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Holocaust in former USSR Territories – the change of the legal narrative regarding Holocaust survivors

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A. Introduction

The Holocaust was by no doubt the most unique Genocide event in modern History. The systematic killing and execution of targeted racial groups, singling out racial groups such as the Jews, was of epic magnitude, and was yet to be seen in History both in its scope and number, and its structural persecution and execution[1].

The systematic killing, was the direct outcome and a clear political undertaken at the Wansee Conference, as a conclusion of a cabinet meeting at the level of Nazi State Secretaries, all aiming towards one goal – "The Final Solution". This meeting that took place on 20.1.1941, was however not the beginning of the persecution, but a cold minded decision in respect to the goal of the racial extension. The so called Nurnberg legislation, that for the first time deprived the civil rights of the Jews in 1935[2], we in fact the beginning, and the start of the second world war, and the capturing of further territories that were either directly annexed to the Reich or under its control, increased dramatically the number of Jews that were in Nazi hands[3].

The Agreement between Nazi Germany and Soviet Union, Riventrop Molotov, created a border for the targeted persecution of Jews, and thus, in a way, a clear division of Europe between the West (with the exception of Great Britain) under Nazi influence, and the Eastern Territories, were Jews at that time, were safe. A large Migration of Jews towards USSR territories took place, and in some cases, these steps, lead to further suffering of the Jews that came from the West, in the form of punishment given by the Soviets for the so called enemies of state[4].

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[1] Schmitz-Berg, Wieder gut gemacht? Grupello, Duesseldorf 2017, p. 9
[2] Koehler, Buergerliches Gesetzbuch, Beck Verlag, Munich 2002, p. XXI
[3] Yahil, The Holocaust, The fate of European Jewry 1932-1945, Tel Aviv, 1987, Vol. 1, pg. 211
[4] See: Ustawa z dnia 24 styczina 1991 r. o kombatantach oraz niektorych osobach bedadcych ofiaami represji wojennych I okresu powojennego

The Barbarossa Campaign of 22nd June 1941, changed of course all this, and pushed this persecution border towards central points within the Soviet Union. Soon enough "safe places" such as Lvov (Lemberg), Kiev, Vilnius, even Leningrad, change status with the enlargement of the Nazi Reich, including the establishment of the Ostkommisariat in the territories of Ukraine. A special "killing field" for Romanian Jews was given to the Romanians by the Nazis in the form of the Tigana Agreement, giving the territory of Transnistria for the civil Administration of the Romanian Fascist Regime, that ended up deporting thousands of Jews as a part of its understanding of the Final Solution program in Romania. From July 1941 to April 1943, some 300,000 Jews (of Romanian origin and local) were moved in deportation convoies throughout Transnistria[5].

All this, created a unique historical situation at the End of the World War II. The Soviet Union, a vital part of the Allied forces, took over most of the Eastern Central European Territories after the war. This created a special situation. In respect to Legal rights, The Soviet Union was also a part of all post war agreements with Germany (even a part of the London Agreement of 1943), and thus was to either directly or indirectly effect the reparation agreements signed with the allied forces. From a humanitarian point of view, many Holocaust survivors, stayed in their origin countries, and as such remained under the radical Socialist regime of the Communist Era.

The Goal of this article, is therefore, to conduct a legal historical survey, as to the development of individual compensation rights as a direct result of the reparation agreements with Germany, and learn of the developments behind the Iron Curtain, then look into the development of modern compensation law as of 1989 in these specific territories. I, therefore, aim to give a less historical but an international survey of legal jurisprudence as for legal definition of rights rendered to Holocaust survivors under various laws. I hope that these definitions would allow us to have a clearer view of the development and changes made in rights of Holocaust Survivors in former Soviet Union Territories.

The article would also allow us to learn more of different jurisprudence and historical comprehension all due to various different legislation and legal understanding of the persecution of the Jews and the damages caused by the NS wrong doing. It is important to note in this respect, that compensation legislation has enveloped over the years, and arrangements have more often been modified to resolve open restitution or compensation issues[6].

