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CHAPTER 9: ADDITIONAL PROGRAM LINES

This chapter contains:

- Overview of the additional program lines of the forced labor compensation program
- Personal injury
- Property loss
- Humanitarian and social programs

INTRODUCTION: COMPLEMENTARY FEATURES OF THE PROGRAM

As introduced earlier, the main focus of the compensation program was to provide financial compensation to the victims of forced labor. They constituted by far the largest number of claimants, and the majority of the funds were allocated for them. However, the Foundation Law also entailed a number of additional program lines that specified compensation payments for other types of claims.

As agreed in the international negotiations, the Foundation Law included compensation for so-called “other personal injuries,” for property losses, and for certain insurance claims. In addition, funds were allocated for humanitarian and social projects for certain Jewish and Sinti and Roma survivors of Nazi persecution. These groups were not required to file claims to receive these additional benefits, but their fate was regarded as sufficiently linked to the circumstances surrounding forced labor and as severe enough to be included in the program.¹

This chapter provides a description of the most relevant aspects of the additional program lines of the compensation program for forced labor. It focuses on the programs “Other Personal Injury,” “Property Loss,” and “Humanitarian Programs” in order to provide a comprehensive picture of the activities of the EVZ Foundation and its partner organizations.

ADDITIONAL PROGRAM LINES

The additional program lines were created in the Foundation Law partly because class action lawsuits against German companies before US courts also referred to other crimes perpetrated by the Nazi regime. These program lines were thus included to achieve legal closure on all US lawsuits against German companies. In addition, there was a particular interest on the side of the JCC to cover certain property losses. While these were not directly related to forced labor, they thus became part of the overall “package.”

1 This is a similar feature as the *cy pres* compensation awarded to certain victims in the Swiss Banks Holocaust Settlement. *Cy pres* is a feature of US class action settlements which allows the distribution of settlement funds in circumstances in which direct payment to individual class members is not economically feasible, or where funds remain after class members have been given a full opportunity to make a claim.

Overview of all program lines and funding

Program line	Fund (in million Euros)
Compensation for Forced Labor	4,535
Compensation for Other Personal Injuries	54
Compensation for Property Loss	102
Compensation for Insurance Claims	102
Humanitarian and Social Programs	153
Humanitarian Programs of the ICHEIC	179
Funds of the EVZ Foundation	102
Remembrance and Future Fund	358

Table 3: Overview of all program lines and funding. Note: All numbers are rounded. In addition to the amounts allocated by the Foundation Law, these numbers include additional income from accrued interest and donations received during the course of the program.

PERSONAL INJURY

Like survivors of forced labor, many individuals who suffered serious physical and emotional harm had not received compensation. Harsh treatment by authorities of the Nazi regime caused all kinds of serious health damages and personal injuries to the persons affected. Two situations were included in the compensation program since they were more closely related to forced labor or to captivity in a concentration camp. The Foundation Law referred to these in the following way:

The funds [...] shall be awarded in cases of medical experiments or in the event of the death of or severe damage to the health of a child lodged in a home for children of forced laborers; in cases of other personal injuries they may be awarded. (Section 11 (1))

The first category included victims who were detained mostly in concentration camps and were subjected to so-called medical experiments. A broad range of such pseudo-medical experiments were performed that had no medical merit but were mostly serving military

purposes, for instance to assess the chances for surviving in cold water, under particularly low pressure, or without drinking water. These cruel and extremely painful experiments, often also involved high doses of adrenaline and potassium cyanide, resulting in long-lasting health damage or death.

The second category was related to the children of forced laborers. During the early years of the war, women who became pregnant after being deported to Germany to perform forced labor were sent back to their home countries. Later, as the Nazi authorities became suspicious that women were becoming pregnant intentionally in order to escape from Germany, this approach was changed. Pregnancies were either forcefully terminated, or the women were forced to give birth in designated places. From there, babies of “inferior racial stock” born to Polish or Soviet forced laborers were taken away from their mothers and put into special children’s homes (*Kinderheime*). Intentional under-nutrition in these homes led to mortality rates between 25 and 50 percent, in some cases up to 90 percent. Those who survived suffered severe health damage and were often traumatized for life.

Eligibility

As stated in the Foundation Law, to determine which other personal injuries were eligible for compensation was left to the implementation phase of the program. Yet, it soon became clear that the limited funds allocated to this category of claims would only be sufficient to pay survivors of medical experiments, and survivors of children’s homes or the parents of children who died in such homes, whose compensation the Foundation Law explicitly mentioned. The Foundation Law foresaw that eligible claimants in these groups could receive up to 7,670 Euros.

