

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

In the Matter of the Claim of

KLEMENTINA PANDO SEVO
MARIANTHI PANDO FILI

} Claim No. ALB-137

} Claim No. ALB-138

} Decision No. ALB-252

Against the Government of Albania

Hearing on the Record held on September 18, 1998.

FINAL DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Barmashi and Erseka, in the District of Kolonja.

By Proposed Decision entered on January 28, 1997, the Commission denied these claims on the ground that the property located in Erseka was owned by claimants' mother, an Albanian national, at the time of loss, and on the further ground that, although the property located in Barmashi was owned by their father, a citizen of the United States, at the time of loss, the claimants did not satisfy the residency requirement in the Agreed Minute to the Settlement Agreement because they had failed to submit supporting evidence to establish

either that they were living in the United States on April 18, 1995, or that the claims were owned by someone living in the United States for at least half the time between April 18, 1995, and the date the claims arose.

By letter postmarked March 11, 1997, claimants stated objection to the Commission's Proposed Decision asserting that their father had lived in the United States until December 1973, and they submitted evidence to establish his residence in the United States at that time. Because claimants have not requested an oral hearing, the Commission issues this Final Decision in a hearing on the record, based on its de novo review of the evidence submitted in support of their claim.

Claimants here, all United States nationals since birth, seek compensation for 3.36 hectares of agricultural land in Barmashi, said to have been confiscated by the Albanian government in 1950.¹ According to the claimants, the Barmashi property was owned at the time by their father, Pando Vangel Jorgaq (also known as Pando Vangel George), a United States citizen at the time. Claimants

¹Claimants apparently do not object to the Proposed Decision denying the portion of the claim relating to property in Erseka owned by their mother, an Albanian national.

further state that they inherited the right to claim for the Barmashi property upon the death of their father, a widower, in 1986.

In support of their claims, claimants have submitted a Certificate dated October 25, 1995, from the District Council of Kolonja which indicates that in 1946, their father, Pando Vangeli Jorgaq, was the owner of 3.36 hectares of farmland located in the village of Barmashi.

Research conducted by the Commission's independent consultant in the archives of Erseka confirms the authenticity of the documents submitted by the claimants reflecting their father's ownership of 3.36 hectares of agricultural land in Barmashi.² Evidence in the Commission's War Claims program establishes that claimants' father acquired United States nationality by naturalization on June 14, 1926, and claimants have established that they were born in Albania as United States citizens Personally Identifiable Information Redacted under 5 U.S.C. §552(b)(6), respectively.

²The Commission's consultant also informed the Commission that although File No. 172 has been opened in claimants' name in the Commission for the Return and Compensation of Property to the Ex-Owners of the Erseka District, no decision has been made so far. By letter dated August 18, 1998, claimants have informed the Commission that they do not wish to pursue their claim in Albania.

Based on the evidence in the record, the Commission finds that prior to 1950, the claimants' father was the owner of 3.36 hectares or 8.3 acres of farmland located in the village of Barmashi, District of Kolonja.

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, GZ 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 claimants' statements and the entirety of the record, the Commission determines that 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 claimants' late father of his property, thus constituting an uncompensated expropriation by the Government of Albania. The claimants have stated that their father's property was confiscated in 1950. In the absence of a more precise date, the Commission will deem the confiscation to have occurred as of January 1, 1950.

The claimants have not asserted a value for the property in Barmashi that is the subject of their claims. 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 property in question, located in the village of Barmashi, District of Kolonja, had a value at the time of expropriation of approximately \$300 per acre, or \$2,500.00.

The claimants have established that their father lived in the United States until December 1973 and died in Albania in 1986. They have also established that they are their father's only heirs. The Commission therefore finds that this claim, owned by the late Pando Vangel Jorgaq, passed upon his death to the claimants, his two children. Accordingly, the claimants are each entitled to an award in the principal amount of \$1,250.00 for their respective one-half interests in their father's claim.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that claimants are entitled to interest as part of their awards, 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, each claimant is entitled to an interest award of 265.8 percent of her principal award, or \$3,322.50.