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[5] Ancel, History of the Holocaust in Romania, Jerusalem 2002, Vol. 2, p. 789
[6] Weiss, Closing the Books – Jewish insurance claims from the Holocaust, 2008, p. 21

B. Federal Republic of Germany

B (1) The Creation of NS Wrong doing Compensation law -

BEG and BEG Schlussgesetz Art. V – *post war personal compensations*

B(1)1 West Germany – A motor in creation of compensation

Soon after the capitulation of Nazi Germany, the Allied forces occupying Germany, commenced to legislated military legislation relevant to compensation of property and remedies for the wrong doing of the NS Regime[7]. Due to the division of Germany, for historical reasons, the Federal Republic of Germany assumed its responsibility vis-à-vis these wrong doings[8], and started right from its beginning comprehensive attempts to reach both reparations agreements vis-à-vis the states – so called "Globale Abkommen"[9].

Parallel to the discussion on Global reparations, the Federal Republic of Germany started rather from the beginning to negotiated with the help of various diplomats with the State of Israel and representative of the Jewish people on the so called personal compensation, *Wiedergutmachung,* a new legal system that would under German administrative law (*Verwaltungsrecht*)[10].

The idea behind this legal structure was the creation of a state based compensation program funded directly by the Ministry of Finance. Important however to note that these compensation arrangements were not only targeted for Jews, but mainly brought to solve first and outmost also the injustice cases by the NS Regime vis-à-vis its own people, meaning also by Germans effected by this NS Regime.

These negotiations were finalized under the so called Luxembourg Agreement of 1951, paving the way to an agreement among the sides. This agreement is also to be commended as the first ever personal compensation agreement that has three parties to it – Federal Republic of Germany as a successor state of the NS Regime, State of Israel as the newly established Jewish Home, and non-governmental organizations representing World Jewry. All this made way to strike and international accord paving the way for personal compensation programs[11].

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[7] Jelinek, "Israel und die Anfaenge der Schilumim" in Herbst & Goschler (eds.), Weidergutmachung in der Bundesrepublik Deutschland (1989), 128

[8] Buschbom,"Die voelkerrechtlichen und staatsrechtlichen Massnahmen zur Beseitigung des in Nahmen des Deutsche Reichs verbuendten nationalsozialistischen Unrechts", in Biella and Buschbom (eds.), Das Bundesrueckerstattungsgesetz (1981), 52

[9] Van Dam, Das Bundesetschaedigungsgesetz, systematische Darstellung und Erlaueterungen (1953), 14

[10] BGH (Bundesgerichtshof – German High court), RzW (Rechtsprechung zue Weidergutmachung) 1966, 321

[11] Ehrig & Wilden, Bundesentschaedigungsgesetz – Kommentar (1960), 201

The Luxembourg treaty lead to the so called BEG (*Bundesetschaedigungsgesetz*), a new German codex presenting a somewhat holistic solution to various compensation issues, such as personal monthly pensions due to health damages due to NS wrong doing (*Gesundheitschaden*), monetary expropriations such as bank accounts, life policies and other financial rights, and to property expropriations[12]. Over the years, these basic compensation agreements would be followed by other settlements some of them initiated in Germany some of them would be created elsewhere.

This arrangement would set forth a compensation program allowing Holocaust survivors to receive a lump sum compensation based upon their physical persecution and its duration. A formula was created in order to calculate the height of the lump sum, a sum that was supposed to recognize and compensate for deprivation of freedom of the survivor.

It is interesting to note that the most of these legislations would be amended over the years, and both expend and increase the monetary compensation from one hand, but more importantly due to various legislation amendments, also basic legal definition as territorial scope of the compensation and the newly developed jurisprudence relating to the definition of holocaust survivors.

B(1)(2) Occupied Territory vis-à-vis Influenced Territory in respect to BEG

In the case of rights of Holocaust survivors under German law, some important legal difficulties arose from the beginning. At large, The German Authorities created two groups, the first, relating to Territories under direct German occupation, and the Second being under the Nazi influence. Countries under Nazi influence never lost their sovereign ability to make decision as for its Jewish Citizens population. This would mean, that under International law, these countries were not only seen as a Nazi ally country that retained its sovereignty, but most importantly shall bare the consequences of the persecution in its territory, made by its state organs[13].

