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## CHAPTER 6: PROCESSING AND RESOLUTION OF THE CLAIMS

**This chapter contains:**

- Different starting points of the partner organizations concerning the claims process
- Claims processing
- Decisions on the claims and approval of the EVZ Foundation
- Processing of legal successor claims
- Appeals

## INTRODUCTION: THE “HEAVY LIFTING”

In terms of time and resources required, the processing and resolution of claims typically constitutes the largest part of the implementation of a reparations program.<sup>1</sup> Even though the implementation phase of the forced labor compensation program was preceded by lengthy and complex negotiations and was followed by a similarly long payment phase, the claims processing was still the most time-consuming and resource-intensive part of the program.

As explained in Chapter 4, the EVZ Foundation itself did not undertake the actual processing of the claims, but this was rather assigned to the seven partner organizations.<sup>2</sup> This principle was laid down in the Foundation Law, whereas the details were set out in the respective partner agreements that the Foundation concluded with each of the partner organizations.

Since the general eligibility criteria were specified in the Foundation Law and the funding for each partner organization was also fixed, the work of the partner organizations could start as soon as these legal bases were in place. Beginning with outreach and public information campaigns as explained in Chapter 5, the processing and resolution of the claims comprised within each of the partner organizations the following:

- Collection and registration of the claims, including their recording in a database;
- Review and verification of the claims;
- Decision on the claims, including where applicable, on appeals; and
- Preparation and organization of the compensation payments.

While the partner organizations performed the typical activities of large-scale claims programs, the EVZ Foundation played a direct role in overseeing the claims processing. Most importantly, the EVZ Foundation provided continuing and detailed guidance concerning the interpretation of eligibility criteria and performed regular audits of the partner organizations’ review of and decisions on the claims.

This chapter describes stages of the claims process that, to different degrees, all large-scale claims programs have to deal with, and that have in some form or other been performed by all the partner organizations of the EVZ Foundation. This description focuses primarily on the practice of the Polish partner organization and the IOM, aware of the fact that each of the

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1 For examples, see Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006); and Norbert Wühler and Heike Niebergall, eds., *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (Geneva: International Organization for Migration, 2008).

2 “[T]he partner organizations [...] formed the backbone of the entire payment process,” see “*A Mutual Responsibility and a Moral Obligation*”: *The Final Report on Germany’s Compensation Programs for Forced Labor and Other Personal Injuries*, eds. Michael Jansen and Günter Saathoff (New York: Palgrave MacMillan, 2009), 115.

seven partner organizations had its specific situation and faced its particular challenges. The Polish partner organization and the IOM are sufficiently representative for the two types of situations and approaches described earlier.

## DIFFERENT STARTING POINTS OF THE PARTNER ORGANIZATIONS

Throughout the processing and resolution of the claims, the different “starting points” of the various partner organizations impacted on their operations. As described in Chapter 5, most of the partner organizations already implemented other compensation programs for victims of the Nazi regime in the 1990s. While the earlier compensation programs did not concern forced labor, these partner organizations still had acquired considerable institutional and historical knowledge. They were in a better situation than IOM to understand the situation of the potential beneficiaries and some could even turn to previous records, as many previous beneficiaries were also eligible for compensation under this program.

Other organizations, particularly the IOM, learned about their claimants only during the outreach and claims processing phases. As IOM had not been involved in any matters concerning survivors of Nazi injustice or persecution prior to the Program, the processing of the claims (i.e. their collection, review, and verification) was, at least initially, considerably more difficult and consequently more time-consuming than for the other six partner organizations. IOM did not only have to find and reach out to all potential claimants, but there was also no institutional knowledge in the organization about these constituencies and the conditions of their forced labor under the Nazi regime. IOM therefore needed to acquire this knowledge as quickly and comprehensively as possible to be able to process and evaluate its claims in a fair and efficient way.

There were two main consequences flowing from the different situations of the partner organizations. First, the international partner organizations, and in particular IOM, needed more time than the national partner organizations to reach their worldwide claims populations and to collect the claims under their responsibility. Second, the verification of the claims by the Central and Eastern European partner organizations and the JCC could in view of their document and knowledge base involve a more individualized review of the circumstances of each specific case, whereas IOM had to rely to a greater degree on the grouping of similarly situated claims and their assessment against the historical and factual patterns of the group. These different approaches are explained in the following sections.

## CLAIMS PROCESSING

The following sections deal with the processing of forced labor claims. Chapter 9 discusses the additional program lines, i.e. personal injury claims, and in the case of IOM also property loss claims.