In comparison to the main forced labor compensation program, the eligibility criteria for these groups were relatively clear. Still, it was difficult to identify which children’s homes were covered, as at the time there was no clear distinction between “normal” foster homes and the abusive homes designated for children of forced laborers. Therefore, the distinction between “normal” foster homes and homes for the children of forced laborers was left to the implementation stage of the program. Also, regrettably, victims of forced medical treatments were not eligible. It was argued that when the medical “treatment” received by a victim was not a “pseudo-medical experiment” but rather an inappropriate physical treatment without experimental character, the claim was not eligible even though these cases also included extreme atrocities. An example was the forced sterilization of Sinti and Roma.

Processing and resolution of the claims

Claims for other personal injuries were processed by the partner organizations along the same lines of responsibility and according to a similar procedure as the forced labor claims (see Chapter 6). Applicants had to submit a written form explaining their fate.² After claims had been decided by the partner organization, the positive decisions were put into an electronic list for approval by the EVZ Foundation, which would check a sample of decisions for their accuracy. Appeals against negative decisions could be brought before the appeals bodies established by the various partner organizations.

The biggest challenge in the verification of the claims was the significantly different levels of detail in the information provided by the claimants. In particular victims of medical experiments often found that they were not able to talk or write about any detail of their painful experiences. To make up for this, IOM, for instance, compared their claims with the personal statements of others, with historical records and with claims and knowledge available from other partner organizations, and aimed at identifying patterns that could match the claims of “mute” victims.

To ensure consistency, the partner organizations and the EVZ Foundation discussed rules, regulations, guidelines, and jurisprudence under the Foundation Law and their application on a regular basis. Based on historical facts and additional research, including by experts of the JCC, the EVZ Foundation compiled and shared with the partner organizations a list of more than 100 medical experiments carried out in different concentration camps that served to support the eligibility of many claims. Similarly, due to the lack of historical knowledge and inconsistency in the information available in the claims, additional research was needed and carried out to support the eligibility of the *Kinderheim* claims. Also, a designated EVZ control team was responsible for the controls of these claims.

Limited funds

A major difference in this program line was that there was a closed fund for all partner organizations together, rather than a separate fund per partner organization. The Foundation Law foresaw that persons who had suffered personal injuries could receive a maximum amount of approximately 7,670 Euros. Even though it was stocked up during the program, the relatively small amount of 54 million Euros allocated for the claims for personal injuries — for all partner organizations together — resulted in two limitations. First, no claimant outside the two priority groups could be given any compensation. And second, this allocation did not

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2 While most of the partner organizations used a separate claim form for personal injury claims, IOM incorporated the personal injury category into its forced labor claim form. It thereby simplified the claims submission for the claimants and reduced the time needed for the registration and processing of the claims.

allow for paying the maximum amount even to the priority categories of eligible claimants. This was problematic in view of the cruelty of the atrocities that were inflicted on the victims. By supplementing the allocation with interest earned on the Foundation's capital, the EVZ Foundation achieved that each eligible claimant could initially be paid at least 4,240 Euros. At the time of the final distribution of the interest accrued by the program, the EVZ Foundation was able to increase this amount by an additional 2,450 Euros for all surviving eligible victims in the priority categories. If they had also submitted a claim and were awarded compensation for forced labor, that compensation amount was not deducted. The same applied to compensation for property losses.

PROPERTY LOSS

The property loss program addressed persons who suffered property losses as a consequence of persecution or other Nazi injustices, with the essential and harm-causing participation of German businesses. Victims suffered these losses in connection with the economic policies enforced in the German-occupied territories of mostly Central and Eastern Europe. Persons who had already been eligible for compensation under previous post-war German legislation could not file claims under this program line.

From the total funds of the EVZ Foundation, an overall amount of approximately 500 million Euros was allocated for various property losses. This amount was divided according to specific purposes.³ Some 102 million Euros were allocated for payment of individual claims for property losses. These claims and their processing are dealt with here.

