FEDERAL SOCIAL COURT

In the name of the people

Pronounced on
20 May 2020

judgement

in the lawsuit

BSG file no.: **B 13 R 9/19 R**
Schleswig-Holstein LSG 13 November 2018 - L 7 R 175/16
Lübeck Social Court 20 October 2016 - S 48 R 173/12

……..,

The Plaintiff and Appellee,

Attorney-of-record: ……..,

v s.

German Pension Insurance North,
Friedrich-Ebert-Damm 245, 22159 Hamburg,

Defendant and Appellant.

The 13th division of the Federal Social Court following the oral hearing of 20 May 2020 through the presiding judge S. Knickrehm, the judge Dr. Mecke and the judge Dr. Hannes as well as the honorary judges Schaller and Ganz
adjudicated:

The appeal of the Defendant against the judgement of Schleswig-Holstein State Social Court of 13 November 2018 is referred back with the condition that the operative part of this judgement is written as follows:

"The court notification of Lübeck Social Court of 20 October 2016 as well as the notification of the Defendant of 1 July 2011 in the form of the objection notification of 7 December 2011 are revoked.

The Defendant is sentenced to pay the Plaintiff a standard retirement pension from 1 July 1997."

The Defendant also has to reimburse the Plaintiff the out-of-court costs of the appellate proceedings.

G r o u n d s:

I

1 The parties involved are disputing over a claim of the Plaintiff for standard retirement pension by taking times into consideration according to the German Act on the Payment of Pensions from Employment in a Ghetto [*Gesetz zur Zahlbarmachung von Renten aus Beschäftigung in einem Ghetto - ZRBG*]. It is in particular disputed whether the Plaintiff stayed in a ghetto from January 1940 to March 1942.

2 The Plaintiff who was born in 1929 was as a Jew a victim of national socialist persecution and is recognised as a persecuted person within the meaning of German Federal Compensation Act [*Bundesentschädigungsgesetzes - BEG*]. In the disputed period of time he lived with his mother and his siblings in his Polish place of birth S. (at the time: H.-K. or R.) near the town of Mielec (District of Krakow of the so-called Generalgouvernement), which was occupied by German troops in September 1939. During the time from January 1940 to March 1942 he cleaned apartments, performed cleaning work on the site of the German military and washed military trucks, for which he received extra portions to eat. The entire Jewish population of Mielec and the surrounding area, also including that of S., was shot dead between 9 and 13 March 1942, deported for extermination or taken to forced labour camps. The Plaintiff was forced to go into the forced labour camp B., where he remained until the beginning of 1943. He was subsequently transferred to the forced labour camp H.-C. and in 1943/1944 interned in the concentration camp Mielec as well as in 1944/1945 in the concentration camp F. After he was freed he initially emigrated to Great Britain in 1945. Since 1949 he has lived in the United States of America (USA), of which he possesses the citizenship.

3 On 16 March 2010 the Plaintiff applied to the Defendant for the granting of a standard retirement pension by taking contribution times from employment in a ghetto into consideration, which the Defendant rejected *(notification of 1 July 2011, objection notification of 7 December*

2011). The subsequently filed legal action was dismissed by the SG (Social Court). It supported its decision in this case on an expert's opinion commissioned by it from the Professor for Eastern European history Prof. Dr. G. regarding the situation in S. and Mielec in the Second World War, according to which there was no ghetto in S. and no concentration and internment of the Jewish population was carried out there either in the disputed period of time *(court notification of 20 October 2016)*.

4 Following the appeal of the Plaintiff the LSG (State Social Court) revoked the court notification of the SG as well as the notifications of the Defendant and obligated the Defendant to grant the Plaintiff a retirement pension according to the statutory regulations. For substantiation it stated that the time from January 1940 to March 1942 is to be taken into consideration as contribution time for the performance of voluntary paid employment during a forced stay in a ghetto. In line with the case law of the LSG North-Rhine Westphalia *(e.g. judgements of 15 December 2006 - L 13 RJ 112/04 - and of 13 February 2008 - L 8 R 153/06)* it is to be assumed that the ghetto is marked in a historically understood meaning by segregation, internment and concentration. The latter is among others to be assumed if the Jewish population had to stay in a defined, delimited housing district. This was in fact not the case here, as the Jewish population in S. remained in their hereditary homes. Nevertheless, a forced stay in a ghetto is to be assumed within the meaning of the ZRBG. As it is the purpose of this law to take an employment, which was not forced labour, but was performed under restrictions to the freedom of movement to a large extent, into consideration under pension law. The extent of the actual de facto restriction to the freedom of movement is decisive. A broad understanding of the term of concentration can be concluded from this. It also comprises in small rural municipal authorities the remaining of the Jewish population in their houses, surrounded by non-Jewish residents, if the entire lifestyle of the Jews was restricted to their houses *(judgement of 13 November 2018)*.

5 With its appeal the Defendant complains about a breach of Section 1 Para. 1 Sentence 1 ZRBG. The interpretation of the term of ghetto by the LSG exceeds the limits of a judge's further training in law. Case law so far required for the recognition of a ghetto a concentration of the Jewish population in any form. This can be concluded already from the wording of Section 1 Para. 1 Sentence 1 ZRBG, according to which an individual house cannot be a ghetto, as well as from the legal systematic connection between the BEG and the ZRBG. Allocated individual houses with the ban on leaving these, would feature a principally different character of persecution, which is more similar to that of a camp or a similar NS detention centre. A delimitation between ghettos and various types of gradation of national socialist camps would no longer be possible in the event of a recognition of house arrest in so-called "star houses". The waiver of the criterion of the concentration leads to the fact that the term of the forced stay in a ghetto will become contourless and loses its independent meaning. Measures to restrict the freedom of movement had existed in practically every locality in the countries and regions controlled or influenced by NS Germany in Western, Central and Eastern Europe, which could be part of an establishment of a ghetto. Finally, the argumentation of the LSG leads to a

breaking up of the link of the location-limited application to ghettos as specially concentrated housing districts with the extended term of employment or remuneration, particularly developed with regard to this and thus stands in contradiction to the purpose of the ZRBG and to the case law of the BSG *(reference to the judgements of 2 June 2009 - B 13 R 139/08 R and B 13 R 81/08 R - as well as the judgement of 3 June 2009 - B 5 R 26/08 R)*. The extension of the term of remuneration cannot be considered isolated but is derived from the special living circumstances in the ghetto as delimited, isolated and concentrated geographical space.

6 The Defendant files a motion for the

judgement of the Schleswig-Holstein State Social Court of 13 November 2018 to be revoked and for the appeal of the Plaintiff against the court notification of Lübeck Social Court of 20 October 2016 to be dismissed.

7 The Plaintiff files a motion

for the appeal of the Defendant to be dismissed.

8 He considers the substantiation of the judgement of the LSG to be correct and emphasises his life situation at the time to be comparable to a stay in a ghetto. In addition, he refers to the ghetto houses in Budapest, which are undisputedly ghettos within the meaning of the ZRBG.

II

9 The admissible appeal of the Defendant is unsubstantiated and therefore to be dismissed with the condition recognisable from the operative part *(Section 170 Para. 1 Sentence 1 German Social Courts Act [Sozialgerichtsgesetz - SGG])*.

10 The LSG rightly revoked the court notification of the SG as well as the contested notifications of the Defendant and sentenced the Defendant to pay a standard retirement pension to the Plaintiff. Irrespective of a principally required broad ghetto term the pension claim of the Plaintiff is derived from the fact that the employments performed by him during the disputed period of time by taking more recent historical knowledge into consideration by way of the analogy are to be deemed equivalent to employments during a forced stay in a ghetto. The date of the objection notification, which was falsely stated in the operative part of the LSG with regard to the year, was to be corrected ex officio and the operative part to be rewritten for the purpose of clarification.

11 Pursuant to Sections 35 Sentence 1, 235 Para. 1, Para. 2 Sentence 1 Sixth Book of the German Social Code [*Sechstes Buch Sozialgesetzbuch - SGB VI*] the Plaintiff has a claim for a standard retirement pension from 1 July 1997. At this time, he had attained the age of 65 and fulfilled the general waiting time. Pursuant to Sections 50 Para. 1 No. 1, 51 Para. 1 SGB VI

calendar months with contribution times and according to Section 51 Para. 4 SGB VI those with substitute times are offset against the general waiting time. According to Section 55 Para. 1 SGB VI contribution times are times, for which according to federal law contributions were paid or however are deemed as paid. The Plaintiff did not in fact make any contributions to the German pension insurance. However, for the time from January 1940 to March 1942 pursuant to Section 2 Para. 1 ZRBG *(as amended by the First Act amending the Act on the Payment of Pensions from Employment in a Ghetto [Erstes Gesetz zur Änderung des Gesetzes zur Zahlbarmachung von Renten aus Beschäftigung in einem Ghetto - ZRBG-ÄnderungsG] of 15 July 2014, BGBl I 952)* contributions are deemed as paid. Together with the substitute times according to Section 250 Para. 1 No. 4 SGB VI, - as the Defendant explicitly declared for the record of the oral hearing, - the general waiting time is thus satisfied.

12 The LSG rightly determined ghetto contribution times *(Section 2 Para. 1 ZRBG)* of the Plaintiff in the awarded scope. On the basis of the actual findings determined by him, which the appellant has not contested and which are therefore binding for the Division *(Section 163 SGG)*, the Plaintiff satisfies the factual element prerequisites of Section 1 Para. 1 Sentence 1 ZRBG in the period of time from January 1940 to March 1942. According to this regulation the ZRBG

applies for times of the employment of persecuted persons in a ghetto, who were forced to stay there, if

1. the employment
   a) was established from an own free decision,
   b) was performed against payment and
2. the ghetto was located in a territory of the national socialist scope of influence,

insofar as a benefit is not provided for these times already from a system of social security.

13 The prerequisites of the determination of ghetto contribution times are satisfied in this case. The living circumstances of the Plaintiff in the period of time from January 1940 to March 1942 are at least to be deemed equivalent to the forced stay in a ghetto.