For many years since the so called Luxembourg agreement, German authorities would not accept their liability for the anti-Semitic wrong doing in Influenced Territories. Following the above mentioned line or argumentation, the German authorities would claim that these states were under a fascist regime, that in principle created its own separate racial legal structure, and would independaly persecuted people of the Jewish race on its territory[14]. Sadly, this dispute is still an open issue til today.

The fact that these states remained sovereign state, allowed the authorities to argue that the fundamental principle of Tort law should be observed, that being the limitation of liability for wrong

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[12] Cohen, "Unfaire Prozessfuehrung" (1965) RzW, 530
[13] Bundesentschaedigungsgesetz, 11th edition (1963), 23
[14] BGH (Bundesgerichtshof - German Supreme court), 1976 RzW (2nd bind), 72

doing. Thus, a clear line could be drawn between the so called German liability (***direct compensation***) or its limited liability due to the physical presence of NS German soldiers on influenced Territories[15].

BEG did allow various solution for some compensation to survivors, but would limit it to territories that would be defined as occupied territories where the international law standing was unclear. In this respect, the recognition of the rights of Holocaust survivors to receive their compensation was brought before the Supreme German Court in order to create the needed legal jurisprudence allowing the compensation of these survivors[16].

In 1965, the German Legislator changed the BEG and introduced the BEG Schlussgesetz, that would allow Holocaust survivors to submit their claims until 1969[17]. Further to the introduction of a special statute of limitation of claims for personal compensation due to health damages, the legislation did take into consideration growing critic echoed by the courts as to the legal basic definition of Art. 43 and 47 BEG[18].

The BEG-Schlussgesetz, therefore, was not only limited to the issue of extension of deadline for the purposes of making timely application of the survivors, but would dramatically chance the presumption as to the scope of responsibility of the Federal Republic of Germany towards acts of racial persecutions conducted in the territory of the so called "Satellite States".

In this respect the former need to prove a direct responsibility of German forces, or a specific act that unlawfully deprives a survivor from his human rights due to acts that could be related to the responsibility of the NS Reich[19]. However, as the BEG is an autonomous law, not to be seen as a law creating either rights under civil or criminal law, the burden of proof for establishing NS German Influence would meet a lower evidential requirements[20].

It is therefore of great importance that the BEG-Schlussgesetz changed the legal presumption under the law from a general rule of need of substantiating causality between the NS Regime presence or influence to a reversed presumption, accepting a specific time line, under which the legal presumption would be that German influence is to be seen as substantiated. It is important to note that the

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[15] Spernol & Langrock, "Amtliche Wirklichkeit", in Frei, Brunner & Goschler (eds.), Die Praxis der Weidergutmachung, 2009, 615

[16] Meyer & Sprerol,"Wiedergutmachung in Duesseldorf. Eine Statistische Bilanz" in Frei, Brunner & Goschler (eds.), Die Praxis der Weidergutmachung, 2009, 690.

[17] Hebenstreit, "Sonderfonds nach Atikle V BEG Slchlussgesetz – Das Bundesetnschaedigungsgesetz" in Giessler Gnirs & hebenstreit (eds.), Das Bunesentschaedigungsgesetz, (1983), 512

[18] Zorn, "Das zweite Aenderungsgesetz zum Bundesenschaedigungsgesetz (BEG-Schlussgesetz)" (1965) RzW, 385

[19] BGH (Bundesgerichtshof - German Supreme Court), 62 RzW, 269

[20] BGH (Bundesgerichtshof - German Supreme Court), 57 RzW, 236-237

legislation saw the actual influence as dated just before the begin of the Barbarossa Operation, thus referring to the period of preparation to push the Soviet front to the East as the date of beginning of persecutions[21].

