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Joint declaration of the rapporteurs for the law regarding the conditions for making pensions payable on the basis of employment in a ghetto (ZRBG) in the Committee on Labour and Social Affairs

New compensatory pension supplement for persecuted people who worked in National Socialist ghettos but have not been able to receive ghetto pensions to date due to insufficient qualifying periods in the pension insurance system

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Despite all of the efforts of the German Bundestag and the Federal Government, through the law regarding the conditions for making pensions payable on the basis of employment in a ghetto (ZRBG), to provide a “ghetto pension” via the German Federal Pension Insurance (DRV) to all people who were forced to reside in National Socialist ghettos and were employed there, one group has been unable to receive a “ghetto pension” to date. For pursuant to the statutory provisions, persecuted people who demonstrably worked in a ghetto and have thereby had their contribution periods in accordance with the ZRBG recognised, but have not fulfilled the qualifying period of five years, do not receive any benefits from the German statutory pension insurance system.

Particularly affected by this situation are victims of the Nazi regime in Eastern Europe, for whom no credited periods can be applied on the basis of provisions relating to pensions, and who live in countries with which there is no social security agreement. Above all, due to the practical restrictions that were placed on their participation in the regular labour force after the end of the war, Roma people were unable to attain employment that involved pension insurance contributions and could be applied to the general qualifying period of German statutory pension insurance as contribution periods. This means that they have not fulfilled the conditions for the payment of a pension under social security law.

Several organisations in Germany and abroad have pointed out this problem to the German



Bundestag, and have called for a solution. The Left Party parliamentary group introduced a bill to the plenary in July 2016, in which it called for the recognition of presumed contribution periods.

Subsequently, the rapporteurs of all four parliamentary groups addressed this issue in multiple talks with groups including the Union of Jewish Religious Communities in Poland, the Roma People Association in Poland, the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of Finance (BMF) and the German Federal Pension Insurance (DRV), seeking a mutually agreeable solution that would help the people affected, who are elderly and in many cases very poor, quickly and without red tape. The BMAS researched the number of people affected, and provided their figures to us. To our knowledge, there are 1,380 people affected.

In order to avoid unequal treatment in comparison with other victims of National Socialism, which could arise through the introduction of presumed qualifying periods for former ghetto workers, the rapporteurs rejected the possibility of recognising presumed pension contribution periods.

In talks with the BMAS, BMF and DRV, we found a solution in the form of a new version of the Federal Government Directive concerning the payment of amounts to victims of persecution in recognition of work in a ghetto which did not constitute forced labour (Ghetto Work Recognition Directive):

In the Ghetto Work Recognition Directive, a compensatory pension supplement in the amount of 1500 euros is to be introduced as a one-time payment for this group of people.

The amendment of Section 2 paragraph 2 of the Ghetto Work Recognition Directive means that as an alternative, a one-time payment can now be made to persecuted people who receive no pension from statutory pension insurance despite ghetto contribution periods because of their lack of other periods that can be applied.

The Federal Government will provide information about this in multiple languages via the Federal Foreign Office and via the website of the Federal Office for Central Services and Unresolved Property Issues (BADV).



We thank the BMF, the BMAS and the DRV very much for the constructive talks and for the solution that has now been found, which was generated in mutual agreement with the rapporteurs in the German Bundestag and was adopted by the Federal Cabinet on 14 June 2017.

The rapporteurs have also agreed on the following measures with the BMF, BADV, DRV and BMAS:

Of the 1,380 people whose applications for ghetto pensions were rejected because of insufficient qualifying periods, 1,110 have already received a recognition payment of 2,000 euros in accordance with the Ghetto Work Recognition Directive. There are 270 people who have received no ghetto pension due to insufficient qualifying periods and have not yet applied for a recognition payment in accordance with Section 2 paragraph 1 of the Directive. These people should be helped promptly so that they too can receive this payment in the amount of 2,000 euros. The responsible BADV has now written to these 270 people in their respective native languages, calling their attention to the Ghetto Work Recognition Directive. We thank the BADV for having arranged for these letters to be sent so promptly.



Background information:

Until 1997, no contribution periods for employment in ghettos under the Nazi regime were recognised in the statutory pension insurance system, because it was assumed that these forms of employment constituted forced labour. In June 1997, the Federal Social Court ruled that forced residency in the ghetto did not exclude employment subject to social security contributions, such that periods of employment in the ghetto could be recognised in the statutory pension insurance system. However, in many cases it was not possible to pay a pension on the basis of these periods, for most former ghetto workers lived and live outside of Germany, and the provisions on foreign payments permitted pension payments for non-German ghetto contribution periods only if, among other things, there were also contribution periods from the territory of the Federal Republic of Germany in an appropriate amount. In most cases, former ghetto workers did not fulfil this requirement.