## Organizational requirements for the claims process

While the organizational set up of the partner organizations is described in more detail in Chapter 4, a number of structural requirements are particularly relevant for the claims process. Most importantly, as claims processing and resolution consists of several separate steps, the organizational structures should mirror these. There has to be a department that performs the initial processing of the claims and verifies them by examining the evidence or by other verification measures. This work is ideally checked by some form a review mechanism. Finally, in instances where claims decisions are not accepted by claimants who file complaints, there must also be structures in place to deal with this, such as an appeal commission.

## Designing a claim form

A well designed claim form is an important part of an efficient claims process that must strike a difficult balance. On the one hand, the form should be standardized, as much as possible, to allow easy entry of the information in a database and its computer-assisted processing; for this, simple fields, ideally with tick boxes or drop-down menus, should be used. On the other hand, the claimants also must have the opportunity to tell their individual stories, and this requires free-text space whose content is much harder to capture. Prior to its use, the claim form should be tested for ease of understanding and comprehensiveness. In IOM's case, for example, this was particularly important not only in view of the age of the claimants, but also because of their distribution over many countries, cultures, and languages.<sup>3</sup>

As an example, the original IOM claim form with the accompanying guidelines that were distributed to claimants is included as Annex 8.

## Claims collection and registration

In the case of the Polish partner organization FPNP, the initial period of collecting the claims was challenging simply because of the great number of applicants. After implementing a large-scale information campaign, the Polish foundation had to deal with enormous amounts of letters flooding in. Claim forms and all kinds of inquiries (so-called informal applications) came in by the thousands. Although the office of the Polish organization somewhat expected a rush, the number of incoming mail exceeded all expectations.

Some of the first official applications using the authorized claim forms reached the FPNP in November 2000. By the end of 2001, the numbers of incoming claims had peaked. At the end

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3 IOM also designed and distributed separate claim forms for personal injury claims and property loss claims.

of the same year, the official deadline for submitting claims ended which prompted many thousands to hand in their forms. All kinds of letters and even postcards coming in before the end of December 2001 were accepted as informal applications meeting the deadline.

For the FPNP office it was a time of intensive work. All personal data and categories needed to be collected in a database, including:

- information on the nature of persecution (forced labor);
- what kind of evidence was submitted to prove persecution;
- assigning a country code to each case reflecting where the claimant was deployed as forced laborer (Germany, Austria, or occupied countries); as well as,
- assigning a code for the type of persecution suffered, the names of involved companies or what type of company it was.

The incoming mail was registered and forwarded to the relevant department.

In IOM's case, the majority of the claims were received in IOM's country offices. They were submitted on the standard claim form that IOM had made available during its outreach. The claims were either sent by post or they were submitted by the claimants in person. Where claimants asked for this, the dedicated program staff in the country offices assisted them in filling out the claim forms. A number of claims were received by post in the central program office at IOM's headquarters in Geneva. In total, IOM received more than 332,000 claims for forced labor.<sup>4</sup>

The program staff in the country offices also registered the claims and archived the claim files. Through a web-based software application, they entered the information from the claims relevant for their processing and verification directly into the specially designed claims database which was maintained in the central program office at IOM Geneva. To the extent that a claim was not complying with the formal submission requirements, the country office would request the claimant to rectify the deficiency.<sup>5</sup> The claim forms and attached documents were scanned and consolidated into a documents database that was centrally managed at IOM Geneva.

From the first day of claims intake, the core team at IOM Geneva received questions from the country offices concerning the program. The questions covered a wide spectrum of issues,

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4 Within two other program lines, IOM further received approximately 42,000 claims for personal injury, and 35,000 claims for property losses. For details of these program lines, including the claims processing, see Chapter 9.

5 One issue was whether so-called "informal" claims not submitted on the claim form would be treated as claims received, and, if so, for how long after the end of the filing deadline they could still be completed and turned into formal claims.

including the formalities of the claims submission; eligibility requirements, especially concerning claimants or claimant groups not covered by the program;<sup>6</sup> evidentiary issues; and technical questions relating to the registration of the claims and the cooperation between the central program office at IOM's headquarters in Geneva and the respective country office. Some of the questions were specific to claimants or claimant groups from a particular country; others were of a more general nature applicable to many or all types of claims in the program.

In order to ensure compliance with the legal requirements of the program by the country offices and consistency in their work, including the replies and the advice they gave to (potential) claimants, the program introduced weekly "Question & Answer" communications from the core team in Geneva to all country offices. These communications provided answers to those questions that had been raised by the country offices during the week and that were relevant for more than one or for all of the offices. The staff in the country offices were also provided with claims intake and registration guidelines drafted by the core team in Geneva, and regular trainings of country office staff were held in the largest country offices and at IOM Geneva. The overall approach was that claims would not be rejected at the intake or registration stage, but that the decision on their acceptability would be taken by the core team in Geneva.

