

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579

In the Matter of the Claim of

MILE MIDE KASEM
HEKURAN M. KASEM

Against the Government of Albania

Claim No. ALB-005

Decision No. ALB-292

Hearing on the Record held on May 4, 1998.

FINAL DECISION

This claim against the Government of Albania is based upon the alleged confiscation of agricultural property located in Luzat, District of Tepelene, and a grocery store located in the town of Vlore.

By Proposed Decision entered on February 24, 1997, the Commission denied this claim, on the ground that claimants had failed to establish that they had an interest in a claim for property in Albania that was owned by a U.S. national when it was nationalized or otherwise taken by the Albanian government.

By undated letter received at the Commission on March 17, 1997, claimant MILE MIDE KASEM objected to the Proposed Decision. His letter did

not state the basis of his objection, but instead requested that the Commission leave his case open to enable him to obtain additional evidence through counsel in Albania. While the Commission honored claimant's request, no additional documentation was forthcoming. Accordingly, by letter dated February 17, 1998, the Commission directed claimants to file any further evidence no later than April 15, 1998.

Claimant MILE MIDE KASEM responded by letter dated March 7, 1998, enclosing a document from the State Archives in Tirana, prepared in connection with post-World War II land reform, listing landowners and their property holdings in the village of Luzat. That listing includes the name "Malo Gjyli." Other documents in the file confirm that claimant was known by that name in Albania, and that his mother and sister also used the surname Gjyli. Claimant states that he is the "Malo Gjyli" on the listing, who is identified as the owner of 7 *dynym* (0.7 hectare, or 1.73 acres) of farmland. The listing further indicates that Malo Gjyli was then residing "with family" in Vlora, for "reason of the war." Claimant provided no documentation concerning the ownership or confiscation of any other property.

By letter dated April 1, 1998, HEKURAN M. KASEM reiterated his assertions that MILE MIDE KASEM owned no property in Albania in his own name, and that claimants' father was the owner of whatever property was recorded under the name Kasem. Accordingly, HEKURAN M. KASEM contends that the Commission should make awards for the 1946 confiscation of claimants' father's property to those of his children who were then U.S. citizens.

The Commission has reviewed the contentions advanced by HEKURAN M. KASEM in his objection, and has again reviewed the entire record in his claim. However, the record remains devoid of any documentary evidence of Medi Kasem's ownership of any specific amount or piece of property in Albania. Moreover, even if such ownership were established, the Commission would remain without jurisdiction to adjudicate any claim for its loss in 1946, since Medi Kasem did not become a United States national until 1948. Although claimant correctly points out that he and most of his siblings were United States nationals in 1946, their father was still living at that time. Thus, at that time they had no more than an expectancy with respect to his property, since it is a well-

known maxim in the law that "no one is an heir of the living." Accordingly, the denial of HEKURAN M. KASEM's claim must be and hereby is affirmed.¹

The claims of MILE MIDE KASEM remain. Based on the additional evidence submitted, the Commission finds that MILE MIDE KASEM owned 7 dynym of farmland in Luzat. Although he has not specified the date of the expropriation, the Commission is aware that on or about August 29, 1945, the Albanian Communist regime promulgated the "Agrarian Reform Law," which provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation. Land Reform Law No. 108, GZ 1945, No. 39. That law was affirmed by the 1946 Albanian constitution, which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12.

¹To the extent that claimants have inherited interests in property confiscated from their father before he became a U.S. national, they should be entitled to relief through the restitution and compensation program being administered by the Government of Albania (if it is not too late to file a claim there). Indeed, the Settlement Agreement between the U.S. and Albania requires that the Government of Albania afford such U.S. nationals the same rights that it affords Albanian nationals to pursue and receive compensation, restitution or any other remedy available under the domestic restitution and compensation procedures established by that government.

Based on the entire record, the Commission determines that implementation of the Agrarian Reform Law, coupled with the restrictions placed upon non-farming owners, had the effect of depriving claimant MILE MIDE KASEM of his property, thereby resulting in an uncompensated expropriation by the Government of Albania. Accordingly, he is entitled to an award of compensation for the resulting loss. For lack of a precise date, the Commission will deem the expropriation to have occurred as of January 1, 1946.