In order to ensure that pensions from ghetto contribution periods could also be payable abroad, the German Bundestag adopted the **law regarding the conditions for making pensions payable on the basis of employment in a ghetto (ZRBG) in 2002**. For payments abroad, ghetto contribution periods themselves were now considered contribution periods on the territory of the Federal Republic of Germany; pension payments could also be made to people abroad on the basis of these periods. To clarify that contribution periods cannot be recognised for periods of forced labour, it was stipulated that the employment of people persecuted by the Nazi regime must have come about of their “own volition” and that their work must have been performed “for remuneration”. This also corresponds to the generally applicable criteria for employment subject to insurance contributions under social law. Some 90% of ZRBG pension applications, however, were rejected, particularly because the conditions of working of one’s “own volition” and “for remuneration” were not fulfilled. Many of those affected brought action against the decisions to reject their applications; the social courts generally shared the view of the pension insurance institutions.

In order to also provide financial recognition for ghetto employment to those people who could not receive a statutory pension from this employment, the **“Federal Government**



Directive concerning the payment of amounts to victims of persecution in recognition of work in a ghetto which did not constitute forced labour and which has not been recognised to date under social insurance law” (Ghetto Work Recognition Directive) was adopted on 1 October 2007 (responsible: Federal Ministry of Finance). Under this Directive, a person persecuted by the Nazi regime could receive a one-time recognition payment of 2,000 euros if an employment-like relationship (for which the requirements are less stringent than for employment as defined under pension insurance law) existed in a ghetto and if the person was not entitled to a pension in accordance with the ZRBG. The BADV is responsible for issuing these payments.

In several rulings in 2009, the Federal Social Court (BSG) altered its previous jurisprudence on the recognition of ghetto contribution periods. Less stringent standards were to be applied to the criteria of “of one’s own volition” and “for remuneration”. Corresponding to these rulings, the recognition of ghetto contribution periods was now possible in the case of a fundamental obligation to work, and food was also recognised as remuneration.

The pension insurance institutions then reviewed all previously rejected applications ex officio; according to the new criteria, pensions were approved in about half of the cases. A recognition payment that had possibly been approved in the meantime was initially claimed back by the BADV pursuant to the Ghetto Work Recognition Directive.

Recipients with very small ghetto pensions particularly resisted the claim for the return of recognition payments that had already been paid out. To avoid such hardships, the Ghetto Work Recognition Directive was amended such that drawing a ghetto pension was no longer mutually exclusive with receiving the recognition payment. The application deadline was also eliminated such that applications for this payment can still be made today.

In the cases of the applications that had been definitively rejected at the time of the BSG jurisprudence, but that were, upon review, able to be approved after all, the pension regularly started later than the earliest possible starting point for pensions under the ZRBG, 1 July 1997. As a rule, these pensions started in January 2005, four years before the change in jurisprudence. The reason for this was the general payment limitation period in social law,



under which payments can only be made retroactively for a period of up to four years (Section 44 paragraph 4 of the tenth book of the Social Code). This payment limitation caused great displeasure among persons entitled to a pension, despite the high supplementary pension payments that were received to compensate for the later start to the pensions.

For this reason, the four-year limitation on retroactive payments for pensions with ghetto contribution periods was eliminated in **2014** through the **First ZRBG Amendment Act**.

Pensions for which a later starting point than the earliest possible starting point for pensions had already been set could have their starting points reset upon request, and could be paid out from July 1997 onward. In these cases, there was usually a pension back payment. At the same time, the monthly payment amount decreased: the supplementary amount paid for a delayed start to pension payments now was no longer applicable, as the pension started earlier. Those who did not want this outcome retained their previous (higher) pension, forgoing a pension back payment.

The application deadline of 30 June 2003, which originally had to be met in order for a pension to start as of July 1997, was eliminated, such that pensions that are applied for today can still qualify for the earliest possible pension starting date.

This Act also adjusted the requirements concerning the location of the ghetto to fit the requirements stated in the Ghetto Work Recognition Directive. It is now sufficient for the ghetto to have been located within the Nazi sphere of influence; it no longer has to have been located in territories occupied by or incorporated into the German Reich. Through this change, some more ghettos, for example in Slovakia and Romania, have been added to the category of those that may be recognised.

It was furthermore stipulated that ghetto pensions can only be paid into the accounts of those eligible for them, and not to authorised representatives of such people, so that those eligible can have the payments directly available to them, without having to pay lawyers' fees.