This 'division of labor' was also adopted by other partner organizations, particularly those that operated in vast territories. The Ukrainian partner organization, for example, worked together with local social welfare offices and regional offices run by partner organizations that accepted claim applications, advised claimants and helped them with the completion of their application forms, while the main office in Kiev controlled the overall procedure and took decisions on claim applications.

## Review and verification of the claims

In the case of the Polish partner organization, the processing of the claims was done by a review and verification commission, which had already been established during earlier compensation programs. As part of the commission, eight smaller teams operated as review committees, usually a team of four plus a team manager. Depending on the incoming number of claims, the size of these review committees would be increased or reduced accordingly. In early 2001, the FPNP established an archive section that was responsible for searching relevant documents to verify the claims, including research in Polish and international archives.

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6 To understand and comply with the legal regime governing the compensation of former forced laborers was for another reason particularly difficult for claimants falling under the responsibility of IOM. Simultaneously with the forced labor compensation program, IOM implemented part of the Swiss Bank Settlement under which many of the same claimants were entitled to compensation that were also entitled under the compensation program. The claims under this parallel Holocaust Victim Assets Programme (HVAP) were received and processed in many of the same country offices as the compensation program claims, and the staff of the two programs had to coordinate closely to assist and advise potential claimants properly.

From 2000 onwards, reviewing and verifying claims took place in accordance with the Foundation Law, its legal specifications and the review principles stipulated by the FPNP board. Determining internal rules, regulations and instructions was crucial in terms of standardizing the decision-making process for audit departments. Also, the EVZ Foundation could gain insight into the decision-making processes of its partner organizations which made the overall procedure more transparent.

The review committees checked the claim forms in form and content and filed them per category. The staff filled in internal review forms before compiling all data in the database. For audit purposes, data records were forwarded to the EVZ Foundation (see Chapter 8).

When a claim could not be verified, the Polish foundation would contact the claimant and ask him/her to produce the necessary evidence, but it would also start its own research in Polish and international archives for documents that confirmed persecution. In January 2001, the review and verification commission reached its highest level of employment with 83 staff members.<sup>7</sup>

Out of the more than 650,000 claims for compensation for forced labor, the review committee approved more than 590,089 claims as formally correct, out of which 485,216 were approved and 104,973 were rejected. On 23 June 2003, the phase of reviewing and verifying forms was concluded.

In IOM's case, the review of the claims and their verification was done centrally by the program team at IOM Geneva. This involved a number of actions. An important first step was the verification of the claimant's identity and of the authenticity of his/her signature.<sup>8</sup> Preliminary checks were performed on the claims database to identify claimants who had submitted the same claim more than once, possibly in different country offices and/or at IOM Geneva. Through regular electronic exchanges with the EVZ Foundation, it was also checked whether claimants had submitted the same claim with more than one of the partner organizations. Claims that did not fall within the responsibility of IOM but within that of one of the other partner organizations or of the Austrian Reconciliation Fund were transferred to that organization, and corresponding claims from the other partner organizations and the Austrian Reconciliation Fund were received and introduced into the IOM program.<sup>9</sup>

7 The high number of staff members was also due to additional tasks, such as the review and verification of forms claiming compensation payments from the Austrian Reconciliation Fund, the processing of claims regarding other program lines as explained in Chapter 9, and the processing of claims regarding other aid projects for victim groups not eligible according to the Foundation Law.

8 While the claimants did not need to be represented by a lawyer but could file their claims free of costs themselves, in cases where a claimant was represented by a lawyer or another person it was sometimes difficult to ascertain the authenticity and authority of such a representative.

9 Foundation Law, Section 11 (1), sentence 2 provided: "... persons who because their forced labor was performed primarily in the territory of what is now the Republic of Austria can receive payments from the Austrian Reconciliation Foundation." For information on the Austrian compensation program, see [www.versoehnungsfonds.at](http://www.versoehnungsfonds.at) (accessed 6 April 2017).

The following *Figure 6* is a flowchart of the typical stages of the claims processing of the partner organizations of the EVZ Foundation.

