

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

In the Matter of the Claim of

LIRIJE KAPBARDHI MENGRI

Against the Government of Albania

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} Claim No. ALB-288

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} Decision No. ALB-262(R)

AMENDED PROPOSED DECISION

This claim against the Government of Albania is based upon the confiscation of real property located in Tushemisht, in the District of Pogradec.

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

By letter dated June 24, 2006, the Commission notified the claimant that in a Diplomatic Note dated April 27, 2006, the Albanian Minister of Foreign Affairs 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. Based on this modification of the Settlement Agreement, the Commission concludes that claimant is now entitled to consideration of her claim on the merits. Accordingly, the previous entry of the decision in this claim is now withdrawn.

Claimant seeks compensation for 14,416 square meters (approximately 1.44 hectares) of land said to have been expropriated by the Albanian government in the agrarian reform of 1946, and a two-story stone house said to have been expropriated in 1975. According to the claimant, the properties were owned by her father, Nikolla (Koli) Kapbardhi (Dimitri) (also known as Koli Miti), who died in 1966.

By undated letters received at the Commission on July 31, 2006, and April 10, 2007, claimant submitted evidence of her United States nationality, copies of her parents' death certificates, a Certificate of Inheritance, a Family Certificate and certain drawings relating to the house and the agricultural land for which she claims.

As a preliminary matter, the Commission notes that evidence has been submitted to establish that claimant's father died in Wisconsin in 1966 and that he died without a will. Accordingly, the Commission finds that the descent and

distribution laws of the State of Wisconsin apply to the ownership of this claim. Under those laws, claimant and her mother each succeeded to one half of the late Nikolla Dimitri's estate.*

The documentation and other evidence submitted by the claimant indicates that her father, Nikolla Dimitri, a United States citizen, had owned a total of 14,416 square meters (approximately 3.6 acres) of farmland and garden plots in the vicinity of the village of Tushemisht, District of Pogradec, and that this property was confiscated from him by the Albanian Communist regime in 1947, when it established the agricultural collective in that area. However, except for copies of some drawings, claimant has not submitted any evidence as to the existence or ownership by her father or herself of a house in Albania. On the contrary, the "Certification" submitted by the claimant states that it was not possible to verify "the nationalisation of the house of Koli Miti Kapbardhi in the village Tushemisht for the years 1972-1974."

Based on the evidence submitted, and having reviewed the verification report provided by its independent consultant in Albania, the Commission finds that claimant's father, a United States national, owned 14,416 square meters of farmland in the vicinity of the village of Tushemisht, District of Pogradec.

*Wis. Stat. Section 318.01 (as amended 1943)

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 3.5 acres of property, and thereby constituted an uncompensated expropriation by the Government of Albania. In the absence of a precise date, the taking will be deemed to have occurred as of January 1, 1947. See, *Claim of TODI VANGJEL KAPBARDHI*, Claim No. ALB-089, Decision No. ALB-273 (1997).

The Commission notes that the claimant has stated on her claim form that 150 square meters of the land has already been returned to her. Claimant also has asserted that the land had a value of \$16.00 per square meter. However, she has provided no evidence or source of information to support this figure. Based on comparisons with similar property for which it has granted awards in other claims, the Commission finds that the land in question consisting of meadows and garden plots would have had a value of \$300 per acre, or \$1,050.00, at the time of loss.

The Commission finds, therefore, that this claim, owned by the late Nikolla Dimitri, who was survived by his wife and the claimant, devolved upon his death in the state of Wisconsin in 1966 to his wife and the claimant in equal shares. Accordingly, the Commission finds the claimant entitled to an award in the principal amount of \$525.00 as compensation for her one-half interest in the claim for the loss of her 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 her award, amount 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 her principal award, or \$1,521.45.

Claimant apparently believes that she is also entitled to claim as the heir of her mother, who died in Albania in 1996. However, the claimant has submitted no information indicating that her mother ever acquired United States nationality. The Commission, therefore, must conclude that it lacks jurisdiction to consider such a claim. On the other hand, claimant should be entitled to pursue that part of her claim through the restitution and compensation program being administered by the Government of Albania.

With regard to claimant's claim for a two-story house/building and its asserted confiscation in 1975, it is again noted that the claimant has submitted no documentary evidence in support of such claim.

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 claimant has not met the burden of proof in that she has failed to submit evidence sufficient to establish the existence, ownership or location of the two-story building which is the subject of this portion of the claim, or the date and circumstances of its alleged confiscation. Accordingly, this portion of the claim is denied.

Under the terms of the U.S.-Albania 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 government in due course.

Accordingly, the Commission 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 International Claims Settlement Act (22 U.S.C. §§1624, 1626, and 1627).

A W A R D

Claimant LIRIJE KAPBARDHI MENGRI is entitled to an award in the principal amount of Five Hundred Twenty-Five Dollars (\$525.00), plus interest from January 1, 1947 , to April 18, 1995, in the amount of One Thousand Five Hundred Twenty-One Dollars and Forty-Five Cents (\$1,521.45), for a total of Two Thousand Forty-Six Dollars and Forty-Five Cents (\$2,046.45).

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

NOV 29 2007


Mauricio J. Tamargo, Chairman

This decision was entered as the Commission's
Final Decision on JAN 25 2008


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) (2007).

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 1.4 hectares of land said to have been expropriated by the Albanian government in the agrarian reform of 1946, and a two-story stone house said to have ^{been} expropriated in 1975. At those times, according to claimant, the properties were owned by her father, Nikolla (Koli) Kaphardhi (Dimitri), who was naturalized as a United States citizen. The claimant states that she inherited the right to claim for the properties 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 notwithstanding her 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 evidence that claimant was living in the United States on April 18, 1995 (the effective date of the Settlement Agreement). Nor is there any evidence that the owner of the claim

(claimant's father, then -- after his death -- claimant) lived in the United States for at least half the time between the dates of the expropriations (1946 and 1975) and April 1995.

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).

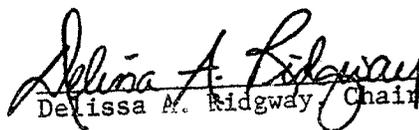
The Commission finds that claimant here has not met the burden of proof to establish either that she was living in the United States on April 18, 1995, or that the owner of the claim lived in the United States for at least half the time between April 18, 1995 and the dates on which the claim arose. In 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.

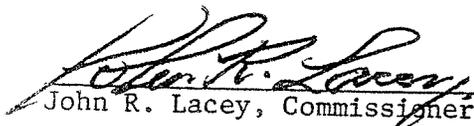
Accordingly, while the Commission sympathizes with claimant for the loss of her family's properties, it cannot find -- on the evidence submitted to date -- that this claim is compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

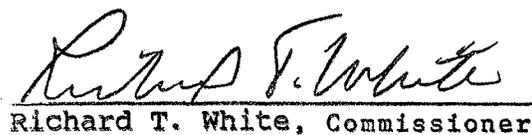
The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

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

JAN 28 1997


Delissa M. 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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