Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force During the Occupation in France *

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Introduction

It was not until July 16, 1995, in a speech delivered by President Jacques Chirac at a ceremony commemorating the great "Vel'd'Hiv Round-Up" of July 16, 1942, an event that has been a tradition for many years[1], that the highest government authority finally acknowledged the French authorities' share of responsibility in the persecutions to which the Jewish community fell victim during the Occupation.

Acknowledging that "France had committed the irreparable" by taking part in the Vel'd'Hiv round-up in no way implied recognition of Vichy's legitimacy. A legal fact was simply stated. It is, indeed, a general principle of law regarding the continuity of the government, according to which any State is, from a legal standpoint, represented by a government. When two authorities claiming to act on a government's behalf co-exist, the **principle of effectiveness** of exercise of powers must be given precedence. However, all questions of legality or legitimacy aside, it is clear that, as unfortunate as it may have been, at least in Metropolitan France it was the Vichy authorities that actually exercised their powers between 1940 and 1944; consequently, responsibility for their acts fell to the government.

The valid controversy surrounding Vichy's illegitimacy, and even its illegality, could not relieve France of its obligations toward the foreign citizens, and its own nationals, that Vichy delivered to the Germans and/or despoiled.

It is unfortunate that neither the Presidents of the Fourth Republic nor Jacques Chirac's predecessors under the Fifth Republic contemplated and/or agreed to assume, as heads of the french State (meaning the french State authority, in order to avoid any confusion with the official term "French State", adopted by the Vichy Regime), France's responsibility, regardless of who was in power during the Occupation.

In point of fact, it was in this speech that the President of the French Republic officially acknowledged France's "unremitting debt" toward the 76,000 Jews deported from France[2]. However, to the extent that Jacques Chirac believed, and rightfully so, that it was necessary to "recognize the mistakes of the past and the mistakes committed by the government"[3], it made sense that the public authorities consider providing reparation for the material damages suffered by the Jewish community in France.

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[1] In fact, until 1993, the commemoration of this tragic event was merely "private" in nature. A decree issued by the President of the Republic on February 3, 1993 made July 16 a national day of commemoration of the racist and anti-Semitic persecutions committed under the so-called "Government of the French State" *de facto* authority.

[2] It should be recalled that 80,000 Jews perished as a result of the persecutions (approximately one-fourth of the Jewish community residing in France), and that three-fourths were saved thanks in large part to the dedication of the French people, who were able to actively disassociate themselves from the anti-Semitic policy implemented by Vichy.

[3] As a matter of logic, France's *Conseil d'Etat* was compelled to take the view that "acts or actions of the French administration, which did not result directly from a constraint by the occupying power, allowed and facilitated, independent of Mr. Papon's personal action, the operations that led up to deportation" (CE, Ass., April 12, 2002, *Papon*, req. no. 238689, concl. Mrs. S. Boissard – Mr. Verpeaux, *L'affaire Papon, la République et l'Etat, Rev. fr. de dr. const*., 2003 p. 513 et s. (French Review of Constitutional Law, 2003 p. 513 et seq.)). The government was therefore ordered to pay one-half of the total damages payable by the former Secretary General of the Prefecture of Gironde.

I - The Mattéoli Commission

The first order of business was to draw up an inventory of the spoliations that had occurred. In a letter of engagement dated February 5, 1997, this task was entrusted by Prime Minister Alain Juppé to a commission placed under the authority of Jean Mattéoli, a former resistance fighter and, at the time, President of the French *Conseil économique et social* (Economic and Social Council)[4]. This commission, made up of eight public figures[5], was charged with "studying the conditions under which movable and real property belonging to French Jews was confiscated or, in general, acquired by fraud, violence or deceit either by the occupying power or by the Vichy authorities between 1940 and 1944".

The task was a considerable one, with some 300,000 to 330,000 people affected by spoliation measures. In practical terms, the mission was two-fold: "to assess the extent of the spoliations" and determine which categories of people benefited from them, and to determine "the fate of this property in the years between the end of the war and today".

Although some historical research already existed, no study had been undertaken regarding **restitution** and **compensation**. To facilitate research, working groups, each placed under the authority of a member of the Commission[6] and consisting of historians and professional archivists, were set up[7].

In April 2000[8], the Mattéoli Commission submitted its report, which highlighted both the extent of the spoliation and the amount of the restitutions.

A) Extent of the Spoliations

In addition to the spoliations organized under the laws and regulations of the Vichy authorities, there was also looting carried out by the Germans.

The first category included: the sale or liquidation of industrial, commercial or business assets and real estate as part of the so-called Aryanization measures; the sale of shares deposited at financial institutions; the blocking of bank accounts after confiscation of funds to pay the "billion franc fine" imposed on Jews by the occupying troops or to finance the UGIF (General Union of Jews of France), an organization created by the occupying authorities[9], and the confiscation of internees' money and property on their arrival at the camps.

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[4] This task was confirmed by the new Prime Minister, Lionel Jospin, in a letter dated October 6, 1997.

[5] In addition to its Chairman, the group's original members were Professor Adolphe Steg, Vice-Chairman, Mr. Jean Favier, Mr. Jean Kahn, Mr. Serge Klarsfeld, Mr. Alain Pierret and Mrs. Wieviorka. Another member, Mr. François Furet, died in July 1997. In March 1998, Mrs. Claire Andrieu and Professor Antoine Prost were appointed as members.