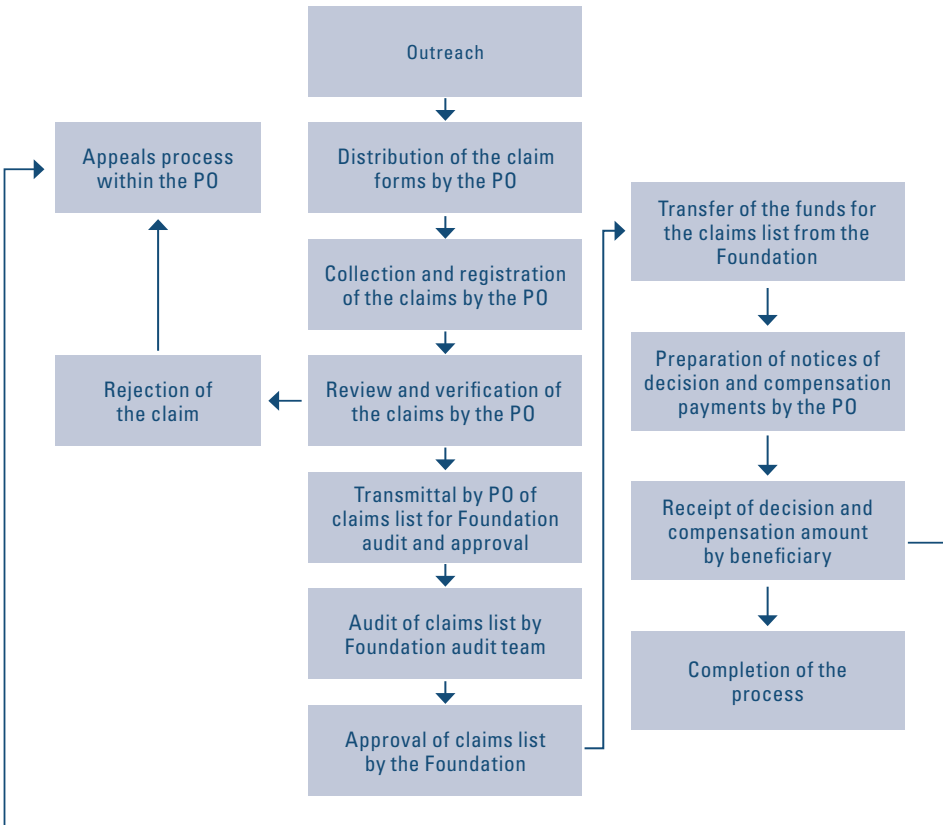


Figure 6: Flowchart of the typical stages of the forced labor claims and payment process. The process varied slightly depending on the different situation of a partner organization. Note: PO refers to partner organization.

The methodology used in the substantive review and verification of the claims followed several key principles. The most important of these was the decision to group together as much as possible similarly situated claims so that four goals could be achieved, which included:

- information and documents from some of the claims could be used to verify other claims in the group that were lacking information and/or documentation;
- information from the claims in the group contributed to a more comprehensive picture and better understanding of what had happened to that group of claimants;



- the review of claims together in groups made their processing more efficient; and
- all of the above resulted in greater consistency and thus fairness to the claimants in the group than an individualized one-by-one review would have achieved.

The grouping was primarily done based on information in the claims database concerning items such as origin of the claimants; place and/or conditions of their confinement; company or entity that used the claimants as forced laborers; evidence (or lack thereof) in the claims; known historic facts about the claimants in the group and their conditions at the time; and other factors.

In order to maximize the benefits of group processing, the review staff at IOM Geneva was organized into teams who ‘specialized’ in one or more claimant groups and in that way became experts for the group and their particular situation.

As laid down in the Foundation Law (Section 11 (2)) and described in Chapter 2, the program applied relaxed evidentiary standards. Claims could essentially be verified in three ways: either they contained sufficient documentary evidence, or they were verified in external archives, or they were determined to be credible. This was in line with the practice of other claims programs dealing with situations that occurred in a distant past and where the victims, because of the circumstances of the crimes, could not be expected to possess significant documentary evidence.<sup>10</sup>

Faced with a great variety of evidentiary documents, IOM had to find ways to ensure consistency in the assessment. IOM’s claimant population was very diverse and submitted different types of documents. To ensure consistency in the review, the program management provided guidelines to the various review teams that contained an annex showing photocopies of each document submitted in the claims and describing its evidentiary value. This “GFLCP Book of Evidence” was a living document that in the course of the claims processing grew to include more than 200 documents.<sup>11</sup>

Because it lacked the type of knowledge about its claims population that the other partner organizations had from earlier programs, and since it quickly realized the scarcity of documentary evidence in its claims, the core team at IOM Geneva was from an early point on looking for outside archives against which it could match the information in the claims in order to verify them. This was in line with its experiences in other claims programs where such archive searches had been used successfully.<sup>12</sup>

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10 For examples in other programs see Heike Niebergall, “Overcoming Evidentiary Weaknesses in Reparation Claims Programmes,” in: Carla Ferstman et al., eds., *Reparation for Victims of Genocide, War Crimes and Crimes Against Humanity* (Leiden: Koninklijke Brill NV, 2009), 145–166.

11 For the table of contents of the GFLCP Book of Evidence see Annex 9.

12 For instance, by the Commission for Real Property Claims in Bosnia and Herzegovina and the Housing and Property Claims Commission and the Kosovo Property Claims Commission in Kosovo.

