214 (July-Dec. 1962).)

Restitution proceedings.—A finding that property was taken from a claimant on the date on which his request for restitution thereof was denied, is illustrated in *Claim of Jiri George Munk,* Claim No. CZ–2722, Dec. No. CZ–311 (17 FCSC Semiann. Rep. 194 (July-Dec. 1962)), which was denied because claimant was not a national of the United States on the date of loss. In cases where the property had been under national administration since 1945 and never restored to its owners, the date of loss was found to be December 21, 1949, when all restitution proceedings were suspended. (*Claim of Eric Walder,* Claim No. CZ–2594, Dec. No. CZ–196, 17 FCSC Semiann. Rep. 192 (July-Dec. 1962); *Claim of Aris Gloves, Inc.,* Claim No. CZ–1170, Dec. No. CZ–3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962).) In one instance, where the assets of claimant's subsidiaries in Czechoslovakia consisted mainly of business machines leased to other firms, the evidence established that the assets were physically taken by the Government of Czechoslovakia on December 20, 1957, which was held to be the date of loss although the subsidiaries had been under national administration for several years prior thereto. (*Claim of IBM World Trade Corporation,* Claim No. CZ–4647, Dec. No. CZ–3142, 17 FCSC Semiann. Rep. 283 (July-Dec. 1962).)

Retroactive taking of property.—Certain nationalization decrees which were not enacted until April 28, 1948 expressly provided that ownership of the nationalized enterprises passed to the State on January 1, 1948. This was the case with Law 114/48 *Sb.,* under which a textile mill in Slana, Czechoslovakia, was nationalized. The mill had been under national administration since 1945. Inasmuch as the claimant, who owned a one-half interest in the enterprise, did not become a United States national until January 27, 1948, the claim was denied, even though the nationalization decree was not enacted until April 28, 1948. The Commission thus gave effect to the retroactive provision of the decree, finding that the loss occurred on January 1, 1948. (*Claim of Gertrude A. Schwarz,* Claim No. CZ–1848, Dec. No. CZ–3425.) It is to be noted, however, that the mill had been under national administration since before January 1, 1948, and the decree of April 28, 1948 merely confirmed an already accomplished fact. In another claim, a wholesale food company had been placed under national

administration in 1945 and restored in 1947, only to be nationalized by decree of the Ministry of Foreign Trade dated March 18, 1949, pursuant to Law 119/48 *Sb.*, purportedly taking the company as of January 1, 1948. Law 119/48 *Sb.* contained no retroactive provision, but directed the Minister of Foreign Trade to publish the names of enterprises being nationalized thereunder, and the dates of nationalization. Since the wholesale food company had been restored to its owners before January 1, 1948, and operated by them until the issuance of the decree of March 18, 1949, the Commission held that the taking occurred on the date of the Minister's decree, and gave no effect to its retroactive provision. (*Claim of John H. Lusdyk,* Claim No. CZ–3219, Dec. No. CZ–2517, 17 FCSC Semiann. Rep. 223 (July-Dec. 1962).) The same result was reached where a wholesale and retail textile business in Prague had been placed under national administration in 1945, restored to the claimants on June 9, 1947, and nationalized pursuant to Law 118/48 *Sb.* by decree of the Ministry of Domestic Trade dated December 29, 1948 and purportedly retroactive to January 1, 1948. The loss was held to have occurred on December 29, 1948, claimants having been in possession and control of the firm between January 1, 1948 and that date. (*Claim of Eric Lenhart, et al.,* Claim Nos. CZ–2122 and CZ–4111, Dec. No. CZ–3479.)

The taking on different dates under various decrees, of separate items of property belonging to the same claimant, is illustrated in *Claim of International Telephone and Telegraph Corporation,* appearing on page 429. For a decision holding that the loss occurred on the date of the physical act of taking property, rather than on a later date when the change of ownership was recorded in the land records, see *Claim of Miroslav Aloisius Kokes, et al.,* Claim No. CZ–1832, Dec. No. CZ–85, 17 FCSC Semiann. Rep. 188 (July-Dec. 1962).

Taking of agrarian property.—Where agrarian property with an area of less than 50 hectares was shown to have been owned by a national of the United States who was not physically present in Czechoslovakia to till the land, so that it came within the purview of Law No. 46/48 *Sb.*, the Commission presumed that the property was taken by the Government of Czechoslovakia as of June 10, 1952 and granted an award, even though claimant was unable to produce evidence to establish that the law had been applied specifically to his land and it had been taken. (*Claim of Stefan Churma,* Claim No. CZ–4711, Dec. No. CZ–194 (Amended).) A similar presumption with respect to a taking of farm land exceeding 50 hectares in area, not tilled by the owner, was made in *Claim of Alexander Feigler,* appearing on page 425.

Constructive taking of rental property.—In the same manner, in claims involving buildings other than one-family dwellings, with a gross annual rental of 15,000 crowns or more, it was presumed without further proof that the rent was placed in a special account for taxes and repairs under Law 80/52 *Sb.* of January 1, 1953, resulting in a constructive taking of the property on that date. On this basis an award was made with respect to several buildings in *Claim of Alexander Feigler,* appearing on page 424. Where two of three houses owned in part by a claimant rented for

more than 15,000 crowns each, but the third house rented for less, the Commission made awards for claimant's interests in the first two as constructively taken on January 1, 1953, but denied the portion of the claim based upon the third building for lack of proof of the nationalization or other taking thereof between the date claimant became a national of the United States and the date of enactment of Title IV of the Act. (*Claim of John H. Lusdyk, supra.*) In another instance, three houses in Prague were found to have been constructively taken on January 1, 1953, but a portion of the claim based upon a house in Tabor, Czechoslovakia, belonging to the same claimant, was denied where its annual rental was only 4,000 crowns. (*Claim of Ida Pick,* Claim No. CZ–3152, Dec. No. CZ–2295, 14 FCSC Semiann. Rep. 150 (Jan.-June 1961).) Where a building clearly came within the purview of Law 80/52 *Sb.* of January 1, 1953, and claimant-owner did not become a United States national until January 18, 1954, the Commission granted an award after finding that the building was not taken until it was placed under national administration on October 4, 1956. No presumption of an earlier constructive taking was made, in view of evidence establishing that claimant remained in possession of the property and continued to enjoy its fruits after January 1, 1953, and until October 4, 1956. (*Claim of Renata Estes, supra.*) A like holding was made in similar circumstances in *Claim of Angela Froehlich Lipson,* appearing on page 387. On the other hand, in the *Feigler* claim (page 424), eight houses renting for more than 15,000 crowns each were found to have been taken constructively on January 1, 1953, even though there was a previous confiscation of the houses in 1946 as German-owned, under Decree No. 108/45 *Sb.*, which confiscation was annulled by a decision of July 20, 1948 on the basis of representations made by the claimant and the American Embassy in Prague. At the same time a portion of the claim based upon a vacant lot in Bratislava, obviously not within the purview of the January 1, 1953 decree, was denied for lack of evidence of a taking thereof by the Government of Czechoslovakia.

Other property losses.—Another type of taking of property by the Government of Czechoslovakia occurred where land was purchased by the Government to build an air strip under contract dated November 25, 1950 which provided for payment of one-half upon approval of the contract and the remainder when title was recorded in favor of Czechoslovakia. Although the contract was approved and the recording accomplished, no payments were made. The Commission found that the sale was not voluntary, that the action of the Czechoslovakian Government constituted a taking of the property within the meaning of Title IV, and granted an award. (*Claim of Frantiska Gasparovic, et al.,* Claim No. CZ–4634, Dec. No. CZ–1154, 17 FCSC Semiann. Rep. 249 (July-Dec. 1962).) Other claims were denied because a nationalization or other taking of property by the Government of Czechoslovakia was not established, as in the case of a claimed loss of gold and jewelry left in Czechoslovakia when the government refused to grant a license for its export (*Claim of Erna Spielberg,* Claim No. CZ–2608, Dec. No. CZ–2466, 14 FCSC Semiann. Rep. 146 (Jan.-June 1961)), revocation by the Czechoslovakian Gov-

ernment of a previous grant of 50,000 crowns as compensation for losses sustained as a victim of National-Socialist persecution, when the law under which the grant was made provided for revocation and limited payments to citizens of Czechoslovakia (*Claim of Olga Loyd,* Claim No. CZ–2170, Dec. No. CZ–1075, 17 FCSC Semiann. Rep. 205 (Jan.-June 1962)), and loss due to destruction of a building by aerial bombardment on December 24, 1944 (*Claim of Margaret Hodermarsky,* Claim No. CZ–3792, Dec. No. CZ–9, 14 FCSC Semiann. Rep. 112 (Jan.-June 1961)). In the last-mentioned case, not only did the loss not result from a nationalization or other taking of property by the Government of Czechoslovakia, it also occurred before January 1, 1945, either of which removes it from the scope of Title IV of the Act.

In the Matter of the Claim of

ALEXANDER FEIGLER

Claim No. CZ–4067
Decision No. CZ–2714

Against the Government of Czechoslovakia

In absence of evidence to the contrary, farms in Czechoslovakia in excess of 50 hectares deemed taken on March 21, 1950 pursuant to agrarian reform laws. Award for farm land measured by average value of such land in area where located, in absence of better evidence. Value of improvements to real property determined by capitalizing rental income.