[6] This is the term generally used to designate the body placed under Mr. Mattéoli's authority.

[7] For all practical purposes, some 100 people contributed to the Commission, most of them on a contractual basis.

[8] Within the limited framework of this study, we are obviously unable to provide a thorough account of this report. Reference can be made to the 10 volumes published, under the guidance of the Commission, by *Documentation Française* (French government printing office) in 2000 (a general report, seven sector reports, an archives manual and a collection of official texts. Also see the excellent summary published in *Le Monde* on April 18, 2000, pp. 8 and 9).

[9] All existing Jewish associations, with the exception of cultural associations, were dissolved; the UGIF became the organization representing the Jewish community and was responsible for such tasks as

The second category included theft by Germans of works of art, gold, foreign currencies and foreign valuables taken from safe-deposit boxes and the routine looting of apartments.

In all, the Commission found that 80,000 bank accounts and some 6,000 safe-deposit boxes had been blocked, 50,000 Aryanization procedures undertaken, more than 100,000 artifacts and works of art and several million books looted and 38,000 apartments cleared.

The amounts in question were considerable[10]. The blocked securities accounts represented 6 billion francs (at that time[11]) and the current accounts 1.2 billion. The sale and liquidation of businesses and real estate were valued at approximately 3 billion, while the value of looted property was difficult to estimate. Cash confiscated at the camps totaled more than 200 million francs, not counting the valuables and items seized[12].

Although no overall figure was provided by the Mattéoli Commission, the amount offered by the press[13], which was not challenged, was 5.2 billion 1941 francs (roughly 1.554 billion euros in 2006).

B) Amount of the Restitutions

With regard to restitutions, the Mattéoli Commission underscored the fact that these did not reflect the spoliation that had occurred. Like Vichy, the reinstated republican institutions did not wish to implement any exceptional reverse measures. The measures taken were by legislative and judicial process. As a result, there was less awareness of the restitution since it was a matter of ordinary law[14]; there were also delays related to judicial proceedings made worse by the housing crisis, which made it more difficult to retake possession of the apartments from which Jews had been driven.

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social welfare, assistance and social and professional reintegration. It was financed in part by the proceeds from Aryanization.

[10] The authors of the Mattéoli Commission's General Report compared these amounts to the occupation indemnity payable by the Vichy government, which was increased from 200 million francs to 400 million francs per day.

[11] According to the work of the INSEE, which is based on the consumer price index, one 1941 franc is equivalent to 0.299 euros (2006).

[12] For the Drancy camp, the deposit forms prepared under the supervision of the camp's French accountant, Kiffer, up to the time that the Germans took over administration of the camp in the summer of 1943 provide a relatively accurate assessment of the sums confiscated and deposited at the *Caisse des Dépôts et Consignations* (not including thefts carried out by French officials at the time of the searches).

[13] See the aforementioned *Le Monde* article of April 18, 2000.

[14] Compensation for looting was awarded under the French War Damages Act of October 28, 1946 which applied to looting carried out by both French and German troops during the crisis or damage from bombings (some six million claims were filed and processed). Moreover, only French Jews – as well as foreign Jews who had joined the French army or the Resistance – were eligible under this law. The archives of the Ministry of Reconstruction and Urban Planning (MRU, which later became the Ministry of Reconstruction and Housing - MRL) were unfortunately destroyed, with a few rare exceptions, in the 1960s. Fortunately, however, a record of this compensation was preserved in the German archives at the time of the Brüg Act (see below).

Of course, the Commission noted the unequivocal political will of the new institutions, which immediately declared all discriminatory measures of any kind taken by Vichy null and void. Bank accounts were unblocked[15] and the courts ordered thousands of automatic reinstatements or cancellations of assignments of commercial leases. A *Commission de récupération artistique* (Commission for the Recovery of Works of Art), a Restitutions Office[16] and an office for oversight of temporary administrators were created. The latter two offices were set up to return private property found in France to their rightful owners, while the *Office des biens et intérêts privés* (OBIP - Office for Personal Property and Interests) performed the same function for property found in Germany. A law enacted on June 16, 1948 made the government responsible for repaying the sums collected for the billion franc fine imposed on the Jewish community by the occupying troops or paid to the temporary administrators put in place by the Vichy authorities.

Above all, the Mattéoli Commission highlighted the limitations of the restitution measures, with the result that the property of exterminated deportees was not claimed by anyone since their children, if they had escaped the genocide, were often very young and unaware of the assets that had been looted from their parents. These unclaimed assets mainly included deposits and bank accounts. Even adult survivors of the Holocaust, who were too "happy" to have come out alive, did not always think about asserting their rights. As a result, under the aforementioned law of 1948, only 5,000 claims were received.

In practical terms, the Mattéoli Commission laid out four main categories of spoliation and looting.

With regard to Aryanized businesses and real estate and French securities, non-restitution was assessed at 243 to 477 million francs (at that time), with these assets accounting for 5 to 10% of total looted property.

Restitution was made on cash and securities looted at financial institutions (more than 7 billion francs) at a rate of 98 to 99%, which meant that some 145 million francs were not returned.

The value of cash and items taken from deportees could not be accurately determined. However, the Commission believed that for the Drancy camp alone, of the 12 million francs confiscated from prisoners and deposited at the CDC, this institution released only 3 million after the war.