1	Herkunftsland	Generalgouvernement
2	Geburtsort	16. Januar 1924
3	Geburtsort	Trostianer
	Kreis	Wielka
4	a) Staatsangehörigkeit	„Staatenlos (Ukrainer)“
	b) Volke-zugehörigkeit	Ukrainer
5	a) Familienstand led., verw., verw. gesch.	led.
	b) Anzahl der minder-jährigen Kinder	

Figure 7: Typical form of evidence: The German employment offices issued an “Arbeitsbuch” for foreign laborers in which all work stations were to be documented. (The example above is the inner side of the Arbeitsbuch of an Ukrainian (born 1924) deported to German-occupied Poland; with the insignia of the employment office in Linz; a Gestapo photo was cropped to function as a passport picture). Source: Dokumentationszentrum NS-Zwangsarbeit, Sammlung Berliner Geschichtswerkstatt

Later on in the German compensation program, when the partner organizations had exhausted the pool of claims which they were able to verify themselves based on documents, the EVZ Foundation assisted in setting up a process whereby each of the partner organizations could match claims against information at the International Tracing Service (ITS) in Bad Arolsen, Germany, the largest archive of Nazi Second World War documents and records. These searches were performed periodically through the exchange of electronic lists pursuant to an agreed standard protocol, and many of IOM’s claims could be verified in this manner.

In addition, the EVZ Foundation financed the creation of an “Archives Network” in which over 350 German national, state and municipal archives and archives maintained by companies<sup>13</sup> and concentration camp memorials, as well as archives from other countries participated.<sup>14</sup> Archive searches were thus one of the most important manifestations of the victim-friendly nature of the program which had been stipulated in the Foundation Law when it obliged the partner organizations to assist the claimants in supporting their claim (Section 11 (2)).

13 A few German companies had earlier granted access to their archives for purposes of the program.

14 For the role of the German Federal Archive and the “Archives Network” beyond the completion of the claims program, see Chapter 11.

Claims that lacked sufficient documentary evidence and could not be verified in archives or against other external records were still compensable if they were otherwise credible.<sup>15</sup> At IOM, a claim was essentially deemed credible if the information and the personal story of persecution provided by the claimant corresponded to that of other claimants in a group or category which was recognized as eligible under the compensation program. The grouping of claims was therefore particularly relevant for these types of claims, and since it used this technique from the outset, IOM started working on these types of claims early on. It then became apparent that for a number of such groups of claims additional historical research was needed since the respective categories of former forced laborers had not yet been covered by earlier research.<sup>16</sup> The category of IOM claimants that was the most difficult to deal with and to verify, and where grouping and credibility were therefore most relied on, were Sinti and Roma claimants especially from South Eastern European countries.<sup>17</sup>

## DECISIONS ON THE CLAIMS AND APPROVAL BY THE EVZ FOUNDATION

The reporting of the partner organizations' decisions to the EVZ Foundation and their control by and eventual approval through the Foundation was the same for all the partner organizations. Once a partner organization had completed its review and decision-making on a group of claims ("tranche"), it put together an electronic list of the tranche which contained standard data on the claims as agreed with the EVZ Foundation. This was the case both for tranches of approved and rejected claims.

The controlling of the tranches was performed by so-called "control teams" that the EVZ Foundation had created for this purpose. When an electronic tranche from a partner organization was received by the Foundation, a control team would select a sample of claims which it would then, together with the partner organization's decision, examine on site at the partner organization. Chapter 8 describes in detail the control process, including the resolution of any disagreements between the partner organizations and the EVZ Foundation.

Upon the completion of the controls, the EVZ Foundation would send back to the partner organization the electronic tranche list with the decision as approved for each claim contained in the list. For tranches containing claims approved for payment, the EVZ Foundation would transfer the required funds to the partner organization that would make the payments to each claimant. Details of the payment process are discussed in Chapter 7.

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15 Section 11 (2) of the Foundation Law provided in this respect: "If no relevant evidence is available, the claimant's eligibility can be made credible in some other way."

16 This was the case, in particular, for former forced laborers in the Balkans and in Greece. IOM cooperated with several reputed historians in Germany and in South Eastern European countries in this respect. Additional historical research was also performed or commissioned by the EVZ Foundation itself.

17 As stated earlier, in its claims processing activities, IOM used synergies between the German compensation program and the program that it implemented simultaneously under the Swiss Banks Settlement. Target groups, including Sinti and Roma, were partially identical and many potential claimants were eligible under both programs. Hence, for a number of individual claims and for certain groups or categories of claims, historical and "group" evidence could be used for the verification under both programs.

