

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 herein, VIKI KOTELLY SPEAR, seeks compensation for the alleged expropriation by the Government of Albania in 1946 of various parcels of real property. The claimant asserts that, at the time of confiscation, the property was owned by her late husband, S. Theodore Kotelly (also known as Sotir Kotelly and Sam Dhori Kotelly), who became a United States national in 1926. According to claimant, her late husband inherited the property upon the death of his father, Theodore Jovan Kotelly, in 1946.¹ In support of her claim,

¹Theodore Jovan Kotelly was also known as Dhori Jovan Kotelli, Theodor Joanu Kote and Theodor Joani Petri.

the claimant has submitted a Certificate of Inheritance, several affidavits and documents of ownership of the Kotelly family.

The Commission first notes that the claimant, as the Administratrix of the Estate of Sotir Kotelly, Deceased, filed a claim in the Commission's General War Claims Program, conducted from July 15, 1963 to May 17, 1967. In that program, the Commission determined that claimant's late husband, who died in the State of Michigan on November 18, 1961, acquired United States nationality by naturalization on June 2, 1926, and that claimant VIKI KOTELLI SPEAR acquired United States nationality by naturalization on September 2, 1941. The Commission there made an award of \$5,050.00 for the benefit of the claimant and her two sons for their interests in property consisting of a two-story house, stable, barn, household furnishings, fruit trees and vineyard that was destroyed or lost as a result of German military operations in January 1944. *Claim of VIKI KOTELLY, ADMINISTRATOR OF THE ESTATE OF SOTIR KOTELLY, DECEASED*, Claim No. W-11456, Decision No. W-16358 (1966). Evidence in the record establishes that claimant's father-in-law purchased four parcels of land in the vicinity of Dishnice between 1900 and 1922 totalling 16,000 square meters. In addition, the evidence indicates that he purchased a one-half interest in two parcels of land measuring 4,000 and 6,000 square meters, for a total of

21,000 square meters. Evidence in the record also indicates that claimant's mother-in-law, Thomaidha Kotelli, was the record owner of 2,000 square meters of land in the village of Dishnice.

In an affidavit dated May 7, 1996, the claimant's sister-in-law, Jorgjia Kotelli Shahini, states that her father, Theodore Jovan Kotelli, died in Albania on June 20, 1946. At that time, Theodore Jovan Kotelli was survived by his wife, Thomaidha Kotelli and two offspring, claimant's late husband, S. Theodore Kotelly, and a daughter, Jorgjia Kotelli. A younger son had died in 1940. Mrs. Shahini avers further that her father died without a will and at his death the ownership of the "farm land" passed to her mother, her brother and herself. According to Mrs. Shahini, the Albanian government confiscated the land sometime in 1946 after the death of her father. She also states that her mother died in 1949.

Based upon the foregoing, the Commission finds that the properties which are the subject of this claim, owned by the late Theodore Jovan Kotelli, who was survived by his widow, by his son, claimant's late husband, and by his daughter, devolved upon his death on June 20, 1946, in accordance with the inheritance laws of Albania as found in the Civil Code of April 2, 1928, in equal shares to his widow and to his son and daughter.

As previously noted, the record also discloses that claimant's husband, S. Theodore Kotelly, died intestate as a resident of the State of Michigan on November 18, 1961. Under the law of intestate succession of Michigan, his surviving spouse inherited a one-third interest in the estate of her husband and his two sons each also inherited a one-third interest. However, claimant's two sons have relinquished their rights to the claim in favor of their mother.² Accordingly, the claimant, as the surviving spouse of S. Theodore Kotelly, is entitled to claim for the loss of his one-third interest in the properties owned by Theodore Jovan Kotelli.

Based on a review of the documents submitted by the claimant, the Commission finds that prior to 1946, claimant's father-in-law was the owner of various parcels of agricultural land totalling 21,000 square meters located in the vicinity of Dishnice, District of Korce -- parcels located in or identified as "Malavec," "Mihalica's Field," and "Dishnica village" -- and that he had a one-half interest in two properties located in "Barc village" and in the vicinity of Dishnice.

²According to the claimant and her attorney, John T. Kotelly, a son of the claimant, John T. Kotelly and his brother, Thomas Ronald Kotelly, have relinquished "their rights in the property to their mother..."