PROPOSED DECISION

This is a claim in the amount of $125,000 against the Government of Czechoslovakia under Section 404, Title IV of the International Claims Settlement Act of 1949, as amended, by ALEXANDER FEIGLER also known as Sandor Feigler, a national of the United States since his naturalization on September 14, 1921. The claim is asserted for the nationalization or other taking of the following property:

(1) One-third (⅓) interest in eight (8) houses located in Bratislava;
(2) Farm land situated in the Community of Cierna Voda, Czechoslovakia;
(3) 117 Certificates of shares of stock in the First Savings Association of Bratislava; and
(4) Bank deposits in the Bratislava Savings and Loan Association.

Section 404 of the Act provides, *inter alia,* for the determina-

tion by the Commission, in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States.

(1) Houses and City Property

The Commission finds that claimant owned:

A. A 16/60 interest in the following houses in Bratislava, Czechoslovakia:

1. 8 Banskobystricka St. (formerly Donner St.), Liber No. 893.
2. 10 Banskobystricka St. (formerly Donner St.), Liber No. 893.
3. 9 First of May Square (formerly Senne Square, Heumarkt), Liber No. 893.
4. 52 Cervena Armada Street (formerly Groessling Street), Liber No. 893.
5. 59 Zidovska Street (formerly Jewish Street), Liber No. 3552.
6. Palisady, Liber No. 3696.

B. A 5/20 interest in house

7. 9 Sladkoviceva Street (formerly Vorosmarty Street), Liber No. 4792, Bratislava.

C. A 7/24 interest in house

8. 8 Smetana Street (formerly Hausberg), Liber No. 11341, Bratislava.

D. A 13/48 interest in a vacant lot

9. On Danube Embankment, Bratislava having an area of 728 square meters, Liber No. 10209, Bratislava.

The Commission further finds that in 1946 claimant's interest in the above-described property was confiscated by the Government of Czechoslovakia pursuant to Decree No. 108/1945 *Sb.* as property belonging to a person of German ethnic nationality. However, upon representations made by the claimant and by the American Embassy in Prague, the authorities in Bratislava by Decision No. 5605/1/VI of July 20, 1948, revoked the confiscation action relating to claimant's interest in the property.

Nevertheless, Czechoslovak Law No. 80/52 *Sb.*, effective January 1, 1953, compelled owners of buildings with a gross rental income of 15,000 Czech crowns or more per year to deposit the rents in special accounts. From such accounts, a real property tax (45 to 50% of the gross rent) and other taxes were deducted. Additionally, at least 30% of the rent was then transferred into a building repair account. Thus, in Czechoslovakia, owners of buildings larger than one-family dwellings having a gross rental income of 15,000 Czech crowns or more per year were and are

precluded from the free and unrestricted use of their realty and the fruits of such realty. To all intents and purposes, owners of such property, despite the fact that they may have remained the record owners, lost all control over the property and were little more than collecting agents for the Czechoslovakian Government. In view of the foregoing, the Commission has concluded that improved real property having a gross rental income of 15,000 Czech crowns or more per year is considered as constructively taken by the Government of Czechoslovakia as of January 1, 1953.

The Commission finds that the houses described above under 1 through 8 were in the category of having a yearly gross rental income of 15,000 Czech crowns or more and that they were taken without compensation on January 1, 1953. The Commission further finds that the value of claimant's interest in the houses, after deduction of war damage and mortgages, was as follows:

1. 8 Banskobystricka St., 16/60 of Kc. 400,000	Kc. 106,667
2. 10 Banskobystricka St., 16/60 of Kc. 1,000,000	Kc. 266,667
3. 9 First of May Sq., 16/60 of Kc. 1,025,000	Kc. 273,333
4. 52 Cervena Armada St., 16/60 of Kc. 300,000	Kc. 80,000
5. 59 Zidovska Street, 16/60 of Kc. 180,000	Kc. 48,000
6. 61 Palisady Street, 16/60 of Kc. 1,050,000	Kc. 280,000
7. 9 Sladkovic Street, 5/20 of Kc. 560,000	Kc. 140,000
8. 8 Smetana Street, 7/24 of Kc. 250,000	Kc. 72,917
Claimant's total interest in the above houses	Kc. 1,267,584

Note.—Converted into U.S. dollars at the rate of exchange of 2 cents for 1 Kc. equals $25,351.68.

In evaluating the above houses, the Commission gave consideration, among other things, to their description furnished by the claimant and by Czechoslovakian authorities, to the yearly rental income estimated by the claimant which in some instances is corroborated by reports of the Government of Czechoslovakia, and to the fact that two of the houses (61 Palisady and 9 Sladkovic Streets) were slightly damaged during World War II. By capitalizing the rental income on the basis of approximately 7% per annum (or fourteen times the yearly income) the Commission used the valuation methods adopted by Czechoslovak Law No. 134/46 *Sb.*, and the Rules of Valuation provided for by Announcements No. 1703 and No. 1704 of August 23, 1946 of the Czechoslovakian Ministry of Finance for the purpose of assessing property taxes. From the so-computed valuation figures were deducted the mortgages in the amounts of 175,000 and 168,000 Czech crowns, respectively, which encumbered the properties.

No evidence has been submitted regarding the taking by the Government of Czechoslovakia of claimant's fractional interest in the vacant lot situated at the Bratislava Danube Embankment.

In the absence of such evidence, no award can be granted for this lot.

The Commission, therefore, concludes that claimant is entitled to compensation under Section 404 of the Act for his interest in the above eight houses in Bratislava in the amount of $25,351.68, plus interest as specified below.

(2) Farm Land in Cierna Voda

The Commission finds that claimant was the owner of approximately 96½ cadastral yutars (55 hectares) of farm land, including approximately ten (10) cadastral yutars of marshland, in the Community of Cierna Voda near Tallos, District of Galanta, Czechoslovakia. Such land had been originally rented out to tenants, but the Commission's records disclose that under the Czechoslovakian Agrarian Reform Act No. 46/1948 *Sb.* agricultural land in excess of fifty hectares which was not tilled by the owners was expropriated and turned over to the State. Based on such records, the Commission has concluded that, absent evidence to the contrary, agrarian property of an area of more than fifty hectares which was owned by a United States national who was not physically present in Czechoslovakia to till the land so owned by him was taken by the Government of Czechoslovakia without compensation as of March 21, 1950.

In view of the foregoing, the Commission finds that claimant's farm land in Cierna Voda was taken by the Government of Czechoslovakia without compensation on March 21, 1950.

Statistics and data with respect to land values in Czechoslovakia, namely, the Fifth Supplement to the Listing of Agricultural Property, published by the President of the German Federal Equalization Office, Bad Homburg, 1960, disclose that the equivalent dollar value of the average farm land in the area of Galanta, Czechoslovakia, was $330.00 per hectare. However, since part of the land owned by the claimant was marshland, the Commission concludes that the average value of the subject land of fifty-five (55) hectares was $300 per hectare and that the claimant is entitled to compensation under Section 404 of the Act in the amount of $16,500.00 with the respective interest thereon.

(3) Shares of Stock

The Commission further finds that claimant was the owner of 117 shares of stock in the Bratislava First Savings Bank Corporation of 1,000 Kc. par value each, and that the said bank was nationalized without compensation by the Government of Czechoslovakia on October 27, 1945 pursuant to Decree No. 102/1945 *Sb.*

In computing the value of this stock, the Commission has considered the financial data from the "Compass" Financial Year

Book for 1944 for the State of Slovakia, including balance sheets and operating statements published therein. On the basis of all the evidence and information available to the Commission, the Commission finds that the value of such stock at the time of nationalization was 1,700 Kc. which, converted at two cents per 1 Kc. at the then prevailing exchange rate equals $34.00 per share.

Accordingly, the Commission finds that claimant is entitled, for his 117 shares of stock in the aforesaid bank, to an award of $3,978.00 plus interest threon as specified below.

(4) Bank Deposits

Claimant asserts that he had on deposit with the *Bratislava First Savings Bank Corporation:*

Kc. 50,496.00 in Savings Book No. 52366
1,166.00 in Savings Book No. 35178
15,674.00 in Current Account
171,190.00 in Current Account;

with the *General Bank, Inc. in Bratislava:*

Kc. 1,610.00 in Savings Book No. 43080; and

with the *Discount and Trade Bank, Inc. in Bratislava:*

Kc. 2,046.00 in Savings Book No. 12061.

A study of the history of events with respect to bank deposits and savings accounts in Czechoslovakia reveals that pursuant to Law No. 41/53 *Sb.*, effective June 1, 1953, those deposits which were made on or prior to November 15, 1945 in old currency were annulled by the Government of Czechoslovakia.

The Commission finds that the above-stated amounts totaling Kc. 242,182.00 in old currency were on deposit in claimant's favor in the aforementioned banks; that claimant's right to payment of these accounts was property within the meaning of Section 401(1) of the Act which defines property as any property, right or interest, and that this right to payment was taken by the Government of Czechoslovakia on June 1, 1953 by virtue of Section 7 of Law No. 41/52 *Sb.*, which cancelled such right.

The Commission concludes with respect to this portion of the claim for bank deposits that claimant is also entitled to compensation at the rate of 2¢ per 1 Kc. for such taking under Section 404 of the Act in the amount of $4,843.64 plus interest thereon as stated in the following table:

RECAPITULATION

Property	Principal amount	Date of taking	6 percent interest from date of taking to Aug. 8, 1958	Total award
8 houses	$25,351.68	Jan. 1, 1953	$8,522.47	$33,874.15
Farmland	16,500.00	Mar. 21, 1950	8,296.70	24,796.70
Shares of stock	3,978.00	Oct. 17, 1945	3,050.45	7,028.45
Bank deposits	4,843.64	June 1, 1953	1,507.20	6,350.84
Total	$50,673.32		$21,376.82	$72,050.14

AWARD

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ALEXANDER FEIGLER in the amount of Fifty Thousand Six Hundred Seventy-three Dollars and Thirty-two Cents ($50,673.32) plus interest thereon at the rate of 6% per annum from the above specified dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the amount of Twenty-one Thousand Three Hundred Seventy-six Dollars and Eighty-two Cents ($21,376.82) for a total award of Seventy-Two Thousand Fifty Dollars and Fourteen Cents ($72,050.14).

