The post-Holocaust Development of Legal Remedies as a Learning Process

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A Summary of "*Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und Sondergesetzliche Entschädigungsregelungen*"

Lina Kost

The following article provides a brief summary of the sixth volume of the series "Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland" published, among others, by the Federal Ministry of Finance in six volumes, and is accordingly focused on the implementation of the respective compensation laws.

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HOLOCAUST REMEDIES

About the Author

Lina Kost is a student assistant at the Chair of Public Law and International Law (Professor Dr. Thilo Marauhn). From August 2022 until June 2024, she supported the “Post-Holocaust Remedies” project. Additionally, she works for the project “Model United Nations”, which is also led by the Chair of Public Law and International Law (Professor Dr. Thilo Marauhn). At the time of this publication, she is studying law at the Justus Liebig University Giessen, focusing on European Law and Public International Law.


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A. Introduction

After the atrocities of the Holocaust before and during the Second World War, it was quickly agreed that the victims of National Socialist injustice needed to be compensated. As early as 1949, the first law concerning compensation payments was introduced in the American-occupied zone.[1] Detailed regulations followed soon after in the rest of the Federal Republic, leading up to a unified legal framework of reparations in Western Germany.[2]

The separate chapters of the volume summarized in this report are written by four different authors[3] and provide an overview of the procedures one had to follow from filing a claim for compensation up until the granting or refusal of one's application. The authors of this book each explain the development of the regulations, the procedural provisions, and the organization of the courts that were responsible for legal action against authorities for wrongful decisions.

This article is a summary of selected parts of "*Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und Sondergesetzliche Entschädigungsregelungen*" ("*Legal Remedies for National Socialist Injustice by the Federal Republic of Germany Volume VI – Compensation Proceedings and Special Statutory Compensation Regulations*"). This anthology is only available in German and offers a detailed overview of the proceedings and special regulations of compensation law.

B. The Compensation Authorities

Before the introduction of the first Federal compensation law (Additional Federal Compensation Act, "Bundesergänzungsgesetz" – BErgG) in 1953, the occupying forces had specific regulations applicable in their respective zones. They were mostly comparable with only minor, predominantly structural differences. In general, the regulations in each of the Western occupation zones were closely aligned with the regulations of the Act on Voluntary Jurisdiction ("Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit" – FGG).[4]

After the introduction of the BErgG, claims were standardized across the Federal Republic, while the procedural responsibilities of different authorities within a state were regulated by the state itself.[5] This led to separate rules of responsibility and procedure being introduced in each of the states. Administrative costs were further borne by the federal states.

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[1] Act on the Treatment of Victims of National Socialist Persecution in the Area of Social Security of 26 April 1949 which was issued by state laws. See, for example, the first compensation law for Baden-Württemberg: Gesetz Nr. 951 zur Wiedergutmachung nationalsozialistischen Unrechts (Entschädigungsgesetz) vom 16. August 1949. Cf. Landesarchiv Baden-Württemberg, Landesamt für die Wiedergutmachung: Einzelfallakten, https://www2.landesarchiv-bw.de/ofs21/olf/einfueh.php?bestand=12038 (accessed 10/05/2024).

[2] Federal Ministry of Finance, Wiedergutmachung – Provisions Relating to Compensation for National Socialist Injustice, 2023, p. 7, https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.pdf?__blob=publicationFile&v=1 (accessed: 10/05/2024).

[3] Hugo Finke, Otto Gnirs, Gerhard Kraus and Adolf Pentz.

[4] Otto Gnirs, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und Sondergesetzliche Entschädigungsregelungen, München, 1987, p. 4.

[5] Ibid., p. 5.

The peak of German compensation work (particularly the highest number of employees) was detected around 1960, while a clear downward trend could already be recorded in 1967.[6]

Every regional authority was subordinated to the instructions of a supreme state authority. This was mainly intended to ensure legality and uniformity of administrative practice.

To ensure standardization, ministerial conferences were organized to be held regularly, but only two of those were actually held, as ministers often instructed representatives to take over this task.

Compensation officers met four, later two times a year, but associations of persecuted persons and others were consistently excluded despite their requests to be invited.[7] The author justifies this by noting that "they could make themselves heard elsewhere"[8].

Despite further disputes with organizations of former persecuted persons and other political actors, the regulations and responsibilities largely remained as they were during the existence of the BErgG.

Generally, jurisdiction rested with the authority of the state in which the persecuted persons had their permanent residence on 31 December 1952 or, among others, with the authority of one state if the persecuted person had emigrated, been deported or expelled before 31 December 1952, and had his or her last place of residence in that state falling within the scope of the law.[9] The introduction of the Bundesentschädigungsgesetz (BEG) in 1956 mainly provided more detailed regulations regarding jurisdictional arrangements of the BErgG. For instance, the Soviet occupational zones of Lower Saxony and Berlin were now included in the scope of the BEG.[10]

Despite these detailed regulations, disputes over jurisdiction often arose, sometimes even after a claim had been decided, which frequently led to considerable delays in the procedures.

