

two houses which were destroyed by the Albanian government in retaliation for his activities against the regime. According to claimant, the value asserted on the claim form was for the two houses and not for the surrounding land.¹

Claimant's letter further asserted that the Dema family owned the land and the houses prior to 1946, when peasant farmers took over the property. Claimant has also stated that he inherited the property upon his father's death in 1975, because he was entitled to do so as the "last brother" under the common law of the area (as articulated in the Code of Leka). According to the claimant, the Albanian government evicted the peasant tenants and "dynamited" the houses in December 1976, after he assumed ownership of the properties, because of his anti-communist activities.

In support of his objection, claimant has submitted the declarations of Kasem Dema and Vladimir Dema. Vladimir Dema, who is not related to the claimant, is said to be the mayor of the "County in the Village of Homesh." Both declarations are identical, and aver that the two houses were destroyed in December 1976.

¹According to the claimant, he is in the process of claiming for the land in Albania under that country's domestic program.

At the oral hearing, the claimant appeared on his own behalf and stated that from 1946/1947, the claimant and his family had no control over their land. He further stated that all the land was taken from the owners by the Albanian government in the 1960's and that the two houses for which he is claiming were destroyed in late 1976. The claimant has established that he acquired United States nationality by naturalization on §552(b)(6) 1976.

At the hearing, the claimant reiterated that he became the owner of the property upon his father's death on March 30, 1976, because he was the youngest son, and that he believed the houses were destroyed in 1976 because of his anti-communist activities. Claimant had previously submitted a declaration by five of his siblings, all Albanian nationals, prepared in Albania in January 1996, stating that their parents left no wills but that it was their parents' wish that claimant be deemed owner of the two houses. At the hearing, the claimant testified that his father left no will because the Code of Leka "does not believe in wills" and because his father was illiterate. He further testified that the land owned by his family was divided among all the brothers and that he, as the youngest brother, was entitled to the dwellings, particularly because he was responsible for sending money to his parents in Macedonia according to the custom of the area.

Claimant was questioned on his valuation of \$28,000.00 for the two houses as of 1946. He explained that he had been told that the two houses were worth 100 gold napoleons in 1938.² He believed 100 gold napoleons to equal \$28,000.00 at that time. Claimant stated further that the first house was built by his grandfather and the second house was built in 1937/1938.

Based on a review of the evidentiary record as supplemented, including claimant's testimony at the hearing, the Commission finds that two houses at issue were destroyed in December 1976. This destruction had the effect of depriving the claimant of his interest in the property in question, and thus constituted an uncompensated expropriation by the Government of Albania. Accordingly, claimant is entitled to an award of compensation for the resulting loss. Claimant and third-party statements indicate that the houses were destroyed in December 1976. For lack of a more precise date, the Commission will deem the taking to have occurred as of December 1, 1976.

²This is also reflected on the claim form.

The claimant asserts that the two houses were worth \$28,000.00 in 1946, and \$58,650.00 when they were destroyed in 1976. However, claimant has submitted no supporting evidence to substantiate those values, which the Commission finds to be highly inflated and unreasonable. 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 and other similar cases, the Commission finds that the two houses in the vicinity of the village of Homesh had a value at the time of expropriation of approximately \$10,000.00 each or \$20,000.00.

The claimant has stated that his father died without a will in March 1976 in Albania and that the decedent was survived by his wife and at least seven children, including the claimant. Notwithstanding the local custom (as reflected in the Code of Leka), the Commission is aware that the 1928 Albanian Civil Code superseded the traditional local inheritance laws. Under the 1928 Code, in the absence of a will, property was divided between the surviving spouse and the children. The Commission therefore concludes that claimant inherited a one-eighth interest in the two houses in question. Thus, claimant is entitled to an award in the total principal amount of \$2,500.00.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that claimant is entitled to interest as part of his award, amounting to 6 percent simple interest per annum from the date of loss to April 18, 1995 (the effective date of the Settlement Agreement). Accordingly, claimant is entitled to an interest award of 110.3 percent of his principal award, or \$2,757.50.

The Commission therefore withdraws its denial of claimant's claim in its Proposed Decision 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).

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 double recovery in a claim. A copy of this decision therefore will be forwarded to the Albanian Government in due course.

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

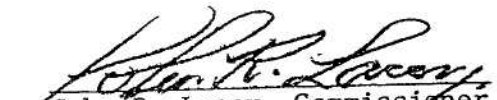
A W A R D

Claimant DULI DEMA is entitled to an award in the principal amount of Two Thousand Five Hundred Dollars (\$2,500.00), plus interest from December 1, 1976 to April 18, 1995, in the amount of Two Thousand Seven Hundred Fifty-Seven Dollars and Fifty Cents (\$2,757.50), for a total award of Five Thousand Two Hundred Fifty-Seven Dollars and Fifty Cents (\$5,257.50).

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

APR 15 1997


Delissa A. Ridgway, Chair


John R. Lacey, Commissioner

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 originally claimed for 4 hectares of forest and agricultural land which was assertedly confiscated by the Albanian government in 1946. At that time, according to claimant, the property was owned by his father, Mehmet Dema, an Albanian national. By Commission letter dated October 25, 1995, the claimant was advised that it did not appear that his claim would be eligible for compensation under the Agreement because the property in question was not owned by a citizen of the United States at the time of confiscation. In response to that letter the claimant contacted the Commission by telephone and stated that, while the property was confiscated in 1946, the

two houses located thereon were actually destroyed in 1976 and that at that time he was the owner. The claimant has established that he acquired United States nationality by naturalization on §552(b)(6) 1976.

The claimant now contends that his claim is only for the two houses assertedly demolished in 1976 or 1977. Claimant failed to mention any houses or other improvements when he described the property on the claim form, however.

Claimant further contends that he had not intended to claim for the agricultural and forest land which is described on his claim form. According to claimant, he had neither seen nor signed the claim form before his attorney completed and forwarded it to the Commission.* Claimant now states that he is seeking restitution of his land under domestic Albanian restitution procedures.

Claimant has submitted various documents in support of his claim. However, none of those documents clarify the threshold issue in this case. If the land on which the houses allegedly stood was confiscated in 1946 (as

*It is noted, however, that in his cover letter of August 7, 1995, forwarding his client's claim form to the Commission, the claimant's attorney stated that "Mr. Dema personally completed this form" before giving it to the attorney for typing and mailing.

claimant has stated), presumably the houses were confiscated at that time as well -- even if they were not demolished until 1976 or 1977. None of the evidence in this case suggests that claimant or his family exercised any control over the houses between 1946 (when the land was confiscated) and 1976-77 (when the houses were destroyed). Indeed, the affidavit submitted by claimant's sister states that the entire family left Albania at the end of World War II, to live in Macedonia/Yugoslavia.

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

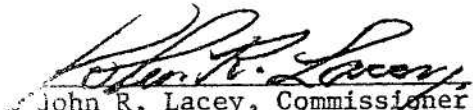
To date, claimant has not met his burden of proof to show that the confiscation of the houses occurred in 1976-77 (when they were assertedly demolished), not in 1946 (when the land where they sat was seized). Claimant concedes that, in 1946, the land and the houses belonged to his father, an Albanian national. Thus, based on the evidence now before it, the Commission cannot find that the property in question was owned by a United States national at the time of confiscation. The Commission therefore concludes that the claimant's claim 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 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) (1994).