Dated at Washington, D.C.
October 11, 1961.

Valuation of real property.—In addition to illustrating a presumption of taking of farmland under Law 46/48 *Sb.*, and a presumption of constructive taking of a building under Law 80/52 *Sb.*, as discussed in the annotations to the *Dayton* claim which immediately precede it, the *Feigler* claim is of interest for its demonstration of certain methods employed in the evaluation of property in the Czechoslovakian claims program. Although inspection of buildings was not possible, consideration was given to such elements as the date and type of construction, number of floors and rooms, dimensions, the presence of basement or attic, and utilities. Deduction was made for any depreciation in value due to war damage suffered before January 1, 1945, in order to determine the value of buildings at the time of their taking by the Government of Czechoslovakia after January 1, 1945. Where the record established the rental income of a building, its capitalization at 7% per annum or 14 times the yearly income provided a measure of value. In the absence of better evidence as to the value of farmland, the Commission employed statistical data of average farmland values in various Czechoslovakian districts and communities published in 1960 by the German Federal Equalization Office for use in compensating German owners of farmland who had been compelled to leave Czechoslovakia, with appropriate adjustments for character of

land. Outstanding mortgage indebtedness was deducted to determine the value of the claimant's equity in the property at the time of loss, as discussed in the annotations to *Claim of Kurt Schuster* appearing at page 410.

Award reduced by amounts received on account of same loss.—Section 407 of Title IV of the 1949 Act provided that "In determining the amount of any award by the Commission there shall be deducted all amounts the claimant has received from any source on account of the same loss or losses with respect to which award is made." Accordingly, once the value of a claimant's property at the time of its loss had been determined, a lesser amount was sometimes awarded after deduction of an amount the claimant had received from another source for the same loss, as in the case where a nationalized Czechoslovakian corporation had certain assets in the United States which had been vested by the Office of Alien Property. The value of claimant's stock in the corporation at the time of its nationalization was $128,901.11, but claimant had received from the Office of Alien Property a share of the proceeds from the vested assets in the United States, amounting to $47,121.64. The Commission's award to claimant for his loss in connection with stock in the corporation was $81,779.47, representing the value of his stock minus the amount received from the other source. (*Claim of Walter Forman,* Claim No. CZ–1135, Dec. No. CZ–3525.)

Award not limited to amount claimed.—Where, on the basis of all the evidence of record, the Commission found the value of claimant's interest in nationalized property to have been greater than the amount stated in the claim, the award was made in the higher amount, the Commission deeming it unjust to limit the award to the claimed amount when the record revealed the value estimate of the claimant, who had been absent from Czechoslovakia for many years prior to the taking of his property, to have been unduly conservative. (*Claim of Paul P. Bukovinsky, et al.,* Claim No. CZ–2545, Dec. No. CZ–2436, 17 FCSC Semiann. Rep. 222 (July-Dec. 1962).)

Valuation of brewery rights.—A special situation affecting some real property values in Czechoslovakia existed in the form of brewery rights in Pilsen and certain other towns in the area of Bohemia. Some claimants, by virtue of ownership of real property, had the right to participate in the earnings of local breweries under usages which originated in the 18th century. These participations were in the nature of shareholders' rights in the breweries, and were attached to specific parcels of real property. Such brewery rights, generally only a fraction of a share or one or two shares, were duly recorded in the land books, and were transferred together with the real property to successive owners. The value of the brewery rights sometimes exceeded the value of the real property itself, as in cases involving the Citizens' Brewery (*Mestansky Pivovar*) in Pilsen, in which one share was valued at $40,450.00. In awards for losses of this type it was necessary to distinguish the date of taking of the realty (generally between 1948 and 1953) from the date of taking of the brewery rights, which in the case of the Citizens' Brewery

in Pilsen were lost on October 27, 1945 when the brewery was nationalized under Decree No. 100/45 *Sb.* The owner-claimant received an award for the total value only if the property was owned by a national of the United States on both dates. (*Claim of Joseph E. Luhan, et al.,* Claim No. CZ–1469, Dec. No. CZ–3244.)

For an example of methods of valuation of shares of stock in corporations, see the following *Claim of International Telephone and Telegraph Corporation.*

In the Matter of the Claim of

Claim No. CZ–4227
Decision No. CZ–3215

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

Against the Government of Czechoslovakia

Award for nationalization of corporation measured by net worth of corporation on date of nationalization as shown by balance sheets, financial statements and other evidence of record. Claim denied in part because claimant failed to establish value of its equity in one entity nationalized by Czechoslovakia. Value of patents determined on basis of costs of investments in patents and patent applications less depreciation for periods during which they were exploited by owner. Exchange rates for Czechoslovakian currency determined to be: $0.0347 per crown in 1938; $0.025 per crown in 1943; and $0.02 per crown in the postwar period.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on March 28, 1962, granting an award based on the claimant's industrial interests and patents in Czechoslovakia; and denying certain portions of the claim. A copy of the Proposed Decision was duly served upon the claimant.

Claimant filed objections, submitting a brief and additional evidence in support thereof. Pursuant to the claimant's request, a hearing was held on May 29, 1962, at which time claimant's representative presented argument and was granted leave to submit further documentary proof. Thereafter, under date of June 5, 1962, the claimant submitted additional documentation. Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended as follows, and as amended be entered as the Final Decision on this claim:

Section 404 of the Act provides, *inter alia,* for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property, includ-

ing any rights or interests therein, owned at the time by nationals of the United States.

Section 405 of the Act provides as follows—

> A claim under Section 404 of this title shall not be allowed unless the property upon which the claim is based was owned by a national of the United States on the date of nationalization or other taking thereof and unless the claim has been held by a national of the United States continuously thereafter until the date of filing with the Commission.

The claim was stated as follows:

		Value of property		Percent claimed	Amount of claim
(1)	Telegrafia Ceskoslovenska Tovarna na Telegrafy, A.S.				$336,394.04
(2)	Standard Electric Doms A.S.	Kc.	2,944,051	100	58,881.02
(2)	ISEC Receivable from Standard Doms	Kc.	2,112,616		42,252.32
(2)	Receivables of ISEC Subsidiaries from Standard Doms	Kc.	8,350,353		167,007.06
(3)	C. Lorenz A.G. Berlin:				
	(a) Bank and cash balances:				
	Ceska Eskomptni Banka, Prague	Kc.	37,260	98.7	735.52
	Ceska Banka Union, Podmokly	RM	255,000	98.7	50,337.00
	Cash on premises at Podmokly	RM	3,773	98.7	744.80
	Allegemine Vorschusskasse-Chrast	RM	237,000	98.7	46,783.80
	Deutsche Bank-Neutitshein	RM	9,534	98.7	1,882.00
	(b) Vrchlabi plant:				
	Bank accounts:				
	Dresdner Bank-Trutnov	RM	1,265,532	98.7	249,816.00
	District Savings Bank	Kc.	10,408	98.7	205.00
	Fixed assets	RM	7,939,308	98.7	1,959,024.25
	Inventories	RM	10,000,000	98.7	1,974,000.00
	(c) Podmokly (Bodenbach) plant	RM	1,700,000	98.7	365,000.00
	(d) Chrast plant	Kc.	1,690,730	98.7	33,375.00
(4)	Mix & Genest A.G., Berlin:				
	Jaromer Plant:				
	Land and buildings	RM	160,000	94.12	37,648.00
	Machinery testing equipment, etc.	RM	1,117,000	94.12	262,830.00
	Inventory	RM	3,354,000	94.12	631,357.00
	Cash on hand and in banks	RM	45,000	94.12	8,470.80
	Teplice-Sanov sales office	Kc.	112,540	94.12	2,118.46
(5)	Ferdinand Schuchardt, A.G. Bruntal (Freudenthal)	RM	621,500	99.57	140,419.00
(6)	ISEC bank accounts				51,974.43
(7)	ISEC patents				126,760.00
	Total				$6,548,015.50

The Commission finds that at all times relevant to this claim, the claimant (INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION) was the owner, directly or indirectly, of all of the capital stock of INTERNATIONAL STANDARD ELECTRIC CORPORATION (hereafter referred to as ISEC), a Delaware corporation which owned 100 per cent of BELL TELEPHONE CO. of Belgium (hereafter referred to as BELL) which in turn owned 99.99% of STANDARD ELECTRIC DOMS A.S., a Czechoslovak partnership (hereafter referred to as STANDARD DOMS); and that ISEC owned 32.44 per cent of TELEGRAFIA CESKOSLOVENSKA TOVARNA NA TELEGRAFY A.S., a Czechoslovak corporation (hereafter referred to as TELEGRAFIA), all of LE MATERIEL TELEPHONIQUE of France (hereafter referred to as MATERIEL), 90.70 per cent of STANDARD TELEPHON UND TELEGRAPHEN AS of Austria (hereafter referred to as STANDARD AUSTRIA), all of STANDARD TELEPHONE ET RADIO S.A., of Switzerland (hereafter referred to as STANDARD SWISS), all of CREED & CO., LTD., of England (hereafter referred to as CREED), and all of STANDARD TELEPHONE AND CABLES, LTD., of England, which latter in turn owned all of KOLSTER & BRANDES, LTD. Additionally, the Commission finds that at the earliest date pertinent to any part of this claim, the claimant owned 100 per cent of STANDARD ELEKTRIZITATS GESELLSCHAFT, A.G. (hereafter referred to as SEG), and 98.74 per cent of C. LORENZ A.G. (hereafter referred to as LORENZ). Further, the Commission finds that at the earliest date pertinent to any part of this claim, SEG owned 18.52 per cent of TELEGRAFIA, 94.1 per cent of MIX & GENEST A.G., 99.57 per cent of FERDINAND SCHUCHARDT BERLINER FERNSPRECH- UND TELEGRAPH-ENWERK A.G. of Germany (hereafter referred to as FERDINAND SCHUCHARDT) and 100 per cent of SUDDEUTSCHE APPARATE-FABRIK G.m.b.H. (hereafter referred to as SAF).