Finally, all items looted by the Germans and left behind in France or transported to Germany[17], the value of which was difficult to estimate, had to be taken into account. Although the Vichy authorities were not held directly responsible for this last category, the Commission nevertheless established France's responsibility after the war. The Land Office (*Domaines*) conducted premature sales of miscellaneous items of an amount of some 100 million francs in 1954[18]. After the

[15] However, banking or similar institutions (current postal account or savings account) made little effort to find the accountholders or their heirs.

[16] The Mattéoli Commission paid tribute to the manager of this office, Professor Terroine, for whom "the restitution of property looted from Jews (was) a work of both justice and humanity whose moral and political meaning far (outweighed) the material assets in question".

[17] Under the *Möbelaktion* (Furniture Action), the Germans routed nearly 600 trains loaded with furniture looted from some 40,000 apartments. In addition, numerous works of art, archives and libraries were targeted by the *Einsatzstab Reichsleiter Rosenberg* (Rosenberg's staff) and of the 8,000 pianos stolen, only 2,000 were found after the war.

[18] One 1954 franc is equivalent to 0.01908 euros in 2006.

war, French museums were not diligent in locating the owners of some 2,000 artifacts and works of art that had been entrusted to the museums after the war[19].

No total amount corresponding to the rate of restitution was proposed by the Commission in its report. According to the press, which was also not refuted on this point, the rate of restitution or repayment can be estimated at 70% for businesses and real estate, 92% for securities and 90-95% for financial spoliation which, given the extent of the spoliation, represents significant amounts.

The Mattéoli Commission also referred to the compensation measures adopted by the Federal Republic of Germany[20] under the federal law known as the Brüg Act[21].

This law, which took effect on July 19, 1957[22], allowed for the review, over a period of about 10 years, of more than 37,000 claims concerning the payment of compensation for lootings of apartments and jewelry that had been confiscated from deportees on their arrival at the extermination camps[23]. More than 450 million DM (approximately 735 million euros in 2006) were paid at that time[24]. The compensation amount was determined by a commission of independent experts under the authority of the *Fonds Social Juif Unifié* (FSJU - United Jewish Welfare Fund). This amount, which was based on a scale corresponding to the number of rooms in the apartment and the family composition[25], took into account payments made for war damages. The Mattéoli Commission's General Report attests to the "extreme competence, great meticulousness and will of the commission of experts to always find the solution most favorable to the looting victims" (p. 157)[26].

C) Follow-Up Action of the Mattéoli Commission

In its recommendations, one of the tasks of the Mattéoli Commission was to demonstrate what it called the "residual spoliation" resulting from the difference between "the initial spoliation and the amount of compensation paid under the Brüg Act, plus the portion of French war damages that was not taken into account under the Brüg Act" (p. 169)[27].

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[19] These items are part of the national collections and are classified as M.N.R. (National Museums – Recoveries register). However, the Commission did note that between 1945 and 1950, some 45,000 items had been returned.

[20] The FRG, for its part, has always refused to acknowledge that, as successor of a part of the Reich, it should pay compensation for the losses caused by the German government, even though it was a Nazi state.

[21] *Bundesrückerstattungsgesetz* (Federal Restitution Act).

[22] In fact, this law was amended several times, and in particular in 1964, to allow an extension of the periods for filing claims for compensation. However, this late filing resulted in a so-called "special hardships" clause being applied, which limited the amount of the payment awarded.

[23] Cash and valuables confiscated at internment camps in France were not taken into account.

[24] It should be pointed out, incidentally, that a law known as the *BEG Act (Bundesentschaedigunggesetz)* enacted in 1953 but amended several times thereafter allowed a number of Jewish victims who had suffered harm to their physical integrity, health and professional interests as a result of Nazi persecutions for racial, religious or ideological reasons, to receive annuities.

[25] Those concerned could, however, choose to have the payment be based on an insurance policy taken out before the war.

[26] This assessment later prompted the CIVS (see below) to stand firm in its decision to not question these amounts, barring a glaring error or new information.

[27] Indeed, many victims of spoliations were unable to come forward because of their disappearance during the turmoil and their heirs, if any, were not always able to file claims for compensation. In

In an earlier progress report, it had recommended the creation of a "commission for the compensation of victims of spoliation resulting from the anti-Semitic legislation in force during the Occupation" and of a Foundation for memory whose mission would be to collect unclaimed funds of any kind resulting from this spoliation[28].

In its final report, the Commission issued three recommendations regarding individual restitutions.

First of all (Recommendation 8), it put forth the principle of compensation under the law for all property proven to exist in 1940 which had been looted but had not been returned or compensated, regardless of the periods of limitation in force[29].

Secondly (Recommendation 9), no "new compensation" was to be considered for looted property that had already been returned or compensated[30].

Finally (Recommendation 10), to uphold the principle of equality, compensation payments were to adhere to the same principles as previous payments.

It was under these conditions that Decree 99-778 of September 10, 1999 did in fact establish a commission for the compensation of victims of spoliation resulting from the anti-Semitic legislation in force during the Occupation (C.I.V.S.) (Journal Officiel (Official Gazette) of September 11, 1999, p. 13633)[31].

