

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

In the Matter of the Claim of

TODI VANGJEL KAPBARDHI

Against the Government of Albania

Counsel for Claimant:

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Claim No. ALB-089

Decision No. ALB-273

Douglas O. Johnson, Esquire

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Tushemisht, 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 three hectares of land expropriated by the Albanian Government in 1946-47; a parcel of property expropriated in 1955; a parcel of property expropriated in 1959; groves of apple trees, date trees and plum trees expropriated in 1964; and a house, a cottage and the land on which they stood, expropriated in 1964. According to claimant, his father, Vangjel Miti (Dimitri) -- said to have been a U.S. citizen -- owned the property at the time of confiscation. Claimant further states that he inherited the right to claim for the property upon the death of his father in Albania in 1980 or 1981.

In support of his claim, claimant has submitted copies of various Albanian documents (with translations) substantiating his late father's ownership of various properties; copies of various Albanian documents (with translations) substantiating expropriations; and documentation of his status as the legal heir of his late father.

Unfortunately, for the reasons explained in the Commission's May 17, 1996 letter to claimant and discussed below, the Commission cannot consider most parts of this claim.

It appears that claimant 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. Because 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.

There is no indication in the record that claimant was living in the United States as of April 18, 1995. Moreover, claimant has stated that his late father left the United States in July 1974. Claimant's father therefore did not live in the United States for at least half of the time between April 18, 1995 and the expropriations in 1955, 1959 and 1964.

Because the owner of the claim was not domiciled in the United States as of April 18, 1995, and (referring to claimant's father, up to the date of his death, and to the claimant thereafter) was not domiciled in the United States "for at least half the period of time between when the property was taken" and April 18, 1995, the parts of the claim for the expropriations in 1955, 1959 and 1964 are not within the scope of the Settlement Agreement. Accordingly, while the Commission sympathizes with claimant for the loss of his family's property, the Commission must dismiss those parts of the claim for lack of jurisdiction.

To the extent that this Commission has no jurisdiction to consider the specified parts of this claim, claimant should be entitled to some form of relief for those losses through the Albanian Government. The Government of Albania is obligated by the Settlement Agreement to afford U.S. nationals the same rights it affords Albanian nationals to pursue and receive compensation, restitution or any other remedy available under the domestic restitution and compensation procedures established by the Albanian Government. Settlement Agreement, Article 6. The Commission's May 17, 1996 letter advised claimant to contact the Albanian authorities directly, if he wishes to pursue such a claim.

Claimant's claim for three hectares of property expropriated in 1946-47 remains.* The Commission does have jurisdiction to consider this part of the claim because evidence in the record indicates that claimant's father lived in the United States for at least half the approximately 49 years between April 18, 1995 and the 1946-47 expropriation.

*A review of the Commission's War Claims Program discloses that claimant's father had filed a claim in that program and had established that he was naturalized as a U.S. citizen on March 14, 1927, which is prior to the birth of claimant in 1934. *Claim of VANGEL DIMITRI*, Claim No. W-2904, Decision No. W-18004 (1966).

Based on the evidence in the record, the Commission finds that prior to 1947, claimant's father was the owner of 30 *dynyms* (3 hectares, or about 7.41 acres) of arable land located in the village of Tushemisht, District of Pogradec.

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 to the legal owner. 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.

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, had the effect of depriving the claimant's father of his three hectares of property, and thereby constituted an uncompensated expropriation by the Government of Albania. The documents submitted by the claimant indicate that confiscation of this property took place in 1947. In the absence of a more precise date, the Commission determines that the property at issue was confiscated as of January 1, 1947.

The claimant has not asserted a value for his father's property as of 1947. However, 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 the claimant's father's property consisting of 30 dynyms or 3 hectares (7.41 acres) of agricultural land located in the District of Pogradec had a value at the time of expropriation of approximately \$200 per acre, or \$1,500.00.

The Commission notes that the claimant has provided a copy of a certificate of inheritance dated November 25, 1993 identifying him as his father's sole heir at the time of his father's death which, in the Albanian language version, is given as January 2, 1981. No date of death is given in the English translation. In prior correspondence with the Commission, the claimant has stated that his father died on January 2, 1980. Other documents in the file indicate that claimant's mother survived his father and died approximately one year later. The Commission finds, therefore, that this claim, owned by the late Vangjel Dimitri, who was survived by his wife and the claimant, devolved upon his death in 1980 or 1981, in equal shares to his wife and the claimant, in accordance with the inheritance laws of Albania as found in the Civil Code of April 2, 1928.

To the extent that claimant's claim is based on his inheritance of his mother's one-half interest in his father's claim upon her death, the Commission lacks jurisdiction because there is no evidence that claimant's mother ever acquired U.S. nationality. Accordingly, that part of the claim was not continuously owned by a U.S. national up to April 18, 1995, the effective date of the Settlement Agreement, and may not be considered by the Commission. However, claimant should be entitled to pursue that part of his claim through the restitution and compensation program being administered by the Government of Albania.

Accordingly, the Commission finds the claimant entitled to an award in the principal amount of \$750.00 as compensation for his one-half interest in the claim for the loss of his father's property, dating from January 1, 1947.

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 entitled to an interest award of 289.8 percent of his principal award, or \$2,173.50.

Under the terms of the U.S.-Albania Settlement Agreement, the Commission will advise the Albanian authorities of the issuance of this decision so as to prevent any double recovery.

The Commission therefore 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 ICSEA (22 U.S.C. §§1624, 1626, and 1627).

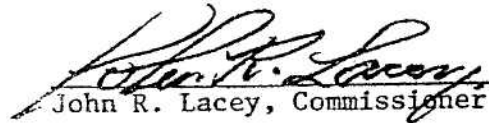
AWARD

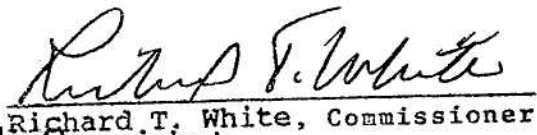
Claimant TODI VANGJEL KAPBARDHI is entitled to an award in the principal amount of Seven Hundred Fifty Dollars (\$750.00), plus interest from January 1, 1947, to April 18, 1995, in the amount of Two Thousand One Hundred Seventy-Three Dollars and Fifty Cents (\$2,173.50), for a total award of Two Thousand Nine Hundred Twenty-Three Dollars and Fifty Cents (\$2,923.50).

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

FEB 24 1997


Delissa M. 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).