

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JOHN MERVA

Claim No. CZ-2-0166

Decision No. CZ-2-1416

Oral Hearing held on Wednesday, October 17, 1984 at 9:30 a.m.

FINAL DECISION

This claim in the amount of \$856,550.00 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the asserted loss of a house and garden at No. 57 and various parcels of farmland and meadow in the vicinity of Kojsov and Gelnica, two bank accounts, an insurance policy, a grocery store and tavern building in Kojsov, and various articles of household furniture, furnishings and other personal property.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958.

By Proposed Decision dated June 20, 1984, the Commission denied this claim in its entirety on the ground that claimant had not established that any property in which he had an interest was nationalized or otherwise taken by the Government of Czechoslovakia after August 8, 1958. By letter dated June 30, 1984, claimant objected to the Proposed Decision and requested an oral

hearing which was held on October 17, 1984 at which time claimant appeared and gave testimony and presented oral argument in support of the objection.

As to that part of the claim asserting loss of bank accounts, an insurance policy and an interest in a grocery store and tavern and various articles of personal property, no evidence has been submitted in support of the objection and the Commission affirms its original denial of those parts of claimant's claim.

The remaining part of claimant's claim involves a house and residential property and various parcels of farmland. As to the house and residential property, claimant has not established that it has been nationalized or otherwise taken by the Government of Czechoslovakia. Claimant testified that one of the co-owners of the residential property was an uncle, and that the uncle's son has built a house thereupon and resides there. The only evidence submitted concerning any governmental action concerning the original house that was on the property is claimant's assertion that although the government gave him permission to use the property when he applied for a permit to improve the home and tear down the sheds, this was refused on the ground that such a permit had to be given to a Czechoslovakian citizen. The Commission does not consider this as establishing that the Government of Czechoslovakia has nationalized or otherwise expropriated this residential property.

From the land records submitted, claimant states that parcels designated as 50, 157, and 1272 constitute the residential property.

The rest of the property apparently consists of fields and pasture which the Commission will refer to generally as the farmland to distinguish it from the above referred to residential property. Evidence submitted as to much of this residential property indicates that as of 1973, it was in the use of a socialist organization which presumably would be the local

collective farm. Originally the Commission found that it had not been established that the property had been taken over after August 8, 1958. The Commission, through its own investigation, has discovered that the collective farm in Kojsov was first established in 1960 and the Commission is willing to presume that the farm property for which claim is made was taken by the Government of Czechoslovakia after August 8, 1958 and was taken over after the collective was formed in 1960. For convenience in computing interest, the Commission finds that the farm property was taken over as of February 2, 1960. Therefore, claimant is entitled to an award based upon the value of the interest that his mother had in this farm property. This involves resolving three issues raised by claimant:

1. The interest claimant's mother had in the property.
2. The size of the farmland.
3. The value of the farmland.

Claimant has submitted copies of four pages from property record numbers 3416, 3417, 3418, all of which were issued in 1973 and 2957 which was issued in 1974.

Record number 3416 lists a total of two hectares, 21 ars, 55 square meters and lists claimant's mother as owning a one-eighth interest acquired on August 26, 1915.

Record number 3417 refers to one hectare, 19 ars, 35 square meters of land in which claimant's mother acquired a one-fourth interest on August 26, 1915. Record number 3418, in addition to the residential lots above referred to, refers to a total of five hectares, 37 ars, nine square meters and claimant's mother is listed as owning a one-eighth interest acquired on August 26, 1915. Record 2957 refers to 81 ars, 28 square meters of property owned by Guraj Thur and Zuzana Jencus and they acquired their interest on August 26, 1915.

As to record 2957, claimant asserts that the entire interest was falsely transferred to Guraj Thur and his wife in 1937. He ~~testified as to his efforts to determine how this had happened,~~ however, the Commission has no alternative on this record but to accept the land record as submitted by claimant which does not ~~show any interest in this property as being held by his mother.~~

As to land record 3418, claimant asserts that his mother in fact held a one-fourth interest rather than a one-eighth interest. ~~The record as presented includes four one-eighth interests in~~ various parties by the name of Maczkavjak, which claimant has crossed out on the record. In various photographs of residential property, claimant has pointed to other adjacent property as being owned by individuals of that last name. While it is not at all clear to the Commission the basis by which claimant's mother might have ~~acquired a one-fourth interest,~~ the Commission notes that the land entry does make reference to the fact that information comes from an original page numbered 38 and for another one-half, there is a reference to number 39, apparently indicating that on page number 39 another one-eighth interest might be listed for claimant's mother. Although the issue is not free from doubt, the Commission is willing to assume that claimant's mother had a one-fourth interest in the agricultural property listed on record 3418.