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addition, a number of victims did not want to beg from their former persecutors and, being of foreign nationality, were not even able to collect compensation under the War Damages Act.

[28] Moreover, in light of the attention drawn by the Commission to the situation of children of Jewish deportees, the government decided, through decree 2000-657 of July 13, 2000, to establish a compensation measure in their favor in the form of a monthly annuity of 3,000 francs (approximately 450 euros) or a lump-sum payment of 180,000 francs (approximately 27,450 euros). In response to criticisms in some circles regarding this measure which, by the way, was found to be legal by France's *Conseil d'Etat* (Ass., April 6, 2001, *Pelletier*, req. no. 224945), the government should have pointed out that the German government had originally planned to compensate the Jewish victims of French nationality directly, as it had done for stateless Jews or Jews of other nationalities. However, in view of General de Gaulle's objection to any differentiation among French victims on the basis of their religion, the German government finally agreed to pay a sum of 400 million DM (approximately 650 million euros in 2006) (agreement of July 15, 1960, Journal Officiel of August 28, 1961, p. 8020) to all victims of national-socialist persecutions, without regard to religious origin (see implementing order of August 29, 1961, Journal Officiel of August 30, 1961; for all practical purposes, an indemnity of some 6,000 francs (at the time) was paid to each of the victims). The measure taken in favor of orphans of Jewish deportees was extended to include all orphans of deportees by a decree of July 27, 2004.

[29] Even despite the brevity of the four-year lapse period, the principle of a 30-year limitation period would have prevented any compensation for spoliations occurring nearly 60 years earlier.

[30] For example, works of act for which compensation had already been paid could obviously not be returned without this compensation first being paid back.

[31] Fortunately, a Report to the Prime Minister explains in detail the reasons for this decree (p. 13632). A decree of the *Conseil d'Etat,* which unfortunately was not published, rejected an appeal based, among other things, on the complaint of inequality among citizens (CE, 2nd and 1st s/sect., June 6, 2001, *Bidalou,* req. no. 214205). The Commission's composition and operating rules were amended by Decree 99-914 of October 27, 1999, Decree 2000-932 of September 25, 2000 and, most importantly, Decree 2001-530 of June 20, 2001, the amounts of which were clarified in a Report to the Prime Minister (Journal Officiel, June 21, 2001, p. 9823).

II - The Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in Force During the Occupation[32] (C.I.V.S.)

A) Organization and Procedure

This 10-member body[33], which reports directly to the Prime Minister, was originally chaired by Mr. Pierre Drai, First Honorary President of the *Cour de Cassation* (Highest Appeals Court)[34]. The Commission is neither a jurisdictional body[35] nor an administrative decision-making body. In point of fact, the Commission's role is to act as conciliator[36] and, failing that, to make recommendations aimed at returning the looted property or compensating the victims. The Report to the Prime Minister stresses that "no one will be required, by law, to comply with these recommendations; however, they will obviously have significant implications"[37].

Once claims[38] are received by the Commission[39], a complete research network is put in place made up of historians and archivists whose research precedes the investigation of the claims by a *rapporteur*[40]*.* To determine whether compensation was paid previously, a review of the German Archives in Berlin, the French National Archives and the departmental Archives in France is necessary[41].

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[32] See Appendices 1 and 2.

[33] The decision-making members include: two highest-ranking magistrates from the *Cour de Cassation*, two members of the *Conseil d'État* (Highest Administrative Court), two senior members of the *Cour des Comptes* (Auditor General's department), two university professors and two qualified experts. They serve a three-year term which is implicitly renewable.

[34] It is for this reason that this body was originally known as the "Drai Commission". By law, the Commission is chaired by a magistrate from the *Cour de Cassation* and since September 2006, following Mr. Drai's departure, has been chaired by Mr. Gérard Gélineau-Larrivet, former Chairman of a chamber at the *Cour de Cassation.* It also has a Vice-Chairman, currently Mr. François Bernard, Honorary member of the *Conseil d'État*. The Commission's teams also include some 60 agents who report to a Director, currently Lucien Kalfon, Prefect. Aside from its units at CIVS headquarters – 1 rue de la Manutention, 75116 Paris – the Commission also has offices at the *Archives Nationales* (French National Archives) and in Berlin.

[35] The creation of a jurisdictional body would have required a law and, in most cases, a court would have been compelled to disallow the claims based on the rules related to the statute of limitations.

[36] This role, which is perfectly understandable in the case of spoliation attributable to a financial or banking institution, including one run by the government (such as the *Caisse des Dépôts*), of an insurance company or public institution (*Direction des Musées de France* – Directorate of French Museums), is less conceivable when the government is directly involved.

[37] In response to a question submitted in writing by Mr. Masdeu-Arus on May 21, 2001, then Prime Minister Lionel Jospin indicated that he "promised to follow" these recommendations (Journal Officiel, AN, September 17, 2001).

[38] Upon receipt of a claim, a questionnaire is sent in order to obtain as much information as possible.

[39] Claimants do not need to hire an attorney and can "be assisted by the person of their choice". Members of the same family can designate one of their own to represent them.

[40] The Commission has access to the computer file of personal information created by the Mattéoli Commission (decree of October 19, 2000, Journal Officiel of Oct. 21, 2000, p. 16856).

[41] It is this three-stage research that accounts for the length of the investigation, which takes about two years on average.