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, GO 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 the entire record, the Commission determines that the 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 the claimant's husband of his agricultural land, and thereby constituted an uncompensated expropriation by the Government of Albania. Accordingly, claimant is entitled to an award of compensation for the resulting loss. In this case, claimant has stated that the property was confiscated sometime in 1946, after the death on June 20, 1946 of her father-in-law. For lack of a precise date, the Commission will deem the taking to have occurred as of January 1, 1947 which is consistent with Commission's findings in other cases that collectivization in the Dishnice area took place in late 1946 and early 1947.³

³See, e.g., Claim of WILLIAM VASIL, Against the Government of Albania, Claim No. ALB-022, Decision No. ALB-137 (1997).

The claimant has not asserted a specific value for the properties. However, based on the prices reflected in the purchase documents, together with its study of the values of various kinds of real property in Albania before and during World War II and thereafter, the Commission finds that the property in question -- the equivalent of 2.1 hectares (5.2 acres) had a value at the time of expropriation of \$1,500.00. Accordingly, claimant is entitled to an award in the principal amount of \$500.00 as compensation for her husband's one-third interest in the claim for the loss of the property in question, dating from January 1, 1947.

The Commission notes that the claimant has not asserted nor submitted evidence of the U.S. nationality of anyone other than herself, her two sons and her late husband. To the extent, therefore, that claimant's claim is also based on her late husband's inheritance in 1949 of some interest in the claim for the loss of property titled individually in the name of his mother, Thomaidha Kotelli, or on his inheritance of a portion of his mother's interest in the estate of Theodore Jovan Kotelli, the Commission lacks jurisdiction over that portion of the claim because there is no evidence that Thomaidha Kotelli was ever a national of the United States.

The ICSA mandates that the Commission decide claims in accordance with, *inter alia*, "[the 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 EUGENIC 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).

In order to be eligible, a claimant must establish not only that the claim was owned by a United States national at the time of confiscation but must also establish that the claim has been continuously held by one or more United States nationals from the date of the confiscation until April 18, 1995, the effective date of the Settlement Agreement. This requirement is well established in the law of international claims, and has long been applied by both this Commission and its predecessor, the International Claims Commission. *See, e.g., Claim of PETER D. JANUS against Yugoslavia*, Claim No. Y-1721, Decision No. Y-0377 (1954); *Claim of MIA FOSTER against Czechoslovakia*, Claim No. CZ-2696, Decision No. CZ-0001 (1960). Accordingly, the portion of the claim based on inheritance from Thomaidha Kotelli is denied.

Since the Commission lacks jurisdiction over a part of this case, claimant should be entitled to pursue that part of her claim through the restitution and compensation program being administered by the Government of Albania (if it is not too late to file a claim there) if she so wishes. Indeed, the Settlement Agreement between the U.S. and Albania requires that the Government of Albania afford such U.S. nationals the same rights that it affords Albanian nationals to pursue and receive compensation, restitution or any other remedy

available under the domestic restitution and compensation procedures established by that government.

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 her 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 291.8 percent of her principal award, or \$1,459.00.

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 any double recovery. A copy of this decision thus will be forwarded to the Albanian authorities in due course.

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 ICSCA (22 U.S.C. §§1624, 1626, and 1627).

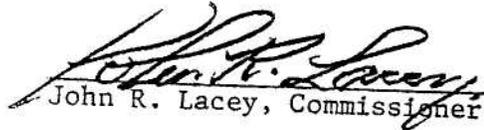
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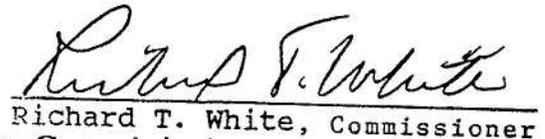
Claimant, VIKI KOTELLY SPEAR, is entitled to an award in the principal amount of Five Hundred Dollars (\$500.00), plus interest from January 1, 1947, to April 18, 1995, in the amount of One Thousand Four Hundred Fifty-Nine Dollars (\$1,459.00), for a total award of One Thousand Nine Hundred Fifty-Nine Dollars (\$1,959.00).

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


Delissa K. Ridgway, Chair

JAN 28 1997


John R. Lacey, Commissioner


Richard T. White, Commissioner

This decision was entered as the Commission's
Final Decision on MAR 25 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).