

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
BARDHUL RUSHA	}	Claim No. ALB-345
ARISTOTEL RUSHA	}	
	}	Decision No. ALB-325
	}	
	}	
Against the Government of Albania	}	

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property in the vicinity of Përmet.

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) (2006).

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 claimants assert that the property which is the subject of this claim, measuring 26,000 square meters and located in the vicinity of Përmet, was purchased by their parents, Gogo and Dafa Rusha, in 1934 for 15 napoleon gold coins per square meter. Further, they state that their father, Gogo Rusha, died intestate in the State of New York in 1939.¹ It is asserted that the property was inherited by BARDHUL RUSHA and ARISTOTEL RUSHA, claimants herein, United States nationals by virtue of their naturalization in 1936, and by their mother, Dafa Rusha, an Albanian national. Claimants further assert that they, along with their mother, were the owners of the property on the date of confiscation, which they assert to have been sometime in 1946.

With regard to the ownership and loss of the property, the Commission's independent consultant in Albania has verified the information in the document of ownership from the Office for Administration and Protection of the Land (OAPL) of the District Council of Përmet provided by the claimants. These documents certify that, prior to confiscation, the property claimed for herein was jointly owned by Gogo and

¹ The claimants have not provided a death certificate as they have been unable to locate a copy, but claimants did provide a sworn statement averring that 1939 was the year of Gogo Rusha's death.

Dafa Rusha. In addition, the Commission's independent consultant confirmed with the Agency for Restitution and Compensation of Properties in Albania that compensation has not been provided to the claimants for the property claimed herein.

Accordingly, based on the evidence before it, the Commission finds that BARDHUL RUSHA, ARISTOTEL RUSHA, and Dafa Rusha owned a total of 26,000 square meters (approximately 6.5 acres) of winter animal feeding and farm land in the vicinity of Përmet, prior to confiscation by the Albanian Government.

Claimants assert that the confiscation of their property was carried out in 1946. In this regard, 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 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 and their mother of their property, thus constituting an uncompensated confiscation by the Government of Albania. In the absence of a more precise date, and based on the information before it, the Commission will deem the confiscation to have occurred as of January 1, 1946.

The Commission next turns its attention to the ownership of this claim following the confiscation of the subject property in 1946. Determination of the proportional

ownership of interests in the claim at the time it arose is dependent on the manner by which ownership of the claimants' father's estate passed at the time of his death. Since the subject property had not yet been confiscated when Gogo Rusha died, it would have been treated as real property rather than as personalty in his estate. Under the applicable law (New York intestate law in effect in 1939), the law of the *situs* governed the intestate distribution of real property. Hence, the inheritance of the subject property was governed by the laws in effect at that time in Albania.

Documents submitted by the claimants confirm that at Gogo Rusha's death in New York in 1939, he shared ownership of the subject property with his wife, Dafa Rusha. In the absence of evidence to the contrary, the Commission assumes that each owned the property to the extent of 50 percent. The Albanian law of intestate succession in effect in 1939 provided that the decedent's children would inherit his entire estate subject to a lifetime "usufruct" interest in the surviving spouse not to exceed 25 percent.² Therefore, the Commission finds that Gogo Rusha's sons, BARDHUL RUSHA and ARISTOTEL RUSHA, each inherited a 25 percent interest in the property claimed herein, subject to the 25 percent usufruct interest of their mother.

In its previous programs, the Commission has adopted, as a basis for valuation of life and remainder interests, the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-1941, and a 3 1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 3 and 4, 1952 for the collection of gift and estate taxes, respectively. (See: 17

² Article 486, Albanian Civil Code, 1928.

F.R. 4980 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 CFR. 81.10 (i)). See also, *Claim of Vilma Ferenc*, Claim No. HUNG – 20151, Dec. No. HUNG – 966 (1958).

At the time of her husband's death, Mrs. Dafa Rusha was 38 years old. According to the Makehamized method, a right of usufruct or life estate in property subject thereto for a person aged 38 years old is valued at 64.867 percent of the interest transferred. Therefore, since Mrs. Rusha inherited a usufruct interest as to 12.5 percent of the entire property (25 percent of her husband's 50 percent interest in the subject property), the value of her usufruct for life was equivalent to 8.108 percent of the value of the property at the time of confiscation. Accordingly, Mrs. Dafa Rusha owned an interest equal to 58.108 percent of the claimed property (including her own 50 percent interest in the property plus her inherited share) and her sons, BARDHUL RUSHA and ARISTOTEL RUSHA, each owned an interest equal to 20.946 percent of the property at the time of confiscation.

On the basis of the foregoing, the Commission finds that BARDHUL RUSHA is entitled to an award representing 20.946 percent of the value of the claimed property, dating from January 1, 1946. The Commission further finds that ARISTOTEL RUSHA is entitled to an award representing 20.946 percent of the value of the claimed property, dating from January 1, 1946.

