German Reparations for World War II Holocaust Victims: An Overview

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GERMAN REPARATIONS FOR WORLD WAR II
HOLOCAUST VICTIMS: AN OVERVIEW

In the five decades since the end of World War II, Germany has been engaged in numerous programs to make amends for the immeasurable suffering that was endured by the victims of National Socialism, among them most notably, the Jewish population of Germany and of the territories occupied by the German army. These programs had their origin in discussions between the Western Allied powers and Jewish refugee groups toward the end of World War II. The United States played a leadership role in the initiation of this process which took shape as the occupation of Germany evolved and as it became apparent that there would be no immediate peace treaty. In the beginning, it was not quite clear how these issues would be dealt with because there was no precedent in international or national law. The evolving course was charted by numerous discussions and deliberations between the U.S. government, including the military occupation government, Jewish refugee groups, German Jewish scholars who had resettled in the United States, and the newly emerging democratic leadership in the Western part of Germany.\

Over time the following picture emerged:

1. Restitution (in the broader sense) was made only by the western part of Germany, first in the territories occupied by the French, U.S. and British military governments, through occupation legislation; and later on the by the German Federal Republic, that is, West Germany, through domestic legislation as well as international treaties. The Soviet zone of occupation, and the German Democratic Republic (East Germany) which emerged therefrom were never involved in any significant efforts to compensate the victims of National Socialism.

2. In the western part of Germany the restitution effort (within the broad meaning of the word) was conceptually divided into the two major directions, on the one hand, restitution of physically identifiable property that had been wrongfully taken, and, on the other, compensation for death, personal injury, deprivation of liberty, and related atrocities committed on the victims of the national socialist regime. The compensation payments were and are quite substantial, including monthly pensions, various health benefits, lump sum payments, survivor benefits, etc.

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1  W. Schwarz, Bundesrückerstattungsgesetz 801 (München, 1981).

2  Due to the short time limit for this request, this brief summary merely attempts to highlight the issues involved. Follow-up information on particular aspects could be provided. Included as Appendix I is German Information Center, GERMAN RESTITUTION FOR NATIONAL SOCIALIST CRIMES (New York, Jan. 1995); this document gives facts and figures on the German restitution process.

3  The first of these was Law No. 59, Restitution of Identifiable Property, Nov. 10, 1947, MILITARY GOVERNMENT GAZETTE, GERMANY, UNITED STATES AREA OF CONTROL, Issue G. [R. von Godin and H. Von Godin, RÜCKERSTATTUNGSGESETZE 262 (Berlin, 1950)].

4  Culminating in the German Restitution of Property Act, i.e., Bundesrückerstattungsgesetz, July 19, 1957, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] I, p. 141, as amended.

5  The most important German enactment on this type of compensation is the Federal Indemnification Act, i.e., Bundesentschädigungsgesetz, 29 June, 1956, BGBl. I, p. 562; however, there are many others dealing with specific aspects, such as compensation for civil servants.
3. The German legislation on compensation for death and personal injury applied only to victims who had close ties to Germany, such as residence within the German borders of 1937, German citizenship, residence within West Germany, or a German cultural background. For victims from other countries in Western Europe, compensation was paid through lump-sum payments to the governments of those countries, and the funds were distributed by the governments of these countries. In addition, German legislation was enacted in 1965 that granted non-Germans within the meaning of the compensation legislation who lived in the Western part of the world limited lump-sum payments for loss of liberty, taking into consideration damage to health.

4. For victims from Eastern Europe, compensation was generally not paid until the breakdown of the Soviet-dominated Communist bloc in 1989 and 1990, on the theory, espoused by the West Germans, that this question was tied to the issue of post-war reparations that had been claimed and taken by the Soviet Union. It appears that the Soviet Union issued a Protocol on August 22, 1953, in which it waived further reparations from East Germany. As an exception from the ensuing general standoff on the compensation issue, Germany made lump-sum payments between 1961 and 1975 to Yugoslavia, Hungary, Czechoslovakia, and Poland, in compensation for medical experiments carried out by Nazi physicians, and Germany also gave financial aid to East Bloc countries on several occasions. However, these East European countries made various statements clarifying that they did no waive the rights of their citizens to claim compensation for Nazi persecution and insisted that the issue be dealt with separately from that of post-war reparations.

5. Since 1990, the issue of restitution for the East European victims of National Socialism resurfaced, and the unified Germany has been engaged in various piecemeal measures to deal with these. Among them was legislation providing for the restitution of property located in Eastern Germany that had been wrongfully taken during the Nazi regime. In addition, between 1991 and 1993, money to compensate Nazi victims was given to foundations in Poland, Russia, Belarus, and Ukraine. It appears that for Polish victims these payments have to date resulted in one-time compensations of about Deutsche Mark DM 500 [currently, U.S. $320].

6. A major development occurred in September 1995, when an executive agreement was concluded between the governments of the United States and Germany, through which the German government and industry granted compensation in the amount of 3.1 Million DM [currently, US $ 2 million] to the American citizen Hugo Princz and to 10 other Americans who had been concentration camp inmates. The Germans tried to keep the agreement secret because they did not want to create a precedent for the numerous other victims that had to do forced labor. The generosity of the Princz award has been ascribed to the publicity that the case created in the United States and to the foreign policy damage that would have been caused by an American court case against the German

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6 A lump-sum treaty was also concluded with Israel. For all of these, see Appendix I.


10 Deutsche Firmen sollen für Polens Nazi Opfer spenden, SÜDDEUTSCHE ZEITUNG (Dec. 23, 1997) [LEXISNEWS].
7. Significant case law developments occurred in 1996 and 1997, when in two cases issues on the compensation of East European individuals were adjudicated by the Federal Constitutional Court which held that the plaintiffs were not prevented by international law from pursuing their claims in a German Court. The Court struck down the long-proclaimed argument of the German Government that international law prevents individuals from claiming restitution for Nazi crimes on the grounds that the wrongs committed against them were acts of war, and therefore governed by the law pertaining to reparations, which applies between states and not individuals. The Court held that individual claims are not automatically precluded by the law of reparations, and remanded the case, whereupon the trial court recognized the claims arising from forced labor of one Jewish woman of Polish citizenship.

8. Following these judicial developments, the Green Party has once again submitted legislative proposals for the granting of compensation to those who had to provide forced labor during World War II. In addition, the Polish foundation is attempting to obtain further compensation payments from German industry. The latest agreement for compensation was concluded late in December 1997, between the Czech Republic and Germany. According to this agreement, a fund of 165 Million DM is being created, which aims primarily at compensating the still living 8,000 victims of National Socialism.

9. On the whole, the post-unification position of the German government has displayed a basic recognition of the moral wrongs committed by the Nazis and a moral obligation to pay compensation resulting therefrom. However, the Germans' willingness to commit themselves legally and financially is often only prompted after lengthy negotiations and legal struggles. Political expediency also appears to play a role in the German deliberation process.

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11 C. Wiedemann, *Später Sklavenlohn* DIE WOCHE 5 (July 12, 1996).

12 2 BvL 21/93 and 2 BvL 33/93.

13 Stiftung für ehemalige Zwangsarbeiter, TAZ DIE TAGESZEITUNG 7 (Nov. 7, 1997).

14 Id.