Next, the claims are investigated on an *inter-partes* basis by a *rapporteur* who is a member of the administrative, judicial or financial courts and is appointed by the Principal Rapporteur. The persons concerned are heard by the *rapporteur* and by the Commission usually composed of three members or in a plenary session[42]. Prior to the Commission's deliberations, a Government Commissioner makes comments either verbally or in writing.

B) Operating Methods

With regard to the Commission's operating methods, we will consider the following aspects: general principles, determining the eligibility of heirs, methods used for assessing losses and bank assets.

1) <u>General Principles</u>

The intention of the Commission was to follow the decree of September 10, 1999 to the letter, as elucidated by the report to the Prime Minister.

"Drawing on the work of Mr. Mattéoli's commission", it seeks to make an appropriate gesture to victims of spoliation, i.e. to persons (or their heirs) who were deprived of a material (movable or real property) or financial asset as a result of the anti-Semitic laws adopted during the Occupation, either by the occupying power or by the Vichy authorities.

Thus, having been given the task of reviewing "individual claims", the Commission is competent to hear claims submitted only by private individuals and not by corporate entities.

Moreover, *each of three conditions* must be met:

First of all, the loss must be related to anti-Semitic laws[43], which excludes war damages (e.g. from bombings), requisitioning, the consequences of violations of laws pertaining to foreign currency or the movement of cash, or the consequences of criminal acts such as armed holdups unrelated to the application of the anti-Semitic laws.

[42] The quorum is then six members. Matters are distributed between the two types of sessions based on the difficulty of the questions raised. Moreover, an appeal of a recommendation made at an ordinary cession can be heard only by a plenary session. In special cases, when the claimant's personal situation requires fast processing of his/her claim or the case does not pose any special problems, the Chairman may issue a recommendation on his own, which can be contested at an ordinary cession on an exceptional basis.

[43] The Commission did, however, compensate a non-Jewish person on the grounds that it was shown that the spoliation to which the person had fallen victim resulted from the fact that the person had been regarded as an accomplice to a direct violation of the anti-Semitic laws of the time. However, it refused to compensate an heir of a Jewish resistance fighter from whom a large sum of money had been stolen at the time of his arrest.

Secondly, the loss must be material (where applicable, a non-economic loss resulting from being the orphan of a deportee qualifies under the decree of July 13, 2000)[44].

Finally, the loss must be attributable to the French authorities or the occupying powers on French or assimilated territory (e.g. Tunisia), including Alsace-Moselle, annexed during the war[45]. Algeria[46] and Tunisia[47] pose specific problems, first of all because spoliations did not occur systematically, as they had in Metropolitan France, and also because archives concerning them are very incomplete. Spoliations that occurred in Poland, Germany, Austria, Romania, etc. are, however, excluded.

There are limits on compensation: no provision is made for loss of income or earnings (e.g. loss of profits, rental payments not received, loss of earnings resulting from the inability to practice a profession), costs arising from war-caused relocation (such as furniture storage costs) and, more generally, costs incurred to stay alive while in hiding. The fact of being poverty-stricken is not considered forced dispossession within the meaning of the decree of September 10, 1999. Similarly, the Commission takes the view that a loss resulting from work stoppage does not constitute an act of theft, through violence, fraud or misuse of power, of a material asset belonging to another person, which the term "spoliation" implies. However, persons who fled the anti-Semitic persecutions and whose vacant apartments were looted are compensated.

The Commission is not required to comply with the strict rules of law that would lead to the denial of nearly every claim due to the expiration of the time limits for remedy.

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[44] The Commission, whose competence is limited to compensation for material losses resulting from the "spoliation of property", is not affected by the judgment handed down on June 6, 2006 by the Administrative Court of Toulouse (*Lipietz*) recognizing the responsibility of both the SNCF (French national railway company) and the French government and therefore entitling the claimants to compensation as a result of arrests and transfers to the Drancy camp.

[45] The Brüg Act did not apply to these cases and the German authorities paid compensation only for property that was proven to have been sold to German nationals. The CIVS therefore supplemented, where applicable, the sums received for war damages.

[46] With regard to Algeria, the CIVS noted that the spoliations concerned only rental properties and large companies (e.g. breweries), as evidenced by the Governor General's decrees appointing temporary administrators, published in Algeria's Journal Officiel (end of 1941 and beginning of 1942). A decree issued on April 8, 1943 by the Governor General ordered the reintegration of Jews with all the rights they had to their property at the time of dispossession. The temporary administrators whose appointments had been reported (end of 1942) were required to present their accounts to the "administered", who were able to appeal to the Governor General who, in turn, then made the necessary corrections and determined the restitutions.

[47] The Commission, after hearing several experts, noted that although the anti-Semitic laws enacted in mainland France were made applicable in Tunisia through a series of measures starting on November 30, 1940, the measures imposed by these laws against property were not applied systematically and rigorously. During the period of German occupation from November 1942 to May 1943, seizures and lootings of Jewish property may have occurred; however, the "*action meubles*" measures aimed at transferring seized furnishings to Germany were not implemented due to the distance and the status of communications. The Commission therefore did not believe that it could fully apply the lump-sum payments under the Brüg Act in cases where there were indications of spoliations. Moreover, compensation for war damages was provided by a Beylical decree in 1947. In the end, fines imposed on the Jewish community in some cities (Tunis, Gabès, Sfax and Sousse) were not paid by Jews and the Tunisian government repaid loans taken out at banks.