On May 11, 1954, MIX & GENEST and SAF merged with SEG, and claimant thus owned 94.1 per cent of the new SEG; its total interest in TELEGRAFIA was reduced to 49.86 per cent, and its total interest in FERDINAND SCHUCHARDT was reduced to 93.69 per cent. In May, 1956, SEG became known as STANDARD ELECTRIK, A.G.

On April 23, 1958, LORENZ merged with STANDARD ELECTRIK, A.G., the new company being known as STANDARD ELEKTRIK LORENZ, A.G. (hereafter referred to as SEL). Accordingly, claimant then owned 92.91 per cent of SEL (which figure is applicable to any of the properties of the former MIX

& GENEST, LORENZ, SAF, and SEG) ; claimant's total interest in TELEGRAFIA was 49.64 per cent and its total interest in FERDINAND SCHUCHARDT was 92.51% for purposes of any award which may be made in this matter. SEL owns 2.56% of STANDARD AUSTRIA.

Such ownership interests may be recapitulated as follows:

IT&T owned 100% of ISEC
- ISEC owned 100% of BELL
  - BELL owned 99.99% of STANDARD DOMS
- ISEC owned 32.44% of TELEGRAFIA
- ISEC owned 100% of CREED
- ISEC owned 100% of STANDARD TEL. & CABLE
  - STANDARD TEL. & CABLE owned 100% of KOLSTER & BRANDES
- ISEC owned 100% of LE MATERIEL
- ISEC owned 90.70% of STANDARD AUSTRIA
- ISEC owned 100% of STANDARD SWISS

IT&T owned 100% of SEG until 1954
- SEG owned 18.52% of TELEGRAFIA
- SEG owned 94.1% of MIX & GENEST
- SEG owned 99.57% of FERDINAND SCHUCHARDT
- SEG owned 100% of SAF
- SEL owned 2.56% of STANDARD AUSTRIA

IT&T had owned 98.74% of LORENZ

After the merger of May 11, 1954, claimant owned 94.1% of SEG and as to:

TELEGRAFIA, 49.86% (94.1% x 18.52% – 17.42%, plus 32.44%)

FERDINAND SCHUCHARDT, 93.69% (94.1% x 99.57%).

After the merger of April 23, 1958, claimant owned 92.91% of SEL (94.1% x 98.74%) and as to:

TELEGRAFIA, 49.64% (92.91% x 18.52% – 17.20%, plus 32.44%)

FERDINAND SCHUCHARDT, 92.51% (92.91% x 99.57%)
STANDARD AUSTRIA, 93.07% (92.91% x 2.56% x 2.37%, plus 90.70%).

The record reflects other changes in the corporate structure, as follows:

By 1954 SEG's interest in MIX & GENEST increased to 94.37%;

By 1954 ISEC held 26.39% of SEG and by 1955 claimant held 68.79% of SEG, a total of 95.18%;

After the war, claimant's interests in LORENZ increased to 99.13%.

In 1956 ISEC held the 95.18% of SEG; in 1956 ISEC took over the 99.13% of LORENZ, and as stated previously, in 1958 LORENZ merged into SEL, and ISEC's interest was 95.43%.

However, neither the increases nor decreases, after date of loss, in claimant's ownership interests, may form the basis for compensation under the Act, inasmuch as such percentages are not shown to have been owned by a United States national, or this claimant, continuously from the time of loss until the date of filing claim (See Sec. 405, *supra*).

It further appears, from a letter of December 7, 1949, from claimant's Czechoslovakian representative that the property of Frantisek Doms, a nominal partner in STANDARD DOMS, had been separated so that the remaining property in STANDARD DOMS belonged indirectly 100% to the claimant.

(1) TELEGRAFIA

TELEGRAFIA, engaged in the manufacture and sale of telephone and telegraph apparatus and dry cells maintaining headquarters in Prague and branch offices in Brno and Moravska Ostrava, with factories in Pardubice and Jablonne, was nationalized by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 *Sb.*, effective October 27, 1945.

Claim is asserted for $285,274.24, the equivalent of Kc 9,690,916 paid by ISEC in 1928 and 1929 for 19,462 shares of stock in TELEGRAFIA; and for $51,119.80, the equivalent of Kc 2,555,-990, paid by SEG in 1940 for 11,113 shares of stock in TELEGRAFIA. The latter purchase was made from the AGRAR BANK, trustee for the Czechoslovakian Government, which subsequent to the enactment of Law 128/46 *Sb.*, did not pursue any right it may have had to object thereto. In December, 1932, the investment of $285,274 was reduced to par, or $115,410 on the books of ISEC, as part of a program of this corporation in 1932 to revalue its assets more conservatively, including the write-down to the then market value of its minority holdings or

the closest equivalent to market value. However, claimant states that it was not permitted to examine the books of TELEGRAFIA and contends that when a taking is accomplished by a method which intentionally precludes valuation of assets, the measure of loss in terms of original investment is equitable.

The Commission has considered the above matters, as well as a 1938 balance sheet reflecting capital and surplus of Kc 12,213,-260 (equivalent to $423,800, converted at the then current rate of exchange of $.0347 per crown); a 1943 balance sheet reflecting capital and surplus of Kc 26,059,903 (equivalent to $651,497.57, converted at the then current rate of exchange of $.025 per crown); a memorandum of November 29, 1946, submitted by ISEC to the American Embassy in Prague, stating in part that at the end of the war TELEGRAFIA had on hand about Kc 80,000,-000 of unfinished war material manufactured for LORENZ, and that it was not known how much was salvageable, and further stating that, assuming the large amount of unfinished war material resulted in a substantial loss, it was conceivable that the equity for the stock interests of ISEC and SEG (in TELEGRAFIA) was wiped out on October 27, 1945, but that this could not be determined without an examination of the books. The balance sheet for 1944 was never received by claimant. The balance sheet for December 31, 1943 is set forth below:

	Kc
Assets:	
Plant, property, and equipment	43,407,253
Less: Reserve for depreciation	33,075,367
Subtotal	10,331,886
Investments	725,350
Special deposits and deferred charges	541,503
Current assets:	
Cash	554,929
Accounts receivable	15,191,098
Inventory:	
Completed merchandise	10,199,192
Raw material, work in process	47,841,498
Installation in process	1,635,578
Other current assets	277,769
Subtotal	75,700,064
Total assets	87,298,803
Capital and liabilities:	
Capital stock	12,000,000
Surplus	14,059,903
Reserves for pensions and benefits	4,209,696

Reserve for contingencies	5,256,087
Other reserves	1,059,004
Current liabilities:	
Bank borrowings	17,903,576
Advance payments by customers	6,402,432
Accrued taxes	5,478,714
Other accounts payable	20,929,391
Subtotal	50,714,113
Total capital and liabilities	87,298,803

It may be observed that when the item of 80,000,000 crowns for unfinished war material is considered in connection with the above balance sheet, it appears that the capital, surplus and reserve for contingencies are exceeded by about 48,684,010 crowns, the equivalent of $973,680.20 (at the post-war rate of exchange of $.02 per crown), exceeding the original investment. Although claimant contended that the production of a company such as TELEGRAFIA started from raw materials, including sheet steel, bar stock and copper wire, and resulted in carrier equipment, both telephone and telegraph, portable radio transmitters, transmitter and receiver sets, electro-medical equipment, which would produce a considerable inventory useable for peacetime production, the claimant also states that it was not possible to estimate how much of the Kc 80 million inventory was in fact useable for peacetime production.

The Commission has also considered claimant's contention that a property increase tax was imposed on the block of shares ISEC held in TELEGRAFIA, pursuant to Law 134 of May 15, 1946. It appears from claimant's Schedule A–1, submitted December 12, 1961, that ISEC itself reported said shares, at par value, for November 15, 1945, although by a letter to the Czechoslovak Ministry of Industry under date of November 5, 1945, claimant indicated it was aware that TELEGRAFIA had come within the purview of Decree 100, effective October 27, 1945. The Czechoslovak Ministry of Industry's Announcement No. 194, that TELEGRAFIA had been nationalized, was dated December 27, 1945, and the utilization of its properties by the Czech national enterprise TESLA was published on April 18, 1946. Further, claimant's letter of June 18, 1952 makes reference to a property tax assessment of Kc 4,083,770 on 19,387 shares of the block held by ISEC, although nothing further appears in the record as to this, but by letter of January 20, 1953, the Czech Government "attached" said shares in connection with a tax debt (discussed in Section (6), below).

The Commission has considered all the evidence reflecting claimant's investments in TELEGRAFIA. However, such evidence is not controlling insofar as the value of the property is concerned. The Commission finds that the record is insufficient to permit a determination of the value of claimant's equity in TELEGRAFIA on the date of nationalization. The burden of establishing the amount of the loss herein rests upon the claimant. Section 531.6(d) of the Commission's regulations (45 CFR) provides:

> The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim.

