



a Notarial Declaration, a Certificate, a Decision from the Law Court of Permet and a Project Decision dated May 12, 1952.

On November 12, 1996, claimant's daughter contacted the Commission by telephone and stated that the claimant was ill and would be unable to attend the oral hearing. The Commission subsequently received a letter dated November 8, 1996 from the claimant, received by the Commission on November 15, 1996, stating that she would be unable to attend the hearing because of her illness. Accordingly, the Commission issues this Final Decision based on its *de novo* review of the evidence in the record.

The claimant in this case, a citizen of the United States by virtue of her birth in the United States in 1921, has stated that the property which is the subject of her claim was confiscated by the Albanian government in 1946. At that time, according to the claimant, she owned the property jointly with her husband, Ismail Zenel Dushallari, an Albanian national.

Based on a review of the evidentiary record as supplemented, including the Commission's own independent review of land records in the Archives of Permet, the Commission finds that, prior to 1942, the claimant's husband was the owner of 15.7 hectares of both agricultural and pasture land located in the village of Pacomit, District of Permet. The Commission further finds that the

claimant's husband effectively transferred a one-half interest in all his real property to the claimant on or about December 5, 1942.

The Commission is aware that on or about August 29, 1945, the Albanian Communist regime promulgated the "Agrarian Reform Law." This law provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation to the legal owner. Land Reform Law No. 108, GO 1945, No. 39. This law was then affirmed by the 1946 Albanian constitution which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12.

Based on the entire record, the Commission determines that the implementation of the Agrarian Reform Law, coupled with the restrictions placed upon non-farming owners and the formation of agricultural cooperatives, had the effect of depriving the claimant of her one-half interest in the property in question, and thereby constituted an uncompensated expropriation by the Government of Albania. Accordingly, claimant is entitled to an award of compensation for the resulting loss. In this case, claimant has stated that the property was confiscated in 1946. For lack of a precise date, the Commission will deem the taking to have occurred as of January 1, 1946.

The claimant has not asserted a specific figure for the value of the property at the time of expropriation, although the Certificate dated October 11, 1995 from the Council of Permet Region indicates a current value of 3,080,000 leks for an area comprising 13 hectares. Based on its study of the values of various kinds of real property in Albania before and during World War II and thereafter, the Commission finds that the claimant's property, consisting of a one-half interest in 157 *dynyms* or 15.7 hectares in the village of Pacomit, had a value at the time of expropriation of approximately \$200 per acre, or \$4,000.00. Accordingly, the Commission finds the claimant entitled to an award in the principal amount of \$4,000 as compensation for the loss of her one-half interest in the 15.7 hectares of property, dating from January 1, 1946.\*

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\*The Commission notes that the claimant seeks compensation for the entire 15.7 hectares of property which she owned jointly with her husband. However, Ismail Dushallari, who died in 1983 and who by his "testament" dated December 5, 1942, left the remainder of his property to the claimant upon his death, never acquired United States nationality. As previously stated in the Proposed Decision, 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. In 1946, when the property was confiscated, the claimant only owned a one-half interest in the property, equivalent to 7.85 hectares. The remaining interest in the property belonged to her husband, an Albanian national, and thus cannot be the subject of an award under the Settlement Agreement.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimant is entitled to interest as part of her award, amounting to 6 percent simple interest per annum from the date of loss to the effective date of the Settlement Agreement. Accordingly, claimant is entitled to an interest award of 295.8 percent of her principal award, or \$11,832.00.

For the reasons stated in the foregoing, the Commission withdraws its denial of the claimant's claim and enters the award set forth below, which will be certified to the Department of Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the ICOSA (22 U.S.C. §§1624, 1626, and 1627). This constitutes the Commission's final determination in this claim.

Under the terms of the U.S.-Albania 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 will therefore be forwarded to the Albanian government in due course.

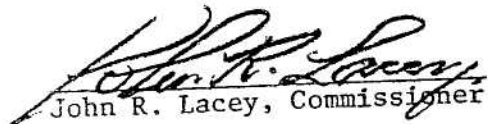
A W A R D

Claimant, EDA MEHDIN DUSHALLARI, is entitled to an award in the principal amount of Four Thousand Dollars (\$4,000.00), plus interest from January 1, 1946, to April 18, 1995, in the amount of Eleven Thousand Eight Hundred Thirty-Two Dollars (\$11,832.00), for a total award of Fifteen Thousand Eight Hundred Thirty-Two Dollars (\$15,832.00).

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

DEC 16 1996

  
Delissa A. Ridgway, Chair

  
John R. Lacey, Commissioner

  
Richard T. White, Commissioner

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

In the Matter of the Claim of		
EDA MEHDIN DUSHALLARI		Claim No. ALB-082
Against the Government, of Albania		Decision No. ALB-125

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Pacomit, District of Permet.

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).

The claimant in this case has stated that the property which is the subject of her claim was confiscated by the Albanian government in 1946. At that time, according to the claimant, the property was owned by her husband, Ismail Zenel Dushallari, an Albanian national. The claimant has established that she is a citizen of the United States by virtue of her birth in the United States in 1921.



In support of her claim, claimant has submitted documents dated August 23, 1994, and October 11, 1995, from the Cadastral Office of Permet. Those documents indicate that Ismail Zenel Dushallari owned between 130 and 157 "dynyms" of land which was confiscated in 1945. In addition, the claimant has recently submitted a new document dated March 5, 1996, from the "Lawcourt of the Vlora District" which states that Ismail Dushallari, who died in 1983, left a "testament" dated December 5, 1942, whereby he assertedly is said to have excluded his children and left all his property to his wife, the claimant. This document further asserts that, beginning in 1942, the claimant was a co-owner of the properties with Mr. Dushallari until the latter's death in 1983, when she became the sole owner of the properties. However, there is no reference to any legal authority for the contention that title to the subject matter of claimant's husband's will in fact passed to her at the time of execution of the will, rather than at the time of his death, as is typically the case.

The ICOSA mandates that the Commission decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICOSA 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).

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)(1994).

Claimant is responsible for the ambiguities in the evidence in this case and thus bears the burden of proof in resolving these inconsistencies by independent objective evidence. To date, the claimant has not met her burden of proof to establish that she owned an interest in the property at issue in this claim at the time of its asserted loss in 1946. \*

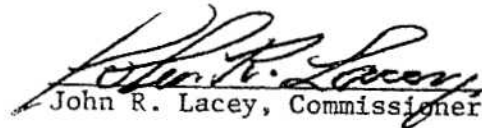
Accordingly, while the Commission sympathizes with the claimant for the loss of her family's property, it must conclude that her claim is not compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

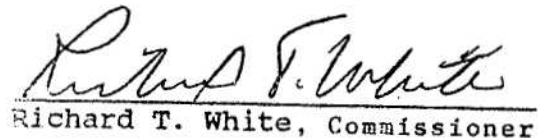
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

MAY 07 1996

  
Delissa M. 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) (1994).