Although the Commission is not a court, it strives to adhere to the *inter-partes* principle during both the investigation and the hearing.

In the interest of fairness, for those who have already been compensated and do not submit new claims, compensation already awarded cannot be reassessed (reparation by France for war damages or compensation by Germany under the Brüg Act), barring glaring errors (error in the family composition or the composition of the apartment, as evidenced by documents in the file or evidentiary documents produced by the heirs) or an arbitrary limit on the amount of compensation paid (e.g. reduction for "special hardships" under the Brüg Act stemming from the late filing of claims and resulting in a recalculation within the limit of this reduction – the adjustment factor used in 2006 is 1.635 for 1 DM in the 1960s).

The presence of payment orders in the file is regarded as sufficient evidence that the payment was made.

Moreover, given the amount of time that has elapsed since the causes of the loss, the Commission takes into account the difficulty in providing evidence and presumes the claimants' *bona fides* for common and plausible losses.

The amount of the compensation is determined based on the loss suffered in light of the living standards at the time, whether the assessment pertains to spoliation of an automobile, furniture or equipment in a tradesman's workshop. Compensation is calculated based on the potential replacement cost of the looted items at the time of loss (generally on the basis of certain payment scales created with respect to war damages). This amount is then adjusted based on the adjustment factors established by the INSEE (French National Institute of Statistics and Economic Studies).

The Commission recognizes the possibility of reimbursement of costs necessarily incurred to institute legal proceedings, at the time of the Liberation, for the restitution of looted property (apartment or business), but not reimbursement of any sums paid in connection with an out-of-court settlement.

Given the difficulty in drawing up a complete list of heirs with certainty, the Commission, in its recommendations, stipulates that recipients of compensation payments should be personally responsible for sharing the compensation with other heirs who make themselves known. It also sets aside the portion of any known heirs who have not been a party to a claim submitted to it.

2) <u>Determining the Eligibility of Heirs</u>

Application of the rules of ordinary law, as provided by the report to the Prime Minister, means that the rules of lineal inheritance in the collateral line (brothers and sisters, aunts and uncles, nieces and nephews) should be applied (without limits) and that the implications of the existence of a general devisee and legatee, named in a last will and testament, should be taken into account.

In the latter case, however, the Commission believes that it cannot consider awarding compensation under the terms of the decree of September 10, 1999 solely on the basis of the existence of a purely legal relationship. The Commission has taken the view that the letter and the spirit of the decree of September 10, 1999 imply that compensation is payable to those claimants who, as members of the "family" through a blood and/or cohabitation relationship, personally suffered the estate-related consequences of spoliation.

With regard to the rights of the surviving spouse, the Commission applies the rules of French law concerning matrimonial regime and inheritance based on the amendments made in 2002[48].

The Commission does, however, agree to award the entire compensation to the surviving spouse if the children formally waive their right to their share.

With regard to collateral lines, it is obviously not easy to determine who these individuals are more than a half century after the tragic events. Moreover, the Commission may set aside portions when it has indications that suggest the existence of heirs whose deaths cannot be regarded as certain.

Finally, the Commission applies the rules of succession by which, except between spouses, the relationship does not confer any right of inheritance.

3) Methods Used for Assessing Losses

While adopting a "pragmatic approach" in line with the report to the Prime Minister, the Commission has found it necessary to draw up a number of guidelines aimed at helping *rapporteurs* better formulate their proposals.

a) With regard to the *looting of apartments*, buildings are classified by reference to the Act of 1948 regarding residential rent (for all practical purposes, the Commission generally uses category 3A).

As far as the composition of the apartment is concerned, the kitchen is regarded as a living quarter given the small size of certain apartments and the family composition. The Commission does not accept the notion that certain rooms may benefit from cumulative compensation, both as living quarters and as rooms used as workshops (however, it does accept that a few items of work-related equipment, such as a sewing machine, may have been set up in a room used as a living quarter).

To determine the value of the compensation, the Commission refers to the (adjusted) lump-sum amounts used under the Brüg Act or bases its calculations on an (adjusted) insurance policy in force at the time. It accepts the principle that supplemental compensation may be payable over and above the compensation paid for war damages alone, while at the same time reserving the right to correct any calculation errors made at the time. In particular, the Commission compensates for the fact that the government blatantly failed to make the compensation payments it should have (at the time, an order of priority was established based on the victims' age, and some victims never actually received the compensation promised to them, given that there is no document certifying the payment on the settlement sheets). The supplemental compensation, over and above that provided for in the French War Damages Act, is made in the amount indicated in the payment scales under the Brüg Act. Moreover, despite compensation paid for war damages and under the Brüg Act[49], victims or their heirs may still claim supplemental compensation if the total amount of the compensation already received is shown to be less than the proceeds of an insurance policy.

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[48] In practical terms, the Commission takes into account the date of marriage (before or after February 1, 1966) and the date of the spouse's death (before or after July 1, 2002) to distribute the compensation between the surviving spouse and any descendants.

[49] One-third of the claims submitted to the CIVS show prior compensation under the Brüg Act which the Commission may supplement.