C. The Procedure at the Compensation Authority

In this section, Otto Gnirs depicts the procedure that a claimant had to go through in order to assert their claim according to the BEG, going into detail regarding general principles and specific procedural regulations. General principles often closely resembled those known from other legal or administrative fields.

The so-called application principle stated that compensation claims were only reviewed upon application.[11] To make the procedure more accessible, a standardized registration form was introduced across all Federal States. A claimant was then generally able to be represented by an authorized representative or agent to give their explanations.

Applications had to be submitted to the correct compensation authority; however, the deadline did not expire if the application was submitted to an incompetent authority or court but was then referred to the correct one.[12]

[6] Ibid., p. 7.
[7] Ibid., p. 10.
[8] Ibid., p. 10.
[9] Ibid., p. 15.
[10] Ibid., p. 15.
[11] Ibid., pp. 19-20.
[12] Ibid., p. 22.

The BErgG and BEG each included a duty to substantiate the applications.[13] This was not mandatory from the outset. However, since it was often difficult for the authorities to clarify the relevant facts without the involvement of the claimants, it was later included in the restitution laws.

After every change in the relevant laws, the lawmakers introduced a number of transitional regulations. The author notes that the relationships between previously asserted claims and those asserted after a new law or amendment came into force were often problematic.[14] Since there were no precedents to base decisions, authorities and claimants were left unclear about the appropriate proceedings.

All applications were subject to certain time limits. Each of the laws that were introduced included a deadline of between six months and two years for submitting an application.[15] This deadline was especially hard to keep for people living abroad, which is why they were often given a longer period of time. The BEG Final Act ("BEG Schlussgesetz") finally included more detailed regulations for individual actions like hardship allowances. The absolute final deadline for any application was set to expire on 31 December 1969, with individual exceptions remaining possible.[16] Even though the author himself described specific deadlines as "unnecessary hardships"[17], he viewed the system of deadline regulations as ultimately fair.

Gnirs further goes on to describe the practice of the restitution authorities according to the acceleration principle, which influenced the organizational and personnel measures in order to process restitution applications as quickly as possible. This led to employees prioritizing some applications over others for their apparent simplicity.[18]

Claimants were exempt from administrative fees and other expenses. Representation by authorized representatives (i.e., lawyers, legal counsel, organizations for persecuted persons, private individuals) was possible, but without a claim to reimbursement for their fees.

Decisions were generally issued by notice. Proceedings could also end by settlement in the form of a contract under public law, where the claim is settled with mutual concessions.[19] This could lead to quicker payments but often required the waiver of further claims not yet examined and was governed by general civil law.[20] According to the author, authorities were generally "always eager to decide applications as favorably as possible, in some cases even after the proceedings have ended"[21].

In his conclusion, Gnirs argues that the efforts taken by the authorities were an important contribution to compensation law and procedures.

D. The Compensation Courts

Adolf Pentz briefly explains the procedure before the courts responsible for compensation cases – which were the ordinary instead of administrative courts because compensation claims were most similar to those

[13] Ibid., pp. 30 et seq.
[14] Ibid., p. 31.
[15] Ibid., pp. 41-44.
[16] Ibid., p. 50.
[17] Ibid., p. 54.
[18] Ibid., p. 55.
[19] Ibid., pp. 62, 67.
[20] Ibid., p. 67.
[21] Ibid., p. 86.

decided by civil law. Establishing separate chambers and senates accommodated the specific nature of the matter.

One judge on the panel should normally belong to the group of persecuted persons but did not have to have been subject to corresponding measures himself.[22]

Criticism arose mainly from political groups who condemned a lack of empathy and unnecessary harshness in decisions by the appointed judges, which the author perceived as unfounded.

E. The Judicial Procedure

The judicial procedure was generally determined by the civil procedural code ("Zivilprozessordnung" – ZPO), with occasional modifications to accommodate for the specific nature of compensation law.[23]

Procedures were generally free of charge and fees, but costs could be imposed on the plaintiff in the case of obviously abusive actions.

F. Compensation for Victims of National Socialism

Before and immediately after the Second World War, reparation claims only used to be asserted by one state against another, generally regulated by peace or reparation treaties.[24] This was then amended by the German compensation law to accommodate for the specific injustices that had been suffered by victims of the National Socialist regime.

In his paper, Kraus debates that the limitation of claims to typical National Socialist injustice by the compensation laws was a necessary consequence of a lack of financial capacity. Distinctions were made between war compensation and compensation for personal injury or damage to property as a result of National Socialist persecution.

