

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

In the Matter of the Claim of	}	
	}	
	}	
ZINOVIA KOLJAKA	}	Claim No. ALB-058
SPIRO CONSTANTINO	}	
	}	Decision No. ALB-243(R)
	}	
	}	
Against the Government of Albania	}	

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the confiscation of real and personal property located in the District of Vlore.

In a Proposed Decision issued on January 28, 1997, which became final on March 25, 1997, the Commission denied this claim because it was not established either that the claimant¹ was living in the United States on April 18, 1995, or that the claim was owned by someone living in the United States for at least half the time between April 18, 1995, and the date the claim arose, as required in the Agreed Minute to the U.S.-Albania Claims Settlement Agreement. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding*

¹At that time, ZINOVIA KOLJAKA was the only claimant in this claim.

Claims, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement").

Subsequently, by letter dated April 3, 1997, ZINOVIA KOLJAKA sought to object to the denial of her claim. By Commission letter dated July 25, 1997, however, she was advised that the decision had already become final and that because there appeared to be no basis upon which to re-open the file, the Commission would take no further action on her claim.

On May 30, 2006, however, the Commission notified ZINOVIA KOLJAKA that in a Diplomatic Note dated April 27, 2006, the Albanian Minister of Foreign Affairs had advised the United States Embassy in Albania that it accepted and agreed with a proposal made by the United States Government on November 18, 2005, to delete the residency requirement from the Agreed Minute to the Settlement Agreement. As a result of this modification of the Settlement Agreement, the Commission reviewed the file in this claim again and requested certain additional information and documentation in support of the claim for confiscation of the subject property, which is said to have taken place in 1946.

To date, ZINOVIA KOLJAKA has not responded to the Commission's letter. However, on September 29, 2006, the Commission received a letter and

a new completed claim form from SPIRO CONSTANTINO, who is ZINOVIA KOLJAKA's brother and resides in Greece, stating a claim for the same exact property as that claimed for by his sister. Both claims being for the same exact property, the Commission added SPIRO CONSTANTINO as a co-claimant in this claim.

On October 6, 2006, the Commission wrote to SPIRO CONSTANTINO noting that it had not heard from his sister and requested certain additional information and documentation from him in support of the claim². By letter dated January 19, 2007, SPIRO CONSTANTINO submitted additional documentation, but stated in his letter that he had been in touch with the "American Embassy in Tirana" and had "ask[ed] them to help us get our property."

In one further letter to the claimants, dated February 28, 2007, the Commission advised them that it only has authority to award financial compensation for property confiscated by the former Communist regime in Albania; it does not have authority to intervene and assist claimants seeking to

²The claimants were advised that according to the Commission's decision on a claim filed in its General War Claims Program, their father had been awarded compensation for a house located in Vuno that was said to have been destroyed in 1944. The letter went on to state that in view of this payment, it would be up to the claimants to persuade the Commission that this property was totally rebuilt after its destruction in 1944, and was then confiscated in 1946, as they have asserted.

have their family's property returned to their possession. Claimants were asked to notify the Commission within thirty days whether they wished to proceed with their claim before the Commission. To date, however, the Commission has received no response to this letter.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. 509.5(b)(2006).

Based on its review of the record before it, the Commission finds that the claimants have not met the burden of proof in that they have failed to submit evidence to establish their ownership of the property which is the subject of this claim or the date and circumstances of its alleged confiscation, or to establish that the property had been rebuilt after its loss and destruction in 1944.

Moreover, as the Commission advised the claimants in its letter of February 28, 2007, it does not have the authority or means to assist them in obtaining the return of their family's property to their possession.

Accordingly, the Commission is constrained to conclude that this claim must again be and is hereby denied.

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

MAY 31 2007



Mauricio J. Tamargo, Chairman



Stephen C. King, 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. 509.5 (e) and (g) (2006).

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, assertedly a United States national by birth, seeks compensation for 1.31 hectares of property (planted in fig trees, olive trees, lemon trees, orange trees and tangerine trees), as well as livestock and a four-room house, said to have been expropriated by the Albanian government "when the communists came into power, when the agricultural cooperatives began to be formed." At that time, according to claimant, the property was owned by her father, Christopher Constantino, who was naturalized as a United States citizen in 1913 and who died in Greece in September 1978. The claimant further states that she inherited the right to claim for the property upon the death of her father.

Unfortunately, the information provided by claimant to date is not sufficient to establish her right to compensation. It appears that claimant is a dual U.S.-Albanian national, because her father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality even if she is also a U.S. national by birth.

Assuming that claimant is a dual United States-Albanian national, the Commission is constrained to apply the residency requirement in the Agreed Minute to the Settlement Agreement. It appears from the claim form that

claimant herself has never lived in the United States; and claimant has not stated whether her father lived in the United States for at least half of the time between April 18, 1995 and the date the property was expropriated.

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 in that she has failed to provide information to establish that her father lived in the United States for at least half the time between April 18, 1995 and the date the claim arose. In the absence of such evidence, the Commission is unable to find that the residency requirement in the Agreed Minute to the Settlement Agreement is satisfied.

Accordingly, while the Commission sympathizes with claimant for the loss of her family's property, it cannot find -- on the evidence submitted to date -- that this claim is 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.

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 MAR 25 1997

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