B(1)(3) The Exclusion of those behind the Iron Curtain

For the individual Holocaust survivor, the journey to receive their compensation did not end with the capitulation of Nazi Germany. As we have seen above, the outcome of the war and the separation of Germany into two states, created two different legal systems under which survivors lived. For the West, that was under American Occupation, individual compensation was a part of the basic understanding of the moral duties of the so called modern Free Democratic Germany. It was an integral part of the so called "Deutschlandsvertrag" – the agreement ending the Occupation of Germany but the allied forces[22]. The legal importance of this document is the clear understanding that the Eastern Part of Germany, the new erected Democratic Republic of Germany (SED) was to hold its separate discussion in regard to its moral obligation towards the victims[23].

Attempts by the Israeli Government and Jewish Organizations to promote such a compensation agreement did not reach much success. In a negotiation round held in Moscow in November 1952, no large progress was made. Israel attempted to reach this goal by contacting the Soviet Union and only received in return the answer that SED was an Independent state and the Soviet Union did not have any influence on the matter. A new moral narrative was put into the discussion, claiming that there was no need for such compensation, as SED was the first to fight Nazi Fascist wrong doing, and that the SED installed an internal program to ensure social welfare for victims of Fascist oppression[24].

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[21] Blessin Giessler, Bundesentschaedigungs-schlussgesetz, Kommentar, 1967, p. 450

[22] „Vertrag ueber die Beziehungen zwischen der Bundesrepurlik Deutschland und den Drei Maechten", 26/5/1952, and the law followed later, „Gesetz betreffened den Vertrag von 26 Mai 1952 ueber die Beziehungen zwischen der Bundesrepurlik Deutschland und den Drei Maechten", 28.3.1954, BGBl. II, 1954, p. 57

[23] Hans Guenter Hockerts, Weidergutmachung in Deutshcland, VfZ 49, 2001, p. 167.

[24] Angelika Timm, Jewish Claims against East Germany, Moral Obligations and Pragmatic Policy, Central European University press, Budapest 1997, p. 87

Not less problematic was the Political decision of the three Allied forces and the Federal Republic of Germany not to allow any compensation program to be relevant to those living in behind the Iron Curtain. Thus, no compensation program for the benefit of individuals living behind the Iron curtain could be applied[25]. This decision, created therefore two groups of individuals, one relevant for compensation, allowing both the historical and research world to be involved with, the other behind the iron curtain, excluded from these programs, not allowing respected historical research and access to documents[26].These thoughts were also echoed in various Court decision in Germany, including the latest in the scope of historical discussion relating to the so called Ghetto pension law[27].

The border between the West and East Germany became therefore not only a political border but also a border that would split Europe into two historical narratives. Those under the influence of the three Allied forces headed by the US, would see the moral need for creation of programs to resolve outstanding compensation issues, whereas the other would follow the Soviet narrative.

This would mean that under the Soviet influenced countries, the main narrative would be that no compensation for Nazi wrong doing should be installed, and that national states would set up social programs for the survivors in accordance with their needs. In this line exactly, the SED regime claimed in 1990 during negotiations with the Israeli government relating to its part in remaining outstanding reparations discussions that only symbolic payment should be given, as the SED did not hold any moral or legal obligations both to Israel or the Jewish world[28].

The Fall of the Iron Curtain, the change of the narrative -
The ability to relate to the issue of compensation of former USSR Holocaust Survivors

Following the reunification of both Germanys, and the signing of the unification contract, a new window of opportunity was created in order to allow to resolve two important large open legal questions: the payment of personal compensation to Holocaust Survivors currently living in former Soviet countries, and resolving the issue of compensating Holocaust survivors that were unable to receive personal compensation due to missing the deadline to apply for compensation under the General compensation law – mainly due to the BEG-Schluss[29].

