



Germany: Social Security Pensions for Work in Ghettos

May 2004

LL File No. 2004-00858
LRA-D-PUB-000211

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GERMANY

SOCIAL SECURITY PENSIONS FOR WORK IN GHETTOS

I. Enactment and Effective Date of the “Ghetto Act”

On June 20, 2002, an Act on the Payment of Pensions for Work Performed in a ghetto was promulgated.¹ This Act, which is commonly referred to as the Ghetto Act, became effective retroactively on July 1, 1997.² The purpose of this “fictitious” date of effectiveness was to pay retroactive benefits from July 1, 1997 to the date of application, to those who applied within the filing deadline.³

The Ghetto Act was enacted as a follow-up to a decision of June 18, 1997, of the Federal Social Court.⁴ In this decision, a woman who had worked as a seamstress for some form of compensation in a ghetto in Eastern Europe during the German occupation during World II won the entitlement to have these times credited toward the coverage required for a German social security pension. Following this decision, the German social security providers began to follow this ruling in considering claims from applicants who had worked in similar situations.⁵

The retroactive application of the Ghetto Act to July 1997 is granted to those qualified applicants who applied by June 30, 2003. It appears that those qualified applicants who missed the deadline will be granted the pension, but only from the time of application, and not for the period beginning in July 1997.⁶

II. Purpose of the Ghetto Act

The Ghetto Act serves the purpose of closing a gap in Germany’s restitution legislation on

¹ *Gesetz zur Zahlbarmachung von Renten aus Beschäftigungen in einem Ghetto [ZRBG], article 1 of Gesetz zur Zahlbarmachung von Renten aus einem Ghetto und zur Änderung des sechsten Buches Sozialgesetzbuch, June 20, 2002, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] I at 2074. There appear to be no law review articles in English that deal with this specific topic of holocaust compensation. Information is provided in various websites in English, among them the website of the Jewish Claims Commission [www.claimscon.org]. Some of these sources, however, are not very specific about all the requirements of the German Act.*

² *Id.* art. 3.

³ *Gesetzesentwurf, Mar. 19, 2002, DEUTSCHER BUNDESTAG. DRUCKSACHE 14/8583*

⁴ *Bundessozialgericht, decision of June 18, 1997, docket number 5 RJ 66/95.*

⁵ *Servicespektrum Konsularhilfe, Gesetz zur Zahlbarmachung von Renten aus Beschäftigungsverhältnissen in einem Ghetto (Botschaft der Bundesrepublik Deutschland – Rom) <http://www.rom.diplo.de/de/informationen/service/dt-zahlbarmachungrenten.html>.*

⁶ *Supra* note 3.

social security pensions⁷ by making years creditable toward a social security entitlement if these years were worked by someone in a ghetto in Eastern Europe during World War II while that area was under German occupation, but only if the work was performed voluntarily and for compensation.⁸ Thus, the Ghetto Act intends to exclude forced labor, for which other compensation programs may be applicable.⁹

⁷ *Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung*, Dec. 22, 1970, *BGBI I* at 1846, as amended.

⁸ *ZRBG § 1*.

⁹ *Contemporary Practice of the United States Relating to International Law*, 94 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 686 (2000).

It appears that the Ghetto Act follows the German pattern of holocaust indemnification law in the field of social security which generally mixes the principles of social insurance with those of holocaust compensation.¹⁰ This adherence to different principles within the seam law makes it difficult to fully understand the intent of the legislature and predict its ultimate interpretation.

III. Criteria for the Granting of a Pension

In addition to meeting the criterion of having worked voluntarily and for compensation in a ghetto, an applicant has to meet three hurdles in order to receive a pension.