Claimant MILE MIDE KASEM has not stated a value for his land as of the date of expropriation, other than his assertion that all the properties for which he sought to claim had a composite value of \$22,000.00. Based on its study of the values of various kinds of real property in Albania before and during World War II and thereafter, together with the evidence before it in this case, the Commission finds that claimant's seven dynym of land had a value at the time of expropriation of \$400.00. Accordingly, claimant is entitled to an award in that amount, dating from January 1, 1946.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that MILE MIDE KASEM is entitled to interest as part of his award, amounting to

6 percent simple interest per annum from the date of confiscation through April 18, 1995 (the effective date of the Settlement Agreement). Accordingly, MILE MIDE KASEM is entitled to an interest award of 295.8 percent of his principal award, or \$ 1,183.20.

In the absence of documentation of the ownership and confiscation of any other property, the denial of the other claims of MILE MIDE KASEM must be and hereby is affirmed.

Under the terms of the Settlement Agreement, the United States Government has agreed to advise the Albanian authorities of the issuance of the Commission's awards so as to prevent any double recovery. A copy of this decision therefore will be forwarded to the Albanian government in due course.

The Commission therefore withdraws the denial of MILE MIDE KASEM's claim set forth in the Proposed Decision, and instead enters the award set forth below, which will be certified to the Secretary of the Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the ICSA (22 U.S.C. §§1624, 1626, and 1627). In all other respects, the Proposed Decision is affirmed.

This constitutes the Commission's final determination in this claim.

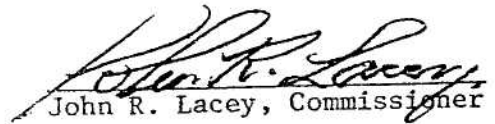
A W A R D


Claimant MILE MIDE KASEM is entitled to an award in the principal amount of Four Hundred Dollars (\$400.00), plus interest from January 1, 1946, 1945, to April 18, 1995, in the amount of One Thousand One Hundred Eighty-Three Dollars and Twenty Cents (\$1,183.20), for a total award of One Thousand Five Hundred Eighty-Three Dollars and Twenty Cents (\$1,583.20).

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

MAY 04 1998


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner


Richard T. White, Commissioner

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In the Matter of the Claim of

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Claim No. ALB-005

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PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of agricultural property located in Luzat, District of Tepelene, and a grocery store located in the town of Vlore.

Under section 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render final decisions with respect to claims of . . . nationals of the United States included within the terms of . . . any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) . . . providing for the settlement and discharge of claims of . . . nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof.

22 U.S.C. 1623(a) (1994).

The Governments of the United States and Albania concluded an agreement for en bloc settlement of claims of United States nationals against Albania on March 10, 1995. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). Claims covered by the Settlement Agreement are

the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, or other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement[.]

Settlement Agreement, Article 1(a).

Claimant MILE MIDE KASEM seeks compensation for the alleged expropriation by the Government of Albania in 1946 of 33 hectares of agricultural land, including a two-story house located in the village of Luzat, District of Tepelene. He also seeks compensation for the confiscation in 1947 of a grocery/food store in the town of Vlore. According to the claimant, he was the owner of the properties at the time of confiscation.

By letter dated December 24, 1995, claimant's brother, Hekuran M. Kasem, requested that he be included as a co-claimant with his brother, asserting that the properties at issue were family-owned properties. The Commission grants this request and includes HEKURAN M. KASEM as a co-claimant in this claim.

In support of the claim, MILE MIDE KASEM has submitted a copy of his birth certificate, evidencing his birth in Massachusetts on 5 U.S.C §552(b)(6) ; a copy of his father's death certificate; a document from the Ministry of Justice in Albania dated October 19, 1995 indicating that in 1947, MILE MIDE KASEM was declared guilty of "desertion" and sentenced to ten years' imprisonment; a Certificate of Ownership from the Cadastral Department of Tepelene; his own Declaration regarding his ownership of a store in Vlore and its confiscation in 1947; and the Declaration of Tefik Myslim Garaj, a Luzat villager.