Claimants have also asserted a claim for the loss of their mother's share in the subject property through inheritance from her upon her death in Albania in 1983. However, they have stated that she never acquired United States nationality prior to her return to Albania following her husband's death in 1939.

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 the law of international claims that a claim may be found compensable only if it was continuously held by a United States national from the date it arose until the date of settlement. *See, e.g., Claim of THE ESTATE OF JOSEPH KREN, DECEASED against Yugoslavia, Claim No. Y-0660, Decision No. Y-1171 (1954); Claim of PETER KERNAST, Claim No. W-9801, Decision No. W-2107 (1965); Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic, Claim No. G-2154, Decision No. G-1955 (1981); Claim of ELISAVETA BELLO, et. al. against Albania, Claim No. ALB-338, Decision No. ALB-321 (2008).*

Accordingly, since the claimants' mother was not a U.S. national at the time of the confiscation of the subject property in 1946, the claim that they inherited from her in 1983, corresponding to her 58.108 percent share in the property, may not be favorably considered, since that share was not owned by a United States national at the time of confiscation. This portion of their claim must therefore be and is hereby denied.

As for the value of the claimants' respective 20.946 percent shares in the property at the time of the confiscation, they have asserted that the property was purchased in 1934 for 15 napoleon gold coins per square meter. This would have been equivalent to approximately \$2,730,000 in 1934 dollars.³ However, claimants have submitted no evidence to support such a valuation, and, in light of the documented values for property established in other, similar claims, it is clear that the asserted figure

³ In 1934, the value of a gold napoleon was approximately \$7.00.

is extraordinarily high. Given that the claimants have not provided any substantiation for this high asserted valuation, the Commission must turn to its study of the values of various kinds of real property in Albania before and during World War II and thereafter. Considering this study, together with the evidence before it in this case, the Commission finds that the property in question, consisting of 26,000 square meters (approximately 6.5 acres) of winter animal feeding and farm land, had a value of approximately \$300.00 per acre, or \$1,950.00, as of the confiscation date of January 1, 1946. Accordingly, BARDHUL RUSHA and ARISTOTEL RUSHA are each entitled to an award in the principal amount of \$408.45 for their respective compensable shares in this claim, dating from January 1, 1946.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimants are entitled to interest as part of their awards, amounting to 6 percent simple interest per annum from the date of loss to the effective date of the Settlement Agreement. Accordingly, each claimant is also entitled to an interest award of 296 percent of his principal award.

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 will therefore be forwarded to the Albanian government in due course.

The Commission therefore makes the following awards, 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 ICSA (22 U.S.C. §§1624, 1626, and 1627).

AWARDS

Claimant, BARDHUL RUSHA, is entitled to an award in the principal amount of Four Hundred Eight Dollars and Forty-Five Cents (\$408.45), plus interest from January 1, 1946 to April 18, 1995, in the amount of One Thousand Two Hundred Nine Dollars (\$1,209.00), for a total award of One Thousand Six Hundred Seventeen Dollars and Forty-Five Cents (\$1,617.45).

Claimant, ARISTOTEL RUSHA, is entitled to an award in the principal amount of Four Hundred Eight Dollars and Forty-Five Cents (\$408.45), plus interest from January 1, 1946 to April 18, 1995, in the amount of One Thousand Two Hundred Nine Dollars (\$1,209.00), for a total award of One Thousand Six Hundred Seventeen Dollars and Forty-Five Cents (\$1,617.45).

Dated at Washington, DC, June _____, 2011
and entered as the Proposed Decision
of the Commission.

Timothy J. Feighery, Chairman

Rafael E. Martinez, 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 Second Amended 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) (2010).

AWARDS

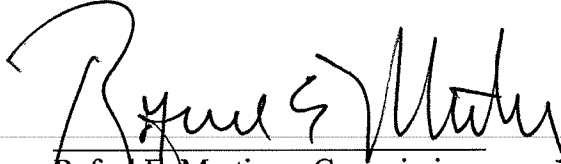
Claimant, BARDHUL RUSHA, is entitled to an award in the principal amount of Four Hundred Eight Dollars and Forty-Five Cents (\$408.45), plus interest from January 1, 1946 to April 18, 1995, in the amount of One Thousand Two Hundred Nine Dollars (\$1,209.00), for a total award of One Thousand Six Hundred Seventeen Dollars and Forty-Five Cents (\$1,617.45).

Claimant, ARISTOTEL RUSHA, is entitled to an award in the principal amount of Four Hundred Eight Dollars and Forty-Five Cents (\$408.45), plus interest from January 1, 1946 to April 18, 1995, in the amount of One Thousand Two Hundred Nine Dollars (\$1,209.00), for a total award of One Thousand Six Hundred Seventeen Dollars and Forty-Five Cents (\$1,617.45).

Dated at Washington, DC, June 3, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, 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 Second Amended 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) (2010).