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Compensation for National Socialist injustice

Article

The Federal Government has attached special priority to the process of providing moral and financial compensation for the wrongs committed by the National Socialist regime.

Germany's responsibility for its past

Speaking in the German Bundestag on 27 September 1951, Federal Chancellor Konrad Adenauer accepted Germany's responsibility to make compensation for the deeds of the past.

"The Federal Government and the large majority of the German people are aware of the unspeakable suffering which, under the Nazi regime, was brought upon the Jews in Germany and in the occupied territories. ... In the name of the German people, unspeakable crimes were committed which call for moral and material restitution, with regard to individual damage inflicted upon Jews as well as to Jewish property whose original owners are no longer alive. ... The Federal Government is prepared to work, together with representatives of Jewry and of the State of Israel which has accepted so many homeless Jewish refugees, for a solution of the material reparation problem which will prepare the way towards a spiritual atonement of untold suffering."

During a visit to Jerusalem in April 2007, Federal Chancellor Angela Merkel reaffirmed that "only by fully accepting its enduring responsibility for this most appalling period and for the cruellest crimes in its history can my country, can Germany, shape the future. There is no alternative."

Federal legislation on compensation

In the years immediately following the war, before the Federal Republic of Germany was founded in May 1949, the Allies enacted legislation in the western occupation zones concerning the restitution of Jewish and other property confiscated by the Nazi regime and about compensation for loss of life, deprivation of liberty and physical injury suffered by persons persecuted by the Nazis. The basic principles from this legislation were later enshrined in the Convention on the Settlement of Matters Arising out of the War and the Occupation (Settlement Convention) and were implemented by and large with the 1956 Federal Act for the Compensation of the Victims of National Socialist Persecution (Federal Compensation Act) and the 1957 Federal Act for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal

Entities of Equal Legal Status (Federal Restitution Act). The Federal Compensation Act granted victims of Nazi persecution (based on race, religion or ideology) a pension by way of compensation for loss of life, personal injury, deprivation of liberty or property, or professional or financial loss. The Federal Restitution Act provided a basis for compensation claims against the German Reich for confiscated property, insofar as it had not already been identified and returned under Allied legislation. In 2013, some 32,000 pensions were still being paid under the Compensation Act totalling some 270 million euros (funded 50:50 by the Federation and the Länder (federal states) with a special arrangement for Berlin). These pensions will be paid for the rest of the beneficiary's or surviving spouse's life.

Agreement with Israel

The two main pieces of federal legislation on compensation were preceded by an agreement with Israel. Under the Luxembourg Agreement concluded in September 1952 by the Federal Republic of Germany and Israel, Germany promised to pay 3 billion Deutsche Mark as "global recompense for the cost of the integration of uprooted and destitute Jewish refugees from Germany and from territories formerly under German rule". However, in view of the scarcity of currency at that date, this sum was to be provided entirely in the form of commodities and services over a period of several years. An additional sum of 450 million Deutsche Mark was to be paid to the Conference on Jewish Material Claims against Germany (JCC) for the relief, rehabilitation and resettlement of Jewish victims of National Socialist persecution living outside of Israel. At the time, this Agreement was highly controversial in Israel, because it was disputed whether the State of Israel or the international Jewish community should accept money from Germany at all.

