

FRIEDERIKE MIETH AND GÜNTER SAATHOFF



INTRODUCTION

This chapter contains:

- Historical background to forced labor under the National Socialist regime
- Germany's long road to facing the crime of forced labor
- General description of the German compensation program for forced labor
- Content and structure of the book

The German compensation program for forced labor under the National Socialist regime was one of the largest and most complex reparations programs worldwide, eventually providing payments to 1.66 million beneficiaries in 89 countries. Running from 2000 to 2007, the program paid out individual compensation amounts to survivors of forced labor during the so-called “Third Reich”, in some instances to legal successors of former forced laborers, and to certain other victims of National Socialist persecution.¹ The sum of approximately 5.2 billion Euros for this program was provided in equal shares by German companies and the German State. Together with seven international partner organizations, the Berlin-based Foundation “Remembrance, Responsibility and Future” (*Stiftung “Erinnerung, Verantwortung und Zukunft”* or EVZ Foundation, after its German initials) administered the program. The EVZ Foundation is still active in the field of remembrance, human rights, and intercultural understanding.

How did this large compensation program come to being? How was it possible to raise this extraordinary amount of money from German companies and government? And how was it possible to design and implement such a massive program 60 years after the crimes took place, with no historical precedents? With many civil society actors and transitional justice practitioners advocating for reparations programs today, these questions have become more pertinent than ever before. There are also many practical “lessons” to be learned from this program. For example, one of the main challenges for the decision-makers was to set up a compensation program that would be able to distribute a fixed amount of money to a yet unknown number of beneficiaries, all within a reasonable time frame. Finally, can anything be learned from this program with respect to the impact and acceptance of large-scale individual compensation in other countries and different historical conditions?

This book is an attempt to describe the experiences of the forced labor compensation program from an ‘insider’s’ perspective. It provides an insight into the processes that led to the enactment of a special international agreement and the Foundation Law, on which the program is based, and details the many decisions that had to be taken during the implementation of that law. Many of the challenges faced by this compensation program were of practical nature and appeared during the launch and execution of the program. They revealed that many consequences of the initial decisions on the design and procedure were not fully anticipated during the setup of the program. In this way, the authors of this book wish to share their experiences so that similar difficulties can be avoided or at least anticipated in future reparations programs.

This introduction provides a brief historical background on forced labor under the National Socialist regime and the long road to the recognition of this crime in Germany. It then briefly describes the main features of the compensation program and provides an orientation to the remainder of the book.

1 “National Socialism” refers to the general ideology by Hitler’s party, the National Socialist German Worker’s Party. It is also commonly referred to as Nazism/Nazi.

FORCED LABOR DURING THE SECOND WORLD WAR

Forced labor was one of many atrocities perpetrated during the years of the National Socialist regime, which ruled Germany from 1933 to 1945. The National Socialist party became a powerful force in German politics in the 1920s. Much of their propaganda focused on existing resentments in Germany. Their leader, Adolf Hitler, became German chancellor in 1933 and the party consolidated its power. After a fire in the Reichstag, the seat of the German parliament, the party disabled the opposition by issuing a decree allowing mass arrests of opposition party members. The National Socialists soon started to repress social groups that were deemed “un-German,” such as people of Jewish, Roma or Sinti origin, homosexuals, and political enemies. Already in 1933, the regime began to build up a forced labor system within Germany. This was less to exploit forced laborers for economic gains, but to punish and detain in concentration camps or “work-education camps” members of the political opposition and those who were not perceived to belong to the German (racially defined) society. On September 1, 1939, Germany started the Second World War with a military attack on its neighbor Poland. In the following years, German aggression extended to cover large parts of Europe with the aim to establish a German world power. This aggression was the start of an international war that became the deadliest conflict in human history.

The crimes perpetrated by the National Socialist regime remain unparalleled. The regime set up a system of concentration camps all over Europe where inmates were starved to death or killed in gas chambers. More than six million people of Jewish faith and 500,000 people of Roma or Sinti origin were murdered in a systematic genocide. Some 5–6 million Poles and Slavonic people (mostly citizens of Central and Eastern Europe) and other ethnic or minority groups were killed. The regime’s ideas of “cleansing” Germany also led them to systematically persecute mentally ill and disabled people, as well as “asocial” individuals and other “unfit” persons, many of whom were murdered or forcibly sterilized. Persons with certain political views such as communists, social democrats, or unionists were also persecuted.