It should be noted that the payment scales used under the Brüg Act include a percentage for the value of "luxury goods" in each category, which means that there are generally no grounds for awarding supplemental compensation for valuables. However, the Commission has been faced with the difficult problem of statements related to the theft of jewelry and valuables (gold ingots and coins, foreign currency, etc.). At times, in light of the victims' wealth and the circumstances in which the spoliation of other property occurred, the Commission agrees to recommend that compensation be awarded, with the amount calculated on the basis of fairness.

The Commission is mindful of the fact that *housing used for refuge* could have been looted at the time of the arrest of a family member, or when information in the file suggests that the family was forced to flee this housing to avoid being rounded up. However, the sum allocated is less given that the furniture seized was certainly less important for this refuge housing than for the main residence, which itself had been abandoned and for which compensation had already been paid.

b) With regard to *jewelry*, commonly worn items were taken into account under the Brüg Act, with very large lump-sum payments applicable to "luxury goods" (based on the classification of the apartment). In some cases, based on information contained in the file (such as the person's profession), supplemental compensation may be awarded for jewelry of very high value.

c) With regard to *work-related losses* pertaining to business, commercial, industrial or professional activities[50], the Commission did not believe that it could regard as compensable losses those losses related to a person being forbidden from exercising his/her business, profession or trade, except where the loss resulted from conditions under which the person concerned was forced to dispose of a work-related asset (e.g. sale of a medical practice), i.e. when this constitutes spoliation of the estate.

The Commission awards compensation for inventories of merchandise (raw materials and finished products), material and equipment and fixtures seized, damaged or destroyed.

It awards compensation for the loss of intangible items (right to renew a lease) when the Aryanization of the business resulted in its liquidation (however, the Commission also takes into account any post-war resumption of the business, as well as the answers provided in the questionnaire sent by the Restitutions Office headed by Professor Terroine). In some cases, when a business was liquidated as a result of Aryanization and reactivated at the same address under the same trade name, the Commission takes the position that the value of all the items comprising the Aryanized business had not disappeared entirely. The Commission does, however, take into account the capital loss resulting from the looting of a business that the owner sold, in its existing state, at the time of the Liberation.

The Commission also takes into account items included in statements filed with the *Office des Biens et Intérêts Privés* (OBIP – Office for Personal Property and Interests) for which compensation was not paid.

[50] In special cases, the Commission has been compelled to hear claims for alleged spoliations of copyrights. To date, however, no spoliation of this kind has been recognized, given that the archives of the SACEM (Organization of Authors, Composers and Music Publishers) indicate that, after the war, the rights of those concerned were restored.

It does not award compensation for loss of profits or loss of income or earnings. However, it does approve the reimbursement of emoluments received by the temporary administrator, as well as any rent that was not paid back to the owners.

To determine the value of tradesmen's workshops located in an apartment, it applies a lump sum that may vary according to the size of the workshop (number of machines and other material and equipment and number of workers) and the type of activity (tailor shop, leather goods shop, furrier's shop, etc.). If the tradesman was deported, the lump sum is automatically adjusted by 20% to take into account the loss in value of the business as a result of its owner's disappearance.

For other businesses, the Commission takes into account information contained in the Aryanization files (balance sheets showing sales revenue, inventories and value of equipment, as well as funds held in cash, bank accounts or postal accounts). In most cases, however, it adjusts the amounts appearing in the temporary administrators' reports when the figures shown on the balance sheets prior to their takeover of the business indicate that these amounts were blatantly and voluntarily under-estimated[51]. The Commission also takes into consideration the forced nature of certain sales, which may have been under-valued or completed under specific conditions, as in the case of auctions. Where relevant, it applies the payment scales used under the French War Damages Act. If there is no indication as to the size of the inventories that existed when the temporary administrator took over the business, the Commission takes the view that the inventory represented approximately three months of sales revenue, based on the customary practice of most of the businesses in question.

The Commission includes in the compensation amount all money and bank and postal funds reported on the balance sheet at the time the temporary administrators took over the business, if these figures are higher than those indicated at the time the business was liquidated. These latter figures may also be used, provided that the Commission did not believe it was necessary to reconstruct the value of the inventories and equipment at the time the administrator took over the business[52].

The *Caisse des Dépôts et Consignations* (C.D.C. – State bank handling official deposits) is required to return sums that it may have kept in its possession as a consequence of deposits resulting from liquidations of Aryanized property[53]. The sums collected to pay the billion franc fine and to benefit the General Commissariat for Jewish Questions (C.G.Q.J) are payable by the government[54].

To determine the value of business assets, the Commission also refers to information contained in standard textbooks (such as Fauliot, Ferbos and Francis

[51] Without, however, losing sight of the fact that during the period in question, problems related to supplies, rationing and scarcity of customers could have contributed to a drop in business in certain sectors.

[52] Of course, funds held in cash, bank accounts or postal accounts may represent the sale of inventory items or equipment and compensation should therefore not be paid twice for these items.

[53] Normally, these sums should have been repaid to the Treasury at the end of the 30-year forfeiture period. However, this was not always the case, as the C.D.C. itself admits.

[54] The Commission does not reassess the amount of the restitutions made (principal + interest), pursuant to applicable laws and regulations, in consequence of deposits at the C.D.C. (as a result of the confiscation of bank assets to pay the billion franc fine or to benefit the C.G.Q.J., the liquidation of securities portfolios or proceeds from the liquidation of businesses). This solution reflects a desire for fairness and equality among all looting victims, just as it does not call into question the lump-sum payments made under the Brüg Act.

