

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 V – Das Bundesentschädigungsgesetz Zweiter Teil*”

Hanin Hagjija-Alaoui

The following article provides a brief summary of the fifth 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 those parts of the Federal Compensation Act which address financial losses.



About the Author

Hanin Hagjija-Alaoui is a research assistant at the Chair of Public Law and International Law (Prof. Dr. Thilo Marauhn). She is also a research assistant and doctoral candidate in clinical child and adolescent psychology (Justus Liebig University Giessen). In 2022, she started supporting the “Post-Holocaust Remedies” project as a student assistant. After finishing her Master thesis (Neuroscience and Psychology of Mental Health) in 2023, she continued supporting the project as a research assistant. Currently, she is working on her second Master thesis (Transition Management), which she is expected to finish this year (2024). Hanin Hagjija Alaoui combines transitional justice with collective trauma psychology. She is especially interested in the MENA region and the reconciliation law there.







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A. Introduction

The compensation regulations following the Holocaust shed a deeply serious light on the challenges of coming to terms with the past and justice. In a complex of legal principles, historical events and individual fates, the endeavour to translate the incomprehensible into tangible forms of remedies is revealed.

There are complex relationships between the legal system and the atrocities of the Holocaust that led to complex challenges for those responsible for remedies. The restoration of lost property, compensation for destroyed professional livelihoods and the recognition of unspeakable suffering through legal mechanisms form the foundation of these compensation schemes.¹

In this context, not only legal subtleties but also moral dilemmas become visible. The question of justice for victims who have lost their professional livelihood or for those who have been traumatized by forced sterilization or mercy killings opens up a broad spectrum of ethical discussions.²

This article will take a brief closer look at the legal framework and the complex realities of compensation schemes after the Holocaust. It will highlight both the difficulties of implementation and the progress made in recognizing injustice and suffering. The article is a summary of selected parts of “Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band V – Das Bundesentschädigungsgesetz Zweiter Teil” (“Legal Remedies for National Socialist Injustice by the Federal Republic of Germany Volume V – The Federal Compensation Act Part Two”). This anthology is only available in German and offers a detailed overview on the regulations of the Federal Compensation Act (“Bundesentschädigungsgesetz” – BEG) concerning legal remedies after the Second World War. Specifically, the volume deals with §§ 51-171 BEG, which address, among other things, damage to property and assets.

B. Damage to Property

Property damages to be compensated were, among other things, the damages suffered by Jews during the so-called “crystal night of the Reich” (“Reichskristallnacht”). The 1949 Compensation Act of the states in the US zone already provided compensation for all property damage in the criminal sense for the destruction or defacement of property caused by persecution.³

In contrast to the damage caused by destruction, for example, the damage caused by looting or abandonment consisted of the loss of physical possession. Looting, as the forcible removal of property

¹ See the entire volume in general: Hans Giessler, Otto Gnirs, Richard Hebenstreit, Detlev Kaulbach, Heinz Klee and Hermann Zorn in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band V – Das Bundesentschädigungsgesetz Zweiter Teil (§§ 51–171 BEG), München 1983.

² In general, see *ibid.*

³ Hans Giessler, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band V – Das Bundesentschädigungsgesetz Zweiter Teil (§§ 51-171 BEG), München 1983, p. 2.



during persecution, is sadly illustrated in dark episodes such as the “Reichskristallnacht”, in cases of breach of the public peace committed by assembling crowds of people.⁴

A major problem with looting was the legal status of the victims. It was not so much the breach of the public peace as such that was of concern, but rather the fact that neither private nor public law was effective against these acts of violence.⁵ The actual injustice of persecution in cases of looting consisted of the withholding of protection of property by the state.

The situation is similar to the abandonment of property. The victims were forcibly deprived of their possessions; they could no longer care for their possessions, for example, because of a persecution-related deprivation of liberty.⁶ The fact that the possessions of the person were gone was a secondary legal problem to the forced disconnection from the person’s things, which was the primary basis for the legal remedy in this case.⁷

It was necessary to differentiate between the damage to property and damage through war.⁸ Therefore, § 17 (2) of the 1949 Compensation Act of the states in the US zone, § 18 (1) of the Additional Federal Compensation Act (“Bundesergänzungsgesetz” – BErgG) and § 51 (1) and (3) of the BEG established that the damage must have been conducted on property which was based in the former Territory of the Reich at the time of the damage.⁹