The Commission holds that claimant has not sustained its burden of proof with respect to this part of the claim. Accordingly, this part of the claim is denied.

(2) STANDARD DOMS; ISEC RECEIVABLE FROM STANDARD DOMS: RECEIVABLES OF ISEC SUBSIDIARIES FROM STANDARD DOMS

STANDARD DOMS, engaged in the assembling and installation of telephone apparatus and accessories, wire transmission systems, commercial radio and radio broadcast transmitting systems, etc., having a telephone factory, was nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Law 114/48 *Sb.*, effective January 1, 1948.

Claim is made for the net worth of STANDARD DOMS; for an account receivable due to ISEC from STANDARD DOMS, described as contract service charges, 1940 through 1947, in an amount of Kc 1,953,880 and interest from 1943 through 1947 in an amount of Kc 158,236; and further, for accounts receivable due from STANDARD DOMS to other subsidiaries of ISEC, arising from merchandise transactions, as follows:

Bell	323,148 Belgium francs.
	2,144,784 Crowns.
Standard Telephone and Cables	29,070 British pounds sterling.
	40,723 Crowns.
Creed	142 British pounds sterling.
Materiel	786,044 French francs.
	1,500 Crowns.
Standard Austria	9 Austrian shillings.
Standard Swiss	228 Swiss francs.

The net worth of Kc 2,944,051 is reflected in the balance sheet of STANDARD DOMS of November 30, 1947, which further shows the accounts payable to the parent company, and accounts payable to ISEC subsidiaries in a stated amount of Kc 8,350,-

352.64. The balance sheet for November 30, 1947 is set forth below:

Assets:	Kc
Plant, property, and equipment	5,254,706.79
Less: Reserve for depreciation	3,813,456.97
Subtotal	1,441,249.82
Special deposits and deferred charges	516,774.20
Current assets:	
Cash	1,747,720.05
Receivables from ITT subsidiaries	1,346,703.70
Other receivables	8,121,505.60
Inventories:	
Completed merchandise	11,014,208.83
Shop and installation	8,255,591.65
Other current assets	6,952.50
Total current assets	30,492,682.33
Total assets	32,450,706.35
Liabilities:	
Capital stock, common	100,000.00
Surplus including statutory reserves	2,844,051.21
Employees benefit and pension reserve	145,078.20
Other reserves	1,622,445.50
Current liabilities:	
Payables to parent company	2,112,616.74
Payables to ISE subsidiaries	8,350,352.64
Bank borrowings	2,413,057.90
Other current liabilities	14,863,104.16
Total current liabilities	27,739,131.44
Total liabilities	32,450,706.35

Claimant contends that the liabilities of STANDARD DOMS to ISEC and to ISEC subsidiaries should be compensated as otherwise the Czechoslovakian Government "is completely released from these liabilities" and that therefore STANDARD DOMS becomes worth correspondingly more, its net worth being increased to Kc 13,407,020 or $268,140, and that whereas the Czechoslovakian Government took the assets of STANDARD DOMS and assumed its liabilities, the omission of compensation to the claimant for said liabilities of STANDARD DOMS to the ITT System would create a "windfall" for the Czechoslo-

vakian Government. Moreover, the claimant contends that the accounts payable involved are due to the ITT System, owners of STANDARD DOMS, representing a different set of conditions than those applicable in the *Claim of Skins Trading Corporation* (FCSC Claim No. CZ–3978, Dec. No. CZ–734).

The Commission has considered all the above contentions. It appears that the transactions between STANDARD DOMS and the other entities, which gave rise to the claim for accounts receivable, were no different from similar transactions between any unrelated concerns; charges were made for goods sold and for services rendered, payments were made from time to time as in any case of an open account, and interest was assessed on unpaid balances. The Commission has determined that claims based on unsecured debts are not compensable under this statute. This does not deny that a claim for such debts exists but rather that the statute does not provide for such claims.[1] Accordingly, the portion of the claim for such accounts receivable is denied.

The Commission finds that the net worth of STANDARD DOMS is best shown by the balance sheet of November 30, 1947, and that this amount, Kc 2,944,051 converted at the rate of exchange prevailing in 1948, $.02 per crown, equals $58,881.02. It is concluded that claimant is entitled to compensation in this amount, plus appropriate interest.

(3) LORENZ

(a) Bank Accounts

In support of its claim for a bank account assertedly held in the Ceska Eskomptni Banka at Prague, claimant relies upon an assertion made in a 1949 Statement of Claim addressed to the Department of State and a copy of its registration (Prihlaska No. 1005) under Decree 95/45 *Sb.* Said Decree 95/45 *Sb.*, provides that bank depositors shall register their accounts existing as of November 15, 1945, and pursuant to Decree 91/45 *Sb.*, such "old crown" accounts were blocked. Generally copies of these registration statements were submitted to the appropriate bank which was required to confirm the existing balances as of November 15, 1945. In this case the document bears no acknowledgment by a bank of a balance as of November 15, 1945. With respect to three asserted accounts in Ceska Banka Union, Podmokly, Allegemine Vorschusskasse, Chrast, Deutsche Bank-Neutitshein, Novy Jicin, claimant relies upon audit reports of C. LORENZ, A.G., of Berlin, showing that blocked accounts were written off in 1948 as worthless, as well as upon affidavits.

[1] Skins Trading Corporation, *supra*.

Additionally, in connection with the asserted account in Ceska Banka Union, Podmokly, claimant has submitted a copy of its registration (Prihlaska No. 1004) which, however, bears no acknowledgment by the bank of a 1945 balance. Although the properties of LORENZ in Czechoslovakia were formally nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 *Sb.*, effective October 27, 1945 (apart from certain other specific properties which may have been taken on other dates as discussed below), the Commission finds that the claimant has not sustained the burden of proving that any balances remained in these accounts on October 27, 1945. Accordingly, this part of the claim is denied.

Two additional bank accounts in the Okresni Zalozna Hospodarska of Vrchlabi and in the Dresdner Bank of Trutnov, which were registered under Decree 95/45 *Sb.* and established, are concerned with the net worth of a plant at Vrchlabi, discussed below.

(b) Vrchlabi

The Commission finds that the properties of LORENZ at Vrchlabi, consisting of a radio tube factory, were nationalized without compensation by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45 *Sb.*, effective October 27, 1945.

In valuing the property at Vrchlabi, claimant at first relied upon a balance sheet of August 14, 1945, summarized as follows:

Assets	*Kc*	*Liabilities*	*Kc*
Bank Accounts:			
Dresdner Bank, Trutnov	3,282,961	Creditors	3,050,013
Okresni Zalozna Hosp., Vrchlabi	10,408	Capital account	108,563,286
Fixed assets	106,319,930		
Inventory	2,000,000		
Total	111,613,299	Total	111,613,299

Thereafter, claimant submitted the statement of WILHELM BRENNER, Comptroller of SEL, who gave the following net values for the plant, as of December 31, 1944:

	RM
Fixed assets	3,439,308.45
Production machinery	4,500,000.00
	7,939,308.45

It was further stated that there should have been an inventory of RM 10,000,000. No liabilities were given. To the figures sup-

plied by said WILHELM BRENNER, claimant added RM 1,265,-532 for the bank account at the Dresdner Bank, Trutnov, and Kc 10,408 for the bank account at Okresni Zalozna Hospodarska, Vrchlabi.

In determining the value of this item of claim, the Commission has considered all pertinent matter of record as described hereafter. Claimant's 1949 Statement of Claim asserted that in 1944 the plant investment was RM 11,750,000 and inventory was valued at RM 1,500,000. A report of A. PLOCEK, a former employee of the claimant in Czechoslovakia, of June 21, 1945, forwarded to the American Embassy at Prague, stated in pertinent substance as follows:

> The valve factory was put into service in 1943 [a valve development plant at Novy Jicin had been removed to Vrchlabi]; the factory has a working space roughly estimated at 5,000 to 6,000 square meters; in 1943 and 1944 investments of about 65 million crowns were made. Mr. Koci was appointed as national administrator. Raw material is at hand for a period of about three months.

The evidence of record reflects some dispute as to whether the Vrchlabi plant constituted war booty subject to removal by the USSR, as that country contended. The record shows that the plant was dismantled to a large extent by the USSR, beginning December 7, 1945, despite strong protests that the United States would hold Czechoslovakia responsible for such removal. However, prior to this date, the plant at Vrchlabi was nationalized without compensation by the Government of Czechoslovakia pursuant to Decree 100/45 *Sb.*, effective October 27, 1945.

The Commission is of the opinion, after analyzing all the evidence, that the values listed on the said balance sheet of August 14, 1945, are more representative of claimant's loss than the values asserted for December 31, 1944, and further, that the said assets (Kc 111,613,299) included the property given by the Czechoslovak Government to the USSR commencing December 7, 1945. Accordingly, the Commission finds that the value of the entire plant at Vrchlabi, taken by the Government of Czechoslovakia was Kc 108,563,286 or $2,714,082.15 converted at $.025 per crown prevailing on October 27, 1945, and concludes that claimant is entitled to compensation in the amount of $2,521,-653.73 plus appropriate interest for its 92.91% interest therein.

(c) Podmokly

The Commission finds that the properties of LORENZ in Czechoslovakia included a radar equipment and cyphering machine plant in rented premises at Podmokly (Bodenbach) of which the Government of Czechoslovakia took complete control

on June 6, 1945, to the extent that the claimant was excluded from the free and unrestricted use of its property and the fruits thereof. The Commission concludes that this action constituted a taking of property within the meaning of Section 404 of the Act.

