

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

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| In the Matter of the Claim of | } | |
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| SELAHEDIN VELAJ | } | Claim No. ALB-328 |
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| | } | Decision No. ALB-311 |
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| | } | |
| Against the Government of Albania | } | |
| | } | |

Oral Hearing held on March 2, 2005.

FINAL DECISION

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

By Proposed Decision entered on December 30, 2004, the Commission denied claimant's claim on the ground that when the property in question was confiscated by the Albanian government, it was not owned by a national of the United States. Nor was there a basis for a finding that the failure of the Albanian judicial system to effect restoration of possession of the subject property to claimant's family constituted a taking of their ownership rights during the period ending April 18, 1995, the period of time covered by the U.S.-Albanian claims settlement agreement.

By letter dated January 12, 2005, claimant stated objection to the Commission's Proposed Decision and requested an oral hearing which was scheduled for March 2, 2005.

At the oral hearing, the claimant appeared on his own behalf and submitted certain documents for the Commission's review.¹ Claimant argued that his father's 1939/1940 transfer of property to claimant's brother was, in fact, done "for the benefit of himself and the other four children *per stirpes*...". In support of this statement, claimant has, subsequent to the oral hearing, submitted an affidavit to this effect by three members of his family. Claimant thus contends that he owned a one-fifth interest in the subject property, dating from 1939 or 1940.

Also at the hearing, claimant stated that he acquired United States nationality by naturalization on July 14, 1958, but he requested the Commission to consider the date of March 11, 1954, the date of his Declaration of Intention to become a United States citizen, as the date that he acquired United States nationality. Claimant also argued that although the Velaj family property, including the house and the surrounding 447 square meters of land "was sequestered by the communist regime" in 1951, it was "re-sequestered" by one

¹These documents were marked as Oral Hearing Exhibits 1 through 7 and made part of the record.

Sihat Gjika, "a high positioned officer of the regime" who contended that he bought the property in question in 1957 from claimant's father.²

Although claimant sought to argue that the "re-sequestration" took place in 1957, in response to questions from the Commission, the claimant confirmed that from 1951 on, he and his family had no control over the subject land or the house. This assertion had previously been made by the claimant and noted in the Proposed Decision³.

Subsequent to the oral hearing, and in further support of his objection, claimant has also submitted a copy of a letter from the Embassy of Albania which refers to a "Law 9235" dated July 29, 2004 entitled "on the Restitution and Compensation of Property". However, he has not explained how this law provides any new basis for favorable action on his claim.⁴

²This transaction was found to be null and void by the Chief Justice of the Supreme Court of Albania who stated that Ahmet Velaj, claimant's father, did not have title to the property in question at the time of the alleged sale as that property belonged to the state in accordance with Action No. 240 dated April 28, 1951.

³According to the claimant, after 1951, the Velaj family property including the residence was "converted into an agricultural school and a vacation center for children of the communist leaders." The claimant has stated that, at that point, the family property became "state owned" and his parents were later "evicted from the residence and forced to live in barracks (sic) used to keep animals."

⁴The Commission has now obtained a full copy of the 2004 law. This law states, in Article 2, that anyone whose property was "expropriated has the right to seek . . . the right of ownership if it was taken away from him according to . . . criminal decisions of the courts or was taken in other wrongful manner by the state from the date of 29 November 1944, either for the restitution of the property or compensation for it." This would appear to provide the claimant an additional basis for pursuing his claim through the Albanian legal system.

As for claimant's contention that he should be deemed to have become a United States national in 1954, when he declared his intention to be naturalized as a United States citizen, the Commission is barred from making such a determination. The International Claims Settlement Act of 1949 expressly provides that a "United States national" is defined as a "citizen of the United States," and "does not include aliens," (22 U.S.C. 1621(c)) and the Immigration and Nationality Act specifies that "[no] declaration of intention [to become a citizen of the United States shall] be regarded as conferring or having conferred upon any . . . alien United States citizenship." (8 U.S.C. 1445(f)).

In summary, having carefully reviewed the record as supplemented, having noted claimant's testimony at the hearing, and taking into account the evidence submitted and the testimony offered, the Commission is constrained to conclude that the property in question was owned as of 1951 by one or more Albanian nationals and that the property was confiscated by the Albanian government on or about April 28, 1951. Whether or not a "re-sequestration" of the property took place in 1957 is not relevant to the Commission's

determination in this case, since claimant did not become a United States national until 1958. Consequently, when the property in question was confiscated by the Albanian government, it was not owned by a national of the United States.

Finally, the Commission does not reach the issue as to the effect of the ruling of the Albanian Supreme Court. As noted previously, the court decision that found him and his family entitled to rightful ownership of the property was not issued until September 1995, which is after the time period ending April 18, 1995, covered by the Settlement Agreement.