14 The term of a ghetto within the meaning of Section 1 Para. 1 Sentence 1 ZRBG is not defined by law and is therefore to be specified by interpretation. The purpose of the law and the thus associated superimposition with regard to compensation law of pension insurance law is also hereby a broad understanding of the term, which is however not to be conclusively determined by the Division here *(more in this respect under I.)*. Against the background of more recent historical scholarship knowledge, which the legislator could not yet comprehensively take into account when creating the ZRBG, moreover by way of the analogy, it is required to deem employments equivalent, which were performed by persecuted persons from an own free decision against payment, while they had to live by force under spatial restrictions to freedom,

which were comparable to the stay in a ghetto *(more in this respect under II.)*. Based on this it does not need to be determined whether the Plaintiff according to the facts determined by the LSG lived in a ghetto within the meaning of Section 1 Para. 1 Sentence 1 ZRBG in the disputed period of time, as in any case he lived under circumstances, which are deemed equivalent to the forced stay in a ghetto *(more in this respect under III.)*. The further prerequisites according to Section 1 Para. 1 Sentence 1 ZRBG also exist *(more in this respect under IV.)*. Owing to these ghetto contribution times the claim from a standard retirement pension that is to be paid in the USA is derived for the Plaintiff *(more in this respect under V.)*.

15 I. The term “ghetto” within the meaning of Section 1 Para. 1 Sentence 1 ZRBG is to be interpreted broadly. It is neither defined by law, nor is there a firmly outlined language use *(more in this respect under 1.)*. The history of law *(more in this respect under 2.)* as well as the purpose of the law *(more in this respect under 3.)* speak in favour of a broad interpretation. The superimposition with regard to compensation law of pension insurance law effected with the ZRBG also gives reason to such an interpretation *(more in this respect under 4.)*, without this being opposed by other systematic aspects *(more in this respect under 5.)*.

16 1. The term of ghetto in Section 1 Para. 1 Sentence 1 ZRBG is open for interpretation with regard to the wording. There is no statutory definition, neither in the ZRBG, nor in further standards that are to be considered in this context *(more in this respect under a)*. No sufficiently consolidated and specialised judicial language use can be found accordingly either *(more in this respect under b)*. Such can neither be derived from the case law of the BSG relating to the ZRBG *(more in this respect under b.aa.)* , nor that relating to compensation law *(more in this respect under b.bb.)*. The same applies to the general *(more in this respect under c)* and the historical understanding of the term *(more in this respect under d)*.

17 a) The term “ghetto” within the meaning of Section 1 Para. 1 Sentence 1 ZRBG is not defined by law. The ZRBG does not include any explanation of this term and for this purpose does not refer to the definition of another law either. Further standards to be considered in this context do not contain any definition either.

18 This initially applies to the BEG. According to the exemplary list of Section 43 Para. 2 BEG also deemed as compensation-substantiating deprivation of liberty besides police or military custody, detention by the NSDAP, pre-trial custody, criminal detention and internment in a concentration camp is also the “forced stay in a ghetto” *(as already Section 43 Para. 2 BEG as amended by Article 1 of the Third Act amending the Federal Supplementary Act on Compensation for Victims of National Socialist Persecution [Art 1 des Dritten Gesetzes zur Änderung des Bundesergänzungsgesetzes zur Entschädigung für Opfer der nationalsozialistischen Verfolgung] of 29 June 1956, BGBl I 559)*. Deemed equivalent to such a deprivation of liberty by Section 43 Para. 3 BEG is among others the living “under conditions similar to those of imprisonment”. A list with almost the same words as Section 43 Para. 2 BEG was previously

contained in Section 16 Para. 2 Federal Supplementary Act on Compensation for Victims of National Socialist Persecution *(BEG 1953 of 18 September 1953, BGBl I 1387)*. However, there instead of “forced stay in a ghetto” the terminology “ghetto admission” was used. Section 15 Para. 2 the so-called Compensation Act *(German Act No. 951 on the Reparation of National Socialist Injustice [Gesetz Nr 951 zur Wiedergutmachung nationalsozialistischen Unrechts] of 16 August 1949, RegBl WB 1949, 187)* that was previously applicable in the American occupation zone used instead the expression “ghetto detention”. A legal definition of the term of ghetto cannot be found in any of these laws.

19 Besides the BEG and the ZRBG the term "ghetto" is used in the German Federal Law [*Bundesrecht*] only in Section 11 Para. 1 No. 1 German Act on the Establishment of a Foundation "Remembrance, Responsibility and Future” [*Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft” - EVZStiftG] of 2 August 2000 (BGBl I 1797)* still. Accordingly, a person is entitled to benefits pursuant to the EVZStiftG, who was detained in a concentration camp within the meaning of Section 43 Para. 2 BEG or in another detention location outside of the territory of the now Republic of Austria or in a ghetto under comparable conditions and was forced to work. A definition of the term of ghetto is not contained in this law either as in the published case law in this respect.

20 Finally, no specification of the term of ghetto can be found either in the pronounced so-called Recognition Directive [*Anerkennungsrichtlinie*] *(Guideline of the German Federal Government on the recognition of work in a ghetto which was not forced labour, currently in the version of 12 July 2017, BAnz AT 14 July 2017 B1)* in the sub-legal context, however in the context that is relevant here of the compensation payments for work in a ghetto. Section 1 Recognition Directive with regard to the group of the persons entitled to benefits, follows on from the formulation of Section 1 Para. 1 Sentence 1 ZRBG. As, under further prerequisites, persecuted persons within the meaning of Section 1 BEG, "who stayed in a ghetto by force, that was located in a territory of the national socialist scope of influence" can receive a recognition payment. The term of ghetto is not explained here either but presumed. However, the extension of the spatial field of application to the national socialist scope of influence, which was only carried out later for the ZRBG by the ZRBG-ÄnderungsG, is anticipated hereby.

21 b) A sufficiently consolidated and specified judicial language use with regard to the term "ghetto" can in any case not be determined for the context of the ZRBG either. At the most it can be derived from the case law of the BSG relating to the ZRBG *(more in this respect under aa)* and the case law relating to compensation law *(more in this respect under bb)* that understood under "ghetto" in the context of the national socialist persecution in particular an "allocated housing district- as a rule inhabited by Jews - ". More concrete definitions cannot be found however.

22 aa) The case law of the BSG relating to the ZRBG has not conclusively determined the term of "ghetto" so far.

23 Solely the 4th Division of the BSG, which is no longer responsible for the matters of the statutory pension insurance within the scope of a rejection defined the term of ghetto as an "allocated housing district- as a rule inhabited by Jews - ("ghetto")" or "allocated housing district ('ghetto')" *(BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 84 or 85, relating to the Moghilev ghetto)*. Insofar as the 4th Division, by recourse to the case law of the BSG relating to Section 43 Para. 2 BEG *(BSG judgement of 21 May 1974 - 1 RA 63/73 - SozR 2200 § 1251 No. 5, juris Margin Note 25)* required that the "restriction of place of stay to this housing district by the threat of the most serious punishments or by measures of violence … was forced " *(BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 85)*, this does not relate to the term of ghetto as such, but to the further factual element stated in Section 1 Para. 1 Sentence 1 ZRBG of the forced stay (in a ghetto).

24 In several judgements the BSG assumed a claim for pension by taking times into consideration according to the ZRBG, without questioning the ghetto character of the respective place of stay. This related to the Drohiczyn ghetto *(BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8)*, the Krakow ghetto *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7)*, the Łódź ghetto *(BSG judgement of 3 May 2005 - B 13 RJ 34/04 R - BSGE 94, 294 = SozR 4-2600 § 306 No 1)*, the Minsk ghetto *(BSG judgement of 2 June 2009 - B 13 R 85/08 R - juris)* and the Stacharowice ghetto *(BSG judgement of 2 June 2009 - B 13 R 139/08 R - BSGE 103, 201 = SozR 4-5075 § 1 No. 5)*. However, the BSG emphasised in the judgements relating to the Drohiczyn ghetto and Krakow ghetto that the legislator had, with the ZRBG, created a distinction-free regulation irrespective of local applicable law, ghetto size and -structure, although it would have to assume that the criteria laid down by the original case law *(so-called ghetto case law of 1997, more in this respect below)* would only be applicable in just a few ghettos *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 28; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 28)*.

25 In the further judgements of the BSG relating to questions in connection with the granting of pensions by taking times into consideration according to the ZRBG owing to the stay in a ghetto the BSG did not express itself either with regard to the content of this term. In these cases, however, it did not depend on this factual element either for the respective decision. Mentioned in these judgements are the Bendzin ghetto *(BSG judgement of 20 July 2005 - B 13 RJ 37/04 R - juris)*, the Budapest ghetto and Koeszeg ghetto *(BSG judgement of 16 May 2019 - B 13 R 37/17 R - SozR 4-1200 § 59 No. 2)*, the Kopaigorod ghetto *(BSG judgement of 30 April 2012 - B 12 R 12/11 R - SozR 4-5075 § 3 No. 3; BSG judgement of 19 May 2009 - B 5 R 26/06 R - juris)*, the Krakow ghetto *(BSG judgement of 19 May 2009 - B 5 R 14/08 R - BSGE 103, 161 = SozR 4-2600 § 250 No. 6)*, the Krasnik ghetto *(BSG judgement of 10 December*

2013 - B 13 R 63/11 R - juris), the Łódź ghetto *(BSG judgement of 19 April 2011 - B 13 R 20/10 R - SozR 4-6480 Art 27 No. 1; BSG judgement of 19 May 2009 - B 5 R 96/07 R)*, the Lublin ghetto *(BSG judgement of 20 July 2005 - B 13 RJ 23/04 R - SozR 4-1500 § 96 No. 3)*, the Ostrowiec ghetto *(BSG judgement of 7 February 2012 - B 13 R 40/11 R - BSGE 110, 97 = SozR 4-5075 § 3 No. 2)*, the Radom ghetto *(BSG judgement of 8 February 2012 - B 5 R 38/11 R - SozR 4-5075 § 3 No. 1)*, the Shargorod ghetto *(BSG judgement of 26 July 2007 - B 13 R 28/06 R - BSGE 99, 35 = SozR 4-5075 § 1 No. 4)*, the Theresienstadt ghetto *(BSG judgement of 12 February 2009 - B 5 R 70/06 R - SozR 4-5075 § 1 No. 6)* and Warsaw ghetto *(BSG judgement of 10 July 2012 - B 13 R 17/11 R - BSGE 111, 184 = SozR 4-5075 § 1 No. 9; BSG judgement of 10 December 2013 - B 13 R 53/11 R - juris; BSG judgement of 7 October 2004 - B 13 RJ 59/03 R - BSGE 93, 214 = SozR 4-5050 § 15 No. 1)*.