Eligibility

In a very complex provision, the Foundation Law set out the criteria for the compensation of property losses suffered during the Nazi period as a consequence of racial persecution or as a result of other Nazi injustices if German companies caused these losses.⁴ Accordingly, two sub-categories were established, one for persecution-related losses, and one for non-persecution-related losses. In both cases, there had to be “essential, direct, and harm-causing collaboration of German businesses”⁵ with respect to the loss concerned. In addition to this specific requirement, the criteria contained a second narrowing factor: payments were reserved to cases that did not

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3 In addition to the amount for individual claims for property losses dealt with in this chapter, another sub-fund of 102 million Euros was established for the payment of claims against German insurance companies; this sub-fund was administered by the International Commission on Holocaust Era Insurance Claims (ICHEIC). The ICHEIC was in addition allocated 179 million Euros for humanitarian purposes.

4 See Annex 1, Foundation Law, Section 11 (1), Sentence 1, Number 3 and Sentence 4.

5 Ibid.

qualify for other German post-war programs for the compensation of property losses. As a result of these limitations, this compensation program only covered a fraction of the actual property losses caused by Nazi Germany.

Processing and resolution of the claims: IOM and the Property Claims Commission

IOM was responsible for the collection and processing of all property loss claims worldwide, including claims from Central and Eastern Europe. Property claims filed with other partner organizations were transferred to IOM. Like for the forced labor claims, IOM applied similar procedures relying on its global network of country offices once again for claims intake. In addition, it performed targeted outreach, developed a separate claim form in seven languages and created a special database for the property loss claims. The registration of the claims and their review was performed by a dedicated team of specialized staff at IOM's headquarters in Geneva. This team of some 30 staff also supported the Property Claims Commission in its resolution of the claims.

The Property Claims Commission was an independent body composed of three members: two members appointed by the German and the US governments respectively, and a chairman chosen by these two members. At the beginning of its work, the Property Claims Commission drafted its own rules of procedure to provide a framework for itself and guidance to the claimants (Supplemental Principles and Rules of Procedure of the Property Claims Commission). These rules dealt with key questions of claims processing and resolution, such as definitions, eligibility, waivers, evidentiary standards, and basic principles to be applied. The Commission held regular meetings at IOM's headquarters for which the IOM team provided legal and administrative support.

In order to resolve the high number of property loss claims (which reached almost 35,000 — many more than expected when the program was set up) in an efficient and consistent manner, the Property Claims Commission decided early on to use mass claims techniques.⁶ It first reviewed a sample of some five percent of the claims to identify and determine the main factual, legal and valuation issues represented in the claims as a whole. This sample had been extracted by the IOM team from the database of the property loss claims pursuant to criteria provided by the Commission. The Commission issued specific guidance on these issues and drafted the corresponding determinations to be used in its decisions on the claims. The Commission then delegated the review of the individual claims to the IOM team that applied the Commission's

6 The pressure to complete the resolution of the claims as quickly as possible also came from the fact that no successful claimants could be paid until all property loss claims were finally decided (Section 9 (10), Foundation Law).

rulings to each similarly situated claim in the remainder of the claims population. The IOM team recorded the Commission determinations in an internal “Conclusion Index of Jurisprudence” which was reviewed and approved by the Commission at each meeting.

The Commission adopted or revised the IOM team’s claim determinations and issued its corresponding decisions during its regular meetings in Geneva. These decisions were drafted with the help of standardized text components that the IOM team had built into the database for the various claims types pursuant to detailed instructions from the Commission. The text of a decision was generated from that database in English and one of six other languages most suited for the claimant.

The key question in most cases was whether the loss of property occurred in connection with the involvement of a German enterprise.⁷ This so-called German enterprise requirement turned out to be the most critical one in separating compensable claims from non-compensable ones. Nazi economic policy and actual expropriations and confiscations were exercised in different ways in different parts of occupied Europe, but individual claimants rarely were able to submit evidence on this issue. The Commission therefore adopted a relaxed standard of proof.⁸ Based on extensive historical research performed by the IOM team, the Property Claims Commission established clusters of historical situations that occurred in certain geographical areas during certain periods of time, and used these clusters to arrive at a number of presumptions. The most important distinction it developed was that the causation of the property loss was presumed if the respective German enterprise benefited from this loss within a year after it had been suffered. For example, if a company or small enterprise was expropriated by the Nazi authorities or occupying forces, the involvement of the German enterprise in the property loss was presumed if the subsequent takeover by that enterprise took place within a year’s time.

