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DECISION



20570
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-202623

DATE: January 19, 1982

MATTER OF: George Antolik - Payment of atonement
fee levied by foreign court

DIGEST: There is no statutory authority for reimbursement of an atonement fee levied on Department of Army employee by a foreign court resulting from criminal charges in which employee was the defendant. Also, the claim does not contain the necessary elements of extraordinary nature and of unusual legal liability or equity to warrant its submission to Congress under the Meritorious Claims Act, 31 U.S.C. 263 (1976).

This action results from a claim for reimbursement of an atonement fee levied by a German court on Mr. George Antolik, an Army employee stationed in Germany. Mr. Antolik submitted the claim to our Office under the Meritorious Claims Act, 31 U.S.C. 236 (1976), which provides that a claim filed here which may not be lawfully adjusted by the use of an existing appropriation, but which in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, shall be submitted to the Congress by special report with a recommendation for disposition thereof. The claim, as presented, does not have such elements of an extraordinary nature and unusual legal liability or equity to justify reporting it to Congress under the act.

Mr. Antolik, the person in charge of a warehouse leased by the Army for the storage of household effects, was charged with negligent homicide by a local German prosecutor because one of the doors of that warehouse fell down and killed a German citizen who was employed in moving household effects into the warehouse. Although the Army Staff Judge Advocate's Office in Germany attempted to persuade the prosecutor to relinquish criminal jurisdiction over Mr. Antolik (the Staff Judge Advocate argued that Mr. Antolik was performing official duties and that the United States authorities would take suitable corrective action under existing administrative regulations), he was tried by a German court. His English-speaking German counsel at the trial concurred in a motion that the proceedings be dismissed, contingent upon Mr. Antolik

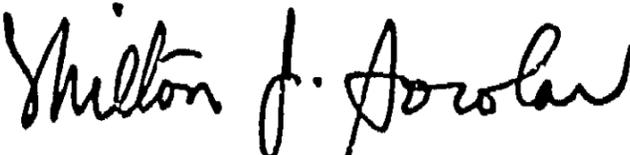
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and two other defendants in the trial paying an atonement fee. The German court granted the motion to dismiss and imposed the atonement fee.

Mr. Antolik's expenses for counsel at the German trial were reimbursed under Army Regulation 27-50, December 1, 1978, which provides for the protection of United States personnel subject to foreign jurisdiction. However, paragraph 2-7(a) of that Regulation specifically provides that fines or civil damages resulting from a foreign trial may not be reimbursed. We agree with the Army and with our Claims Group that Mr. Antolik's claim--in effect a claim for reimbursement of a fine resulting from a foreign trial--may not be paid under any existing appropriation. There remains the question whether the claim is appropriate for submission to Congress under the Meritorious Claims Act.

The cases we have reported for the consideration of the Congress have involved equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem. To report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would give preferential treatment to the claimant involved over others in similar circumstances. The rationale for this rule is that, where the problem is a recurring one affecting a class or group, the problem is properly for the consideration of the Congress in general legislation. Accordingly, it is not every case containing elements of equity which is deserving of relief under 31 U.S.C. 236 but only those instances, on a case-by-case basis, which contain a unique or unusual set of circumstances. Trial of an American citizen by a foreign court for his alleged criminal conduct which results in a fine is not an unusual circumstance and therefore it would not be appropriate for reporting to the Congress under the Meritorious Claims Act.

Accordingly, Mr. Antolik's claim must be denied. We must decline to submit his claim to Congress under the Meritorious Claims Act.

for 
Comptroller General
of the United States