Forced labor became more and more an integral part of the German war economy. While individuals were persecuted by the Nazi regime before the war began in 1939, the practice of German companies and state authorities to systematically force civilians to work under harsh or inhumane conditions began after the start of the war. The goal of such forced labor was two-fold. First, workers were exploited for economic gain; and second, it was related to the plan to eradicate certain population groups by forcing them to work until they died of exhaustion (so-called ‘extinction through labor’). From 1939 to 1945, more than 12 million people were forced to work for German industry, agriculture, public sector, and in German households, the majority of whom originated from Poland and the Soviet Union. In addition, more than eight million individuals were deployed in Germany’s occupied territories, so that in total more than 20 million laborers were forced to work under the Nazi regime.² Many of the

2 Mark Spoerer, “Zwangsarbeit im Dritten Reich,” Norbert Wollheim Memorial, Frankfurt am Main, 2008, available at www.wollheim-memorial.de/files/993/original/pdf_Mark_Spoerer_Zwangsarbeit_im_Dritten_Reich.pdf (accessed 27 February 2017).



Figure 1: Forced laborers on the factory premises of Daimler in Minsk, supervised by an employee of the German company Todt, September 1942. Source: Mercedes-Benz Classic

individuals deported to Germany or production sites in occupied territories were selected through a highly organized system involving German government institutions, military, and companies. Prisoners of war and people deported to concentration camps suffered particularly inhumane circumstances. By the early 1940s, the German war economy depended on the exploitation of foreign laborers and, as a result, German companies profited significantly.

After the end of the war, Germany was divided into four military zones, each governed by one of the Allied Forces. The United States of America (US), Great Britain and France oversaw zones which later became the Federal Republic of Germany (West Germany). The Soviet Union presided over the zone which later became the German Democratic Republic (GDR; East Germany). The International Military Tribunal in Nuremberg was set up by the Allied Forces to deal with those most responsible for the crimes during the Second World War, and in the decades after the war several other trials of such crimes took place in Germany, other European states and Israel.³

3 For a general overview of transitional justice in Germany see Sanya Romeike, “Transitional Justice in Germany after 1945 and after 1990,” Occasional Paper No. 1, International Nuremberg Principles Academy, 2016, available at www.nurembergacademy.org/fileadmin/media/pdf/news/Transitional_Justice_in_Germany.pdf (accessed 8 March 2017).

GERMANY'S LONG ROAD TO FACING THE CRIME OF NAZI-ERA FORCED LABOR

As early as 1946–47, starting with the Nuremberg trials, forced labor was recognized as a crime and some of the main perpetrators were convicted. The prosecutors of the Nuremberg Trials designated forced labor a charge under the ‘crimes against humanity’ category and sentenced Fritz Sauckel, the politician responsible for the execution of the forced labor program, to death. However, the tribunal was not responsible for the decision on forced labor victims’ right to compensation.

While both German states established compensation legislations for victims of the Nazi regime, they did not include survivors of forced labor. Under the 1953 West German framework of compensation laws and regulations for different groups of victims of the Nazi regime, the *Bundesentschädigungsgesetz* (BEG), persons recognized as persecuted by the Nazi regime such as, for example, “holocaust survivors” were considered eligible for compensation for damages resulting from imprisonment or for health damages, but not for forced labor itself.⁴ This framework did not apply to individuals in Central and Eastern Europe, as payments to countries of the Eastern Bloc were politically unwelcome during the Cold War. The GDR also provided pensions to persons persecuted by the Nazi regime, but focused on those who were persecuted for political reasons rather than racial or religious reasons. Here, compensation was not offered to foreign victims of Nazi persecution so that survivors of forced labor were not eligible⁵.

Moreover, there was little political will to compensate victims of forced labor. In the 1950s, a time in which the Cold War already dictated international foreign policy, West Germany refused to pay individual compensation payments, citing mainly legal and political reasons: First, it was argued that forced labor was not a specifically National Socialist crime, but rather a most unfortunate consequence of the war. This in turn would be the responsibility between states and/or former conflict parties directly. Second, German companies were not considered responsible for the deployment of forced laborers as they acted solely according to the directions by the Nazi regime. Third, payments to individuals, and to countries under dictatorial rule, which were part of the so-called Eastern bloc, would ultimately lead to strengthening these regimes.

In the same vein, for a long time, German companies also denied their responsibility for forced labor during the Second World War and successfully avoided compensation payments.