The Commission therefore withdraws its denial of these claims set forth in the Proposed Decision, and enters the awards 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 International Claims Settlement Act (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 these claims.

A W A R D S

Claimant KLEMENTINA PANDO SEVO is entitled to an award in the principal amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00), plus interest from January 1, 1950, to April 18, 1995, in the amount of Three Thousand Three Hundred Twenty-Two Dollars and Fifty Cents (\$3,322.50), for

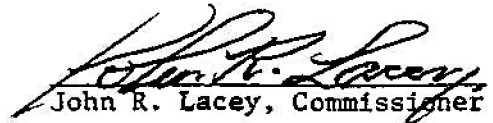
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a total award of Four Thousand Five Hundred Seventy-Two Dollars and Fifty Cents (\$4,572.50).

Claimant MARIANTHI PANDO FILI is entitled to an award in the principal amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00), plus interest from January 1, 1950, to April 18, 1995, in the amount of Three Thousand Three Hundred Twenty-Two Dollars and Fifty Cents (\$3,322.50), for a total award of Four Thousand Five Hundred Seventy-Two Dollars and Fifty Cents (\$4,572.50).

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


John R. Lacey, Commissioner

SEP 18 1998


Richard T. White, Commissioner

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PROPOSED DECISION

These claims against the Government of Albania are based upon the alleged confiscation of real property located in Barmashi and Erseka, in the District of Kolonja.

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.

Claimants here, assertedly United States nationals by birth, seek compensation for 3.360 hectares of agricultural land in Barmashi, as well as 296 square meters of land and a building and shops located in Erseka. Claimants state that the Barmashi property was confiscated by the Albanian government in 1950, and the Erseka properties were confiscated in 1954. According to claimants, the Barmashi property was owned at the time by claimants' father, Pando Vangel Jorgaq (said to have been naturalized as a U.S. citizen in 1924); and the Erseka properties were owned at the time by claimants' mother, Stefane Jorgaq (an Albanian citizen). Claimants further indicate that their father inherited the rights to the Erseka properties upon the death of their mother in 1955, and that they inherited the right to claim for the Barmashi and Erseka properties upon the death of their father in 1986.

Unfortunately, the information provided by claimants to date is not sufficient to establish their right to compensation, for the reasons explained in the Commission's May 17, 1996 letters to claimants and discussed below.

Claimants' claim for the Erseka properties must be denied on the ground that those properties were not owned by a United States national at the time of expropriation. The ICSA mandates that the Commission decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICSA § 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).

The Commission finds that, at the time the Erseka properties were assertedly expropriated by the Albanian authorities, they were not owned by a national of the United States. Accordingly, while the Commission sympathizes with claimants for the loss of those properties, that part of the claim is not compensable under the terms of the Settlement Agreement. It therefore must be and is hereby denied.

Claimants fare no better on their claim for the Barmashi property. It appears that claimants are dual U.S.-Albanian nationals, because their father was an Albanian citizen. Under Albanian law, claimants retain Albanian nationality notwithstanding their U.S. nationality by birth.

Because claimants are dual United States-Albanian nationals, the Commission is constrained to apply the residency requirement in the Agreed Minute to the Settlement Agreement. There is no evidence that either claimant lived in the United States on April 18, 1995, the effective date of the Settlement Agreement; indeed, there is no evidence that either claimant has ever lived in the United States. Nor is there any evidence that the claim for the Barmashi property was owned by someone living in the United States for at least half the approximately 45 years between 1950 (when the property was expropriated) and April 1995 (the effective date of the Settlement Agreement).

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 claimants here have not met the burden of proof to prove either that they were 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 1950 and April 1995. 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.

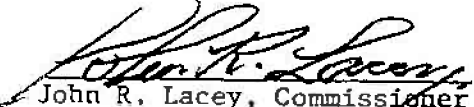
Accordingly, while the Commission also sympathizes with claimants for the loss of the Barmashi property, it cannot find -- on the evidence submitted to date -- that that part of the claim is compensable under the terms of the Settlement Agreement. Therefore, the claim for the Barmashi property also must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of these claims.

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

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).