First, the applicant must have five years of coverage, which is the minimum period for a German social security pension entitlement. These times of coverage may include times before the end of World War II, during which the applicant fled from Germany, and times during which the applicant was in a concentration camp.¹¹

Second, the applicant will receive a pension only if he has not been receiving a social security pension already for which the periods worked in a ghetto are not already credited. This might have been accomplished by a German or a foreign pension, and there are several German schemes that provide social security pensions for holocaust providers in addition to other indemnification for suffering caused by persecution.¹²

Third, section 1 paragraph 4 of the Ghetto Act states that payments under this law are not considered to be social security benefits. It appears that this statement is interpreted by the German social security providers to the effect that the pension is paid as an act of atonement and not in fulfillment of an obligation. For this reason, a pension will be paid only if this increases the net income of the applicant, and no pension will be paid if this would result in a reduction of other benefits that the applicant is receiving. Such benefits might be foreign social security payments or welfare payments or other supplements granted on the basis of need.¹³

IV. The Relevance of the Social Security Agreement between Germany and the United States

In 1976, the United States and the Federal Republic of Germany entered into an Agreement on Social Security [hereinafter: the Agreement].¹⁴ The main purpose of the Agreement was to allow for the payment of social security pensions for individuals who worked in the United States as well as

¹⁰ H. Finke et al, *ENTSCHÄDIGUNGSVERFAHREN UND SONDERGESETZLICHE ENTSCHEIDUNGSREGELUNGEN 307* (München, 1987).

¹¹ *Sozialgesetzbuch VI, Dec. 18, 1989, BGBl I at 2261, as amended, § 250.*

¹² *Finke supra note 10, at 323.*

¹³ *Supra note 5.*

¹⁴ *Signed at Washington, Jan. 7, 1976, entered into force Dec. 1, 1979, 30 UST 6099; TAS 9542; 1177 UNTS 257.*

in Germany by having each country pay a partial pension proportional to the length of time worked in the country. In addition, this agreement provided some advantages for holocaust survivors by giving them the opportunity to make voluntary contributions to the German social insurance system in order to obtain coverage for a pension. These opportunities exceeded those then existing in German domestic law.¹⁵

The Agreement was accompanied by an Implementing Agreement¹⁶ that contains many rules for the coordination between German and U.S. agencies. Among these rules is also a one-year deadline for making use of the voluntary payment possibilities contained in the Agreement.¹⁷ Article 14 of the Agreement provides that petitions and documents submitted to the authorities of one country are deemed to also have been presented to the authorities of the other country, and article 8 of the Implementing Agreement requires the authorities of each country to forward pertinent statements, documents, applications, and appeals to the authorities of the other state, if this is necessary to establish eligibility.

The Agreement was amended in 1985¹⁸ and in 1995.¹⁹ Of these, the 1995 amendment was of greater significance to holocaust survivors, because this amendment again expanded the possibilities of individuals to make voluntary contributions in order to obtain coverage.²⁰ German case law, however, appears to have established that voluntary payments can be made only under limited circumstances which include the observance of a two-year deadline that was foreseen in the Supplemental Agreement.²¹ Moreover, no additional payments can be made by those who already were entitled to voluntary contributions under German domestic law but have failed to make use of this possibility.²²

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¹⁵ *Deutsch-amerikanisches Sozialversicherungsabkommen ratifiziert, BUNDESANZEIGER No. 208 at 8 (1979).*

¹⁶ *Administrative agreement for the implementation of the agreement on social security of Jan. 7, 1976. Signed at Washington June 21, 1978; entered into force Oct. 30, 1979; effective Dec. 1, 1979, 30 UST 6150; TIAS 9542; 1177 UNTS 270.*

¹⁷ *Id. art. 16, ¶ 2 (b).*

¹⁸ *Supplementary Agreement, signed Oct. 2, 1986, effective Mar. 1, 1988, TIAS 12115.*

¹⁹ *Second Supplementary Agreement Amending the Agreement between the Federal Republic of Germany and the United States of America on Social Security of Jan. 7, 1976. Signed at Bonn, Mar. 6, 1995; entered into force May 1, 1995, BGBl II at 301.*

²⁰ *Id. art. 1 no 7.*

²¹ *Supplementary Agreement [supra note 18] No f, amending the Final Protocol of the Agreement [supra note 14], no. 8 (h).*

²² *Gesetz zur Neuregelung des Fremdrenten- und Auslandsrentenrechts, Feb. 25, 1960, BGBl I at 93, as amended, §§ 17 a through 22.*

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