26 Finally, the so-called ghetto case law of the BSG, which constituted the reason for the creation of the ZRBG *(BT-Drucks 14/8583 PP 1, 6; cf. BSG judgement of 7 October 2004 - B 13 RJ 59/03 R - BSGE 93, 214 = SozR 4-5050 § 15 No. 1, juris Margin Note 50; BSG judgement of 20 July 2005 - B 13 RJ 37/04 R - juris Margin Note 29)*, does not contain any abstract description of the term of ghetto either. The 5th Division in the judgement of 18 June 1997 in relation to the Łódź ghetto with regard to the question of the existence of employment within the meaning of pension insurance law only stated in a descriptive manner that a voluntary decision is not solely to be negated, "because the work service was provided in a spatially-limited area, the leaving of which was practically impossible for the inhabitants owing to drastic threats of punishment" *(BSG judgement of 18 June 1997 - 5 RJ 66/95 - BSGE 80, 250 = SozR 3-2200 § 1248 No. 15, juris Margin Note 20)*. In addition this case law also related to activities during the stay in the not yet closed Jewish housing district ("ghetto") of Krenau *(BSG judgement of 14 July 1999 - B 13 RJ 61/98 R - SozR 3-5070 § 14 No. 2)* as well as in the Reichshof ghetto *(BSG judgement of 23 August 2001 - B 13 RJ 59/00 R - SozR 3-2200 § 1248 No. 17)*.

27 bb) No more far-reaching knowledge that is essential for the understanding of the term can be derived from case law relating to compensation law either.

28 Besides a statutory *(more in this respective above under I.1.a)* a definition of the term of ghetto by the supreme court is also missing here. Only from a parenthesis in a judgement of the Federal Court of Justice of 3 July 1957 *(IV ZR 125/57 - RwZ 1957, 328, juris Margin Note 14)* it cannot be derived decisively that it is also supposed to have been characteristic for conditions similar to those of imprisonment within the meaning of Section 43 Para. 3 BEG - in a ghetto - is the living separately from the residents of a town, who are not being persecuted, without the opportunity to have contact to these persons, *(cf. also Federal Court of Justice judgement of 9 March 1966 - IV ZR 100/65 - RzW 1966, 332, juris Margin Note 20)*. Not the ghetto term, but exclusively the "conditions similar to those of imprisonment" is affected if the Federal Court of Justice in the judgement of 9 March 1966 *(IV ZR 100/65 - RzW 1966, 332, juris Margin Note 20)* does not allow the general findings of the Regional Court judgements regarding the situation of

"gypsies" in the Generalgouvernement to be sufficient to assume such conditions. Schleswig-Holstein Higher Regional Court in the contested decision had described the Generalgouvernement with consideration for the deportations carried out herein, the bad food conditions, the discrimination by the compulsion to wear special "gypsy identifications", an armband with a "Z" and by the number respectively applied on the left lower arm with paint as well as the shootings that were carried out as "a unique, large ghetto, locked for external purposes" for the "gypsies", who were brought there, *(cf. Federal Court of Justice judgement of 9 March 1966 - IV ZR 100/65 - RzW 1966, 332, juris Margin Note 15)*. The Federal Court of Justice however negated the assumption of conditions similar to those of imprisonment solely owing to generally applicable restrictions such as wearing of a star, curfews, the ban on leaving the location, and in the event of a persecuted person, who after the disbanding of the Czernowitz ghetto, that only existed for a short period of time, could temporarily return to their own home *(Federal Court of Justice judgement of 8 November 1973 - IX ZR 78/73 - BeckRS 1973, 31374843; cf. also Stuttgart Higher Regional Court order of 31 October 1955 - EGR 477 - RzW 1956, 48, 49)*.

29 In the early case law relating to compensation law of the Higher Regional Court the reference can be found to a general language use, according to which a ghetto is a "segregated housing district for Jews" *(Frankfurt Higher Regional Court order of 19 February 1954 - 8 U 101/53 - RzW 1954, 265, 266; Stuttgart Higher Regional Court order of 31 October 1955 - EGR 477 - RzW 1956, 48, 49; similar Müller, comment on Stuttgart Higher Regional Court order of 26 April 1951 - EGR 111 - accordingly "ghetto initially does not mean anything further than a Jewish housing district", RzW 1951, 238)*. A claim for compensation owing to deprivation of liberty according to Section 43 Para. 2 BEG was only assumed with a forced stay in a housing district for Jews, which is full and sustainably segregated from the surrounding area. On the other hand, the case law considered that not deemed as eligible for compensation according to Section 43 Para. 2 BEG is the forced stay in an open ghetto *(Stuttgart Higher Regional Court order of 31 October 1955 - EGR 477 - RzW 1956, 48, 49; Blessin/Ehrig/Wilden, BEG, 3rd edition 1960, BEG Section 43 Margin Note 17 with further proof for the case law)*, in these cases, however, the factual element that is deemed equivalent according to Section 43 Para. 3 BEG of a life "under conditions similar to those of imprisonment" could have existed.

30 For the territory of the so-called Generalgouvernement a general segregation of the housing districts for Jews, which satisfies the factual element of a "forced stay in a ghetto" within the meaning of Section 43 Para. 2 BEG, from the Third Regulation regarding restrictions to place of stay in the Generalgouvernement of 15 October 1941 *(VOBl GG S 595)* was assumed, the Art 1 of which threatened Jews, who left the housing district allocated to them, with the death penalty *(further with regard to the Compensation Act Stuttgart Higher Regional Court order of 26 April 1951 - EGR 111 - RzW 1951, 238; to BEG 1953 Frankfurt Higher Regional Court order of 19 February 1954 - 8 U 101/53 - RzW 1954, 265, 266; to the BEG Blessin/Ehrig/Wilden, Federal Compensation Act, 3rd edition 1960, BEG Section 43 Margin Note 18 with further proof for the*

case law). From the entry into force of this Regulation Stuttgart Higher Regional Court even saw a town in its entirety as a ghetto, although there was no "allocated housing district" in this, however at the start of the war among a total of 10,000 inhabitants 8,500 Jews were living there already, whose number grew to around 15,000 by September 1942 *(Stuttgart Higher Regional Court judgement of 26 April 1951 - EGR 111 - RzW 1951, 238, 239)*.

31 c) No more far-reaching knowledge can be gained from the general language use either. The word "ghetto" is used ambiguously therein. None of the meanings is however suitable for satisfying the term of ghetto in the national socialist scope of influence exclusively referenced by the ZRBG *(cf. Section 1 Para. 1 Sentence 1 ZRBG)*.

32 Generally, "ghetto" is associated with the late Middle Ages and early modern Jewish housing districts in towns, such as for example that erected in 1516 in Venice *(cf. in this respect Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 32 ff; Gutman/Jäckel/Longerich/Schoeps, Enzyklopädie des Holocaust (Encyclopaedia of the Holocaust), Vol. I, 1989, 535, key word ghetto)*. In addition, the term is also associated with the Eastern Jewish Schtetl. This concerns settlements with a high Jewish population share in Eastern Europe, which were however not places of forced stay *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24; Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39)*. Ghetto can, however, also describe town districts, in which discriminated minorities, foreigners or also privileged population classes live together, or even a certain social, economic, mental, etc. district or framework, from which someone cannot leave *(Scientific Council of the Duden Editorial Office (Wissenschaftlicher Rat der Dudenredaktion), Duden - Das große Wörterbuch der deutschen Sprache (The great dictionary of the German language), Vol. 4, 3rd edition 1999, 1501, key word ghetto; also https://www.duden.de/rechtschreibung/Getto)*.

33 d) Only indications for the interpretation of Section 1 Para. 1 Sentence 1 ZRBG can be gained from the historical-specialist descriptions of the term of ghetto. Research results relating to historical scholarship are in particular to be taken into consideration if the aim is - as here - to interpret a standard, which refers to a historical fact. Attention is still to be paid, however, to the fact that historical scholarship and legal studies respectively serve different interests in knowledge. Historical scholarship serves to research the past *(Sellin, Einführung in die Geschichtswissenschaft (Introduction to the Historical Scholarship), Extended new edition 2005, 17)*. The history that interests historians comprises human actions and suffering in the past *(Faber, quoted according to Boshof/Düwell/Kloft, Grundlagen des Studiums der Geschichte (Fundamentals of the Study of History), 5th edition 1997, 3)*, whereby the historical interest is only directed at certain fields and can only assume certain questions *(Boshof/Düwell/Kloft, Grundlagen des Studiums der Geschichte (Fundamentals of the Study of History), 5th edition 1997, 3)*. Accordingly, the research of the national socialist ghettos was also carried out from a historical-specialist point of view since the post-war time on the basis of various perspectives

and methodical approaches *(an overview is offered by Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 18 ff)*. The formations of terms carried out by historians follow respectively thus serve another interest in knowledge than the judicial interpretation of the law, the aim of which exists in the determination of an objectivised intention of the legislator, which is expressed in a regulation, *(prevailing case law; cf. e.g. BVerfG judgement of 21 May 1952 - 2 BvH 2/52 - BVerfGE 1, 299 - juris Margin Note 56; Federal Constitutional Court (BVerfG) order of 15 December 1959 - 1 BvL 10/55 - BVerfGE 10, 234 - juris Margin Note 40; BVerfG judgement of 19 March 2013 - 2 BvR 2628/10, 2 BvR 2883/10, 2 BvR 2155/11 - BVerfGE 133, 168 - juris Margin Note 66; BSG judgement of 22 October 2014 - B 6 KA 3/14 R - BSGE 117, 149 = SozR 4-2500 § 106 No. 48, Margin Note 60; BSG judgement of 7 May 2019 - B 2 U 27/17 R - SozR 4-2700 § 67 No. 1, also envisaged for BSGE - juris Margin Note 11; Federal Court of Finance judgement of 30 July 1980 - I R 111/77 - BFHE 131, 469 - juris Margin Note 11; Federal Court of Finance judgement of 23 October 2013 - X R 3/12 - BFHE 243, 287 - juris Margin Note 20, respectively with further proof; for the criticism of the thus underlying theory of methods e.g. Rüthers/Fischer/Birk, Rechtstheorie: mit Juristischer Methodenlehre (Legal theory: with legal methodology), 11th edition 2020, Margin Note 799 f, 806 ff with further proof)*. Therefore, an independent interpretation of the term of ghetto in the context of the ZRBG has to be carried out by applying all recognised judicial interpretation methods, within which historical knowledge is to be taken into consideration without a doubt *(thus in the end also Röhl, NZS 2018, 513, 515)*.