4 See Federal Compensation Act, Federal Law Gazette, BGBl. I S. 1387, sections 28 to 50, 29 June 1953, last amended 17 August 2015.

5 For an overview of German compensation for National Socialist injustice see Federal Foreign Office “Compensation for National Socialist Injustice” available at www.auswaertiges-amt.de/EN/Aussenpolitik/InternatRecht/Entschaedigung_node.html#doc482342bodyText7 (accessed 15 May 2017).

While a few companies voluntarily investigated their roles in the forced labor system and established compensation schemes for their former ‘employees,’ the vast majority of companies did not pay any compensation. In some instances companies were sued for compensation, but it was typically argued that companies were forced by the Nazi regime to participate in the forced labor system, thus shifting the responsibility to the government. This argumentation was often followed in the court decisions. One of the notable exceptions was the “Wollheim trial,” where the former forced laborer Norbert Wollheim successfully sued the I. G. Farben, a chemicals and arms manufacturer, for compensation. Hence, the vast majority of the survivors of forced labor did not receive compensation in the decades after the war.⁶

It was only decades after the Second World War that the voices demanding compensation for survivors of forced labor grew louder. Particularly after Germany’s reunification in 1990 and the dissolution of the GDR, the Green Party in the German Parliament, followed by the Social Democratic Party, and a large number of civil society initiatives (including the Protestant and Catholic Churches) lobbied for taking up the case of former forced laborers. They argued that this was part of accepting the historic responsibility as well as a political and moral settlement with states in Central and Eastern Europe. Eventually, the issue became a priority of the political agenda when a number of class action lawsuits⁷ were brought on behalf of survivors of forced labor against German companies in the United States. Together with threats to boycott the businesses and products of German companies in the US, this finally forced Germany to reevaluate its position.

As a result, German companies and the German Government entered into negotiations about a compensation scheme that would explicitly address forced labor. After several rounds of international negotiations among a range of stakeholders an agreement was reached to implement a large compensation program. The negotiators represented all sides — lawyers speaking for former forced laborers, the US and German governments, representatives of governments from countries where the majority of survivors lived (in Eastern Europe and Israel), victims’ associations, and representatives of the German companies. Chapter 1 discusses the negotiations in greater depth, as well as the legal, political, and practical challenges that were encountered during this phase.

6 See Klaus Körner “*Der Antrag ist abzulehnen*” – 14 Vorwände gegen die Entschädigung von Zwangsarbeitern: Eine deutsche Skandalgeschichte 1945–2000 (Hamburg: Konkret Literatur Verlag, 2001). For more information on the Wollheim trial see www.wollheim-memorial.de (accessed 15 May 2017).

7 These are lawsuits that are brought on behalf of a group of claimants rather than an individual. Details are explained in Chapter 1.

THE COMPENSATION PROGRAM FOR FORCED LABOR

In 2000, the EVZ Foundation was established with the aim of immediately putting in place a compensation program. The Foundation was established by the so-called Foundation Law⁸ that was the end result of the international negotiations. The German Government and the “Foundation Initiative of the German Industry,” an informal body representing the companies, provided the initial assets of the Foundation in equal shares — some 5.2 billion Euros in total. In this way, Germany and its companies finally accepted a measure of accountability towards the victims of forced labor after decades of denying any responsibility for these heinous crimes.

From 2001 to 2007, compensation payments were made through a complex system with the EVZ Foundation as the main administrator and seven *partner organizations* tasked with implementing the program. The partner organizations, defined by the Foundation Law, were five national organizations of Belarus, the Czech Republic, Poland, Russia, and the Ukraine responsible for former forced laborers in these respective countries and a number of other Eastern European states, as well as two international organizations — the Conference on Jewish Material Claims Against Germany (JCC) for Jewish individuals worldwide, and the International Organization for Migration (IOM) for non-Jewish individuals worldwide.

The Foundation Law described two broad *eligibility categories*: survivors of forced labor in concentration camps and ghettos were to receive up to 7,670 Euros, while individuals who performed forced labor for companies in other confined settings were eligible for payment of up to 2,560 Euros. In order to account for the regional differences, a third ‘opening clause’ category was mentioned in the Law as well, in which partner organizations could distribute payments to victims of forced labor in other circumstances than the two above, such as to those who were forced to work in agriculture.