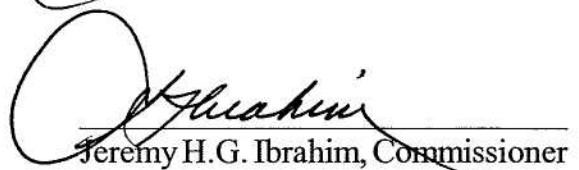
Accordingly, while the Commission sympathizes with the claimant for the loss of his family's property, it is constrained to conclude that the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

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

APR 07 2005



Mauricio J. Tamargo, Chairman



Jeremy H.G. Ibrahim, Commissioner

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PROPOSED DECISION

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

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) (2002).

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 has asserted that the property which is the subject of the claim was confiscated by the Albanian government in 1951. He further asserts that the "Velaj family has resided for over 100 years at the property situated in the suburbs of the city of Vlora called 'Ujiftot.' At the time of the confiscation, claimant states that the Velaj family consisted of his father and mother, Ahmet and Feruze Velaj, and five children, all Albanian citizens. The claimant explains further that in 1940, the oldest son, Hulusi, had built a new house on the property around which he planted 400 citrus trees that

he had imported from Italy. In order to obtain a mortgage, the bank required the property deed as collateral. In order to accomplish this, claimant states that his father transferred title to the property, consisting of a total of 37,000 square meters, to Hulusi, who in turn assigned it to the bank. Claimant asserts that his father's transfer of the property was done "for the benefit of himself and the other four children *per stirpes*..."

Several years later, the bank, having been paid in full, is said to have returned the deed to Hulusi, who kept the title in his name. However, claimant states that subsequently, on October 8, 1951, the Albanian Communist government condemned Hulusi Velaj to death as "an enemy of the people for having collaborated with the West and an agent of the C.I.A." and confiscated all his property. The claimant further states that the Velaj family property including the residence was then "converted into an agricultural school and a vacation center for children of the communist leaders." According to the claimant, at that point the family property became "state owned" and his parents were later "evicted from the residence and forced to live in barracks (sic) used to keep animals."

In 1957, according to the claimant, a high official of the Communist regime, Sihat Gjika, approached claimant's father for the purpose of transferring title to the Velaj "residence and 447 sq. meters of land surrounding the house." Claimant's father, being old, ill, alone and scared, is said to have gone ahead with the transfer in favor of Sihat Gjika, even though he knew that the property had been confiscated in 1951. It is unclear whether any money was paid as part of this transaction. According to the claimant, Sihat Gjika claims to have paid "400,000 old Leke" to claimant's father, but claimant disputes that any monies were paid.¹ Claimant further alleges that shortly after this transaction, Sihat Gjika then sold the property to the Albanian government for 470,000 Leke and later on the Vlore authorities "gave him a parcel of land in the center of the city".

In 1990, the claimant states that he and his family sued Sihat Gjika for the return of the house and the 447 meters of land, and that the circuit court of Vlora voted in favor of the Velaj family. According to a document in the file, this court

¹ Claimant asserts that at that time, 400,000 old Leke would have been equal to U.S. \$200,000, based on an exchange rate of 2 old Leke to \$1.00. However, the Commission has previously determined that in the 1950's, the exchange rate was 50 Leke to \$1.00. See, e.g., Claims of ELIZABETH LEKA and DIANA REPISHTI, Claim Nos. ALB-093 and ALB-185, Decision No. ALB-219 (1997).

decision was issued on May 9, 1995.² However, Sihat Gjika did not vacate the premises, and the case was taken to the Appeals Court in Tirana which also voted in favor of the Velaj family. Documents in the file indicate that this decision was issued on June 16, 1995. Despite these decisions, claimant asserts that Sihat Gjika appealed to the Supreme Court and after payment of bribes, ultimately obtained a decision in his favor. This decision was issued on September 29, 1995.

In support of his claim, the claimant has submitted documents relating to his brother's execution, ownership of the family's property and their lawsuit. In addition, he has submitted a Declaration of Intention to become a United States citizen dated March 11, 1954. Claimant has stated previously that he obtained United States citizenship sometime in 1960, but it is noted that he has submitted no documentation to support this statement.

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

²Claimant's "Exhibit III" recites a date of January 9, 1995. However, his "Exhibit XIV" recites in two places that the date was May 9, 1995.

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).

Based on the record before it, the Commission finds that in 1951, when the property in question was confiscated by the Albanian government, it was not owned by a national of the United States. Nor is there a basis for a finding that the failure of the Albanian judicial system to effect restoration of possession of the subject property to claimant's family constituted a taking of their ownership

rights during the period ending April 18, 1995, covered by the Settlement Agreement.

Accordingly, while the Commission sympathizes with the claimant for the loss of his family's property, it must conclude that his claim is not 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

DEC 30 2004



Mauricio J. Tamargo, Chairman



Jeremy H.G. Ibrahim, 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) (2003).