§ 17 of the 1949 Compensation Act of the states in the US zone only granted compensation for damage to property if items were defaced or destroyed. However, the law did not grant compensation for abandonment or looting.¹⁰

Due to this problem, compensation for abandonment and looting was ordered in § 18 BErgG. The same regulation was adopted in § 51 BEG. However, a problem arose here: the reimbursement claims continued to have priority. This meant that although there was a claim for compensation in the case of abandonment or looting, this was excluded from the offence of seizure. The decisive factor for the offence of looting and abandonment was, therefore, whether the fate of the object was unknown.¹¹

The prevailing opinion assumed that restitution took precedence even in cases of looting or abandonment. But claims for compensation were only excluded if a seizure could be positively established. In this way, it was possible to avoid displacement by restitution law. This also corresponded to the original intention of the legislator, which regulated the principle of the subsidiarity of compensation law in § 5 BEG.¹²

Later, the compensation and restitution law problem was further restricted in the case of looting and confiscation. The seizure process would not prevent the claim for compensation if the identity of the acquirer was unknown from the outset.¹³ If, however, the acquirer was initially known but could no longer be found after the end of the Nazi regime, there was no compensation in cases of looting or abandonment even though restitution claims could not be realized. The same applied if the acquirer was known but the seized property could no longer be described. This regulation was criticized for its

⁴ In this context cf. § 125 German Criminal Code (Strafgesetzbuch – StGB) old version. Giessler (note 3), p. 2.

⁵ Giessler (note 3), pp. 2-3.

⁶ Ibid., p. 3.

⁷ Ibid., p. 4.

⁸ Ibid., p. 4.

⁹ Ibid., p. 4.

¹⁰ Ibid., p. 6.

¹¹ Ibid., pp. 6-7.

¹² Ibid., p. 7.

¹³ Ibid., p. 8.



narrowness. Above all, it would have been good to be able to assert the right to compensation in the event that neither the seized property nor the acquirer could be found. According to § 55 BEG, the amount of compensation could not exceed 75,000 DM, even if the actual loss exceeded this amount.¹⁴ These regulations, characterized by the challenges of the time and the complexity of the events, form the basis for compensation regulations after the Holocaust and are at the center of ongoing legal discussions and developments.

C. Damage to Career

In principle, losses to career progression were compensated in accordance with the principle of in rem restitution in order to restore the condition prior to the loss.¹⁵ This proved particularly challenging as the professional conditions could rarely be restored to their original state.¹⁶

Legal and practical problems were also raised by educational damages, which were also part of professional progression. Particularly controversial cases were the so-called “Wickelkindfälle”, which caused problems with educational losses. According to the factual territorial principle under § 64 (1) BEG, the educational loss had to have occurred either in the territory of the Reich according to the status as of 31 December 1937 or in the expulsion area. This meant that children who emigrated before the start of compulsory schooling, for instance, in 1933, were later not entitled to compensation for educational losses.¹⁷ These cases were criticized from the outset, as children who were deported before the start of compulsory schooling were not excluded from compensation for educational losses.¹⁸ Against the background of court decisions, the following gap, among others, was revealed: Legal practice also differentiated between children who were taken abroad by their legal guardians for reasons of persecution and those who were deported from Germany and later wanted to claim compensation for damage to their education.¹⁹ The restrictions of the legal text thus excluded many groups of victims from the compensation for educational losses.

Sometimes, amended provisions in the BEG gave rise to professional injuries for the first time that had not previously been counted as such. If this was the case and a claim fell under this regulation, a new right to claim could be established under Art. III No. 1 BEG Final Act (“BEG Schlussgesetz”), but only until 30 September 1966.²⁰ A reinstatement of the rejected claim was also permissible if the earlier decision was not based on a provision that had been amended by the BEG Schlussgesetz. A restriction on the permission to resubmit old applications only applied in accordance with § 9 (5) BEG due to outdated causality. A right to a new decision was then granted only if the earlier decision was reasoned on the grounds that damage would have occurred even without prosecution.²¹

¹⁴ Ibid., p. 10.

¹⁵ Hermann Zorn, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band V – Das Bundesentschädigungsgesetz Zweiter Teil (§§ 51-171 BEG), München 1983, p. 73.

¹⁶ Ibid.