In arriving at the value of this plant, the Commission considered a statement made on August 1, 1945, that the Russians had taken RM 100,000 of aviation radar equipment; a statement made on September 14, 1945, that the Russians were planning to remove additional material; a statement that the Russians took 38 cases of materials, contents and value thereof unknown, leaving 378 packing cases in the possession of Czechoslovakia; statements that the plant was established in March and April 1945, and that in May 1945, the assets of the plant were RM 1,700,000 (RM 500,000 for machinery and tools, and RM 1,200,000 for materials). Any property which might have been taken by the Russian Army prior to the Government of Czechoslovakia taking control of the plant would not be compensable under Title IV of the Act. However, the Commission finds that the value of the property on June 6, 1945, including property taken thereafter by the USSR, was RM 1,700,000 or $425,000, converted at $.25 per reichsmark, the rate prevailing on June 6, 1945, and concludes that claimant is entitled to compensation in the amount of $394,867.50 plus appropriate interest for its 92.91% interest therein.

With respect to claim for cash in the amount of RM 3,773 on the company premises at Podmokly, the Commission finds that it has not been established that such cash was present and nationalized or otherwise taken by the Government of Czechoslovakia. Accordingly, this part of the claim is denied.

(d) Chrast

The Commission finds that the properties of LORENZ in Czechoslovakia included a telecommunication equipment laboratory and plant in rented premises at Chrast, of which the Government of Czechoslovakia took complete control on May 11, 1945, to the extent that the claimant was excluded from the free and unrestricted use of its property and the fruits thereof. The Commission concludes that this action constituted a taking of property within the meaning of Section 404 of the Act.

In determining the value of the properties at Chrast, the Commission has considered a statement of values as of May 11, 1945, upon which the claimant relies, as follows:

	Kc
Measuring instruments	987,660
Equipment of mechanical and technical working places	45,000
Machine equipment	21,500
Inventory of the office and shop equipment removed	141,000
The existing office and shop equipment according to the inventory	75,570
Stocks:	
Raw materials and tools	20,000
Semi-manufactured products	250,000
Wireless tubes	150,000
Total	1,690,730

Further, the Commission has considered the above-mentioned report of A. PLOCEK, of June 21, 1945, which recites in part the following:

> LORENZ transferred its carrier laboratory to Chrast during 1944. The laboratory was installed in rented buildings with a working area of about 1500 square meters. I am, however, informed that they have taken off all more costly instruments and equipment in time and transferred them to an unknown place, probably in Germany/Bavaria/. Practically only some drawing-tables have been left. What has been left has already been taken away by the Red Army as war booty.

Additionally the Commission has considered the newly submitted report of the claimant's representative made on the occasion of his visit to the property on May 11, 1945, to which he appended the aforementioned statement of values, and evidence that the "more costly instruments and equipment" which Mr. Plocek referred to, were excluded from the May 11, 1945 inventory, and that the measuring instruments and inventory of the office and shop equipment in the May 11, 1945 statement of values were present on that date.

On the basis of all evidence of record, the Commission finds that the value of the property on May 11, 1945 was Kc 1,690,730 or $42,268.25, converted at $.025 per crown prevailing on May 11, 1945 and that claimant is entitled to compensation in the amount of $39,271.43 plus appropriate interest for its 92.91% interest therein.

(4) MIX & GENEST

The Commission finds that the property of MIX & GENEST in Czechoslovakia consisted of a telecommunication equipment plant on rented premises at Jaromer and its property in a sales office in Teplice-Sanov which were placed under national administration by the Government of Czechoslovakia. The report abovementioned of A. PLOCEK, of June 21, 1945, stated that the property was then "under national administration and in a state

of liquidation." Accordingly, the Commission further finds that the property at Jaromer and Teplice-Sanov was placed under national administration, on June 21, 1945, for the purpose of liquidation, and that such action was a taking of property without compensation by the Government of Czechoslovakia.

In determining the value of claimant's loss, the Commission has considered, among other things, the communication of claimant to the Secretary of State, of April 16, 1949, stating as to MIX & GENEST, that it had a "telecommunication equipment plant in rented premises at Jaromer" with a net worth in June, 1945 of over Kc 11,000,000 "formulated on the spot at the time," not including communication equipment valued at Kc 1,000,000 said to have been taken by the Czech Army. The plant valuation of June, 1945, follows:

Assets	*Kc*	*Liabilities*	*Kc*
Machine equipment	2,084,000	Debts and invoices due	1,210,975
Shop and office equipment	1,633,000	Obligation to the factory Policky & Reiker	750,000
Tools and instruments in shop	50,000	Estimated net worth	10,107,025
Measuring instruments	2,700,000		
Installation of electricity, water, heating, and air conditioning	2,300,000		
Articles in process of manufacture	2,200,000		
Stock and tools	1,101,000		
Total	12,068,000	Total	12,068,000

Consideration has also been given to the affidavit of ALEXANDER G. P. SANDERS, Financial and Accounting Director, who states that he has determined that MIX & GENEST "during 1943 established a plant on rented premises in Jermer/Jaromer/, Czechoslovakia, for the assembly of carrier equipment. In May, 1945, the assets at the Jermer location were estimated" as follows:

	RM
Land and buildings	160,000
Machinery	254,000
Tools	6,000
Testing equipment and apparatus	780,000
Other assets	77,000
Inventory	1,700,000
Drawings	1,500,000
Payment on account	154,000
Cash on hand and in banks, and postal checks	45,000
Total	4,676,000

No liabilities are included in the above statement.

In connection with bank accounts, claimant submitted on October 17, 1960, a listing of three accounts as follows:

	Kc
Jaromer Postal Savings Office	118,851
Zivnostenska Banka, Teplice Sanov	44,560
Dresdner Bank, Teplice Sanov	663

Claimant stated that Audit Reports of MIX & GENEST do not show that these had been written off as worthless. Thereafter claimant tentatively withdrew claim based on a bank account of Kc 118,851 as it was not clear whether it was duplicated in the item "RM 45,000." Further, claimant submitted evidence of an attempt to register these accounts under Decree 95/45 *Sb.* (Prihlaskas Nos. 1006, 1007, and 1008). Additionally, there was filed a letter of February 10, 1947, from the Postal Savings Office at Jaromer to claimant stating that the application "for an account in the name of the management of the firm of MIX & GENEST at Jaromer should be filed by said firm as owner of the property under consideration." The accounts are further considered below in connection with the value of the Jaromer plant and of the Teplice-Sanov office.

The Commission has also considered the full report of A. PLOCEK, above-mentioned, of June 21, 1945, in connection with MIX & GENEST which reads in substance as follows:

> MIX & GENEST set up a plant in Czechoslovakia for the manufacture of carrier equipment, after their factory in Berlin was bombed out in 1943. It was installed in rented buildings of a former textile factory in Jaromer in the east of Bohemia. The factory used about 2,000 square meters as working space, and employed about 600 people. I am, however, of the opinion that manufacture has not really been started there, perhaps only some assembly has been done. Piece parts for assembly have been brought from BELL ANTWERP. I learn, furthermore, that already during 1944 they had started to take off all worthy new machines, as automatic revolver-banks, punch presses, etc., installed shortly before and transferred them most probably to their work in Berlin which in the middle of 1944 has again been put into operation. Only a few old machines have been left. The factory is now under a national administrator and is in the state of liquidation. At this time the plant is occupied by the Red Army.

In the above mentioned communication of April 16, 1949, claimant stated its understanding that the Russians did not remove any property from Jaromer.

The Commission is of the opinion that the listing made "on the spot" in June, 1945, is more nearly representative of the claimant's loss than the "estimate" for May, 1945. However, it is concluded that of the improvements (installation of electricity, water, heating, and air conditioning) totalling Kc 2,300,000, made at this plant, a portion thereof having a value of Kc 1,440,000 cannot be considered to have remained the personal property of MIX & GENEST. Accordingly, the value of the assets has been reduced to Kc 10,628,000, to which may be added the "old crown" bank account, Kc 118,851, for a total of Kc 10,746,851. After deducting the liabilities, the value of the property of MIX & GENEST at Jaromer was Kc 8,785,876.

The claim as originally filed, was based on the aforesaid valuation made in June, 1945, with an additional item of Kc 1,000,000 for communications equipment. Thereafter, on October 17, 1960, claimant revised the basis for evaluation, relying on the affidavit of ALEXANDER G. P. SANDERS; and on March 15, 1961, claimant stated that the said item of Kc 1,000,000 for communications equipment could be assumed to be within the inventory in the May, 1945, estimate, and reduced the amount of its claim accordingly.

Additionally, the Commission has considered a report made after an inspection of the plant by the claimant's representatives on August 6, 1945, which recites in part that:

> 35 portable units of completed single channel carrier equipments from this plant are stored at the headquarters of the Czechoslovakian military authorities at Jaromer and were seen during the first visit.

Accordingly the Commission finds that the total value of the property of MIX & GENEST pertaining to the Jaromer plant, was Kc 9,785,876 which, converted at the rate of $.025, prevailing on June 21, 1945, is $244,646.90, and the Commission concludes that claimant is entitled to compensation in the amount of $227,301.43 plus appropriate interest for its interest of 92.91 per cent therein.