34 For this reason, the interpretation developed by the LSG North-Rhine Westphalia 2006 relating to the ZRBG, oriented to specialist historically identified aspects of the establishment of ghettos, cannot be concurred with, according to which the features of the concentration, segregation and the accommodation similar to internment must always have existed *(cf. LSG North-Rhine Westphalia judgement of 15 December 2006 - L 13 RJ 112/04 - juris Margin Note 37)*. The specialist historical discussion from the time after substantiation of this case law rather shows that no structures can be determined that apply equally to all ghettos in terms of time and location. The description of national socialist ghettos from a historical-specialist point of view rather describe a picture that is marked by inequality and diversity of the establishment of the ghettos in the national socialist scope of influence. Even the academics of the two largest holocaust research centres - Yad Vashem and United States Holocaust Memorial Museum (USHMM) - do not use any standard definition of the term. The essential reason for this is that the selected definitions are determined by the interest in knowledge pursued in the respective investigation.

35 Thus, for example, for the creation of the Yad Vashem Encyclopedia of Ghettos, which was published in 2009 respectively 2010, a ghetto definition was created by its authors in 2005 in order to be able to answer the question of which locations should be included in this work. Ghetto is accordingly "each concentration of Jews under force for longer than one month in a clearly delimited housing district of an already existing settlement (major city, small town or

village) in territories, which were controlled by Germany or its allies " *(Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 13 f)*. Covered by this definition were various samples of concentrated housing, such as housing districts, streets and groups of buildings, not however individual buildings such as "Jew houses" *(as opposed to Benz however in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, who sees the Jew houses as a rudimentary form of a ghetto)* or barracks, and it did not require any Jewish administration, even if this was often available *(Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 14)*. At the same time it is pointed out that "Jewish councils" were often used already before the erection of ghettos *(Michman in Yad Vashem Encyclopedia of Ghettos, Vol. I, 2010, XXXIX; Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIII; Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 177)*.

36 For the creation of the Encyclopedia of Camps and Ghettos of USHMM ghettos were in essence defined as places, at which the German Jews gathered *("In essence, a ghetto is a place where the Germans concentrated Jews", Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIII)*. Seen as essential indications for a ghetto here were instructions of German bodies to Jews, to move to certain parts of a town or a village, where only Jews were allowed to live, however also the gathering of Jews from surrounding places *(Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIII f)*. However, it is also sufficient that existing "Jewish" housing areas were declared to be ghettos *(Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIV)*. In addition, ghettos are delimited towards labour and other camps *(Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIII)*.

37 Lehnstaedt refers to the definition of Dean - albeit also with obvious deviations -, who describes a ghetto "as (1) a separated, explicitly limited housing district, in which Jews had to live and which had been allocated to them in a process of the 'establishment of ghettos'; (2) Non-Jews were not permitted to live there, while (3) the Jews had been forbidden from leaving under the threat of punishment" *(Lehnstaedt in Hensel/Lehnstaedt, Arbeit in den nationalsozialistischen Ghettos (Work in the National Socialist Ghettos), 2013, 11, 13 f, with an explicit reference to Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIII)*, who however emphasises at another point that this definition is true for "almost" all ghettos, which is why it is essential to examine the individual case *(Lehnstaedt, Geschichte und Gesetzesauslegung (History and Interpretation of the Law), 2011, 30, with reference to Dean, Der Holocaust in der Sowjetunion (The Holocaust in the Soviet Union) - Lecture for the Symposium, 6)*. Accordingly, the historical-specialist definition according to Benz includes the supposed self-administration by "Jewish elders" and "Jewish council" as well as the intention to manipulate Jews by committing them to housing districts that they have by no means chosen themselves, by forced labour and hunger *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24)*. Against the background that Jews were forced during the entire occupation time to leave their homes and to be housed elsewhere, it is partly even requested that one should only speak of a ghetto, if the majority of the Jews of a location was concentrated in a district and

were subject to a compulsory place of stay *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39; ders in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 162)*.

38 In addition, the statements relating to development and function of the national socialist ghetto in the current historical specialist literature also give a heterogeneous picture. According to Benz, ghettos were initially erected in a rudimentary form of the "Jew houses" in the German Reich, then as places of the concentration of the Jewish population in the conquered Poland. They had served the internment, exploitation and extermination and were often places of massacres. At the same time they had acted as a reservoir of workers and production plants for the armaments *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24 and 28; regarding the exploitation of workers cf. also Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLVI)*. Economic reasons such as the exploitation of the workers would have been in contradiction with the ideological goals of impoverishment, selective deportation and, this is emphasised by Benz, finally the extermination *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24)*, even if their purpose rationality is often only seen in the review *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24; cf. also Gutman/Jäckel/Longerich/Schoeps, Enzyklopädie des Holocaust (Encyclopaedia of the Holocaust), Vol. I, 1989, 535, key word ghetto)*. Although at least half of all murdered Jews in Europe lived for a while involuntarily in a ghetto *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 35; Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39, 41; ders in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 185)*, the interpretation of the erection of ghettos as a general phenomenon of a preparatory phase of the total extermination however also encounters criticism *(cf. Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 29; Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 184)*. It is in particular pointed out that the Shoah was the result of an open historical process *(Zarusky, Expert's opinion for Lübeck Social Court in the lawsuit S 21 R 381/13 - pending at the BSG under B 13 R 4/20 R - S 5 with reference to Hilberg, Die Vernichtung der europäischen Juden (The Extermination of the European Jews), 1990, Vol. 1, 56)*. The process of extermination thus did in fact develop according to a stipulated schema, nevertheless it did not however result from a fundamental plan. In 1933, no bureaucrat could have been able to foresee, which type of measures would be taken in 1938, nor was it possible in 1938, to foresee the progress of events in 1942. The process of extermination was an operation that was carried out step-by-step and the involved civil servant could rarely have had an overview of more than the respective next step *(Hilberg, Die Vernichtung der europäischen Juden (The Extermination of the European Jews), 9th Edition 1999, Vol. 1, 56)*.

39 Finally, a distinction is made between various types of ghettos. Pohl thus states there were ghettos surrounded by walls and guarded - so-called closed ghettos - *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39)*. This type was however limited to just a few large cities. The "open ghettos" had formed the rule, the structural limitation of which was limited to

existing walls or building walls *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39, 40; ders in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 176 f, 185; cf. Michman in Yad Vashem Encyclopedia of Ghettos, Vol. I, 2010, XXXVIII)* and the boundaries of which were often only marked by signs *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24; Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIV)*. Furthermore, "labour ghettos" are named as a third category, which had mostly been produced from other ghettos, in which after massacres above all of unemployed and old persons and children almost only workers remained still, partly with their families, *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39, 40; ders in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 184 f; Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLV, speaks here of "remnant ghetto" or "Restghetto")*.

40 This versatility in design of the "ghetto" in the national socialist scope of influence described by historical scholarship already suggests to take it into account by a broad understanding of the term with the judicial interpretation of the term of ghetto within the meaning of the ZRBG.

41 2. The standard history of the ZRBG also speaks in favour of such a broad understanding of the term of ghetto within the meaning of Section 1 Para. 1 Sentence 1 ZRBG.

42 The passing of the ZRBG was carried out as a reaction to the ghetto case law of the BSG *(judgement of 18 June 1997 - 5 RJ 66/95 - BSGE 80, 250 = SozR 3-2200 § 1248 No. 15; judgement of 21 April 1999 - B 5 RJ 48/98 R - SozR 3-2200 § 1248 No. 16; judgement of 14 July 1999 - B 13 RJ 61/98 R - SozR 3-5070 § 14 No. 2; judgement of 23 August 2001 - B 13 RJ 59/00 R - SozR 3-2200 § 1248 No. 17)*, accordingly also the work that until this time regularly qualified as forced labour in a ghetto can be an employment subject to insurance that is determined by the features of voluntary work and be remunerated *(bills of the SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN and FDP or PDS parliamentary groups, BT-Drucks 14/8583 PP 1, 5 or BT-Drucks 14/8602 PP 1, 5)*.

43 A great deal speaks in favour of the fact that with the passing of the ZRBG in 2002 the legislator had the image of the closed Łódź ghetto in mind. Thus, in the substantiation for the bills reference is made several times to this ghetto and the judgement of the BSG of 18 June 1997 relating hereto *(5 RJ 66/95 - BSGE 80, 250 = SozR 3-2200 § 1248 No. 15)*. Moreover, in the bills *(BT-Drucks 14/8583 P 5 or BT-Drucks 14/8602 P 5)* the BSG judgement of 23 August 2001 *(B 13 RJ 59/00 R - SozR 3-2200 § 1248 No. 17)* relating to the Reichshof ghetto is also explicitly mentioned, more detailed circumstances of which can however not be seen from the judgement . In the speeches of the Members of Parliament Nolte (CDU/CSU), Deligöz (BÜNDNIS 90/DIE GRÜNEN), Dr. Schwaetzer (FDP), Dr. Seifert (PDS) recorded within the scope of the second and third deliberation of the submitted bills in the German Bundestag (lower house of parliament) on 25 April 2002 as well as of the Parliamentary State Secretary at the Federal Minister of Labour and Social Affairs, Ms Mascher, *(BT- Plenary Protocol 14/233,*

23279 ff) mainly the Łódź ghetto is also mentioned. However, the Member of Parliament, Mr Deligöz, additionally referred to the terrible conditions under which "the people had to live, who were crammed into the ghetto by the Nazis, in Warsaw, in Lodz and at many other places" *(BT- Plenary Protocol 14/233, 23280)*.

44 The so-called ghetto case law also includes the BSG-judgement of 14 July 1999. This related to the "Jewish housing district of Krenau", which as evidenced by the grounds for the decision had not been closed at the decisive time *(B 13 RJ 61/98 R - SozR 3-5070 § 14 No. 2, juris Margin Note 2)*. Although this judgement was neither mentioned in the bills, nor in the committee printed matters or the cited speeches, the ZRBG should obviously also apply to such "open ghettos". It may be assumed that the legislator had full knowledge of the published relevant case law of the BSG until the passing of the ZRBG. If the ZRBG should not have been applied to facts such as the non-closed housing district of Krenau, a clear reference hereto could at least have been expected in the materials. However, all indications are missing in this respect.

45 In addition, the legislator of the ZRBG did not limit itself to the codification of the ghetto jurisdiction, but extended its scope in multiple ways *(cf. BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 26)*. In order to enable the payment of pensions from these contribution times, by this law, irrespective of the applicability of the Insurance Legislation of the German Reich [*Reichsversicherungsgesetz*] or the German Foreign Pensions Act [*Fremdrentengesetz - FRG*] *(more in this respect in detail BSG in the judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 24 ff)*, contribution times are established by the fiction of the contribution payment for times of voluntary employment during a forced stay in a ghetto of the national socialist scope of influence. In addition, the simulated contributions - insofar as a benefit is to be paid overseas as contributions for an employment in the federal territory. Only this enables - if applicable by taking further times under pension law into consideration such as e.g. substitute times owing to persecution *(Section 250 Para. 1 No. 4 SGB VI)* - the payout of the pensions to persons entitled to a claim overseas. At the same time the ZRBG - as explicitly ordered in Section 1 Para. 2 ZRBG - supplements the regulations under pension law of the German Act on the Settlement of National Socialist Injustice in Social Security [*Gesetzes zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung - WGSVG*] *of 22 December 1970 (BGBl I 1846)*, through which the application of the additional regulations contained therein for the benefit of persecuted persons for the general regulations of the SGB VI is made possible *(bills of the SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN and FDP respectively PDS parliamentary groups, BT-Drucks 14/8583 P 6, respectively BT-Drucks 14/8602 P 6)*.