¹⁷ Ibid., p. 278.

¹⁸ Ibid., p. 279.

¹⁹ Ibid., p. 279.

²⁰ Ibid., p. 306.

²¹ Ibid., p. 306.



This, therefore, had to be examined for the cases. According to Art. III No. 1 BEG Schlussgesetz, factual findings of an earlier decision were not binding. The decisive point here was that there was no entitlement under the previous law, and it had been newly established for the first time.²²

For self-employed professions, losses were compensated in accordance with § 113 BEG, whereby the independence of the profession was decisive.²³ In order to be entitled to compensation, the victims had to have been working at the time of the persecution. Compensation for loss of livelihood was regulated in accordance with §§ 75-80 BEG and §§ 12-20 of the third Implementing Regulation to the BEG (3. DV-BEG).²⁴ The upper limit was set at DM 40,000 in accordance with § 123 BEG.²⁵

Whether a person was self-employed was examined in accordance with § 113 BEG. Due to the fact that the pension option under §§ 82, 94 BEG is organised in different ways (depending on whether a person is self-employed or not), the definition of self-employment was important. If one was subsequently assigned to a group, the pension option under Art. III No. 4 BEG Schlussgesetz was assigned accordingly.²⁶

The subdivisions of the compensation claims were made according to entitlements that enabled persecuted persons to be reintegrated into economic life, entitlement to capital compensation and entitlement to a pension.²⁷

However, the legal text regulating the compensation periods (§§ 75, 79 BEG, § 12 of the 3. DV-BEG) is unclear in that only the compensation period itself is defined, but not the time of occurrence of the loss (period of damage).²⁸

Various methods were used to calculate compensation for self-employed professions, with an exception being made if the person would not have been able to continue working in his/her profession even without the persecution.²⁹

The compensation was intended to restore the economic position of the persecuted person and could be calculated on the basis of the average income of the last three years before the persecution, taking into account when the person was first persecuted.³⁰ The classification of the employment pursued by the persecuted person prior to persecution as self-employed or employed was binding. The pension eligibility requirements for claims by self-employed persons (§ 82 BEG) and claims in the private sector (§ 94 BEG) differed fundamentally from each other and, therefore, attached particular importance to the binding effect.³¹

²² Ibid, p. 306.

²³ Ibid., p. 208.

²⁴ Ibid., p. 211.

²⁵ Ibid., p. 211.

²⁶ Ibid., p. 208.

²⁷ Ibid., pp. 210, 211, 232.

²⁸ Ibid., p. 212.

²⁹ Ibid., pp. 222 et seq.

³⁰ Ibid., p. 223.

³¹ Ibid, p. 235.



D. Compensation of Special Victim Groups

The legal compensation framework contained the possibility of hardship compensation (so-called “Härteausgleich”) for persons who were not “persecuted” within the meaning of the law. Nevertheless, there were difficulties in compensating those who had been forcibly sterilized and the descendants of those who had been “mercifully killed”. With regard to the latter, for example, the practical significance of hardship compensation remained low because it was hardly possible to establish any damage in the form of loss of livelihood.³²

The treatment of these special groups led to numerous bureaucratic and ethical challenges and reflects the complexity of compensation schemes after the Holocaust.

E. Conclusion

In conclusion, post-Holocaust compensation schemes represent a significant chapter in the history of jurisprudence and moral responsibility. However, despite all the efforts made through legislation and the work of lawyers, it remains the case that reparation for the immeasurable suffering inflicted on the victims can never be complete.

The challenges faced by survivors and their descendants are complex and range from bureaucratic hurdles to the emotional impact of what they have experienced. Nevertheless, it is important to recognize that post-Holocaust compensation schemes represent a significant step towards justice and remedies, even if they cannot answer all questions and do not do equal justice to all victims.

It is our responsibility to learn from the past and ensure that such atrocities never happen again. The memory of the victims and their stories must be kept alive so that their suffering was not in vain and that we always remember what humanity is capable of – both in its darkest and its brightest manifestations.

³² Richard Hebenstreit, in: BMF in Zusammenarbeit mit Walter Schwarz (eds.), Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland Band V – Das Bundesentschädigungsgesetz Zweiter Teil (§§ 51-171 BEG), München 1983, p. 492.









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

<https://holocaust-remedies.com>
https://www.instagram.com/holocaust_remedies/

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