These so-called "outer compensation arrangements", allowed the Federal government from one hand to create new personal compensation mechanism at the same time keep old arrangements mainly the

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[25] De la Croix, "Israel Vertrag und Haager Protokolle", in de la Croix & Rumpf (eds.), Der Werdegang des Entschaedigungsrechts (1985) 151
[26] Knut Ipsen, legal opinion (8 October 2008) in the context of NRW LSG (L 8 R 67/06), 3
[27] BSG, 19 May 2009 (B 5 R 26/06) note 22
[28] Supra note 22, pg. 175
[29] Schaefer & Budde, Entschädigung- Ausgleichsleistungsgesetz (1994), 2

BEG closed, all this to reduce both payment and scope of new claims made by survivors[30]. One should note, that the "outer compensation arrangements" did create a problem, as the payments were installed only as the claim was submitted, and no back payment was possible[31]

A new program was installed as a result of the unification program[32], and so new "outer compensation arrangements were created[33]. Interesting enough, those arrangements assisted in solving a complicated legal matter. The GDR had already resolved its moral/legal formal international law liability in forms of the agreements reached as of 1953, having said so, continued to work in order to resolve outstanding individual claims issues yet to be address thus far[34].

This step, allowed the survivors to receive their recognition and compensation, notwithstanding the international law question relating to the liabilities of SED regime or other former Soviet Union entities for the compensations[35]. The Federal government undertook the responsibility to find solution for these groups, and as of that period began to work on outer legal solutions.

Individual Compensation program was set in accordance with the scope of the persecution. Two groups were established: those who were in Ghettos or other camps, and those who were restricted of their basic rights or fled from the Nazis. The later was to receive a lump one time compensation payment under the ***hardship fund*** – a fund set forth to cover mainly those who were in satellite states and their persecution did not amount to the scope of Ghettos and concentration camps[36].

B(1)(4) Slave Labor fund – Compensation to NS wrong doing towards the slave laborers

In the year 2000, German government in corporation with the German Industry created the so called Slave labor fund, or in its legal full name "Remembrance, Responsibility and Future" was founded[37]. The fund set forth to create a new compensation arrangement for slave labor work that was conducted under the NS Regime. For many, the idea behind this fund was to try and create a comprehensive

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[30] Goschler, Schuld und Schulden (2008) 440
[31] In this respect, the situation is other than under the BEG, BEG-Schlussgesetz, and Art. 3 ZRBG.
[32] Article II of the Agreement dated 18 September 1990 between the Federal Republic of Germany and the German Democratic Republic on the establishment of German Unity interpretation and implementation of the Unification Treaty date 31 August 1990.
[33] DB Drucksache 19/7545, p. 3
[34] Marc Reuter, Ghettorenten, Mohr Siebeck, Tuebingen 2019, p. 68.
[35] BT Drucksache 19/1537, p. 3
[36] Langner, "Die Wiedergutmachung von NS-unrecht und die neue Richtlinie zur Ghetto Arbeit", in Zarusky (ed.), Ghettorenten, Eschaedigungspolitk, Rechtsprechung und Historische Forschung (2010), 119
[37] Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft", BGBl. 2000 I 1263

solution to outstanding issues, hoping to write the last capital of the history of individual compensation arrangements[38].

The fund allowed the Federal government to solve with one agreement two key issues: the Jewish Slave laborers, but also create a compensation scheme for millions of former East workers (Ostarbeirtern) , people of Slavic racial origin that were brought by force into Germany to support and assist the German industry[39]. The idea therefore behind this compensation arrangement was to find a legal solution also for non-Jewish slave laborers that were taken from Poland, Ukraine and elsewhere to work in Germany but were not relevant for compensation due to their domicile behind the iron curtain, or in territories under the influence of the Soviet Union[40].

Once again, this program would create a range of different categories for compensation and definition of the slave labors[41]. Under Art. 11 to the fund various groups would be recognized as entitled to payment. The reason being was that the fund was to solve open compensation for Jewish slave labors, Slavic Slave labors and those who were taken to labor however not in full capacity of a labor camp[42].

Important to the topic of this article, was the differentiation of the territories were the Holocaust survivors were put to work. Whereas in the Northern Territories of Transnistria, the new legal order saw the territory as equivalent to other territories under German Occupation, other Romanian territories were to be seen in light of ***Art. 43, 47 BEG-Schluss***, and allow a reduced payment due to the fact that work was conducted to a "satellite State" and not a direct occupied territory[43].