The Foundation Law did not set a fixed or maximum amount for the compensation of property losses. It was thus the task of the Property Claims Commission to award a certain amount for a particular loss. The Commission realized that it could not provide a unique valuation specific to every compensable loss because the vast majority of claimants were not able to provide the information necessary to do so. It therefore created a “valuation matrix” in which it categorized

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7 The Property Claims Commission defined property in Section 1 of its Supplemental Principles and Rules of Procedure comprehensively as “any and all immoveable and moveable, tangible and intangible assets,” (unpublished document on file with the author).

8 As stated in Section 22.1 of its Supplemental Principles and Rules of Procedure, “the Commission’s decisions on compensability shall be based on relaxed standards of proof taking into account the lapse of time between the date the loss occurred and the date the claim was made; the circumstances in which the specific loss or types of losses occurred; the information available from other cases; and the background information available to the Commission regarding the circumstances prevailing during the National Socialist era and the Second World War and the participation of German enterprises in the commitment of National Socialist wrongs,” (unpublished document on file with the author).

the loss within a table of standardized values. Nearly 70 such property classifications were drawn up, with the most common relating to farms, small- and medium-sized businesses, professional practices, and bank accounts. The Commission chose the amounts of the standardized values based on a number of factors, including

- (1) the values used in prior German compensation programs;
- (2) historical research;
- (3) information found in the claims, particularly those in the sample of claims that had high-quality evidence; and
- (4) other sources.

The first was the most influential factor, and the Commission decided to use the pre-established, fixed tax or repurchase values of an earlier German compensation legislation, the *Bundesentschädigungsgesetz* (BEG), as a guide. In order to weigh the categories appropriately in relation to each other, a point system was used for each property type and a value of 145 Euros was assigned to each point.⁹ This standardized methodology also contributed to consistency in the treatment of the claims, particularly given the limited funds available for property losses.

Closed fund

The Property Claims Commission first issued decisions on the compensable claims (varying between twelve and one million Euros) in favor of more than 15,000 claimants in over 30 countries without making payments. In its decisions, the Commission noted that the standardized values in its matrix (and in the decisions) did not represent current market values or repurchase values, and that given the limited funds available for property loss claims, it was likely that at the time of payment the awarded amounts would need to be reduced even further. To use current market or repurchase values would have meant to grant awards that would have vastly exceeded the funds allocated to pay property loss claimants, ensuring a *pro rata* reduction of up to 90 percent. The Commission instead aimed at limiting the *pro rata* reduction to approximately ten percent.

Appeals against these decisions were possible, but were limited to a reconsideration based on a manifest error or new evidence not taken into account in the first decision, and only if claimants could show that the omission in the first instance was not their own fault. The Property Claims Commission itself carried out the reconsideration. Only a small number of reconsideration requests were successful; the most common ground was the submission of new evidence.

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9 Alternative methods were used for calculating the awards for real property and bank account losses.

The successful claimants received compensation payments after all claims were finally resolved, i.e., after the last reconsideration request was decided upon. In the end, the reductions at the payment stage were about 13 percent for persecution-related losses and 32 percent for non-persecution-related losses.

Final Report of the Property Claims Commission

Further details on the property loss part of the compensation program and the procedures and methods used in the processing, valuation, and resolution of these claims are contained in a comprehensive final report that the Property Claims Commission submitted to the Board of Trustees and in the EVZ Foundation's final report.¹⁰

HUMANITARIAN AND SOCIAL PROGRAMS

So-called humanitarian programs were foreseen in the Foundation Law, as it was felt that the fate of certain survivors of Nazi persecution was sufficiently linked to forced labor, but that these groups did not have any means to show a qualification for claims, or individual payments to them were not economically feasible.

The Foundation Law allocated certain sums for humanitarian projects: The JCC received 141 million Euros for the benefit of Jewish Holocaust survivors, and IOM was allocated 12 million Euros for projects benefiting Sinti and Roma who were persecuted by the Nazi regime. These two programs are briefly summarized below. A third humanitarian program with an amount of 179 million Euros administered by ICHEIC concentrated on home care and assistance to Jewish survivors and two Holocaust education projects.¹¹

The great majority of the assistance under the JCC program was provided to Jewish survivors through partner organizations in Israel, the United States, and countries of the former Soviet Union. In Israel, these supported neighborhood assistance for elderly survivors, day care centers, home care, and geriatric and nursing homes. In the United States, the emphasis was on home care. In Central and Eastern Europe, home care, meal deliveries, heating, winter clothing, medical aids, and medicines were made available.

10 See Michael Jansen and Günter Saathoff, eds., *"A Mutual Responsibility and a Moral Obligation": The Final Report on Germany's Compensation Programs for Forced Labor and Other Personal Injuries* (New York: Palgrave Macmillan, 2009).