In connection with the value of the property at Teplice Sanov, the Commission has considered the financial statement made by the national administrator on September 17, 1945, which includes the bank accounts in the Zivnostenska Banka and Dresdner Bank. The Commission finds that at the time of loss the value of this property was as follows:

	Kc
Assets	116,119.10
Less liabilities	3,578.80
Net worth	112,540.30

Converted at $.025 per crown, prevailing on June 21, 1945, this is equal to $2,813.51, and the Commission concludes that claimant is entitled to compensation in the amount of $2,614.03 plus appropriate interest for its interest of 92.91 per cent therein.

(5) FERDINAND SCHUCHARDT

This company operated a portable army telephone manufacturing plant on rented premises at Bruntal.

The properties involved are shown in a report of April 16, 1949 as:

	RM
Machinery, tools and furniture	334,500
Raw materials, piece parts and completed sets	280,000
Cash	7,000

It is asserted that raw materials, piece parts and completed sets were looted by the Russian Army in "May, 1945" and that the cash "disappeared." Inasmuch as it is not established that this occurred while the properties were under the control of the Czechoslovak Government, the Commission finds that this was not a nationalization or other taking by the Government of Czechoslovakia within the meaning of the Act, and this part of the claim is denied.

On about August 1, 1945, a Czechoslovakian firm applied for appointment as national administrator of the properties (pursuant to Decree No. 5 of May 19, 1945) which appointment was made on August 24, 1945. The record discloses that the machinery, tools and furniture were distributed to various Czechoslovakian firms, which effected a liquidation of the remaining properties of the plant. The Commission finds that the said national administration was imposed for the purpose of liquidation, that such action was a taking of property without compensation by the Government of Czechoslovakia, that the value of the property was RM 334,500 or $83,625 converted at $.25 per reichsmark, the rate prevailing on August 24, 1945, and that claimant is entitled to compensation in the amount of $77,361.49 plus appropriate interest for its 92.51 per cent interest therein.

(6) ISEC BANK ACCOUNTS

Claim is made for bank accounts in the Czechoslovak State Bank as follows: (a) "old crowns" in the amount of Kc 2,515,539, (b) a "Special" account in the amount of Kc 80,159, and (c) an account in the amount of 3,023 "new crowns."

The record discloses as to account (a) that this was closed on January 11, 1952, by a transfer of 2,515,539.40 "old crowns" to

the District National Committee of Prague for "property taxes"; as to (b) which account was opened in 1948, having a balance of 80,159 crowns on December 31, 1951, that it was revalued pursuant to the provisions of Law 41/53 *Sb.*, and had a balance of 11,522 crowns on December 31, 1956; and as to (c) that this account said to be in "new crowns" had a balance of 3,023 crowns on December 31, 1951, and that an amount of 3,000 crowns was transferred therefrom to the District National Committee of Prague, also on account of the aforementioned property tax.

Law 41/53 *Sb.*, effected a monetary reform, and among other things, annulled blocked bank accounts in "old crowns" existing on June 1, 1953, and revalued accounts in "new crowns" established by Decree 91/45 *Sb.*, but it did not annul the right to payment of bank deposits in "new crowns" made after such date. There is no evidence to show that the revalued account (b), or the balance of 23 crowns in account (c) have been taken by the Government of Czechoslovakia prior to August 8, 1958. Moreover, a prohibition against the transfer of funds outside of a country is an exercise of sovereign authority which, although it may cause hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 404 of the Act.[2]

With respect to the transfer of 2,515,539.40 "old" crowns, and another item of 3,000 crowns to the District National Committee of Prague, claimant has contended that the accounts represented principally payments for royalties that accrued during the war but that the tax (to which the accounts were applied) was computed in 1947 based on ISEC accounts receivable, patents, royalties and assets of STANDARD DOMS, nationalized January 1, 1948. Documentation submitted by claimant indicates that the following taxes were assessed upon property assertedly held by ISEC and STANDARD DOMS:

(1)	Kc. 4,225,250	Tax on property increase between January 1, 1939 and December 31, 1945, under Law 134/46 *Sb.*
(2)	Kc. 1,156,600	Capital Levy on value as of December 31, 1945, under Law 134/46 *Sb.* (after deducting (1) above).
(3)	Kc. 4,071,849	Tax on increase in value between December 31, 1945 and December 31, 1947, under Law 185/47 *Sb.* (after deducting (1) and (2) above).
(4)	Kc. 1,227,824	Tax on value as of December 31, 1947, under Law 185/47 *Sb.* (after deducting taxes above).
	Kc. 10,681,523	Total.

[2] *In the Matter of the Claim of Karolin Furst*, Claim No. CZ-1381, Dec. No. CZ-682.

It further appears that as a result of non-payment, penalties were assessed: (a) in the amount of Kc 908,420 (total, Kc 5,133,-670 on January 21, 1952); (b) in the amount of Kc 248,670 (total, Kc 1,405,270); (c) and (d) in the amount of Kc 794,940 (total Kc 6,094,613 by June, 1951, which apparently increased to Kc 6,578,206 by September 1, 1952).

The Government of Czechoslovakia applied the two bank accounts to the tax debt, attached the shares of TELEGRAFIA and royalties due from KABLO National Enterprise of Czechoslovakia (which had absorbed certain licensees of claimant and its subsidiaries).

It appears that in computing the property increase tax under Law 134/46 *Sb.*, claimant sought exemption of an amount of Kc 5,589,902 and deducted it in the tax return on the ground that this figure consisted of an account receivable to ISEC from STANDARD DOMS and license fees from KABLO and TELEGRAFIA, which assets were in Czechoslovakia on November 15, 1945, solely because of inability to transfer them to New York, a circumstance beyond claimant's control. The Czechoslovakian Government restored the items as a basis for tax and denied the request for exemption.

Claimant further points: (1) to asserted duplication in the assessment base inasmuch as ISEC declared its capital investment in STANDARD DOMS and earned surplus, whereas the Government of Czechoslovakia then added the assets of STANDARD DOMS; and to schedules submitted by the claimant indicating that ISEC reported a net loss as of November 15, 1945 from its investment in STANDARD DOMS with which contention it appears the Government of Czechoslovakia did not agree; (2) to the fact that the assets of ISEC upon which taxes were based include the capital stock held in TELEGRAFIA, which had been nationalized pursuant to Decree 100/45 *Sb.*, and that ISEC had itself reported these shares, at par value; (3) to the fact that various amounts added by the Government of Czechoslovakia could not be traced by the claimant to any financial statements, or otherwise identified; asserting that the Government of Czechoslovakia's program of capital levy and "millionaire's" taxes was conducted so as to overlap or pre-date nationalization of the properties upon which the taxes were levied; and contending that the bank accounts in question were "attached" and that this constituted nationalization.

The Commission has considered the above matters and the letter of December 7, 1949, from the claimant's Czechoslovakian counsel, explaining the revisions made by the Government of Czechoslovakia in the tax base. It appears that claimant, through

its subsidiaries, was not discriminated against in the application of the Czechoslovakian tax laws and that the Government of Czechoslovakia merely exercised its sovereign authority in applying the bank accounts in some satisfaction of the tax debt. It appears that by letter of September 15, 1958, the Czech Government advised ISEC of a total of Kc 2,442,885.08 then owed for various taxes.

Inasmuch as it has not been established that the Government of Czechoslovakia took any action with respect to the bank accounts in question which amounted to a nationalization or other taking of property within the meaning of the Act, this part of the claim must be and hereby is denied.

(7) ISEC PATENTS

This item of claim is based on costs of investments in patents, the total amount of $126,760 being said by the claimant to represent the costs of filing applications, and maintaining patents that existed prior to the war. Claimant states that the discontinuance in 1952 by ISEC and its subsidiaries, of maintenance of patents and the prosecution of applications, was occasioned by the policy of the Government of Czechoslovakia pursuant to its nationalization program, although the German subsidiaries (LORENZ, MIX & GENEST and SAF) ceased maintenance after nationalization of Czechoslovakian industry. Claimant contends that the continued use of its techniques by Czechoslovakia without which the using enterprises could not operate, is a taking under the Act.

Claimant's patent claim in Czechoslovakia is stated as follows:

		Approximate average cost	
Patents in force:			
ISEC	55	$225	
STANDARD DOMS	50		
CREED	23		
KOLSTER & BRANDES	2		
STANDARD TEL. & CABLE	1		
LORENZ	27		
MIX & GENEST	3		
SAF	1		
	107	$207	
Subtotal	162		$34,540

			Approximate average cost
Applications pending:			
ISEC	658	$120	
STANDARD DOMS	5		
CREED	18		
LORENZ	147		
MIX & GENEST	2		
SAF	1		
	173	$76	
Subtotal	831		$92,220
Total			$126,760

The figure of $225 consists of filing (preparation) costs, $70; fees, $30; maintenance for 7½ years to 1952, $75; and manpower hours expended in consideration thereof, $50; the figure $120 consists of local filing, $70 and headquarters time, $50. The items $207 and $76, for the German subsidiaries' patents and patent applications, was computed in like manner. It is further stated that the costs of patents and patent applications to ISEC and its subsidiaries was not capitalized and carried as an asset in the accounts as a matter of policy in effect for many years.

Claimant contends that a large proportion of its patents and patent applications were directed to telephone, switching apparatus, printing, telegraph apparatus, direct line and radio communication and aerial navigation, fields of burgeoning importance during the post-war years, and disclosed novel techniques which were of considerable commercial value at the time. It is said that these elements continue to represent techniques standardized throughout the world today. The claimant further states that in submitting a patent application, sufficient engineering data was included to demonstrate the technical working of the invention, that this is an obvious disclosure of the fundamental principles, and the mere filing of the application placed in the hands of the Czechoslovakian Government a vast potential of technical background.