Comprehensive agreements with Western states

Between 1959 and 1964, Germany concluded comprehensive compensation agreements with 12 Western European countries (and in the 1990s with the USA). Each of these countries received a fixed sum from Germany (which ranged from 400 million Deutsche Mark for France, to 115 million Deutsche Mark for Greece, and one million Deutsche Mark for Sweden), to be distributed to "nationals who were victims of National Socialist measures of persecution by reason of their race, their faith or their ideology and who, as a result of such measures, suffered loss of liberty or damage to their health, or, in the case of those who died in consequence of such measures", to their dependents. These agreements were the result of political pressure from countries which did not wish to accept the exclusion of so-called "Western persecutees" under the Federal Compensation Act. Eligibility under the Federal Compensation Act was dependent inter alia on a "territorial link", i.e. the applicant had to have been resident in the German Reich before the end of the war or in the Federal Republic of Germany after the war. There were legal reasons for this, quite apart from the financial consequences of a broader compensation package – the compensation provided for war damages should, as normal under international law, remain without prejudice to any state-to-state reparation payments, and should therefore not be provided in the form of payments to individual foreigners. An exception was made for Israel, since the state was not founded until 1948 and was therefore not a wartime enemy of Germany. The comprehensive agreements stipulated that the "payment provided for shall constitute a final settlement, as between the Federal Republic of Germany and [other state], of all questions" covered by the given agreement.

Hardship settlements with the Jewish Claims Conference (JCC)

The first “hardship fund” was established in 1980. Following the emigration of large numbers of Jews from the former Soviet Union to Israel, the USA and other countries, the question of compensation for these persons became acute. Victims of National Socialist persecution in the Communist Warsaw Pact countries had been excluded from the Federal Compensation Act, and the final deadline for applications had in any case passed at the end of 1969. Spurred to action by a resolution adopted by the German Bundestag, the Federal Government issued a directive regarding a hardship fund. Victims of National Socialist persecution, who had been excluded from existing statutory compensation schemes for reasons not of their own making, could now, under specific conditions, apply for a one-off payment of 5000 Deutsche Mark (today 2556 euros). The JCC was charged with taking the necessary administrative measures to implement this directive.

Article 2 Agreement

This programme was extended following German reunification. Article 2 of the supplementary Agreement of 18 September 1990 to the Unification Treaty provided for the Federal Republic of Germany concluding an agreement with the JCC on further compensation for Jewish victims of National Socialist persecution who had not yet received compensation. Given its anti-fascist ideology, the former German Democratic Republic had adopted a negative stance on compensation, which needed to be rectified. Since then, there have been regular negotiations between the Federal Ministry of Finance and the JCC to further improve assistance and adapt it to the changing needs of the victims. The Article 2 Agreement was renegotiated in 2012 to make it more understandable but also to extend the group of those entitled to assistance. Of particular importance is the move to extend its application to the territories of the former Soviet Union and Eastern Europe. The new agreement of 15 November 2012 brings together the 1980 guidelines, the agreement of 1992, a JCC fund, as well as various other regulations: all Jewish victims of persecution who suffered National Socialist violence and have not yet received compensation can receive a one-off payment of 2556 euros. Persecuted Jews who were imprisoned in a concentration camp or ghetto for three months or who lived either in hiding or illegally using a false identity for six months can be granted a monthly pension for the rest of their lives. Since 1 July 2014, the pension has been set at 320 euros.

In addition, the JCC is granted an annual sum to help provide medical and geriatric care for Holocaust survivors (136.7 million euros in 2013; 142 million euros in 2014; 205 million euros in 2015; 210 million euros in 2016; 215 million euros in 2017).

As a result of the follow-up negotiations on the Article 2 Agreement between the JCC and the Federal Ministry of Finance on 27 and 28 August 2014, an additional loophole was closed. Many Jewish children suffered damage to their health as a result of persecution by Nazi tyranny. Symptoms of a catalogue of health problems, attributable to extreme stress in childhood, are often only displayed in old age; examples include post-traumatic stress disorder, deficiency symptoms and social discrimination. In order to provide targeted assistance to people who suffered severe trauma in childhood, the negotiating partners agreed to set up a joint fund totalling 175 million euros. From the funds, patients receive one-off payments of 2,500 euros to help meet the costs of therapeutic psychological and medical treatment. Those eligible to receive the payment must have been born between 1 January 1928 and 8

May 1945 – an age group referred to as “child survivors” – and have suffered severe damage to their health as a result of imprisonment in a concentration camp or a ghetto, or as a result of living in hiding or illegally for a period of at least six months. After approval by the German Bundestag on 3 December 2014, this regulation will enter into force on 1 January 2015. For further information, consult the JCC homepage

www.claimscon.org

Pursuant to the so-called extra-legal provisions for the compensation of Jewish victims of persecution in particular, a total sum of around 464 million euros was made available in 2013 (386 million euros in 2012).