B(1)(5) Recognition guideline for Ghetto workers (Annerkenungsrichtlinie)

In the year of 2007, The Federal Government issued a decree establishing yet again another payment mechanism allowing Holocaust survivors that worked in Ghettos to receive a compensation payment for their work conducted in a Ghetto that did not materialize to work recognized under the German Federal

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[38] Lehmann-Richter, auf der Suche nach den Grenzen der Wiedergutmachung (2007), 286
[39] Saathoff, „Die politischen Auseinandersetzungen ueber die Entschädigung von NS-Zwangsarbeit in Deutschen Bundestag" in Barwig, Saathoff &Weyde (eds.), Entschädigung für NS Zwangsarbeit (1998), 59
[40] Kranz, „Zwangsarbeit – 50 Jahren danach: Bemerkungen aus polnischer Sicht" in Barwig, Saathoff & Weyde (eds.), Entschädigung für NS-Zwangsarbeit (1998), 112.
[41] Hockerts, Moisel & Winstel (eds.), Grenzen der Wiedergutmachung (2006) 50,55
[42] Art. 11(1)(2) EVZstifG
[43] BT-Drs 11/5176, 1

Social law – ZRBG[44].

The decree followed a bitter campaign of Holocaust Survivors against the federal government, mainly due to the fact that the vast majority of the applications submitted by survivors were rejected by the German authorities trying to substiate their original claims under the Social Security law allowing Holocaust survivors to receive social pensions - ZRBG[45].

Thus the regulation in Art. 1(1) BADV sees the territorial scope of this arrangement as broder that the original legal definition of Art. 1(1) ZRBG, and accepts applications for those survivors that worked in Ghettos that were in territories under German influence. Thus, this regulation that came to life In the year 2007, correlates and follows the logic behind the BEG-Schluss, and it's legal understanding of Art. 43,47 as discussed supra elia[46].

It is therefore important to refer to the historical question here at hand in respect to the difference between the direct or de facto occupation of the NS Regime, as accepted by the Federal Social Court in matters relating to social security rights of former Ghetto workers[47], and the more broder territorial scope of legislation as seen under BEG Schluss and BADV, meaning to suffiece in mere influence of the NS Regime.

This legislation also recognized the different regime under which Holocaust survivors lived, an allow a special compensation for Holocaust survivors living behind the iron curtain under Soviet legal order. For this matter, the so called "Ghetto Pension law" demanded that survivors would prove to have paid contribution to national social security institutions, this in many cases for Survivors from the former Soviet Bloc, was not to be realized. A special additional compensation was made in their behalf assisting many of these survivors to receive a onetime payment[48].

Post-Soviet Regime Compensation Arrangements - The Romanian Case

Law 189/01 incorporates a former governmental decree creating a special compensation legislation for Romanian survivors that were persecuted during the Holocaust ***by the Romanian Regime***[49]. This

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[44] Bundesanzeiger No. 186 (5 October 2007), 7693
[45] BT-Drs 16/10334, 654
[46] Weber, the Ghetto workers law, social security benefits for work undertaken in Nazi ghettos under the German federal law (2016), 124
[47] Kallmayer, Sozialrecht im Blickpunkt – Essener Sozialgerichtsforum: Ghettoarbeit und Rentenanspruch (2012) NZS, 619
[48] https://www.badv.bund.de/DE/OffeneVermoegensfragen/AnerkennungsleistungenfuerGhettoarbeit/start.html
[49] Legea nr. 189/2000 privind aprobarea Ordonantei de Guvernului nr. 105/1999 pentru modificarea si completarea Decretului-lege nr. 118/1990 privind acordarea unor drepturi personaelor persecutate din motive

legislation holds two key important decisions, one it for the Romanian state to compensate its Romanian citizens that were deprived of their basic human rights under the regime of Marschal Antunescu, and in a very clear way assume responsibility for the wrong doings[50].

This creation of a special legislation creating additional social benefits for Holocaust survivors in not unique to Romania, and similar legislations could be found in Similar other European Countries such as the Czech Republic and Republic of Poland[51]. For that matter, the compensation for the minorities persecuted by the Local authorities during the Holocaust, entitles them to receive a social welfare increased payment due to these wrong doing.