11 For the mandate of the ICHEIC to deal with insurance claims see footnote 3. For more information on the humanitarian and social programs see Michael Jansen and Günter Saathoff, eds., *"A Mutual Responsibility and a Moral Obligation,"* 136–139.

The program for Sinti and Roma administered by IOM is well-documented in a final report on its humanitarian projects.¹² The implementation of this program was extremely challenging in particular for two reasons: first, the difficult living conditions of the Roma communities in Eastern Europe, which were characterized by social discrimination and deep-seated rivalries within the various communities; and second, the lack of reliable information at the start of the program as to how many persons would be eligible to benefit from it. With the collaboration of a specialized search firm and local partners including Roma organizations, IOM eventually identified and supported 70,000 beneficiaries in 13 Central and Eastern European countries.

IOM originally hoped that the humanitarian assistance would contribute to a more fundamental improvement in the living conditions of the Roma survivors in their communities. In practice, this objective was not achievable. In places where no social framework existed, attempting to build sustainable structures would have required so much time that the results of such efforts would likely have only benefited the descendants of the survivors, and not the survivors themselves. While development aid normally focuses on promoting long-term skills and integration among the younger generations, in the circumstances IOM had to concentrate on getting direct assistance as quickly as possible to the most needy, elderly Roma, including basic relief goods such as food, clothing, and heating fuel. By reaching 70,000 individuals, this humanitarian assistance also served to build confidence and pave the way for counseling and so-called “encounter projects” that continued beyond the compensation program and were later funded by other sources (see Chapter 12).

SUMMARY

The additional program lines for personal injury and property losses and the humanitarian assistance programs, while benefiting deserving victims of Nazi persecution, did not fit neatly within the overall program’s focus on forced labor. Their inclusion at a late stage of the negotiations raised questions about the wisdom of integrating them into the much larger forced labor compensation program. The challenges arising from this were compounded by the fact that the first two of these program lines were severely underfunded compared to the number of eligible claimants, and that the number of these beneficiaries was only known when all the respective claims had been processed. Difficult choices about prioritization of claims and levels of compensation had to be made, and frustration and disappointment by the claimants were the result.

12 See International Organization for Migration, *Humanitarian and Social Programs: Final Report on Assistance to Needy, Elderly Survivors of Nazi Persecution* (Geneva: IOM, 2006), www.swissbankclaims.com/Documents/DOC_74.1_hsp_1.pdf (accessed 28 April 2017). This report also covers the similar projects that IOM administered under the Swiss Banks Settlement.

CHALLENGES AND LESSONS LEARNED

- The additional program lines for other damages each required the design and application of *special features* and mechanisms, thus adding to the complexity of the overall program.
- In the case of personal injury claims, the allocated funds that were agreed in the negotiations turned out to be much too limited to fully compensate all eligible claimants. Therefore, difficult decisions on *prioritization* between in principle compensable claims and on the maximum payout per claimant had to be taken in the course of program implementation.
- Supported by a secretariat experienced in mass claims methods and processes, the Property Claims Commission of IOM applied several *key techniques* to achieve an efficient and consistent resolution of large numbers of claims in a short period of time. These were, in particular, the use of a sample of claims to identify and decide representative factual, legal and valuation issues; and the reliance on relevant research and the corresponding grouping of claims to apply presumptions and arrive at consistent legal determinations.
- Sampling and grouping of claims have proved useful in other compensation programs as well. They need, however, an *experienced secretariat to be applied in a consistent and efficient way*.
- The limited funding available for the compensation of eligible property loss claims led the Property Claims Commission to the development of a “*valuation matrix*” that assigned values to loss types not based on calculations of actual losses, but in amounts as close as possible to the eventual awards.
- Since the number of eligible claimants was not known and, in contrast to the forced labor program, no fixed sums or ceilings had been set for property losses, payments could only start once *all the claims had been processed and finally resolved*.

- The fact that the initial awards first notified to the successful claimants prior to payment still had to be reduced *pro rata* at the payment stage led to further disappointment of property loss claimants. This could only have been avoided if the awarded claimants had been notified after the resolution of *all* the claims. However, this would have frustrated the claimants equally, if not more so.
- The humanitarian assistance program for Sinti and Roma survivors in Central and Eastern Europe, albeit limited in scope, served to increase awareness of the great need for the most basic relief which, until then, was largely unnoticed.