## LEGAL SUCCESSOR CLAIMS

As described in Chapter 2, the Foundation Law provided for a self-contained regime of eligibility of legal successors (Section 13 (1)).<sup>18</sup> Legal successors in this hierarchy could only be paid compensation if the deceased person would have been eligible to receive it. Consequently, the compensation program had two types of legal successor claimants:

- (i) Those who filed a claim as successors of former forced laborers who were alive on 15 February 1999 but died before they could file a claim; and
- (ii) Those who took over the claim application as the applicant passed away while the process was still ongoing.

Before a legal successor's claim could be reviewed on substance, the legal successor had to prove that the former forced laborer died on or after 15 February 1999, which was the cut-off date decided during the negotiations. Legal successors of deceased claimants had to notify the partner organizations of their legal succession within six months after the death of the initial claimant or their entitlement to receive payment would expire.

The various partner organizations essentially used two different approaches for the communications with legal successors and the processing of their claims. Both had advantages and disadvantages, and both presented different processing challenges. In the first approach, all legal successors making a claim for the same deceased person had to agree on one of them as their representative in the compensation process. This had the advantage for the partner organization of having to deal with only one legal successor per affected family. Communications in this case only took place between the partner organization and the legal successor representative, and the total payment for all eligible legal successors was also made only to that representative who was in turn obliged to pay out the respective shares to each of the other eligible legal successors. It was possible in this case that not all eligible legal successors would participate in the process because the partner organization relied on the other legal successors, and in particular the legal successor representative, to communicate properly with all legal successors. There was thus also the risk that the legal successor representative would not pay out one or more shares of the compensation he or she would receive on behalf of all eligible legal successors since the partner organization relied on the legal successor representative in this respect as well.

In the second approach, the partner organization tried to identify and communicate with all (potentially) eligible legal successors of a deceased person, and it made payment of the respective share of the compensation awarded directly to each eligible legal successor. This approach put a higher processing burden on the partner organization. It also exposed the partner organization to the risk of attempts to be held liable by legal successors that it did not find or include in the process or to whom it did not pay out their share of the compensation. On the other hand, communications and payout did not depend on the ability or honesty of one or more of the legal successors, but was in the domain and control of the partner organization itself.

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<sup>18</sup> The exclusionary levels of legal successors were: spouse and children; grandchildren; siblings; and a will.

### **The processing of legal successor claims by a national partner organization**

During the course of paying out the first installments, the FPNP already established a separate department for defining basic principles regarding payments and procedures for legal successors. By calling into existence a department that dealt with special inheritance cases and legal successors of compensation payments, the FPNP foundation board sanctioned the work of this newly established team in October 2002. The department's main task was the distribution of compensation payments among legal successors in accordance with the Foundation Law and internal FPNP regulations.

As a result of cooperating with the Polish Ministries for the Interior and Administration, the Polish partner organization gained access to the central database PESEL-CBD, the official residents' registration system in Poland, in May 2004. Having access to this database sped up the process of payments considerably, e.g. the time that was previously needed to divide payments among legal successors could almost be shortened by half. Moreover, time-consuming written correspondence for the sake of completing personal data could be reduced. The PESEL database was used to determine dates of death, PESEL-reference numbers, addresses of legal successors and their degree of relationship with deceased beneficiaries. This collaboration also resulted in considerable cost savings on the part of the FPNP. However, only the Polish partner organization was permitted to access this useful tool while other partner organizations could not benefit from it.

Nonetheless, processing claims of legal successors became a challenge for all partner organizations. This was also the case in Poland, where payments made to legal successors on the basis of the Foundation Law often did not correspond to national inheritance law. Due to the fact that payment dates were repeatedly postponed and beneficiaries were generally quite old, some claimants were no longer alive to receive the second installment payment. Moreover, legal successors often contacted the foundation with considerable delay and sometimes failed to meet the six-month deadline within which they were supposed to get in touch with partner organizations after the death of the eligible claimant in their family. Many only learned about this procedure when they were notified about the second installment payment.

Therefore, the FPNP approached the EVZ Foundation to request a favorable interpretation of both the Foundation Law and the six-month deadline for legal successors. In this regard, a joint meeting of all partner organizations with the EVZ Foundation in Warsaw in March 2004 proved very fruitful. It was agreed that until 15 May 2004, all partner organizations would accept all applications in the name of claimants who met the initial deadline to submit their claim (31 December 2001) but who had passed away before receiving the complete amount of compensation payments. In these cases, the partner organizations decided to approach legal successors directly, instead of waiting for them to get in touch.

The resolution facilitated securing thousands of "belated" legal successors compensation payments in Poland. In April 2004, the FPNP launched a large-scale information campaign

for the media and victim's associations, sending out nearly 50,000 letters which informed about the procedure in the event of a beneficiary's death and which included the corresponding application form. Ultimately, more than 45,000 legal successors, most of whom did not know that they could claim compensation, contacted the partner organizations.