Compensation for forced labourers

Following the conclusion of the German-US intergovernmental agreement of 17 July 2000, the German Bundestag passed the Law on the Creation of a Foundation “Remembrance, Responsibility and Future” (EVZ). The Federal Republic of Germany and German companies each made available 50% of the Foundation’s capital of 10 billion Deutsche Mark. From these funds, nearly 1.7 million former forced labourers for the German Reich in almost 100 countries received compensation to the tune of 15,000 Deutsche Mark for slave labour (in a concentration camp) or 5000 Deutsche Mark for other forced labour. By far the largest part of the compensation payments of 4.362 billion euros went to former forced labourers in Poland, Russia, Belarus and Ukraine. A sum of 700 million Deutsche Mark from the foundation’s capital assets was reserved for the Future Fund. This is the part of the Foundation that is still active. It uses its revenue to fund projects to keep the memory of the victims of the Nazi regime alive, for example by organising meetings with survivors and promoting cooperation between young people. For further information, consult the EVZ homepage

www.stiftung-evz.de/eng/home.html

Ghetto pensions

Based on a decision by the Federal Social Court (BSG) of 18 June 1997, the law regarding the conditions for making pensions payable on the basis of employment in a ghetto (ZRBG) enacted in 2002 lays down provisions for recognising contribution periods as a result of work undertaken by victims of National Socialist persecution in ghettos set up under the National Socialist regime. Furthermore, the ZRBG contains special regulations for calculating pensions and for paying pensions to recipients abroad. Pursuant to the version of the ZRBG in force until 31 July 2014, the earliest date that pensions could commence was 1 July 1997, provided an application was made by 30 June 2003. However, around 90% of the applications for pensions pursuant to this law were rejected owing to a narrow interpretation of the law by the BSG. The BSG retracted this legal position in June 2009. As a result of this amended adjudication, pensions were authorised retrospectively for over 50% of the cases that had initially been rejected. However, owing to the four-year retroactive period generally applicable in social law (Section 44 of Book X of the Social Code – SGB X), these pensions were not paid from July 1997, but, as a rule, only from January 2005. Additional payments were made as compensation for the delayed commencement of pensions.

The victims of Nazi persecution who worked under inhumane conditions in ghettos, the majority of whom are now advanced in years, considered the four-year period of limitation for retroactive payments of their pensions to be a grave injustice, despite the additional payments they received. It was against this backdrop that the First ZRBG Amendment Act, the essence of which entered into force on 1 August 2014, was adopted. It stipulates that the four-year period generally applicable in social law does not apply to pensions pursuant to the ZRBG. The application deadline of 30 June 2003 previously in force for the commencement of pensions on 1 July 1997 was deemed null and void. The pensions already paid under the January 2005 rule are recalculated for the earliest date for commencement of pensions of 1 July 1997 upon submission of an application by the persons concerned (known as reassessment). In order to avoid unequal treatment, this also applies to beneficiaries who, in light of the restrictive authorisation practice in place until June 2009, had filed a pension application after the application deadline in force at the time had elapsed and were therefore not able to begin receiving pension payments from 1 July 1997. Around 40,000 pensions pursuant to the ZRBG with a commencement of pensions after 1 July 1997 had been authorised when the amendment to the legislation was made. In such cases, the pension insurance providers inform beneficiaries about the option to have their pensions reassessed for an earlier commencement of payments and the implications of this on a case by case basis. Back payments for pensions commenced at an earlier date are paid on a regular basis, coupled with a lower monthly pension as the additional payments owing to a later commencement of pensions lapse. Persons concerned can then decide whether they wish to apply for an earlier commencement of their pensions or whether they intend to continue drawing their current pension.