The Commission has considered Czechoslovakian decrees listing patents among property taken; evidence that the Czechoslovakian Government placed a value on patents of ISEC and STANDARD DOMS in computing the taxes based on Law 134/46 *Sb.* although the patents involved and the basis for the evaluation are not shown; material in the book *Telephonie* published in 1958 by Czech Akademie Ved., concerning devices produced or used in Czechoslovakia, with its references to TELEGRAFIA

and STANDARD DOMS, bearing on the use by the Czechoslovakian Government of the property involved in the patents and patent applications; nationalization of three companies licensed to use methods and patent rights of ISEC and its associated companies; and that royalties due from KABLO NATIONAL ENTERPRISE, which absorbed CABLE MANUFACTURING CO., of Bratislava, KABLO CABLE & WIRE ROPE MILL CO., and KRIZIK CABLE CO., both of Prague (the three companies operating under license agreements with ISEC) were attached on January 20, 1953, although the amounts are not established.

The Commission finds that the patents outstanding and the pending applications for patents were for the uses set out below and that the Government of Czechoslovakia, without compensation, took the patents, and utilized the material filed with the pending applications, for the benefit of the economy of the Czechoslovakian State, on the dates indicated:

	Taken	Claimant's interest (percent)
Patents outstanding:		
ISEC—55:		
20 used by Telegrafia	Oct. 27, 1945	100
15 used by Standard Doms	Jan. 1, 1948	100
20 used by licensees, succeeded by Kablo National Enterprise	Jan. 20, 1953	100
Standard Doms—50	Jan. 1, 1948	100
Lorenz—27	Oct. 27, 1945	92.91
Mix & Genest—3	June 21, 1945	92.91
Used by licensees (Kablo)		
Creed—23	Jan. 20, 1953	100
Kolster & Brandes—2	Jan. 20, 1953	100
Standard Telephone & Cables—1	Jan. 20, 1953	100
SAF—1	Jan. 20, 1953	92.91
Patent applications pending:		
ISEC—14 prewar:		
5 for Telegrafia	Oct. 27, 1945	100
4 for Standard Doms	Jan. 1, 1948	100
5 for licensees (Kablo)	Jan. 20, 1953	100
ISEC—644 postwar for Standard Doms	Jan. 1, 1948	100
Standard Doms—5 prewar	Jan. 1, 1948	100
Lorenz—147 prewar	Oct. 27, 1945	92.91
Mix & Genest—2 prewar	June 21, 1945	92.91
Creed:		
17 postwar	Jan. 20, 1953	100
1 prewar	Jan. 20, 1953	100
SAF—1 prewar	Jan. 20, 1953	92.91

In determining the value of this item of claim, the Commission has considered the evidence of value attributed by the Czechoslovakian Government to patents of ISEC and STANDARD DOMS in the imposition of the taxes aforementioned, although the record does not reflect how the Czechoslovakian Government arrived at these figures. It is also noted that, with the exception of 31 patents registered in the German subsidiaries, the others (131 in number) were maintained for 7½ years to 1952, although some were taken in 1945 and 1948. Accordingly, the Commission finds that the claimant is entitled to compensation under Section 404 of the Act, based on the aforementioned costs of investments in the patents and patent applications. It does not appear, however, that such maintenance fees paid after the patents were taken may be regarded as part of the claimant's loss within the meaning of the Act. Further, it appears that a depreciation factor is applicable as claimant recognized in submitting its tax return under Law 134/46 *Sb.*

The Commission finds that the claimant's interests in the patents outstanding at the time of their taking by the Government of Czechoslovakia had a value of $26,945.37 and the claimant's interests in the pending patent applications had a value of $90,362.89.

Recapitulation of award

	Principal award
Standard Doms	$58,881.02
Lorenz:	
Vrchlabi plant	2,521,653.73
Podmokly plant	394,867.50
Chrast plant	39,271.43
Mix & Genest:	
Jaromer plant, including bank accounts	227,301.43
Teplice Sanov	2,614.03
Ferdinand Schuchardt	77,361.49
Patents outstanding	26,945.37
Patent applications	90,362.89
Total	$3,439,258.89
Interest	2,629,401.34
Total award	$6,068,660.23

Accordingly, it is

ORDERED that this award be restated as follows, and certified to the Secretary of the Treasury:

AWARD

An award is hereby made to the INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION in the principal amount of Three Million Four Hundred Thirty-nine Thousand Two Hundred Fifty-eight Dollars and Eighty-nine Cents ($3,439,258.89) for industrial property, including patents, plus interest thereon at the rate of 6% per annum from the respective dates of taking to August 8, 1958, the effective date of Title IV of the Act, in the aggregate amount of Two Million Six Hundred Twenty-nine Thousand Four Hundred One Dollars and Thirty-four Cents ($2,629,401.34) for a total award in the amount of Six Million Sixty-eight Thousand Six Hundred Sixty Dollars and Twenty-three Cents ($6,068,660.23).

Dated at Washington, D.C.
July 11, 1962.

Valuation of corporations and their assets.—The *International Telephone and Telegraph Corporation* decision depicts the complexity of tracing ownership through many corporate entities and determining the percentage of ownership held by a claimant or other United States nationals at various times, which was not uncommon in claims filed by American corporations. It also illustrates methods utilized in determining the value of corporations at the time of nationalization, and thus the value of shares of stock therein, starting with balance sheets for the most appropriate period of time available. In its treatment of a portion of the claim based upon an interest in *Telegrafia Ceskoslovenska Tovarna Na Telegrafy A.S.*, it contains a relatively rare instance in which, although the elements of ownership and loss were established, the claim was denied because the record was insufficient to permit a determination of the value of claimant's equity in the enterprise at the time of its nationalization. Not being in a position to find that claimant's interest had any value at the time of loss, the Commission was unable to make an award for this portion of the claim. The decision also demonstrates the evaluation of intangible property items, such as patents, on the basis of the investment cost for the patents, and on the basis of figures used for tax purposes, where available.

In some instances, where the record contained prewar balance sheets but claimant was unable to present postwar financial statements or other evidence of value at the time of nationalization,

the prewar balance sheets were used in determining the value of the fixed assets of the enterprise, such as land, buildings, and machinery; and in the absence of evidence of a persuasive nature that the firm had other assets at the time of taking by the Government of Czechoslovakia, awards were calculated only on the basis of the prewar fixed assets. (*Claim of Hedwig H. Mautner, et al.*, Claim Nos. CZ–1134, CZ–2052, CZ–2079, Dec. No. CZ–2978, 17 FCSC Semiann. Rep. 237 (July-Dec. 1962).) In many instances where claimant had no evidence pertaining to value of a nationalized corporation, the determination of value was based upon financial data extracted from the appropriate volume of *Compass,* the Financial Yearbook for Czechoslovakia, published by *Compass-Verlag* in Vienna, Austria, which often included balance sheets for corporations listed therein. (*Claim of John Lukac,* Claim No. CZ–2510, Dec. No. CZ–2230, 17 FCSC Semiann. Rep. 213 (July-Dec. 1962).)

Indirect losses.—The Commission consistently held that claims for indirect damages such as the loss of good will are compensable only if reasonably certain or susceptible of accurate determination. Good will generally is measured by prospective profits; and in the absence of evidence to show that a claimed item of good will was other than conjectural or speculative, the item was eliminated in the calculation of value. (*Claim of Ann A. Unger, et al.,* Claim Nos. CZ–3137, CZ–3138, CZ–3142, Dec. No. CZ–3538, 17 FCSC Semiann. Rep. 262 (July-Dec. 1962).) Claims based upon prospective earnings which may have been realized by an enterprise after its nationalization were denied because any such profits would not belong to the claimants, whose ownership interest in the enterprise was extinguished at the time of nationalization. (*Claim of Aris Gloves, Inc.,* Claim No. CZ–1170, Dec. No. CZ–3035, 17 FCSC Semiann. Rep. 239 (July-Dec. 1962).)

Exchange rates.—Evidence of value of property in Czechoslovakia generally was expressed in Czechoslovakian currency. In order to translate a sum in Czechoslovakian currency into an equivalent in United States currency, exchange rates had to be used which would reflect the dollar value as of the time when the valuation of the property was made. In the *International Telephone and Telegraph Corporation* decision, different exchange rates were employed for different dates, based upon the Commission's study of fluctuation in the value of the *koruna* as summarized in Panel Opinion No. 2. For the prewar years, the conversion rates were well established and posed no problem. For the years 1937–1938, the exchange rate was $0.034 for one *koruna.* During the period when Czechoslovakia was under German occupation, the Czechoslovakian *koruna* was tied to the German reichsmark at the ratio of 10 *koruny* per reichsmark, or $0.025 for one *koruna.* In 1945 a new Czechoslovakian currency was introduced, exchangeable at the rate of $0.02 per *koruna.* For the years 1945 through 1952, this official rate of exchange was adopted by the Commission. After the Czechoslovakian monetary reform of June 1, 1953, the value of the *koruna* was fixed at a new official rate of $0.139 for one *koruna;* but this exchange rate was artificial and unrealistic and little

weight was given to evaluations made after June 1, 1953. If no other source of evaluation was available, appraisals expressed in *koruny* of that period were converted at the more realistic rate of $0.02 per *koruna*.

Where evaluations were submitted in currencies other than *koruny*, the appropriate exchange rates prevailing at the time of evaluation were used. For example, where evaluations made in 1938 in Swiss francs were on record, the Swiss franc was converted into dollars at the 1938 conversion rate of 4.372 francs for one dollar. (*Claim of Ella Wyman, et al.*, Claim Nos. CZ–4347, CZ–4348, Dec. No. CZ–3529.)