46 With these regulations new territory should [will] be entered into "for the benefit of persecuted persons, who had all exceeded the age applicable for the standard retirement pension of 65 years already - partly substantially -, in the field of the statutory pension insurance, whereby certain principles both in the field of the recognition of times under pension law as well as the

provision of benefits from this overseas were deviated from". In particular it should not depend on, "in what territory ruled by the German Reich the contribution times were spent in and in which state the entitled person is living in […]. The payment of the pension claims based on ghetto contribution times overseas will also be made possible without federal territory contribution times" *(bills of SPD, CDU/CSU, BÜNDNIS 90/DIE GRÜNEN and FDP respectively PDS parliamentary groups, BT-Drucks 14/8583 P 5, respectively BT-Drucks 14/8602 P 5)*. Before the ZRBG-ÄnderungsG came into force in 2014 *(BGBl I 952)* already the case law of the BSG derived a requirement for the standard assessment of ghetto employments within the meaning of the ZRBG, without differentiations according to the local applicable law and by waiving the restrictions of the remuneration term under pension insurance law under normal living and working conditions that have always existed *(BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 26 ff; see in this respect also the speech of the Parliamentary State Secretary to the Federal Minister for Labour and Social Affairs, Ms Mascher, recorded within the scope of the second and third deliberation of the ZRBG on 25 April 2002, according to which "regardless of the respective geographical location of the ghetto and the circumstances under social law respectively existing at these locations, standard principles should apply for the calculation of the pension from ghetto employment times" - BT-Plenary Protocol 14/233, 23282)*. It supported itself hereby on the determination that the legislator, although it would have to assume that the criteria laid down by the so-called ghetto case law, which gave the reason for the passing of the ZRBG, could only be applied in a very few ghettos, created a distinction-free regulation irrespective of local applicable law, ghetto size and structure *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, juris Margin Note 28; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 28)*.

47 The broad ghetto term of the ZRBG that was postulated in the case law of the BSG as a distinction-free regulation irrespective of the local applicable law, ghetto-size and -structure, can be deemed as included in the intention of the legislator at the latest with the ZRBG-ÄnderungsG of 15 July 2014 *(BGBl I 952)*. Although reference is explicitly made to the judgements of June 2009 in the bill of the federal government for the ZRBG-ÄnderungsG *(BT-Drucks 18/1308 PP 1, 7)*, the ghetto term as such - was as far as could be recognised from the materials - these were not an object of the deliberations in the legislative process. Nevertheless, the factual field of application of the ZRBG was extended from a spatial point of view by the fact that this was extended through amendments to Section 1 Para. 1 Sentence 1 ZRBG to times of employment also in ghettos, which were in fact not located in a territory that was occupied by the German Reich or was integrated into this, which however was nevertheless subject to the influence of the national socialists, such as for example Slovakia or Romania *(BT-Drucks 18/1308 P 9)*. The variety of the ghetto structures that is covered by the ZRBG anyway was increased hereby once again.

48 The explicit assimilation of the field of application of the ZRBG in terms of facts and location to the formulation of Section 1 Para. 1 of the Recognition Directive *(BT-Drucks 18/1308 P 9)*, carried out through the ZRBG-ÄnderungsG, is also a clear reference to a further ghetto term of the legislator. The federal government had issued this Directive, which covered all territories of the national socialist scope of influence from the start, on 1 October 2007 *(BAnz 2007, 7693)* as a reaction to the very high rejection quota at the time in case of applications according to the ZRBG. It enabled a flat rate one-off payment under prerequisites that were made much easier compared to the ZRBG initially to persecuted persons who had no claim according to the ZRBG *(Joswig, WzS 2019, 318 f; Wissenschaftliche Dienste des Deutschen Bundestags, Sachstand, Das Ghettorentengesetz und die Anerkennungsrichtlinie (Scientific Services of the German Bundestag, factual status, The German Ghetto Pension Act and the Recognition Directive), WD 6 - 3000 - 136/16, 6; BMF, cabinet passes new version of the Recognition Directive; can be available at https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Vermoegensrecht_und_Entschaedigungen/kabinett-beschliesst.html, last called 24 March 2020; cf. regarding the backgrounds Harwardt/v Miquel in: Justizministerium des Landes NRW (Ministry of Justice of the State of NRW) <Hrsg>, Sozialgerichtsbarkeit und NS-Vergangenheit (Jurisdiction of Social Court and NS Past, 2016, pp. 211, 226 f; Lehnstaedt, Geschichte und Gesetzesauslegung (History and Interpretation of Law), 2011, 25 f)*. In order to implement the Recognition Directive a list of ghettos and the duration of their existence, coordinated with the German pension insurance, was drawn up under the overall control of the Federal Ministry of Finance, which did not make a distinction between "open" and "closed" ghettos or times before and after a closure *(available at: https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Vermoegensrecht_und_Entschaedigungen/BMF-Ghettoliste.pdf, last called on 24 March 2020)*. The practice of the pension insurance funds with regard to the ZRBG is also oriented to this list, which does not make any such distinctions either *(cf. Schnell, RVaktuell 2014, 268, 270; Answer of the federal government to the small enquiry of members of parliament of the parliamentary group of DIE LINKE, BT-Drucks 18/6493 PP 4, 7)*. The legislator could not have failed to have been aware of this.

49 The essential object of the ZRBG-ÄnderungsG was a further exception from the General principles of pension or social administration procedural law [*Allgemeinen Grundsätzen des Renten- bzw Sozialverwaltungsverfahrensrechts*] for the benefit of the persons persecuted by the NS. Contrary to Section 44 Para. 4 Tenth Book German Social Insurance Code [*Zehntes Buch Sozialgesetzbuch - SGB X*] it was accordingly possible for these to be able to profit from the change in case law, which was made in June 2009, from 1 July 1997 already and not only for four years retroactively. Together with the options granted in this respect and disbursement regulations it becomes clear through this which high importance is now attached by the legislator to the "interest of the former ghetto workers in an adequate appreciation of their ghetto work in the statutory pension" *(BT-Drucks 18/1308 P 9)*. This forbids, particularly against the

background of the requirement of the standard assessment of ghetto employments postulated in the judgements of the BSG of June 2009 already *(cf. BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 29)*, restricting the factual field of application of the ZRBG to facts which correspond with the common image of a ghetto as a (locked) housing district. This way the historically proven polymorphism and asynchronicity of the ghetto establishment process *(cf. above under I.1.d)* in the now standardised territory could not be adequately taken into account.

50 3. A further ghetto term is also required by the sense and purpose of the ZRBG. With this law it should be made possible for persecuted persons to obtain a pension from the German pension insurance for employment during a forced stay in a ghetto for which the German Reich was responsible,- even if only due to the national socialist influence. *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 26; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 30; cf. also BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 63)*. It does not depend on the type of remuneration, marginal earnings thresholds or the mode of payment *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8)*. In order to realise this purpose - as presented above *(see above under A.I.2.)* - a distinction-free regulation was created irrespective of local applicable law, ghetto size and structure *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 28; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 28)* and this regulation was extended with the First ZRBG-ÄnderungsG beyond the territories occupied by the German Reich or incorporated into this Reich to the entire national socialist scope of influence. In view of the already described asynchronicity and polymorphism of the ghetto establishment *(cf. above I.1.d)* the purpose of the law can only be sufficiently taken into account through an interpretation of the term of ghetto, which covers all of its conceivable forms of appearance within this territory. At the same time it must be suitable for also taking early stages of the process of increasingly more aggravated terror measures into account, which in the end were directed at the obliteration above all of the Jewish population in Europe, when persecuted persons performed work under circumstances comparable with a ghetto.

51 Historians today assume that 1100 to 1200 ghettos existed in the German dominium during the Second World War, mainly on Polish, Baltic and Soviet land. For Poland their number is stated to be around 600 *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 27 f; Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39, 40 f, respectively with reference to details of Dean; Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 185; around 1140 ghettos are listed in the Yad Vashem Encyclopedia of Ghettos, Michman, as cited elsewhere, Vol. I, 2010, XIV; ders, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 19)*. In the ghetto list of the BMF created for the implementation of the

Recognition Directive and updated until today there are currently even 1472 locations recorded *(available at: https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Vermoegensrecht_und_Entschaedigungen/BMF-Ghettoliste.pdf, last called on 28 February 2020)*. The number of the ghettos identified by historians is therefore substantially higher than that of locations, with which the German occupying powers also spoke of a ghetto or "Jewish housing district" *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39; cf. Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 166; with regard to the variety of and change in the meaning of the term of "ghetto" during the NS era Michman in Yad Vashem Encyclopedia of Ghettos, Vol. I, 2010, XVI ff; ders, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 166 ff)*.

52 Ghettos did not only have completely different structures, they were not comparable with regard to the duration of their existence either *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 25 f; Pohl in Benz/Distel, Der Ort des Terrors, Vol. 9, 2009, 161, 184 f)*. A general order for the establishment of ghettos is not handed down *(general opinion; e.g. Gutman/Jäckel/Longerich/Schoeps, Enzyklopädie des Holocaust (Encyclopaedia of the Holocaust), Vol. I, 1989, 535, key word ghetto)*. As opposed to concentration camps they were not under any central management. They were subordinate to local SS and police stations and had various regional forms of appearance, which following a recognisable political and administrative logic *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24; cf. Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror) Vol. 9, 2009, 161, 165 f; Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, S XLIII, XLVI; Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 94 f; cf. also Lehnstaedt, Geschichte und Gesetzesauslegung (History and Interpretation of the Law), 2011, 29 f)*.

