

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

In the Matter of the Claim of

THOMAS MICHAEL TOMA

Against the Government of Albania

Claim No. ALB-072

Decision No. ALB-268

Hearing on the record held on January 11, 1999.

FINAL DECISION

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

By Proposed Decision entered on January 28, 1997, the Commission denied this claim, on the ground that claimant did not satisfy the residency requirement in the Agreed Minute to the 1995 United States-Albania claims settlement agreement with respect to a number of the properties for which he claimed, namely for properties said to have been expropriated in 1959, 1963 and 1973. The other portions of his claim were denied for lack of sufficient evidence of expropriation.

Subsequent to the issuance of the Proposed Decision, claimant submitted a copy of his father's death certificate and a Certificate dated January 1, 1998, from the District Archives of Pogradec indicating that agrarian reform took place in that general area in 1955. The Commission treated claimant's submission of these documents as an objection to the Proposed Decision.

By letter dated August 14, 1998, the Commission advised the claimant that the Commission's independent consultant in Albania had completed his search of the records in the Archives of the District of Pogradec and had advised that 2,602 square meters of land has been returned to the claimant, that compensation in the form of government bonds is to be paid for 738 square meters of land, and that another application for return of or compensation for 3,240 square meters of land to the claimant is pending.

In a letter dated August 27, 1998, claimant asserted that all the agricultural land had in fact been confiscated in 1955, and he expressed agreement with the Commission's consultant's report that 2,602 square meters of land has been returned to him and 738 square meters is to be paid for with Albanian government bonds. However, he also stated that he is not willing to accept the bonds, which he alleges are worth only one-tenth of their face value. In addition, claimant asserts that 2,500 vines in his vineyard in Gradishte have

not been compensated for; that 1,040 square meters of land containing 600 vines located in Guri i kuq has not been returned; that 850 square meters of land containing 500 vines located in Shkalla e Kalase has not been returned; and that 1,500 square meters containing 80 chestnut trees has been returned but the 80 trees have been destroyed.

Subsequently, claimant also submitted a "Certificate" dated November 5, 1998, from the District Council of Pogradec which identifies him as the owner of 3,340 square meters of land, out of which a portion with an area of 738 square meters has been used for public construction, and which states that no compensation has thus far been made to him for the public use of that portion. Additionally, claimant has submitted his own "Declaration" in which he again states that he will not accept payment in bonds for the 738 square meters of land mentioned above, which is located in Gradishte, and likewise will not accept payment in bonds for the 850 square meters of land containing 500 vines or for the 1040 square meters of land containing 600 vines.

The Commission has carefully reviewed the evidence in the record as supplemented. Based on this additional review, the Commission now finds that

claimant's father had owned a total of 3,851 square meters (about one acre) of vineyards in the vicinity of Pogradec that were expropriated pursuant to the agrarian reform law of November 8, 1955, without payment of compensation, and that have not been returned to private ownership.* Accordingly, the Commission finds that claimant is entitled to an award for the resulting loss. For purposes of this decision, the Commission will deem the expropriation to have occurred as of September 2, 1957, the date of Prime Minister Order No. 20, which decreed the expropriation of the Guri i kuq parcel.

Claimant has asserted that the total value of the three parcels is \$35,788, not including the value of the grapevines on the 1,223 square meters of land in Gradishte. However, this figure appears to represent what he believes to be the property's current value, whereas the Commission's practice is to determine the amount to which a claimant is entitled based on the value of the expropriated property in question as of the date of its expropriation, with a separate award of interest then included to compensate for the delay between the date of expropriation and the date of payment by the expropriating government. Moreover, the Commission notes that the values claimant has asserted appear to

*This total comprises the following parcels: 1223 square meters of land in Gradishte, 1040 square meters of vineyard in Guri i kuq, 850 square meters of vineyard in Shkalla e Kalase, and 738 square meters of land in Gradishte.

be exaggerated, and in any case, they are not supported by any independent objective evidence.

Based on the entire record, and having compared the facts of claimant's claim with those in other cases previously adjudicated, the Commission finds that the property in question, consisting of 3,851 square meters of vineyards in the vicinity of Pogradec, had a value of \$1,000.00 as of the date of expropriation by the Albanian government.

The claimant has established that his father died in New York in 1976 without a will and was survived by his wife, an Albanian national, and three children including the claimant. Claimant's two siblings have renounced their interests in this claim in his favor. The Commission therefore finds that this claim, owned by the late Michael P. Toma, devolved upon his death intestate on August 21, 1976, in accordance with the descent and distribution laws of the State of New York, to his wife, then an Albanian national, to the extent of one-half, with the remaining one-half devolving to the claimant and his siblings. Accordingly, claimant is entitled to an award in the principal amount of \$500.00 based on his inherited one-half interest in his father's claim for his agricultural property, dating from September 2, 1957.

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 his 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 also entitled to an interest award of 225.8 percent of his principal award, or \$1,129.00.

As for the remaining portions of claimant's claim, however, the Commission is constrained to conclude that the evidence in the record is insufficient to support a finding that the Albanian government expropriated the land in issue, or destroyed the grapevines and chestnut trees, at least 18 years and 8 months before claimant's father's death on August 21, 1976 - that is, before December 21, 1957. In the absence of such evidence, those portions of the claim fail to meet the residency requirement in the Agreed Minute to the 1995 United States-Albania claims settlement agreement, which provides that in order to be valid, any claim submitted by a claimant with dual United States-Albanian nationality must have been either held for at least one-half of the time from when

it arose until the settlement agreement's effective date of April 18, 1995, by a person or persons domiciled in the United States, or held as of April 18, 1995, by a person domiciled in the United States. If for no other reason, the denial of the remainder of claimant's claim must accordingly be and is hereby affirmed.