### **The processing of legal successor claims by an international partner organization**

The processing of legal successor claims by IOM followed the second approach described above. Once the eligibility for payment was determined for the former forced laborer, IOM identified all claims relating to the case. If they were submitted by different individuals, IOM determined which individuals could be considered as eligible legal successors and grouped them together as part of the same "family group."<sup>19</sup> Where individuals had not submitted separate claims but were identified by IOM as legal successors for the same deceased person, IOM included them in the related family group. IOM sent requests to all identified legal successors in each family group for proof of identity and relationship to the deceased victim so that their eligibility could be confirmed as within the hierarchy pursuant to the Foundation Law. A person claiming a legal successor right needed to provide a recognized certificate of death and recognized proof of the relationship between the person asserting the right and the deceased victim.<sup>20</sup> Only one certificate of death, however, was required for each family group. In all instances, legal successors had to show that they were in the highest level of relationship to the deceased person on whose behalf they were claiming. So long as identified eligible legal successors at a higher relationship level had survived the deceased person, legal successors at a lower level were not eligible for payment.

Similar to the claims by forced laborers, IOM required that all identified legal successors also signed a waiver stating that they would not make any further claims against the German State and companies. IOM also required that eligible legal successors agree in writing to share among all unidentified eligible legal successors at the same relationship level, in case IOM had not received notice of all equally entitled eligible legal successors prior to distribution of payments.

All identified legal successors in each family group received decisions from IOM explaining whether their legal successor claims were considered to be eligible and, if not, for what reasons they were rejected. The controls and approvals by the EVZ Foundation and the payment process for legal successor claims were basically the same as those for claims by former forced laborers themselves.

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19 The identification of a "family group" was done primarily with the help of the information in the GFLCP database.

20 Since IOM was dealing with legal successors residing in many different countries, it had to process a great diversity of death certificates and heirs' documents. To ensure consistency in their assessment, IOM put together a "Book of Heirs Evidence" with evaluation guidelines similar to its "Book of Evidence" for claims by former forced laborers.

Among the 330,000 forced labor claims processed by IOM, approximately 11,000 were legal successor claims. Some 40 percent of these were claims filed originally by claimants who subsequently died, and some 60 percent were claims filed by legal successors. The number of legal successors included in these claims was approximately 22,000, which meant that on average each claim represented two legal successors.

## APPEALS

A claimant who was not satisfied with the decision on his or her claim could make an appeal to an independent appeals commission within the partner organization which had decided on the claim. An appeal could be made against the rejection of a claim or against the amount of compensation awarded, for instance when the claimant was assigned a lower eligibility category than expected. Appeals could be made by victims of forced labor or their legal successors entitled to compensation payments. The deadline for making an appeal was within three months and seven days after the decision by the review and verification commission was sent out.

Appeals were examined by independent appeals commissions.<sup>21</sup> While the appeals commissions were independent in their review of the earlier decisions on a claim and drew up their own rules of procedure, they were still bound by the legal framework of the Foundation Law and the binding regulations and interpretations of the EVZ Foundation. The EVZ Foundation performed similar audits on decisions of the appeals commissions as it did on the initial decisions of the partner organizations. When disagreements existed between an appeals commission and the EVZ Foundation, they attempted to find a common position.

Appeals commissions were not allowed to change a first instance decision to the disadvantage of the claimant, except in cases of proven fraud or other obvious abuse of power. The decisions made by the appeals commissions were final. The Foundation Law explicitly stated that there was no further legal action possible to object the decision of the appeals commissions.

Claimants who had been awarded some compensation appealed on the following grounds:

- Dissatisfaction with the amount of the compensation; the claimant found that the compensation amount was too low and did not accurately reflect nor compensate for the suffering endured;
- Dissatisfaction with only the partial payment (first installment) of an already small amount;
- Dissatisfaction with unfavorable exchange rates, particularly in the case of Poland (see Chapter 3);
- Non-consideration of the duration of forced labor and the age of victims in the amount of compensation;

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<sup>21</sup> As defined in Section 19 of the Foundation Law on appeal proceedings and in the respective partnership agreements, partner organizations were required to establish independent appeals organs.

- Dissatisfaction with assigning the suffered repression to an inaccurate category; particularly controversial was that detention sites had to be on the so-called “BEG-list”(drawn from earlier compensation legislation for victims of Nazi injustice), and later had to be classified as so-called “other places of confinement”;
- Dissatisfaction with the evidentiary requirements.

Groups of claimants who appealed because the claims of their group were rejected:

- Individuals who did not meet the requirement of deportation beyond the national borders of 1937 (these were individuals who were forced to work in their place of residence as well as relocated individuals);
- Prisoners of war who were also used as forced laborers;
- Italian Military Internees (IMIs);
- Individuals who had failed to file their claim within the legal deadline or who had failed to claim succession within the deadline.