53 The public image of the ghetto is characterised by the hermetic segregation from the non-Jewish surroundings, as in the ghettos of Warsaw and Łódź. The historical research initially also concentrated on these large ghettos in Poland *(Pohl in Benz/Distel, Der Ort des Terrors, Vol. 9, 2009, 161, 162 ff; Lehnstaedt, Geschichte und Gesetzesauslegung (History and Interpretation of the Law), 2011, 30)*; the comprehensive knowledge regarding these locations determined the prevailing understanding of the term of "ghetto" in research literature and the general image of the Holocaust among the population *(Michman in Yad Vashem Encyclopedia of Ghettos, Vol. I, 2010, XIII f; ders, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 161)*. On the other hand, - as stated above already - it is assumed today that "open ghettos" were the rule. These ghettos were often located on the outskirts of small towns and were open to the land; in the west of Poland there were also village ghettos *(Pohl in Zarusky, Ghettorenten (Ghetto pensions), 2010, 39, 40; ders in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 185)*. A merely partial concentration of Jews in the large cities is also known from the rural regions of the so-called "Reichskommissariats Ostland" (in the territory of the Baltic region and of parts of Belarus). There, the Jews who had survived the first wave of killings were taken

from villages and small towns either into large city ghettos or left at the place where they were forced into small improvised "Jewish districts" *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 28; cf. Dean in USHMM Encyclopedia of Camps and Ghettos, Vol. II/A, 2012, XLIV)*.

54 Even if walls were missing in open ghettos, there was no freedom of movement there. At the same time, access for non-Jews was forbidden *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 25)*. The hopelessness of the ghetto was not only derived from the German supervision, but also from the circumstance that there was no safe refuge available for Jews outside of these places. The non-Jewish population, in particular in the first phase of German occupation often behaved "dismissive" *(Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 27 f; cf. in this respect from a non-specialist historical point of view also Müller, comment on Stuttgart Higher Regional Court order of 26 April 1951 - EGR 111 - RzW 1951, 238, 239)*.

55 4. The systematic classification of the ZRBG also forces to take this historical knowledge into account by a broad ghetto term.

56 With the ZRBG, the legislator superimposed parts of the pension insurance law with regard to compensation law. By applying the interpretation principles developed for compensation law, *(more in this respect below)* therefore a maximum of one further ghetto term is to be used as a basis for the ZRBG, which particularly lies within the limits of that which could be taken into consideration as a ghetto according to the previous judicial language use and against the background of current historical scholarship knowledge. These are in the end all delimitable locations, which were allocated to Jews and other groups of persecuted persons by force for housing and the regular stay within the national socialist scope of influence and at which a paid employment from an own voluntary decision was nevertheless still possible within the meaning of Section 1 Para. 1 Sentence 1 No. 1 ZRBG. Further qualifying features, such as the setting up of a special Jewish (Pseudo-self-)administration ("Jewish council") and a service to ensure order ("ghetto police") and a Jewish work organisation ("Jewish employment department") *(Binne/Schnell, DRV 2011, 11, 16)* are not on the other hand required, just as housing and living circumstances similar to internment, which go beyond the restriction to stay *(thus however e.g. LSG North-Rhine Westphalia judgement of 15 December 2006 - L 13 RJ 112/04 - juris Margin Note 37; LSG North-Rhine Westphalia judgement of 28 January 2008 - L 8 RJ 139/04 - juris Margin Note 29)*. Also remains of an urban structure as well as mainly the accommodation in the family group *(Binne/Schnell, DRV 2011, 11, 16)* are not absolutely essential - the delimitation of labour and concentration camps is carried out in line with the demonstrated purpose of the law based on the feature of the voluntary nature of performed work.

57 The ZRBG closes a gap at the interface of the right to compensation for victims of national socialist persecution - only this comprises the personal field of application - and the pension

law, by compensating for the damages which persecuted persons suffered due to the fact that they do not receive any pension benefits for the work performed voluntarily during the stay in the "ghetto". Accordingly, the application of the ZRBG is excluded, insofar as benefits are already paid for these times from a system of the social security *(Section 1 Para. 1 Sentence 1 ZRBG)*. Owing to such work - e.g. because of missing remuneration within the Reich insurance laws - no contribution times could frequently not be acquired already. If mostly non-recognised contribution times existed owing to such work - until the so-called ghetto case law of the BSG - as a rule no pensions could be paid from this to the entitled persons, who frequently live overseas and/or do not at least belong to the German language and culture group *(cf. Sections 110 ff SGB VI; Section 1 FRG in conjunction with Sections 1, 4 German Act on the Care of Victims of War [Gesetz über die Versorgung der Opfer des Krieges - BVG])*. The compensation of such damages according to other regulations was not possible until the ZRBG came into force. In particular the BEG only compensates damages to life, the body, health, freedom, property, assets as well as in professional and economic advancement *(Section 1 Para. 1 BEG)*. A benefit entitlement according to the German Act on the Establishment of a Foundation "Remembrance, Responsibility and Future" *(of 2 August 2000, BGBl I 1263)* only exists for forced labourers *(Section 11 Para. 1 Sentence 1 No. 1 of the Act)*, thus particularly not owing to the voluntary work in question in this case.

58 The ZRBG thus establishes pension entitlements which would have been excluded outside of the special historical situation of a ghetto employment of victims of national socialist persecution. The privileged treatment under pension law associated with the waiver of fundamental elements of the insurance obligation and benefits law constitutes from a functional point of view a substitute for a per se required benefit according to social compensation law *(Joswig, WZS 2019, 316, 318; Scientific service of the German Bundestag, factual status, WD 6- 3000 - 049/16, special waiting time regulation for persons entitled according to the ghetto pension law by complying with the requirement for equal treatment, S 6; Binne/Schnell, DRV 2011, 12, 13)*. This is also illustrated by the speeches of members of parliament of the parliamentary groups involved in drafting the bills recorded - within the scope of the second and third deliberations of the submitted bills in the German Bundestag on 25 April 2002 *(BT- Plenary Protocol 14/233, 23279 ff)*: The Member of Parliament Nolte (CDU/CSU) spoke of the fact that "an existing loophole with the reparation of national socialist injustice should be closed". The Member of Parliament Deligöz (BÜNDNIS 90/DIE GRÜNEN) welcomed that "with the German Ghetto Pension Act … at last a further loophole in compensation law is closed" and saw the aim of this law was to remedy existing "hurdles due to pension law for persons who were forced into a ghetto by the Nazis and to carry out paid employment there in this forced situation in order to be able to survive". The Member of Parliament Dr. Schwaetzer (FDP) pointed out that through this law "a loophole in the law is closed, which was only made obvious by the case law of the Federal Social Court". "The principle debate on the assessment of the work in a ghetto" was "ended positively in a very pragmatic manner". The Member of Parliament Dr. Seifert (PDS) emphasised that with this law "a new, urgently needed regulation of the pension of workers in a

ghetto was initiated". Finally, the Parliamentary State Secretary at the Federal Minister of Labour and Social Affairs, Ms Mascher, that with this law "a gap in the law on reparation" is to be closed. In the committee for labour and social order the members of all parliamentary groups also "agreed that with the legislative initiative a loophole with the reparation of national socialist injustice would be closed at last" *(Recommendation for a resolution and report of the committee for labour and social order <11th Committee>, BT-Drucks 14/8823 P 5)*.

59 The ZRBG as an "innovative part of the law of reparation of national socialist injustice" *(BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 63)* is therefore, despite its anchoring in pension law, to be seen from the point of view of substantive law as a compensation regulation that reshapes this law *(cf. already BSG judgement of 16 May 2019 - B 13 R 37/17 R - SozR 4-1200 § 59 No. 2 Margin Note 32)*. Therefore, with its application, the interpretation principles developed in the case law of the BSG for the right to compensation are to be complied with *(cf. relating to the law regarding the treatment of the persecuted persons of national socialism in social insurance of 22 August 1949 - German Persecution Act [Verfolgtengesetz - VerfolgtenG] - already BSG judgement of 26 June 1959 - 1 RA 118/57 - BSGE 10, 113, juris Margin Note 9; BSG judgement of 16 September 1960 - 1 RA 38/60 - BSGE 13, 67 = SozR No. 4 relating to § 1248 RVO, juris Margin Note 10; BSG judgement of 6 September 1962 - 1 RA 154/57 - BSGE 17, 283 = SozR No. 6 relating to VerfolgtenG General of 1949-08-22, juris Margin Note 13; relating to the WGSVG cf. BSG judgement of 28 February 1984 - 12 RK 50/82 - SozR 5070 § 9 No. 7, juris Margin Note 15)*. Accordingly, precedence is to be given to the principle of reparation over the principle of safeguarding the social insurance law system. Therefore, a solution that is particularly still possible may be chosen - and is to be given preference - which leads to the fact that caused injustice is to be compensated for as far as possible *(BSG judgement of 16 September 1960 - 1 RA 38/60 - BSGE 13, 67 = SozR No. 4 relating to § 1248 RVO, juris Margin Note 10; Joswig, WZS 2019, 316, 318)*.

60 5. Other systematic aspects do not oppose a broad understanding of the term within the scope of the ZRBG. This shall apply both to the consideration inherent to the standard and the law as well as with a view to other standard contexts in which the term of ghetto is used.

61 The order of validity of the ZRBG for "persecuted persons in a ghetto, who have stayed there by force", it does in fact initially appear obvious for determination of the term of "ghetto" to orientate the considerations to Section 43 Para. 2 BEG *(cf. BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 84)*. The central criterion is insofar the deprivation of liberty there. It must in particular have been carried out by police or military custody, detention by the NSDAP, pre-trial custody, criminal custody, concentration camp custody and forced stay in a ghetto. The substitute time element under pension insurance law of Section 250 Para. 1 No. 4 SGB VI also explicitly follows a deprivation of liberty or a restriction within the meaning of Sections 43, 47 BEG *(cf. in this respect Fichte in Hauck/Noftz,*

SGB VI, K § 250 Margin Note 225, which in the absence of relevant case law of the Social Court refers to established literature and case law relating to compensation law).

62 However, the term "persecuted person" only defines the personal field of application of the ZRBG. According to Section 1 BEG persecuted persons are those persons, who - in particular as Jews -, among others for reasons of (supposed) race, were persecuted by national socialist violent measures and hereby suffered damages to the legal assets stated in the BEG *(prevailing case law; e.g. BSG judgement of 14 December 2006 - B 4 R 29/06 R - BSGE 98, 48 = SozR 4-5075 § 1 No. 3, Margin Note 56; e.g. BSG judgement of 19 May 2009 - B 5 R 14/08 R - BSGE 103, 161 = SozR 4-2600 § 250 No. 6, Margin Note 17; BSG judgement of 19 May 2009 - B 5 R 26/06 R - juris Margin Note 15; BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 14)*. It is not recognisable that the capacity as a persecuted person in the context of Section 1 ZRBG would particularly have to be based on the ghetto stay. It can in particular not be concluded from the provision regarding the personal field of application in Section 1 Para. 1 Sentence 1 ZRBG that this law should only be applicable to persecuted persons who suffered harm to their freedom within the meaning of Section 43 Para. 2 BEG because of a forced stay in a (closed) ghetto. The capacity as a persecuted person can rather, according to the BEG, follow on from a multitude of violations of legal assets, e.g. also from a restriction to freedom by wearing a Star of David during the time from 30 January 1933 to 8 May 1945 *(Section 47 Para. 1 BEG)*.

