

Federal Social Court

Judgment of 20 May 2020 - B 13 R 9/19 R

Payment of pensions from employment in a ghetto - broad interpretation of the term of ghetto within the meaning of the law on the Payment of Pensions from Employment in a Ghetto [*Gesetz zur Zahlbarmachung von Renten aus Beschäftigungen in einem Ghetto - ZRBG*] - transfer under compensation law of the pension insurance law by the ZRBG - employment from an own free decision within the meaning of the ZRBG - age

1. The broad term of ghetto of the law on the payment of pensions from employment in a ghetto (ZRBG) essentially covers delimitable locations, which were allocated to Jews and other groups of persecuted persons within the national socialist area of influence by force for housing and regular place of abode and at which a paid employment was nevertheless still possible from their own free decision.

2. Employment in a ghetto, is deemed to be employment which persecuted persons performed during which they were subject to restriction of movement which almost excluded leaving their living quarters at their free discretion that clearly went beyond persecution which the entire, in particular the Jewish population was subjected to.

3. Despite being based on pension law, the ZRBG is to be seen under substantive law as a compensatory regulation that adopts this.

The plaintiff was persecuted as a Jew during the time of national socialism. The location in the so-called "General government" at the time, today in Poland, in which the plaintiff lived, had a population of approx. 100, including three families of the Jewish faith with a total of 21 persons. After the occupation by the German troops the Jewish population was forced to wear identification armbands with the Star of David, however (initially) remained in their houses. Further marking of the houses was not carried out, however the Jewish residents were restricted in their freedom of movement to their apartments or houses and were not allowed to leave these apart from for the route to work and for essential supplies. Moving required permission During the time from January 1940 to March 1942 the plaintiff carried out cleaning work on the site of the German military for which, according to his own account, he received an extra portion of food. The state social court obligated the sued pension insurance fund to grant a retirement pension, as forced residence in a ghetto is to be assumed within the meaning of the ZRBG.

This result was confirmed by the Senate. The conditions, under which the employment of the plaintiff was carried out, are to be deemed equivalent to those of forced residence in a ghetto by way of an analogy. The term of a ghetto is indeed not defined by law and standard history suggests that the legislator essentially considered "closed ghettos" in 2002. Nevertheless, there was no stipulation of a certain ghetto term. In the years after the ZRBG came into

force, historians came to the conclusion that the majority of the known ghettos concerned so-called "open ghettos" and the ghettoisation in the National Socialist sphere of influence was characterised by asynchronicity and diversity. The legislator clearly did not take this more recent historical knowledge into account when creating the ZRBG so that a incompleteness of the law in breach of the plan is to be assumed. This can only be remedied by the fact that circumstances comparable with residence in a ghetto also triggers the legal consequences of the ZRBG. This is because the ZRBG closes a gap in both the right to compensation for victims of national socialist persecution 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 their residence in the "ghetto". This requires a superimposition of the pension insurance law under compensation law. Predicaments, which are characterised by the fact that the persecuted persons were subject to a forced stay in the process of increasingly reinforced terror measures are comparable, which almost excluded leaving the spatial living area at free discretion and which clearly went beyond situations of persecution, to which the entire population, in particular the Jews, were exposed to, but nevertheless allowed an activity performed by them to be qualified as voluntary employment still.