In the case of the Polish partner organization, the foundation board entrusted the review of appeals to an already existing appeals committee within the organization. It resumed its work as part of the forced labor compensation program in November 2001. After lengthy consultations with the EVZ Foundation, the existing committee was restructured into the appeals commission and internal principles were defined to ensure that the review of appeals was in accordance with the Foundation Law and the partner agreement.

Members of the appeals commission acted independently in the matter of reviewing appeals. They made their decisions in accordance with applicable regulations and on the documentation provided by the claimant or evidence gathered by the FPNP. Based on the partner agreement, the FPNP was required to determine the composition of the appeals commission in agreement with the EVZ Foundation. Members of the appeals commission, as required by the German side, could not dually be board members of the Polish partner organization, nor could they in any way be involved in the first instance decision-making.

The Polish appeals commission was also in contact with state archives and assisted claimants in providing the necessary evidence that would prove their persecution. It also made use of the possibility of authenticating incomplete evidence of repression in order to help a larger number of eligible persons to claim compensation and to actually receive it. This is also reflected in the percentage ratio of positive and negative decisions of which more than 70 percent were in favor of appellants.

Also the FPNP negotiated several times with the EVZ Foundation on whether its appeals commission could review complaints filed later than the three months’ deadline initially agreed upon. The aim was to try to pay out as many beneficiaries as possible within the overall existence of the compensation program, even if claimants were formally no longer eligible as



they had missed the deadlines. The terms of these negotiations were formally recorded in amendments of the partnership agreement between the EVZ Foundation and FPNP.

When it searched for candidates for its appeals commission, IOM consulted with its “Steering Committee of Most Affected Victims Associations.”<sup>22</sup> As spelt out in the partner agreement, the appeals commission had to consist of three members. As a result, IOM chose, as two of the members of its appeals commission, candidates recommended by the Steering Committee who brought particular knowledge of victims’ situations and relevant historical background into the work of the Commission. The chairman of the appeals commission was a judge at the European Court of Human Rights who brought particular independence and vast experience with judicial proceedings into the process. IOM’s appeals commission not only relied on the knowledge and experience of its members, but also drew on additional historical expertise that was provided by dedicated staff in IOM’s program team and from historians with whom that staff cooperated.

## SUMMARY

Processing, reviewing and verifying claims form the substantial part of implementing compensation programs, including the interpretation of eligibility criteria, the establishment of audit committees and finally challenges that local and international partner organizations are faced with when dealing with appeals and legal successor cases.

## CHALLENGES AND LESSONS LEARNED

- Given the large number of claims and the standardized and limited compensation available in the forced labor compensation program, the competing goals that needed to be reconciled were providing justice to the individual claimants while at the same time developing and implementing a process that provided compensation to all eligible claimants as quickly and efficiently as feasible.
- The various partner organizations had to deal with different claimant groups and different evidentiary situations, and therefore adopted tailored processing approaches, from the intake of the claims and their registration, to their review, verification, and determination of their eligibility.

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22 For the steering committee, IOM had asked the largest victims associations in the major claimant countries to agree on a manageable number of representatives.

- In line with the practice of other large claims mechanisms, a relaxed standard of proof was applied, and the forced labor compensation program *actively* assisted claimants in proving their claims, including through presumptions and searches in external archives. As such, the program was not just a purely bureaucratic matter, but claimants also looked for communication, recognition, interaction, and support.
- The extensive use of IT and communications support, including in particular that of databases, was essential to the efficient processing of the claims.
- Of utmost importance are the specific measures taken to ensure the protection of personal claimant data, both within a program and in relation to outside communications.
- Care must be taken to ensure potential beneficiaries are not prevented from filing their claims by “gatekeepers” at the claims reception stage; intake staff needs to be trained and monitored in this respect.
- A particular challenge in the forced labor compensation program was that the interpretation of certain eligibility criteria and historical information was only specified later on in the program. This led to situations where claims were processed only to be rejected afterwards, or that claims had already been rejected when new interpretation guidelines for historical circumstances were disseminated. Thus, clear eligibility criteria and interpretation thereof contribute to an effective claims process.
- The fact that the compensation program relied on a self-contained regime of legal successor eligibility rather than on national inheritance laws contributed greatly to its efficient completion.
- The direct role of the EVZ Foundation throughout the claims processing was a unique feature of the compensation program, compared with other claims mechanisms. It ensured consistency, primarily through providing binding guidance to the partner organizations on eligibility of categories of claims, determination of camps as other places of confinement, and through the auditing and approval of the partner organizations’ decisions on the claims; but it also required targeted mechanisms and processes to resolve differences between the partner organizations and the EVZ Foundation.