On record 3416 where claimant's mother is listed as a one-eighth owner, there is no such reference to any other pages and no basis for the Commission to ~~conclude that claimant's~~ mother had more than a one-eighth interest. Therefore, the Commission concludes that the following records show the following interests as having been owned by claimant's mother:

3416: a one-eighth interest in 2.2155 hectares or the equivalent of .28 hectares; record 3417 shows a one-fourth interest in 1.1935 hectares or the equivalent of .298 hectares; record 3418 shows a one-fourth interest in 5.3709 hectares of agricultural land or the

equivalent of 1.342 hectares. Therefore, the total share shown by these records as having been owned by claimant's mother totals 1.92 hectares or 4.74 acres

Claimant asserts that the sizes listed on the land records which he has put into evidence are not accurate and the Commission should assume that the actual area is over two and a half times greater than that listed. Claimant reaches this conclusion through the following reasoning. He has submitted what he states is a plot map of parcel 157 and parcel 50 which he states was actually measured and shows that these parcels when actually measured were 2.46 times greater than the sizes listed in the land records for these residential plots. He therefore argues that all measurements on land records should be presumed to understate the actual area to the same extent. Just what the plot map shows is not completely free from doubt. However, even if claimant is correct that the residential lots are understated in the land records, it does not follow that the sizes of agricultural land and pastures are understated. Claimant suggest that there is a question as to whether a square siah is 3.6 square meters or whether it is 8.84 square meters, however, in fact a square siah is 3.5966 square meters and the size of the agricultural property on record number 3418, which is expressed in square siahs, is also listed in another document submitted by claimant in hectares, ars and square meters which agrees with the record listing the size in square siahs.

Claimant asserts that the size of agricultural property when originally listed was obtained by stepping off the borders of the fields and not by an actual survey. This may well be true, however, the probability that the land records for agricultural land understates the area is no greater than the probability that it may overstate the area. The Commission finds no merit in the argument that the copies of land records submitted by claimant are inaccurate as to the size set forth therein for agricultural property.

Therefore, the Commission concludes that claimant is entitled to an award for the value of 4.74 acres.

~~Claimant asserts that this land is extremely valuable and~~
should not be valued as farmland and pasture but as resort areas such as Aspen, Colorado, or Lake Placid, New York. He argues ~~that the general area can be a potential resort area and states~~
~~that a ski lift and a hotel have been built. The Commission has~~
~~examined a number of photographs submitted by claimant of the~~
~~property. Claimant's property is clearly farmland and pasture in~~
an area of similar undeveloped property, even as of the middle and late 1970's, and there is no basis whatsoever to value this farmland taken over by the government in 1960 as other than agricultural property. The Commission has therefore valued it in accord with studies it has made concerning the value of agricultural property in this area of Czechoslovakia, and in comparison with valuations placed upon similar property and other awards made by the Commission in this program and finds that claimant's property had a value of \$750.00 as of February 2, 1960. In addition, the Commission has held that claimant is entitled to an award of interest at 6% simple interest per annum from the date of loss until February 2, 1982, the effective date of the settlement agreement between the United States and Czechoslovakia.

The Commission notes that there is an outstanding request to the Government of Czechoslovakia for further information this claim. If the Commission should receive a response to such a request before February 24, 1985 and if this response provides any information which would allow the Commission to issue a mere favorably award, the Commission on its own motion will reopen this claim.


The Commission therefore makes the following award as its final determination of this claim.

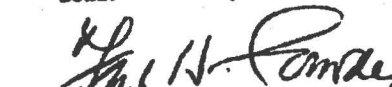
A W A R D

Claimant JOHN MERVA is therefore entitled to an award in the
~~principal amount of Seven Hundred Fifty Dollars (\$750.00), plus~~
interest at the rate of 6% simple interest per annum from
February 2, 1960 to February 2, 1982, in the amount of Nine
~~Hundred Ninety Dollars (\$990.00), for a total award in the amount~~
of One Thousand Seven Hundred Forty Dollars (\$1,740.00).