63 Section 2 Para. 2 ZRBG does not oppose a broad interpretation of the ghetto term either. According to the bill substantiation in this respect the aim of the ZRBG was to make the payment of pension benefits overseas possible exclusively for times of employment in a ghetto. An "inclusion in terms of value" of contribution times which were acquired outside of the ghetto should therefore be excluded according to Para. 2 *(BT-Drucks 14/8583 P 6 relating to § 2)*. Consequently, the ZRBG makes a distinction between employments during the ghetto stay and those before or after this time *(cf. LSG North-Rhine Westphalia judgement of 15 December 2006 - L 13 RJ 112/04 - juris Margin Note 33)*. However, this does not say anything with regard to when a contribution time "outside of the ghetto" was acquired. This distinction rather particularly presumes the term of the ghetto as a place of a forced stay within the meaning of Section 1 Para. 1 Sentence 1 ZRBG.

64 II. Whether the living circumstances of the Plaintiff during the disputed period of time can be subsumed still under the broad ghetto term as outlined above, can be left undetermined in the end. As cases are to be deemed equivalent to the voluntary paid employment during the forced stay in a ghetto, in which persons concerned lived under restrictions to freedom that are comparable to a ghetto and performed such employment. Insofar Section 1 Para. 1 Sentence 1 ZRBG features a loophole in the regulations in breach of the plan *(more in this respect under 1.)* which is to be closed with regard to the compensation of national socialist injustice aimed at with this law and the presented superimposition of pension insurance law with regard to

compensation law *(more in this respect under I.4. above)* by way of the analogy by extension of the legal consequences of the ZRBG also to those facts *(more in this respect under 2.)*.

65 An analogy is the transfer of the legal consequence of a regulated factual element to a fact that is similar to it but is not regulated. It presumes that the law features a loophole in the regulations in breach of the plan and the fact that is to be assessed from a legal point of view is comparable with the factual element regulated by the legislator, to the extent that it can be assumed it would have come to the same conclusion while weighing up interests, with which it would have been guided by the same principles as with the used legal regulation, *(cf. e.g. BSG judgement of 23 July 2014 - B 12 P 1/12 R - SozR 4-2500 § 251 No. 2 Margin Note 21 ff mwN; BSG judgement of 18 June 2014 - B 3 P 7/13 R - SozR 4-3320 Art 45 No 1 Margin Note 14 ff with further proof; Rüthers/Fischer/Birk, Rechtstheorie mit Juristischer Methodenlehre (Legal theory: with legal methodology), 10th Edition 2018, Margin Note 889; Grüneberg in Palandt, BGB, 78th* edition *2019, introduction Margin Note 48, 55 with further proof)*. These prerequisites exist in this case.

66 1. Section 1 Para. 1 Sentence 1 ZRBG features a loophole in the regulations in breach of the plan by the fact that the factual field of application of the law was limited to employments during the stay in a ghetto.

67 As presented already the history of its development and materials relating to the ZRBG indicate that in 2002 the legislator had the image of the closed Łódź ghetto in mind *(cf. I.2. above)*. This corresponded at the same time with the public image of a ghetto and the understanding prevailing at the time of the term of "Ghetto" in research literature *(cf. I.1.d above)*. However, the knowledge about ghettos and the establishment of ghettos has been extended since then by the more recent historical scholarship research from an essential legal point of view.

68 Since the turn of the century, thus around the same time as the passing of the ZRBG, the focus of historical scholarship has been placed more on the research of the living circumstances in the ghettos of the national socialist scope of influence *(Zarusky in Hensel/Lehnstaedt, Arbeit in den nationalsozialistischen Ghettos (Work in the National Socialist Ghettos), 2013, 407, 410 ff)*. Thus, not only the major lexical work "Yad Vashem Encyclopedia of Ghettos" was published in 2009 respectively 2010 and the Ghetto Volume of the "Encyclopedia of Camps and Ghettos" of the USHMM in 2012, but a multitude of further publications *(an overview is offered by Zarusky, ebd, 407, 411, footnote 15)*. German historical scholarship also dealt increasingly with the victims of the Holocaust *(cf. Scientific Services of the German Bundestag, factual status, Duration of ghettos under National Socialism, WD 6 - 3000 - 025/16, 4)*, which was also stimulated by expert's opinions in disputes about claims according to the ZRBG *(Lehnstaedt in Hensel/Lehnstaedt, Arbeit in den nationalsozialistischen Ghettos (Work in the National Socialist Ghettos), 2013, 11, 15 f, in footnote 13 with proof relating to work about Jewish life before the extermination also outside of ghettos; Bieback also refers to the importance of the expert's*

opinions commissioned by the Social Courts for the historical reappraisal of the living and working conditions in the ghettos in an article that will be published soon, VSSAR 2020, 109, 112). According to Pohl *(Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 164)* it was only started since the 1980s to examine the ghetto politics of the occupation administrations in more detail. Since the opening of the Eastern European archives from 1989, a host of studies were published regarding the role of the ghettos in the national socialist politics regarding Jews *(e.g. Browning, Die Entfesselung der "Endlösung" (The Unleashing of the "Final Solution"). The national socialist policies regarding Jews 1939-1942, 2003)* and in the context of individual occupied regions. The more detailed research of individual ghettos from all perspectives, both from the point of view of the German occupying powers as well as from the point of view of the Jewish inmates, also only started in the last few years of the first decade of the 21st century. The Italian historian Corni was - according to Pohl - the first who summarised the status of research *(Corni, Hitler's Ghettos, Voices from a Beleaguered Society, 1939-1944, 2002)*; the comprehensive analysis of the ghettos by Michman *(published in German under the title: Angst vor den Ostjuden (Fear of the Eastern Jews), 2011)* offers the most recent knowledge *(Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 164)*. However, Lehnstaedt stated in 2011 still a loophole in research with regard to the phenomenon of a ghetto, which research so far had only assumed to a small extent, which is why small and even medium-sized ghettos often required investigation still *(Lehnstaedt, Geschichte und Gesetzesauslegung (History and Interpretation of the Law), 2011, 30)*.

69 Michman also determines as a result of a historiographical analysis that the extensive knowledge of just a few ghettos in Poland had had a decisive influence on the prevailing understanding of the term of "ghetto" in research literature and on the general image of the Holocaust among the population. On the other hand, he refers to the large number of ghettos, of which one is now aware of their existence; to the fact that many of these existed outside of Poland, and to the fact that even in Poland many of them had been set up relatively late over the course of the process (only from 1941 and not in 1939 and 1940 already) *(Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 161)*. One central part of his knowledge is that the establishment of ghettos in occupied Poland was neither carried out systematically, nor fully. Purely in terms of numbers the majority of ghettos were erected in 1941 and 1942; in dozens of localities - mainly in smaller towns and villages with a low or moderate Jewish population (up to 15,000 Jews) - the Jews however continued to live as before in their houses, without a ghetto having been erected there, whereas on the other hand frequently, albeit not always, a Jewish council was installed *(Michman, Angst vor den Ostjuden (Fear of the Eastern Jews), 2011, 97; relating to "village ghettos" and "small improvised Jewish districts" cf. also Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 161, 185, respectively Benz in Hansen/Steffen/Tauber, Lebenswelt Ghetto (Lifeworld Ghetto), 2013, 24, 28)*.

70 The knowledge available today regarding the asynchronicity and diversity of the ghetto establishment process in the national socialist scope of influence was not yet available to the

legislator of 2002. Therefore, there was no necessity at the time to lay down regulations with regard to persecuted persons who were living outside of a ghetto under comparable restrictions and had to take advantage of every opportunity, through a voluntary paid employment, as described in Section 1 Para. 1 Sentence 1 No. 1 ZRBG, for example in order to receive food and thus so ensure their survival. The legislator made changes to the ZRBG in 2014, therefore after publication of the new historical-science knowledge. However, it clearly did not have the latter in view. At least this was obviously not associated with a deliberate delimitation, referring hereto, of the factual field of application, which could oppose an analogy here, d *(cf. I.2. above)*.

71 2. The loophole in the regulations existing through this is to be closed with regard to the compensation aimed at with this law of national socialist injustice and the presented superimposition of pension insurance law by compensation law *(more in this respect under I.4. above)* by way of an analogy by the extension of the legal consequences of the ZRBG also to those facts.

72 This injustice consists of the fact that no pension entitlements were established, although the performed "ghetto work" under other circumstances would have been carried out within the scope of employments subject to pension insurance and then, as a rule, would have established pension entitlements. The ZRBG as an innovative part of the law of reparation of national socialist injustice intends to create compensation for this situation. This requires the equal treatment of comparable compulsory situations also outside of a ghetto, which is oriented to the special features of the situations in mind with the ZRBG.

73 These compulsory situations are characterised by the fact that the persecuted persons in the process of increasingly aggravated terror measures in their location-related area of life were subject to a forced stay, which nevertheless allowed an activity performed by them to be qualified as voluntary employment still. This was the fundamental new feature of the so-called ghetto case law of the BSG *(judgement of 18 June 1997 - 5 RJ 66/95 - BSGE 80, 250 = SozR 3-2200 § 1248 No. 15; judgement of 21 April 1999 - B 5 RJ 48/98 R - SozR 3-2200 § 1248 No. 16; judgement of 14 July 1999 - B 13 RJ 61/98 R - SozR 3-5070 § 14 No. 2; judgement of 23 August 2001 - B 13 RJ 59/00 R - SozR 3-2200 § 1248 No. 17)*, which resulted in the creation of the ZRBG *(more in this respect under I.2. above)*. The employment, the consideration of which under pension law is aimed at by the ZRBG, is consequently to be found between forced labour on the one side and voluntary work which is performed under a still existing remaining freedom of movement, on the other side. A defining characteristic to the latter is the extent of the restriction to freedom of movement under which the persecuted person concerned had to suffer in their location-related area of life at the time of the activity. As the focus of the ZRBG is placed on the consideration under pension law of an employment which was established as a result of an own voluntary decision, and not on the harm to freedom eligible for compensation through the BEG, the restriction to freedom of movement must however not achieve the intensity of a deprivation of liberty within the meaning of Section 43 Para. 2 and 3 BEG.