It the clean legal sense, the Romanian Authorities, similar to the legal model assumed by the Federal Republic of Germany, assume responsibilities to the wrong doings conducted under the fascist regime of Antunescu. In this respect, the current Romanian state, assume legal responsibilities and liabilities for the wrong doing committed during the Holocaust and for Crimes against humanity conducted in its territory.

The Romanian Legislation, creates a different timeline that accepted by the German authorities and thus also Israeli authorities that see the scope of time of NS related wrongdoings as of April 1941, when NS German forces were already present on Romanian Territory[52].

The Romanian Legislation sees the potential period of persecution to be as of 6th September 1940 til 6th March 1945[53]. By taking this important steps, Romanian authorities begin to recognize periods of persecution also done directly by the Antunescu Regime, that at the time were officially independent prior to German march into Romanian on 22.6.1941, a timeline taken from the day that the famous *Barbarosa Operation* began, and the breaking of the Rivntrov Molotov agreement[54].

This legislation does see 7 different categories of potential survivors: those deported to camps and ghettos outside of Romania, deprivation of civil rights in Ghettos and concentration camps, deported from their original cities elsewhere, slave laborers in Army bases, Survivors of the deaths trains, first in

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policie de dictatura instaurata cu incepere de la 6 martie 1945, precum si celor deportate in strainatate ori constituite in prizonieri, republicat, cu modificarile ulterioare. Monitor Oficial Nr. 553 on 8.11.2000

[50] Shoahlegacy.org/what-we-do/database-on-national-social-welfare-policies/Romania

[51] Supra note 3.

[52] Art. 43 BEG-Schlussgesetz, see in Ludwig Farnborough, Bundesentschaedigungsgesetz, BEG-Schlussgesetz, Duesseldorf 1965, p. 51.

[53] See Art. 1 law 189/2000

[54] Ancel, History of the Holocaust – Romania, 2002, p. 519

kind of a survivors exterminated for racial grounds, those evacuated from the place of domicile. The law also acknowledges the rights of spouse, and children born in the aftermath of the persecution[55].

The Administrative legal aspect of the legislation was developed under Romanian law and governmental decisions. In this respect, the law recognizes several official evidence or documents that might substantiate the claim of the survivor[56]. Whereas in the beginning the authorities interpreted the law in a restrictive way, many cases came before court as the original documents could not be submitted to the authorities. The Romanian appeal court, therefore referred the authorities to Art. 4(2) of the decision, forcing them to accept also affidavits of survivors in case no documents could be presented[57]

The legislation has been amended over the years, and thus as of 2016, the legislation applies also for former Romanian citizens[58] – those who were Romanians at the time of the persecution. In this respect this legislation amendment of 2016 is following the legal concept as presented with the Polish compensation legislation, and over the years the pensions have been raised in order to increase the direct support of the Romanian government to its Holocaust survivors.

It is therefore interesting to note that this legislation tackles the issue of compensation of Holocaust survivors from a different angle than the compensation arrangements under the German law or its mirror legislation (at least in its first years) in Israel. Its sees its historical moral duty to assist those of Romanian origin and citizenship denounced of their basic human rights during the Holocaust.

The Romanian Jurisprudence went in respect to the legal interpretation of the law a serious step forward, and extended the practical legal doctrines developed both by German and Israeli law. In the Romanian model, a survivor is allocated a pension, even if he is born into a situation of persecution, although not being persecuted by the Romanian Regime. The specific case brought before the court of appeal, dealt with a former Romanian survivor, who's family was deported to Bulgaria under the international agreement between Romania and Bulgaria, and in that case born 2 years after the deportation took place. The court recognized the rights, claiming that the statue of deportation was forced on the survivor, thus she was eligible under law for the respected compensation[59].