The payments were issued in *two installments*. This was because the total amount to be distributed was limited but the exact number of beneficiaries was unknown. While some estimates of the number of forced laborers were available during the negotiations for the program, it was impossible to know how many were still alive after more than 55 years. Paying in two installments allowed the EVZ Foundation and its partner organizations to distribute the overall funds available equally across all beneficiaries, as the exact number of beneficiaries became known after the first installment. Yet, this process created a number of challenges in the administration and implementation of the program, which will be discussed throughout this book.

While the EVZ Foundation’s principal task was to make payments to survivors of forced labor and, in some instances, their legal successors, *two additional program lines* were implemented as well. These consisted of compensation payments for so-called “other personal injuries” to

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8 See Annex 1.

individuals who were particularly subjected to medical experiments, and for “property damages” including personal and business losses, lost bank accounts, losses under insurance contracts etc. In addition, the Foundation Law earmarked funds for so-called “humanitarian programs” for persons who were subjected to particularly harsh suffering. Given the main focus of this book is on the compensation payments for forced labor, these other program lines are only briefly described in Chapter 9.

The German program was not the only compensation program for survivors of forced labor at the time. Parallel to the negotiations with Germany, international negotiations also took place with Austria, which — as a former part of the Third Reich after its annexation by Germany in 1938 — was involved in very similar crimes. Though their design and approach differed in some aspects, the German and Austrian programs often worked with the same partner organizations. The Austrian program will not be described in this book, but it is referred to where comparisons are relevant.⁹

In addition to the compensation payments, a *long-term mandate* of the EVZ Foundation was to preserve the memory of and educate about the lessons of the Nazi injustice, to advocate for human rights as a way of learning from the past for the present and future, and to support humanitarian projects for survivors of forced labor. Toward this aim, a separate “Remembrance and Future” Fund was set up, which supports projects in Germany and a number of other countries. The ongoing work and funding programs of the EVZ Foundation are discussed in Chapter 12.

CONTENT AND STRUCTURE OF THE BOOK

This book discusses a range of aspects of the forced labor compensation program that are deemed most relevant for policy-makers and practitioners who seek to establish and implement reparations programs for mass crimes. Many features of the German program were unique due to the unprecedented scale of the program and the international collaboration. For example, the vast number of potential beneficiaries across many countries posed a number of challenges that do not normally present themselves in a national program. Nevertheless, while every reparations program designed to address certain human rights violations must take the very unique situation into account, there are a number of key aspects and potential dilemmas that have to be resolved by all programs.

The descriptions in this book focus primarily on the experiences of the EVZ Foundation and two of its partner organizations, as a comprehensive description of the work of all seven

9 For detailed descriptions of the work of the Austrian Reconciliation Fund that administered the Austrian compensation program, see Hubert Feichtlbauer, *Forced Labor in Austria 1938–1945* (Wien: Austrian Reconciliation Fund, 2005) and www.versoehnungsfonds.at.

partner organizations would have been beyond the scope of this endeavour. By focusing on the work of two typical partner organizations, one operating on a national and one on an international level, this book discusses the challenges of the program in an exemplary way that will be more relevant to the reader.

The program is described in a chronological rather than a stakeholder-centered order, and most chapters are written in a way so that each can be read more or less independently from each other. As the experience of the authors has shown, those who are interested in the lessons learned in other programs often find themselves at a particular stage of a reparations program, e.g. in the advocacy, planning, or implementation phase, and may therefore be interested only in parts of this book. Nevertheless, the authors of this book hope that, even when the historical and contemporary contexts differ, readers may find insights for their specific situation.

Finally, the chapters in this volume do not address the question whether this particular compensation program was the *appropriate* mechanism to address the injustice of forced labor during the Second World War. The EVZ Foundation was set up for the purpose of implementing a law that had already been negotiated and, in this way, many of its activities were already defined. Neither the EVZ Foundation nor its partner organizations were in a position to amend the Foundation Law. However, some thoughts regarding the impact and acceptance of the program are discussed in the conclusion of this volume.

Chapter 1 looks at the process of the international negotiations prior to the establishment of the EVZ Foundation in more detail. Why was the program set up so late? Which stakeholders participated in the negotiations and what was debated? How did they agree on the sum of 5.2 billion Euros made available for the compensation? The chapter also discusses the main provisions of the Foundation Law, which was the result of the negotiations.

Chapter 2 describes in detail the eligibility criteria set out in the Foundation Law. What were the decisions concerning eligibility of claimants? How did the different victim categories come about and how was the amount of compensation for each group arrived at?

