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## Miami Woman Wins Judgement in Spy Case

by LADB Staff

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Ana Margarita Martinez, a Miami woman who married an alleged Cuban spy, has won a judgment of US\$27 million against the Cuban government. The award is to be paid out of frozen Cuban funds, which has raised serious questions about US international obligations and the rights of others who have claims against Cuba. Under current law, the judgment in the Martinez case allows her to collect from Cuban assets frozen in the US and estimated at up to US\$170 million.

Martinez's former husband is Juan Pablo Roque, a pilot in the Cuban Air Force who defected to the US in 1992 and joined the anti-Castro organization Hermanos al Rescate. He returned to Cuba in 1996, one day before planes flown by Hermanos al Rescate pilots were shot down off the Cuban coast (see, NotiSur, 1996-03-01). Roque later went on Cuban television and said that he had left Hermanos al Rescate because he had become disillusioned with its tactics. He denied he was a Cuban agent. Roque is under indictment in the US, charged with being part of a spy ring currently on trial in Miami. He is also charged with conspiracy to commit murder in connection with the shootdown and is considered a fugitive from US justice.

Martinez sued Cuba in Miami-Dade Circuit Court in July 1999 under the Anti-Terrorism Act of 1996, which allows people to sue for damages resulting from acts of terrorism. Martinez asked for compensation for damages she suffered from having unwittingly married the alleged spy. Her lawyers claimed that Roque duped her into marrying him and that she suffered emotional damage as a result. The most novel claim was that, because Roque was acting as an agent of Cuba during the marriage, their sexual relations constituted rape, for which the Cuban government was responsible. The marriage was later annulled.

In March, Circuit Court Judge Alan Postman awarded Martinez US\$7.1 million in compensatory damages. On March 23, he awarded her an additional US\$20 million in punitive damages. Judge Postman ruled that Martinez was the victim of terrorism, thus qualifying her to receive compensatory damages under the Anti-Terrorism Act. The judgment against Cuba rests on the assumption that Roque was a Cuban spy, but that claim has yet to be proven.

While the Anti-Terrorism Act allows lawsuits, it does not unlock the Cuban funds kept in Chase Manhattan Bank in New York. To remedy that, Congress passed a bill last October permitting plaintiffs to collect from the Cuban funds and the funds of other countries the US government refers to as "rogue states." Since the law, sponsored by Sen. Frank Lautenberg (D-NJ) and Sen. Connie Mack (R-FL), permits use of the funds only for compensatory damages, money for Martinez's US\$20 million punitive award will have to be found elsewhere.

In January, just before leaving office, President Bill Clinton authorized unfreezing US\$93 million in Cuban assets to compensate the plaintiffs in another case, paving the way for Martinez also to collect. The US\$93 million was to compensate the families of three Hermanos al Rescate pilots

killed in the 1996 shutdown. Miami Judge James Lawrence King had awarded the families US\$187 million in a 1997 judgment. Clinton had previously blocked attempts by Judge King to get at the funds. The Clinton administration argued then that using the funds would hurt the president's ability to conduct foreign policy. Clinton had already authorized US\$1.2 million in Treasury funds to compensate the families (see EcoCentral, 1998-11-05).

### *Cuban government promises a response*

Following the Clinton decision to release the funds to the pilots' families, the Cuban government said it would carefully consider its response. In February, National Assembly President Ricardo Alarcon said, "You may be sure we will have a response." The Clinton decision was "an aggression," he said, and he reiterated the Cuban view of the shutdown, saying the pilots were killed while violating Cuban air space. "The United States does not have the right to something that doesn't belong to it," Alarcon said. He said that by using the funds the US was rewarding terrorism and encouraging more terrorist acts in the future.

### *Wife goes to head of the line of claimants*

There are thousands of claimants besides Martinez and the families in the Hermanos case, but only they are entitled to payment from the Cuban funds. The Foreign Claims Settlement Commission has certified nearly 6,000 claims totaling US\$6 billion, mostly for expropriated property. While many claims date back to the 1960s, the claimants will have to get in line behind Martinez and the families because they do not have a court judgment.

In an editorial published in the South Florida Sun- Sentinel, Wayne S. Smith criticized Clinton for reversing his policy and abandoning all his arguments against releasing the funds to pay claims. In doing this, said Smith, Clinton "turned his back on the interests and rights of thousands of Americans in order to benefit a handful of people in Miami." Smith, the former chief of the US Interests Section in Havana and a critic of US Cuban policy, suggested Clinton had caved in to hard-line Cuban exile groups in Miami. "And so it goes in case after case," said Smith. "Didn't we say it has come to be a familiar pattern?"

In another editorial, The Washington Post said last year that the Anti-Terrorism Act that allows suits against countries the US says are terrorist states was a bad idea and should be repealed. "The law creates an exception to the normal immunity that foreign states have in US courts...and some of the assets are consular properties that the government is bound by treaties to protect," said the editorial.

### *Telephone war continues*

In retaliation for Judge King's March 1999 order allowing the Hermanos al Rescate plaintiffs to tap funds owed the Cuban telephone company Empresa de Telecomunicaciones de Cuba, S.A. (ETECSA), Cuba cut telephone connections to the US (see CubaSource, 1999-03-11). In December 2000, Cuba again cut connections in response to Clinton signing the Lautenberg-Mack bill. As the Martinez judgment was handed down in March, Cuba increased the communications blackout and began blocking calls made through the Internet. Callers in both the US and Cuba are now saying

it is increasingly difficult to complete connections. US telephone companies are refusing to make connections through third countries because of costs.

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