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission.

JAN 23 1985


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision.

FOREIGN CLAIMS SETTLEMENT COMMISSION
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IN THE MATTER OF THE CLAIM OF

JOHN MERVA

Claim No. CZ-2-0166

Decision No. CZ-2-1416

PROPOSED DECISION

This claim in the amount of \$856,550.00 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the asserted loss of a house and garden at No. 57 and various parcels of farmland and meadow in the vicinity of Kojsov and Gelnica, two bank accounts, an insurance policy, a grocery store and tavern building in Kojsov, and various articles of household furniture, furnishings and other personal property.

Claimant acquired United States citizenship by derivation following the naturalization of his father on September 24, 1929.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

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Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958.

Claimant has submitted copies of land register extracts and other documents dating from 1973, 1974, 1978 and 1979, which show that his mother was named in the land registers of Kojsov and Gelnica, Slovakia, as the nominal legal owner of a one-fourth interest in a house, yard and garden at No. 57 in Kojsov and in some 23 parcels of farmland and meadow in or near that village

and in the vicinity of the nearby town of Gelnica, having acquired that interest through inheritance in 1915. In addition, claimant has submitted a copy of a gift agreement dated September 11, 1973, whereby his mother transferred her property interest to him. According to these documents, the one-fourth interest transferred to him by his mother was equivalent to a total of 2.107 hectares or about 5.2 acres.

With regard to the loss of the claimed property, the land register extracts which claimant has submitted identify all of the parcels in question, except for the house lot and garden in Kojsov, as being "in the use of a socialist organization," and he states that he first learned that the property was in this status while visiting in Czechoslovakia in 1970. However, he also mentions that during that visit he was informed that the takeover of the property for such use "started in 1947, piece by piece." It is further mentioned that during 1972 and 1973 the Government planted trees on nine of the parcels in the vicinity of Gelnica known as "Keblova," and that a parcel of meadow identified as "Hola" was taken over for use as a ski slope when a lift was constructed on it in 1979, but the record indicates that the parcels were already in socialist-organization use before those years. In the case of the house, lot and garden in Kojsov, it appears that a nationalization or other taking has not in fact been carried out, as claimant states that the "Socialist Government gave [him] permission to use this property."

The Commission must conclude that the record herein is insufficient to permit a finding that any portion of the real property involved in this claim was nationalized or otherwise taken by the Government of Czechoslovakia during the period of August 8, 1958, to February 2, 1982, covered by the present claims statute. Accordingly, claimant's claim for that property must be and it is hereby denied.

The other portions of this claim are based upon the loss of two bank accounts, an insurance policy, an interest in a grocery store and tavern building in Kojsov, and various articles of household furniture and furnishings, farm tools and other personal property. However, the only evidence claimant has submitted in support of these portions of his claim consists of photocopies of passbooks pertaining to the two bank accounts. Furthermore, these show that the accounts were denominated in so-called "old crowns," the currency which was in circulation in Czechoslovakia before November 1, 1945. As such, the accounts would have been confiscated as of June 1, 1953, when all such accounts were annulled under the provisions of the 1953 Czechoslovakian currency reform law, No. 41/53 Sb. The existence and date and circumstances of loss of the other items claimed for is not established in the record.

For the reasons discussed in the preceding paragraph, the Commission finds that the portions of this claim involving the loss of bank accounts, an insurance policy, a grocery store, and personal property likewise may not be favorably considered under the present Act. Accordingly, these portions of the claim must also be and they are hereby denied.

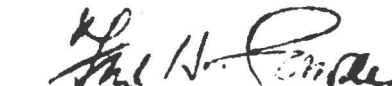
Utilizing a provision in the U.S.-Czechoslovak claims settlement agreement of 1982, the Commission transmitted a request to the Government of Czechoslovakia through diplomatic

channels in early 1983 for a report as to the actual date and circumstances of the nationalization or other taking of the real property interests which are the subject of this claim. The Commission will reopen the claim if that report is received in advance of the statutory program completion deadline of October 31, 1984, and contains information which would permit a portion of the claim to be found compensable.

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

JUN 20 1984


Bohdan A. Futey, Chairman


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the 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 Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)