Chapter 3 discusses the financial details of the establishment of the Foundation and the planning of the compensation program. It describes how the fundraising was organized from different stakeholders and what decisions had to be taken prior to the implementation with regard to financial aspects. It also addresses administrative costs and the financial management of the large compensation fund.

Chapter 4 outlines the organizational structure of the EVZ Foundation as the main administrator as well as that of two partner organizations. While the overall structure may be unique due to the large number of victims involved and the geographical scope of the program, the different tasks involved in the compensation program are relevant in other contexts as well.

Chapter 5 describes in detail the outreach component of the program, which was a task of the partner organizations. This was a particular challenge for some organizations given the long time that had passed since the crimes and the old age of the potential beneficiaries. The chapter outlines the typical issues that need to be considered during outreach.

Chapter 6 discusses the different stages of the claims processing, including the collection, review and assessment of the claims, the support of claimants, and the most relevant technical processes involved.

Chapter 7 deals with the process of paying out the compensation amounts. It looks at the necessary steps to set up and manage a secure payment system, including creating a financial infrastructure and necessary negotiations with banks.

Chapter 8 describes the controls and audit processes of the program. The EVZ Foundation as the main administrator was tasked with controlling the claims decisions taken by the partner organizations for which it set up separate control teams. The chapter includes a description of the typical challenges in audit processes.

Chapter 9 describes the two other program lines, “other personal injuries” and “property loss,” as well as the so-called “humanitarian programs” administered by the EVZ Foundation and the partner organizations, in order to give a full picture of the mandate of the compensation program.

Chapter 10 describes the issue of legal closure in the forced labor compensation program. This did not only involve political decision-making, such as reaching agreements during the negotiations, but also encompassed a range of legal and practical actions that needed to be taken in order to achieve legal closure.

Chapter 11 discusses how “ending” a compensation program needs to be a well-planned process. Many aspects need to be addressed early on in order to allow a smooth completion of such a large program. It describes how some tasks still require dedicated staff after the conclusion of the payment process and how the EVZ Foundation handled the immense amounts of data after concluding the program. The chapter also gives ideas how institutional knowledge can be preserved.

Chapter 12 gives insights into the ongoing work of the EVZ Foundation. The “Remembrance and Future” Fund provides funding for projects that seek to acknowledge the suffering of the victims of National Socialism, foster historical dialogue, support vulnerable survivors, and educate Germans and others in Europe in human rights matters as “lessons of the past.”

The *Conclusion* discusses the outcome and impact of the program. Did the EVZ Foundation and its partner organizations achieve the goals of the program? Did the compensation program fulfill the different expectations of the survivors of Nazi-era forced labor, of the initiators and funders of the program, as well as of the wider public? Did it lead to better understanding between peoples or even “reconciliation” between former enemies? The chapter critically looks at successes and challenges of the program, and discusses the significance of the forced labor compensation program in more general terms.

Finally, a few notes on terminology and the use of certain concepts in this book are in order:

Forced labor/slave labor: Elsewhere, the forced labor compensation program has been referred to as “forced and slave labor” compensation program. For this historical context, “slave labor” is not a clearly defined term. Some use it to distinguish the inhumane conditions of forced labor in concentration camps from ‘ordinary’ forced labor in companies or households. Yet this leaves out forced work in ghettos and other camp-like environments where circumstances were often similar to those in concentration camps. Others understand “slave labor” to describe the forced work by Jewish individuals. The Foundation Law, for various reasons, only refers to the term “forced labor,” as will be done in this book as well.

Former forced laborers, victims, and survivors: While it is not uncommon to use the term “forced laborers” in today’s language, we found it more fitting to speak of “survivors” or “victims” of forced labor, or former forced laborers. Where used, the word “victim” is not meant to suggest a passive role of the individual in question.

Foundation Law: “Foundation Law” will be used throughout this book to refer to the specific law that allowed the establishment of the compensation program (Law on the Creation of a Foundation “Remembrance, Responsibility and Future,” 12 August 2000, see Annex 1). The term should not be equivocated with the federal laws that regulate public or private foundations in Germany.

Reparations/compensation program: In its entirety, the German forced labor compensation program encompasses more forms of reparations than compensations alone, according to the UN guidelines for reparations. Technically, it would therefore justify the label reparation program. At the time, however, the program was called a compensation program, not least because in Germany, “reparations” is a politically sensitive term as it creates a strong association with the earlier, state-level reparations that were part of the obligations Germany had to fulfil after the Second World War. In this book, the term compensation program will be used for reasons of consistency.