However, many exceptions were made to exclude certain population groups from compensation payments. One of these examples included members of Slavic ethnic groups, who were not perceived as having been persecuted on racial grounds within the meaning of § 1 BEG.[25] The author argues that this specific exception was made because while those persecutions had clearly been arbitrary, they were not necessarily discriminatory and thus should not be compensated as such.

Compensation authorities were faced with another difficulty through refugees who had fled Germany during the Holocaust. The BErgG, as the first Federal compensation law, provided that people who were persecuted in violation of human rights and were at the time still refugees within the meaning of the Geneva Refugee Convention (GRC) were able to receive exceptional hardship payments if they suffered from permanent

[22] Adolf Pentz, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und sondergesetzliche Entschädigungsregelungen, München, 1987, p. 110.
[23] Ibid., pp. 113 et seq.
[24] Gerhard Kraus, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und sondergesetzliche Entschädigungsregelungen, München, 1987, pp. 171-173.
[25] Ibid., p. 174.

damage to their health. An agreement between the Federal Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) made on 5 October 1960 finally included payments to UNHCR for the compensations they implemented for nationally affected refugees.[26] Further regulations were then determined through the involvement of UNHCR.

G. Remedies in the Civil Service

Compensation provisions for persecuted members of civil service were more specific norms in relation to the general provisions of the BEG. Article 131 of the Federal Constitution expressly provided for this field of compensation.[27]

Separate regulations for civil servants had already existed in many federal states before the introduction of the BEG, but they, too, differed greatly across states. Even before the introduction of the BEG, the Federal Government developed legislative drafts for the compensation of members of this profession. The Act on the Regulation of Compensation for National Socialist Injustice for Members of the Civil Service (BWGöD[28]) was then introduced in 1951[29].

The term “civil servant” has been extended further and further in the amendments to the compensation laws. Special regulations were additionally made for people who were not eligible for compensation because of their membership to the National Socialist Party (NSDAP) or similar reasons. In exceptional cases, this group of people could also be granted compensation if, for example, their membership was caused by previous repressive measures.[30]

Generally, people who used to work in civil service were able to receive pensions comparable to those of “regularly” retired people or compensation for professional setbacks.

[26] Ibid., p. 209.
[27] Otto Gnirs, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band VI – Entschädigungsverfahren und sondergesetzliche Entschädigungsregelungen, München, 1987, p. 266.
[28] Bundesgesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts für Angehörige des öffentlichen Dienstes.
[29] Ibid., p. 267.
[30] Ibid., p. 281.

H. Conclusion

The compensation for National Socialist injustice was one of the greatest challenges that the Federal Republic of Germany was facing during a time when rebuilding the country after a war was at the forefront of most people's minds. Alongside reparations that were expected to be paid to other states, this constituted a great financial burden.

Throughout the volume, one cannot fail to notice the ambitions of relevant parties to keep this burden as small and to terminate these proceedings as soon as possible. Nevertheless, the ongoing negotiations with former persecuted peoples' organizations and United Nations offices ultimately led to a system of regulations which was practicable and overall bearable.

Although the crimes and injustices that were committed during the Holocaust can never be fully made up for or compensated, these regulations were important steps towards supporting Holocaust survivors and wrongfully persecuted persons in rebuilding a dignified life for themselves and their families. Their stories did not end with the Second World War and their long journeys towards justice are carried on by the generations after them.


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Project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)”

The research project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)” is carried out by the Chair for Public Law and International Law, Justus Liebig University (JLU) Giessen in cooperation with scholars from Reichmann University in Herzliya/Israel and the Instituto Colombo-Alemán para la Paz (CAPAZ) in Bogotá/Colombia. The project, conducted by Prof. Dr. Thilo Marauhn and Dr. Ayşe-Martina Böhringer, began in late summer 2022 and is dedicated to the in-depth analysis of compensation law in connection with the Holocaust and the legal framework that has been developed since 1945 for dealing with the consequences of Nazi crimes.

The project, funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) from August 2022 until June 2024 as part of the Education Agenda NS-Injustice, focuses on the critical analysis of the development of political and legal instruments in dealing with the consequences of the Nazi atrocities. The following questions, among others, are addressed: After the atrocities of the Holocaust, what lessons can be learned from the compensation law measures taken to date? Which instruments are suitable for legal remedies? An important main feature of this project is the international summer school, which offered students from Israel, Colombia and Germany the opportunity to take an in-depth look at the legal process of addressing Nazi crimes. The program covered two weeks each at Reichmann University in Herzliya, Israel and JLU Giessen and included a variety of courses and excursions to relevant institutions to ensure a practice-oriented perspective. The summer school took place from 18.08.2023 to 14.09.2023. This unique way of teaching the subject of this project should also inspire future generations to engage in research-based learning, practice-oriented knowledge transfer and academic responsibility.

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Contact
Justus Liebig University Giessen
Chair for Public Law and International Law
Licher Strasse 76
D-35394 Giessen/Germany
E-Mail: intlaw@recht.uni-giessen.de

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