However, it requires an intensity of the forced stay which in its concrete effect almost excludes the leaving of the location-related area of life anytime the person wanted and therefore substantially exceeds the restrictions, which individually or cumulatively are associated with a compulsory identification obligation, a night-time curfew and the principle ban on the cross-municipality relocation of the place of residence. This is because the ZRBG deliberately makes a distinction between persecution situations which the entire, in particular Jewish, population was exposed to in the national socialist scope of influence, and the specific compulsory situations as in a ghetto. Whether persecuted persons in their location-related area of life, at the time of the activity, were subjected to an intensive forced stay that justifies being deemed equal to a ghetto stay, is an issue of fact and is to be determined by the courts in the instance in an individual case based on concrete indications. Special care and attention is required here with regard to the determination of the actual bases and with the substantiation of the equal treatment.

74 III. Based on this, the Plaintiff, according to the facts in the disputed period of time determined by the LSG with binding effect for the court of appeal *(Section 163 SGG)*, lived under circumstances which are deemed equivalent to the forced stay in a ghetto.

75 At the time of the German occupation in September 1939, according to the findings of the LSG, which are not contested with the appeal complaints and are binding for the Division, around 100 inhabitants were living in S. , including three families of Jewish belief with a total of 21 persons. Immediately after the German troops marched in, they, as well as the Plaintiff, were forced to wear armbands with the Star of David and identify themselves as Jews. The Jewish council was responsible for them, just as for the Jewish residents of other localities there in the surrounding area of the town of Mielec. The Jewish residents of S. remained in their hereditary homes during the disputed period of time or other individual houses were allocated to them, in which they had to live. Neither a concentration of the Jewish population in a certain, delimited housing district nor the marking of houses was carried out. They were not allowed to move away from these without permission. At the same time, they were subject to an administrative law as well as an actual force to stay in their residence, from which they, in any case at night, were not allowed to go out - owing to an at least accordingly existing curfew - and during the day they could de facto not go out owing to the animosities of the "national German population". They were restricted in their freedom of movement to the apartments or houses and were not allowed to leave these, unless they were going to work or for the purpose of essential supplies. They were under the control either of the German occupying troops or the "national German population", whom they lived "next door to". These performed an effective control and ensured that Jews did not exceed the bans imposed upon them. Contacts between the Jewish and the German and Polish population were reduced to a minimum, previously existing contacts were broken off.

76 According to these findings it was not possible for the Plaintiff to leave his location-related area of life - of the house in S. - anytime he wanted. The stay there was forced through the effective control of the German occupying troops and the "national German population". Exceptions only applied for the way to work or for the purpose of essential supplies. In January 1940 already the restrictions to freedom of movement affecting the Plaintiff were similar to those to which over the course of time larger and larger parts of the Jewish population were subjected in the successively set up "Jewish housing districts", without it depending on whether the living circumstances on the whole were already just as inhumane and miserable, as told from ghettos *(cf. more in this respect e.g. Pohl in Benz/Distel, Der Ort des Terrors (The Place of Terror), Vol. 9, 2009, 171 f, 177 ff)*. This is because the intensity of the restrictions to freedom of movement and in particular of the forced stay in the disputed period of time substantially exceeded the restrictions which generally existed at the beginning of the disputed period of time owing to the regulations issued by the national socialist bodies for the Jewish population of the so-called Generalgouvernement. Regulations and instructions are historically proven, according to which general restrictions existed, above all in the obligation of the Jews, which was ordered in 1939 for the Generalgouvernement already, to wear a white armband with a "Zion star", *(Ordinance of 23 November 1939 on the Compulsory Identification of Jews [Verordnung über die Kennzeichnungspflicht von Juden of 23 November 1939], VOBl GG 61)* as well as in bans on accessing paths, roads and squares during the time from 9.00pm to 5.00am or from relocating the place of residence beyond boundaries of municipal authorities without permission. Breaches were initially threatened with "aggravated long-lasting compulsory labour service" *(First Implementing Regulation [Erste Durchführungsvorschrift] of 11 December 1939 , VOBl GG 231, of the Regulation on the Introduction of Compulsory Labour for the Jewish Population of the Generalgouvernement [Verordnung über die Einführung des Arbeitszwangs für die jüdische Bevölkerung des Generalgouvernement] of 26 October 1939, VOBl GG 6)*. From October 1941 the death penalty officially applied for "Jews who leave the housing district allocated to them without authorisation" *(Third Ordinance on Residence Restrictions in the Generalgouvernement [Dritte Verordnung über Aufenthaltsbeschränkungen im Generalgouvernement] of 25 October 1941, VOBl GG 595)*. The establishment of "Jewish councils" had been ordered by the Generalgouverneur Frank on 28 November 1939 already *(Heim/Herbert/Kreikamp/Möller/Pohl/Weber, Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933-1945 (The Persecution and Murder of European Jews by National Socialist Germany 1933-1945), Vol. 4 Poland September 1939-July 1941, 2001, No. 46)*.

77 IV. The further prerequisites according to Section 1 Para. 1 Sentence 1 ZRBG also exist.

78 According to the findings of the LSG that are binding for the Division, the Plaintiff performed employment as a result of his own voluntary decision in exchange for payment within the meaning of the ZRBG in the disputed period of time. He cleaned apartments, carried out cleaning work on the site of the German military and washed military trucks.

79 This employment was established due to his own voluntary decision. Insofar it is irrelevant that general forced labour existed for Jews in the Generalgouvernement owing to the Ordinance on the Introduction of Compulsory Labour for the Jewish Population of the Generalgouvernement [*Verordnung über die Einführung des Arbeitszwangs für die jüdische Bevölkerung des Generalgouvernement*] of 26 October 1939 *(VOBl GG 6)*. As within the meaning of the ZRBG an employment has also been established from an own voluntary decision if a work obligation existed, however the person concerned was not forced to carry out a certain work, but was able to determine the "whether" and "how" of the work *(BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 17 ff; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 19 ff)*. At the same time, the age of the Plaintiff at the time of at the start of the age of ten years old does not oppose the assumption of an employment started from his own voluntary decision within the meaning of Section 1 Para. 1 Sentence 1 ZRBG *(cf. BSG judgement of 2 June 2009 - B 13 R 139/08 R - BSGE 103, 201 = SozR 4-5075 § 1 No. 5, Margin Note 24)*.

80 This employment was also performed in exchange for payment within the meaning of Section 1 Para. 1 Sentence 1 lit. b ZRBG, because the Plaintiff received extra portions of food as a consideration. Payment within the meaning of this regulation is any reward, not only in money, but also in the form of food or corresponding vouchers. Further requirements (e.g. compliance with a minimum amount; also food for another person) do not have to be fulfilled *(BSG judgement of 2 June 2009 - B 13 R 139/08 R - BSGE 103, 201 = SozR 4-5075 § 1 No. 5, Margin Note 27 ff; BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 25 ff; BSG judgement of 3 June 2009 - B 5 R 26/08 R - BSGE 103, 220 = SozR 4-5075 § 1 No. 8, Margin Note 25 ff)*.

81 Finally, S. was located during the disputed period of time on the territory of the so-called Generalgouvernement set up after the German attack on Poland with effect from 26 October 1939 *("Decree of the Führer and Chancellor of the Reich on the Administration of the Occupied Polish Territories [Erlass des Führers und Reichskanzlers über die Verwaltung der besetzten polnischen Gebiete]" of 12 October 1939, RGBl I 2077)* and thus undoubtedly in the territory of the national socialist scope of influence.

82 No indications were determined that a benefit is paid from a system of social security for the disputed time already which according to Section 1 Para. 1 Sentence 1 ZRBG excludes ghetto contribution times, by the LSG. In particular, it has not been determined that these times would have been taken into consideration with a pension possibly received from such a system of the USA. Such is not asserted by the Defendant either.

83 V. Owing to the ghetto contribution times, the claim is derived for the Plaintiff to a standard retirement pension from 1 July 1997, which is to be paid to the USA.

84 The standard retirement pension of the Plaintiff begins on 1 July 1997, although the Plaintiff applied to the Defendant for the granting of a standard retirement pension for the first time on 16 March 2010. Insofar the fiction of Section 3 Para. 1 Sentence 1 ZRBG applies for his benefit, according to which an application for pension from the statutory pension insurance is deemed as applied on 18 June 1997. Owing to the entry into force of the ZRBG as of 1 July 1997 a pension start is derived hereby on this day *(cf. BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 55 ff)*.

85 The place of residence and customary place of abode of the Plaintiff in the USA does not oppose a claim for standard retirement pension also with consideration for Sections 110 ff SGB VI. Insofar as one does not want to directly derive this from Section 2 Para. 1 No. 2 ZRBG as well as the purpose pursued hereby, particularly also to enable the payment of pensions to entitled persons overseas, *(cf. BSG judgement of 2 June 2009 - B 13 R 81/08 R - BSGE 103, 190 = SozR 4-5075 § 1 No. 7, Margin Note 50 ff)*, this can in any case be derived from the Regulations of the Agreement of 7 January 1976 between the Federal Republic of Germany and the USA on Social Security *(DASVA, BGBl II 1358)*. This enjoys precedence for application here over the regulations of the national law *(Section 30 Para. 2 First Book German Social Insurance Code [Erstes Buch Sozialgesetzbuch - SGB I]; Section 110 Para. 3 SGB VI)* and leads to an equal treatment of US citizens, who, like the Plaintiff, have their customary place of abode in the USA, with German citizens *(Art 4 Para. 1 DASVA in conjunction with Art 3 lit. a and Art 2 Para. 1 lit. a DASVA)*. This equal treatment effects that the claim of the Plaintiff for the granting of a retirement pension is directed according to Sections 35 Sentence 1, 235 Para. 1, Para. 2 Sentence 1 SGB VI. The applicability of the ZRBG, which is not named in Art 2 Para. 1 lit. a DASVA, is concluded from the final protocol relating to the DASVA *(BGBl II 1976, 1368, 1370 in the version of the Additional Agreement of 6 March 1995, BGBl II 302, 305)*, that according to Art 21 DASVA is part of the Agreement. According to No. 9 *(previously No. 8)* of this final protocol, the application of the Agreement shall not affect German legal regulations insofar as it contains more favourable regulation for persons who have been harmed because of their political attitude or for reasons of race, the belief or the ideology. It should be ensured hereby that national German reparation law, which also includes the ZRBG, has precedence over the Agreement, insofar as it contains more favourable regulations *(cf. memorandum on DASVA, BT-Drucks 7/5210, S 19 relating to Art 20 to 24)* and is actually applied.

86 VI. The costs decision is concluded from Section 193 SGG.