The ZRBG Amendment Act also brought the ZRBG's geographic scope of application in line with that of the Ghetto Work Recognition Directive with the effect that work done in ghettos in Slovakia, Romania or Shanghai, for example, can also be taken into account. The ZRBG Amendment Act intends to honour the legitimate entitlement of former ghetto workers to adequate compensation for their work in ghettos through their state pensions.

An agreement allowing beneficiaries to draw a ZRBG pension in Poland is to be concluded shortly. Owing to an existing agreement, payment of this benefit to beneficiaries in Poland is not possible.

Ghetto work recognition payment

After the majority of applications for payment of a ghetto pension pursuant to the ZRBG had been rejected by the German Federal Pension Insurance scheme, the German Government in 2007 adopted the Federal Government Directive concerning the payment of amounts to victims of persecution in recognition of work in a ghetto which did not constitute forced labour and has not been recognised to date under social insurance law. In these cases, a humanitarian, voluntary one-time payment of 2000 euros (so-called ghetto work recognition) could be made. Following the new ruling by the Federal Social Court in June 2007 and the resulting recognition of numerous, originally rejected, applications by the German Federal Pension Insurance scheme based on the ZRBG, the relationship between this payment and the ghetto pension became unclear. Amendments to the Ghetto Work Recognition Directive through Cabinet decisions on 29 June and 20 December 2011 brought clarification. This meant the granting of a ghetto pension pursuant to the ZRBG, also for the past, does not affect eligibility for the granting of a ghetto work recognition payment.

Of the some 74,000 applications for a ghetto work recognition payment, some two thirds (more than 53,000) have been authorised to date.

Prague Conference on Holocaust-Era Assets in 2009

Late in June 2009, an International Conference on Holocaust-Era Assets met in Prague. Following on from the Washington Conference of December 1998, which dealt predominantly with works of art confiscated under National Socialism and Holocaust insurance, the Prague Conference examined all unresolved issues for Holocaust survivors and other victims of Nazi persecution. The Terezin Declaration published at the end of the meeting lists the main issues discussed under separate headings:

- the welfare of Holocaust survivors and other victims of Nazi persecution,
- immovable (real) property,
- Jewish cemeteries and burial sites,
- Nazi-confiscated and looted art,
- judaica and Jewish cultural property,
- archival materials,
- education, remembrance, research and memorial sites.

With respect to the welfare of Holocaust survivors, the participating States took “note of the fact that Holocaust (Shoah) survivors and other victims of Nazi persecution have today reached an advanced age and that they have special medical and health needs, and we therefore support, as a high priority, efforts to address in their respective states the social welfare needs of the most vulnerable elderly victims of Nazi persecution – such as hunger relief, medicine and homecare as required, as well as measures that will encourage intergenerational contact and allow them to overcome their social isolation”.

The issue of medical and geriatric care for Holocaust survivors is becoming ever more acute. According to a JCC study, of the 500,000 remaining Jewish survivors of the Holocaust, some 100,000 are poor and in need of care. The overwhelming number of this latter group live in Israel, the USA and the former Soviet Union. The JCC calculated the annual sum needed to fund adequate medical and geriatric care to be nearly 300 million US dollars. So far, the JCC has funded a considerable part of its outlays for such care (170 million US dollars in 2009) from assets it was given under the Act on the Settlement of Unresolved Property Issues, namely heirless (formerly Jewish) property in East Germany. These assets are running out. A working group was established at the annual negotiations between the Federal Ministry of Finance and the JCC with the aim of providing longer-term support for such measures and to put them on a firm foundation for the years to come. In November 2011, agreement was reached on further increasing the annual grants for home nursing and medical care. All in all, the Federal Republic of Germany has, as of 31 December 2013, paid some 71 billion euros in compensation for the crimes committed by the National Socialist regime. Within the German Government, the Federal Ministry of Finance is the lead ministry for compensation for National Socialist injustice. A detailed treatment of the subject can be found at

www.bundesfinanzministerium.de