Under the terms of the United States-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.

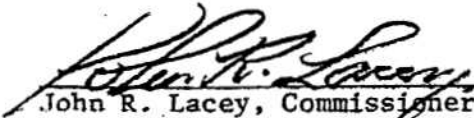
The Commission therefore partially withdraws the denial set forth in the Proposed Decision in this claim, and makes the following award, which will be certified to the Secretary of the Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the International Claims Settlement Act of 1949, as amended (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, THOMAS MICHAEL TOMA, is entitled to an award in the principal amount of Five Hundred Dollars (\$500.00), plus interest from September 2, 1957, to April 18, 1995, in the amount of One Thousand One Hundred Twenty-Nine Dollars (\$1,129.00), for a total award of One Thousand Six Hundred Twenty-Nine Dollars (\$1,629.00).

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

JAN 11 1999


John R. Lacey, Commissioner


Richard T. White, Commissioner

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OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
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In the Matter of the Claim of	
THOMAS MICHAEL TOMA	} Claim No. ALB-072
Against the Government of Albania	} Decision No. ALB-268

PROPOSED DECISION

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

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 Agreed Minute to the Settlement Agreement further provides:

For purposes of article 1, the term "United States nationals" shall include dual United States-Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.

In effect, this residency requirement limits the Commission's jurisdiction over the claims of dual nationals to those cases where the owner of the claim either (1) was domiciled in the United States on April 18, 1995 (the effective date of the Settlement Agreement), or (2) was domiciled in the United States for at least half the period of time between the date the property was expropriated and April 18, 1995.

Claimant here, a United States national by birth, seeks compensation for 1500 square meters of chestnut forest said to have been expropriated in 1955; six plots of land (two vineyards, 850 square meters and 1223 square meters, respectively, said to have been expropriated by the Albanian government in 1955; 1040 square meters of vineyards said to have expropriated in 1957; 67 square meters of orchard land said to have been expropriated in 1959; 1200 square meters of lakeshore property said to have been expropriated in 1963; and 180 square meters of land said to have been expropriated in 1973); and a one-story, four-room house, storehouse and surrounding wall, all said to have been expropriated in 1973. Claimant states that his father, Michael P. Toma (Mihal Thoma Pano), was the owner of the properties at the time of confiscation.

Claimant's father lived in the U.S. from 1909, was naturalized as a United States citizen in 1920, and died in the United States in 1976. Upon his death, his estate devolved in four shares upon his wife (claimant's mother) Lube, claimant, and claimant's two siblings (Irina Mihal Pano, a/k/a Irene Gusho, and Piro Mihal Pano). When claimant's mother died in 1987, her estate devolved in three shares to her children. Claimant's siblings renounced their inheritances in favor of claimant in a 1994 court proceeding in Pogradec.

In support of his claim, claimant has submitted documentation including copies of his own birth certificate and his brother's birth certificate; copies of his own U.S. passport and that of his sister; the death certificates for his father and mother; Inheritance Testimony identifying the heirs of claimant's father; the December 1994 decision of the court in Pogradec concerning claimant's siblings' renunciation of their inheritances in favor of claimant; documentation of the 1959 expropriation, the 1963 expropriation and the expropriation of the house in 1973; diagrams of various properties; and miscellaneous correspondence from U.S. Government agencies concerning public benefits for members of claimant's family.

Unfortunately, for the reasons explained in the Commission's letters dated May 17, 1996, October 22, 1996, and December 18, 1996, and discussed below, the evidence and information provided by claimant are not sufficient to establish his right to compensation.

Claimant's claim for the properties expropriated in 1959, 1963 and 1973 is barred by the residency requirement in the Agreed Minute to the Settlement Agreement (set forth above), which the Commission is constrained to apply to the claims of all dual U.S.-Albanian nationals. Claimant here is a dual U.S.-Albanian national, because his father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality notwithstanding his U.S. nationality by birth.

Claimant was not living in the United States on April 18, 1995 (the effective date of the Settlement Agreement). Indeed, claimant has not lived in the United States at any time since his father's death (when he became an owner of the claim). Thus, although claimant's father lived in the United States until his death in 1976, it cannot be said that the owner of the claim (claimant's father, then -- after his death -- claimant) lived in the U.S. for at least half the time between April 1995 and the dates of the expropriations. The Commission therefore cannot find that the residency requirement is met as to the 1959, 1963

and 1973 confiscations. Those parts of the claim therefore must be and are hereby denied.

Claimant's claims for the properties expropriated in 1955 and 1957 remain. However, claimant has provided no documentation of those confiscations. The Commission's October 22, 1996 and December 18, 1996 letters to claimant noted this point, and requested that claimant submit any additional evidence promptly. To date, no such documentation has been received.

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 claimant here has not met the burden of proof to submit documentation establishing the alleged confiscations in 1955 and 1957. In the absence of such evidence, the Commission is unable to find in favor of claimant on those parts of his claim.

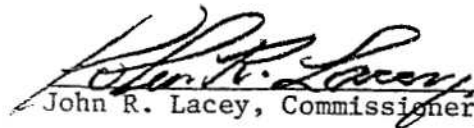
Accordingly, while the Commission sympathizes with claimant for the loss of his family's properties, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the Settlement Agreement. The claim therefore must be and is hereby denied.

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.

JAN 28 1997


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner


Richard T. White, Commissioner

This decision was entered as the Commission's
Final Decision on MAY 06 1997

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).