The December 24, 1995 letter of claimant HEKURAN M. KASEM contends that the property at issue actually was owned by claimants' parents, Medi Kasem and Xhiko Shaban Kasem. He has submitted a copy of his birth certificate, evidencing his birth in Massachusetts on 5 U.S.C §552(b)(6) . He has also submitted a copy of a Petition for Naturalization signed by his father, which indicates that his father took the oath of allegiance to the United States on June

17, 1948. Other documents submitted by HEKURAN M. KASEM include declarations by two of claimants' sisters and a declaration by a "dignitary" from the village of Luzat.

The Commission has carefully reviewed all the evidence, contradictory and otherwise, that has been submitted. However, the Commission is not persuaded by the Declaration of Tefik Myslim Garaj (dated July 6, 1993) that claimant MILE MIDE KASEM was the owner of 25 *dynyms* of agricultural land located in Luzat.¹ Nor is the Commission persuaded by claimant MILE MIDE KASEM's own declaration that he was the owner of a food store in Vlore.

Section 531.6(d) of the Commission's regulations provides:

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

45 C.F.R. 531.6(d) (1995).

The Commission finds that MILE MIDE KASEM has not met the burden of proof in that he has failed to submit supporting evidence to establish his ownership of "33 hectares" or any other amount of farmland located in Luzat or

¹By letter dated February 20, 1996, claimant was advised that such a statement might not be sufficient to establish his ownership of the claimed property and was encouraged to provide a document from the local land registry office. He has provided no other supporting evidence of ownership.

his ownership of a store in Vlore. In the absence of such evidence, this portion of MILE MIDE KASEM's claim must be and is hereby denied.

The Commission's independent consultant in Albania has verified a July 28, 1995 Certificate from the Cadastral Department of Tepelene, which indicates that MILE MIDE KASEM owned a 375 square meter plot of land in Luzat in 1951. However, other than his own assertions, claimant has submitted no evidence of the alleged confiscation in "September 1946." Indeed, there is no proof that -- even if claimant owned the land in 1951 -- he owned it in 1946, when it is said to have been taken.

More significantly, however, the Commission is persuaded by the declarations which claimant HAKURAM M. KASEM has submitted from two of claimants' sisters and a Luzat villager. Those declarations attest that the only land held in the Kasem family in 1946 was that owned by Medi and Xhiko Kasem. And the Commission's independent consultant in Albania has been unable to verify that the Kasem family owned any property in Luzat in 1946.²

²Specifically, the Commission's consultant has provided a "verification" from the Office of the Archives of Tepelene dated November 22, 1996 which states that it has no record of property registered in the name of Medi Kasem prior to 1946.

Indeed, even if the claimants were able to establish that their father owned property in Luzat which was confiscated in 1946, this Commission would lack jurisdiction over the claim. Claimants' father, Medi Kasem, did not acquire United States nationality until June 1948. Under the ICSA, the Commission is required to decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICISA section 4(a)(2), 22 U.S.C. 1623(a)(2). It is a well-established principle of international law, which this Commission has applied without exception, that a claim may be found compensable only if the property which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. *See, e.g., Claim of EUGENIA D. STUPNIKOV Against Yugoslavia*, Claim No. Y-2-0071, Decision No. Y-2-0003 (1967); *Claim of ILONA CZIKE Against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS Against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981); *Claim of TRANG KIM Against Vietnam*, Claim No. V-0014, Decision No. V-0001 (1982). This principle has also been recognized by the courts of the United States. *See, e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied* 355 U.S. 854 (1957).

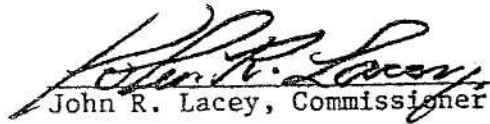
Whether for lack of jurisdiction or lack of evidence, the Commission has no choice but to deny this claim.

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

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

FEB 24 1997


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner


Richard T. White, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. 531.5 (e) and (g) (1995).