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[55] Art. 1(1)(a-g) Law 189/2000

[56] Art. 4(1),(2) Hortarare nr. 127 din februarie 2002

[57] Sentinta 220/2008 Curtea de Apel Timisoara, dated 17.9.2008

[58] Legea nr. 173/2016 privind acordarea unor dreptui persoanelor care bu mai au certatenie romana, dar care au fost persecutate de carte regimurile instaurate in Romania cu incepere de la 6 septembrie 1940 pana la 6 martie 1945 din motive entice, Monitorul Oficial Nr. 808, 13.10.2016

[59] Sentinta 31/2008 Curtea de Apel Constansa, dated 14.1.2008

In this respect, the Romanian legislation is of significant importance to the welfare of the survivors, and stands out when compared to other existing agreements such as in Republic of Poland or newly under the new compensation regime of the Republic of Serbia[60].

Its exit point is the will of the Romanian government to promote a tool of direct social assistance for those Romanians that for racial reasons were not able to enjoy the protection of their civil liberties by the Romanian State under General Antunescu. The payments, and especially the newest decision of the Romanian parliament of 2017[61], to increase its support for those survivors is a clear symbol made by the Romanian state towards it citizens and former citizens persecuted during the time of the Holocaust.

Interesting enough, this process that was surveyed here in respect to the outcome of the compensation arrangement in Romania is by no mean special or limited to Romania itself. In June 2009, some 46 countries met in the Czech Republic in order to discuss outstanding legal issues regarding Holocaust Survivors and their need. The gathering ended with the "Terezin Declaration" calling for all states to find solution to these issues. For the first time, The Russian Federation took part in the preparation of the document and document and signed as one of the signatory states[62].

Such steps are not always limited only to internal national interest and needs. Like in many other longer process of narrowing between people and nations, this symbolic legislation, allocating a special social benefit for the survivors, was and is well taken by foreign governments, and sends a clear reconciliation massage both on the individual level but also on state level, communicating the understanding of Romania to the scope of wrong doings during the Holocaust and a desire to create a legislation allocating assistance for the survivors in their last days[63].

Conclusions

[60] Law on elimination consequences of seizure of property of Holocaust victims who have no living legal successors, official gazette of Republic of Serbia, No. 13/2016

[61] Lege 126/2017 pentru modificarea Ordonantei Guvernului nr. 105/1999 privind acordarea unor drepturi personaelor persecutate de carte regimurile instaurate in Romania cu incepere de la 6 Septembrie 1940 pana la 6 martie 1945 din motive entice, 415, 6.6.2017

[62] http://www.eu2009.cz/en/news-and-documents/news/terezin-declaration-26304/

[63] m.knesset.gov.il/News/PressReleases/pages/press12.7.17b.aspx

In the scope of this article, we could observe the different legal narrative relating to moral responsibility towards the Holocaust survivors and their social needs due to NS persecution. The outcome of the cold war and the political tension between the US and its allies from one side, and the Soviet Union and its allies from the other side, created a situation in which different groups of survivors were created.

From some 40 years, Survivors living under the Soviet Regime had to rely on their national state general soviet social programs and could not receive compensation. Their national narrative was also influential regarding the research and quest to reach historical truth. Under the Soviet Block, Nazis were only to be blamed, and no systematic research in regard to the local participation and activities of the national population in the persecution took place. It was in many ways a double Taboo – Survivors were not to discuss of their hardships and receive compensation, but not less important the Historical-Political Narrative of the Soviet Regime was such not allowing a diversion from the main heroic pathos of nations struggling and defeating the Fascist Regime.

After the fall of the Soviet Union, and the opening of central and eastern Europe to the west, narrative have changed. Nations were free again to discuss and confront their dark past. Many nations began forming historical committee to hold painful but much needed discussions as to their dark past, looking into their fascist period during world war II.

Luckily for the survivors, the Republic of Germany found outer legal solutions to be implemented in a relatively fast and speedy process. This would allow those survivors living behind the iron curtain to enjoy some measure of Justice, and receive compensation for the NS Wrong doing and access to various social programs as a result of these new arrangements.

On state level, the process for renewing Democracies in central and eastern Europe and the introduction of national former fascist wrong doing, allowed these countries to promote the search for truth and promote in that way also historical justice.

The call of the Terezin declaration of 2009 to improve the free access to archives, serves both the individual claimants searching for their justice and social support but also the interest of nations to go through the important process of clarifying their past and assume even if late their responsibilities towards their periods of Fascist wrong doing.