

BETTER LATE THAN NEVER: BACK PAY FOR WORK PERFORMED IN NAZI-ERA JEWISH GHETTOS

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Soon after the end of World War II, the occupying powers in Germany instituted reparation programs for the territories under their control. Following the establishment of the Federal Republic of Germany, the West German government, and subsequently the unified German government, passed a series of laws designed to provide financial compensation to the victims of Nazi persecution, including compensation for physical and mental harm, for forced labor, and for the confiscation of personal and business assets. Some compensation models involved direct payments to the surviving victims themselves, some involved payments to the State of Israel to defray the costs of absorbing victims, and some involved payments to a fund administered by an organization known as The Conference on Jewish Material Claims Against Germany (the “Claims Conference”). According to the website of the Claims Conference (www.claimscon.org), Germany “has paid more than \$60 billion in indemnification for suffering and losses resulting from Nazi persecution” since 1952.

The time for applying for most of the reparations programs has long since expired. There are, however, a few reparations programs that remain open today. A 2002 law (known by its German acronym, “ZRBG”¹), passed by the German government in response to a 1997 court ruling in favor of survivors of the infamous ghetto in Lodz, Poland, provided that voluntary work performed for remuneration in a Jewish ghetto constituted qualifying employment under Germany’s old age and survivor’s pension laws. A successful applicant receives monthly “pension” payments determined by the German pension authority, known as the “DRV,”² based upon the nature and length of the work. Unfortunately, the DRV initially denied approximately 90% of the 70,000 applications for such pension benefits, generally on one of four grounds: (1) the work was not performed for remuneration; (2) the work was not “voluntary”; (3) the work was not of a type that the German pension laws were created to address; or (4) the applicant was under the age of 14 at the time they performed the work.

In response to the uproar created by the near-universal denial of ZRBG applications, in 2007 the German government created the German Ghetto Work Payment Program (the “Ghetto Fund”), to be administered not by the DRV, but by Germany’s Federal Office for Central Services and Unresolved Property Issues (in German, the Bundesamt für zentrale Dienste und offene Vermögensfragen, or “BADV”). The qualifications for compensation from the Ghetto Fund are similar to those under ZRBG, including a requirement that the applicant have performed voluntary work in a ghetto under Nazi control or influence. Unlike ZRBG, however, there is no requirement that the work have been done for remuneration. Moreover, interpretation of the requirement that

¹ ZRBG stands for “Zahlbarmachung von Renten aus Beschäftigungen in einem Ghetto,” which translates as “pensions payable on the basis of employment in a ghetto.”

² DRV stands for “Deutsche Rentenversicherung,” which translates as “German pension insurance.”

the work was “voluntary” is more lenient under the Ghetto Fund program; work is deemed to have been voluntary if the applicant either requested the work or, even if the work was ordered, had some control over the hours of work or the manner in which the work was performed.³ Compensation under the Ghetto Fund is a one-time payment of 2,000 Euros (approximately \$2,741 as of October 2010).

A concerted nationwide effort to publicize the existence of the Ghetto Fund was implemented by Bet Tzedek Legal Services, a Los Angeles-based firm that provides legal services to low-income, elderly, and disabled clients. As a result of this publicity campaign, this author had the pleasure of assisting an applicant for compensation from the Ghetto Fund. Nearly eighteen months later, the BADV notified the applicant of approval of the application, and the German government authorized payment approximately two weeks thereafter.⁴

If you or someone you know believes they may be entitled to compensation from the Ghetto Fund or ZRBG,⁵ please contact Shawn Sefret by phone at (410) 727-6600 or by e-mail at ssefret@rosenbergmartin.com.

³ In response to a court ruling regarding DRV’s handling of ZRBG claims, DRV is re-examining previously-denied applications and reviewing new applications in a manner intended to lead to less literal interpretations of the qualifications for entitlement to payment. First, “remuneration” will not be read to mean only payment in currency, but will be read to mean payment with anything of value, including food. Second, whether work was voluntary will be interpreted in much the same way as it is with Ghetto Fund applications. Third, a ZRBG claim cannot be denied based upon the applicant’s age at the time of performance of the work.

⁴ Not lost on this author is the irony of the length of the application approval process in connection with granting symbolic pay to an elderly population for work performed upwards of seventy years ago.

⁵ Payment under ZRBG disqualifies the applicant from payment from the Ghetto Fund, unless wholly different time periods form the basis for application under the two programs.