Lefebvre) and to information provided by trade associations (inasmuch as this information is not limited to sums corresponding to equipment that is currently needed based on the number of workers and employees and the surface area of the premises).

d) With regard to *works of art*[55], if the work of art is part of the "M.N.R." (National Museums – Recoveries register), the Commission, following an in-depth review of proof of ownership, renders a decision based, among other things, on the absence of other claims and, where applicable, recommends that the artwork be returned, provided that any compensation previously awarded be paid back[56].

If there is no longer any trace of the work of art, the Commission takes into account the information that proves or show the plausibility of the claimant's statement. To determine the compensation amount, it refers, where applicable, to the artist's rating, as evidenced by auction or private sales at a time close to the spoliation, and to the opinions of experts or museum curators. In the event of prior compensation paid under the Brüg Act, the Commission has deemed it fair to supplement the compensation that was, in this case, limited to 50% of the recognized value of the assets.

e) With regard to *valuables confiscated at the time of internment in camps in France*, it is a known fact that valuables carried by internees were not accurately inventoried in the police records of searches (when such records existed) and, based on the work of the Mattéoli Commission, the Commission estimated that the average value of assets held was 3,000 francs (at that time), which leads to a lump-sum payment of 800 euros. The Commission therefore recommends that the government pay this lump sum of 800 euros, minus any sums identified individually in said search records and deposited at the *Caisse des Dépôts et Consignations* (which have undoubtedly lapsed and, for all practical purposes, not been transferred to the Treasury). These sums will be deducted from the C.D.C. account, which is part of Fund A set up under the Washington Agreement on bank assets[57] (see below).

According to the work of the INSEE, the cash values were adjusted in 2007 based on a factor of 0.304 euros (for one 1941 franc), and material assets (merchandise, material and equipment)[58] were adjusted based on a factor of 0.449 euros (in relation to 1938).

f) With regard to *veterans' pensions* not received during the Occupation, an inquiry conducted at the Ministry of Defense revealed that no text abolished or even suspended pensions of Jewish veterans. The same was true of disability pensions. Measures were even taken, at the time of the Liberation, to correct the situation of those who had not received the back payments that were owed to them (i.e. 1,200 francs per year). In addition, for each claim that includes this type of problem, the Commission determines whether the person was, given the

[55] The number of cultural files is not very large (approximately 1.5% of the total files).

[56] Until now, the Commission has recommended the return of only three paintings, while other cases were generally settled through the payment of compensation. In one case, a valuable painting was retained by the museum that had possession of it in return for compensation paid to the heirs.

[57] Unlike the other sums deposited, the C.D.C. agreed to assume full responsibility for the sums confiscated at the Drancy camp, without taking into account the sums collected for the billion franc fine or for the General Commissariat for Jewish Questions.

[58] Excluding the valuation of works of art.

circumstances[59], actually able to receive, at the time of the Liberation, the sums to which he was entitled.

g) With regard to *insurance policies*, up to now the Commission has, for the most part, only needed to deal with policies taken out with the *Caisse des Dépôts et Consignations* (C.D.C.) through the *Caisse Nationale des Retraites pour la Vieillesse* (C.N.R.V. – former national old-age and retirement fund).

In most cases, these were provident-birth policies that had been underwritten, for a nominal amount of 125 francs (at that time), by the *Conseil Général de la Seine* upon the birth of a child and for which no subsequent additional payment was made by the beneficiary. Moreover, based on the rare files that were kept, the *Caisse* assessed the amount of compensation corresponding to the proceeds due on the maturity date of the policy (usually the beneficiary's 60th birthday) as being equal to the average sum payable under policies of the same category. These policies were not adjusted in 2006 since this method would have been disadvantageous to victims given the inflation that occurred in the 1950s and 60s. As a result, these amounts are barely more than a few euros. For beneficiaries who died after being deported, the Commission decided to award compensation in the amount of 1,000 euros. This compensation is paid by the *Caisse des Dépôts* out of its own funds and not out of the funds allocated to the compensation of bank assets.

With regard to an insurance-based savings plan taken out with an insurance company prior to the war, the Commission considered the fact that payments could not continue to be made to this policy during the Occupation as a result of the anti-Semitic laws and awarded compensation in the amount of 1,000 euros, payable by the government[60].

4) <u>Bank Assets</u>

Compensation of looted bank assets is governed by a specific scheme[61] under which two Funds (A and B) were created on accounts at the *Caisse des Dépôts et Consignations* (C.D.C.). These funds are administered by the *Fonds Social Juif Unifié* (FSJU - United Jewish Welfare Fund)[62] and Fund B is managed by a Supervisory Board.

A distinction is made between two types of accounts: *identified accounts* and *unidentified accounts*.

The amounts in the accounts, including those with debit balances[63], that could be *identified*[64] are adjusted on the same basis as cash (€0.304 in 2007 for one

[59] Obviously, for a deported person, such a presumption is not made for the sums due at the time of the person's disappearance (and these types of pensions were paid only on an annuity basis).

[60] The insurance company in question was unable to provide information to the CIVS since the files were destroyed after 30 years.

[61] An agreement between France and the United States was signed in Washington on January 18, 2001 (Journal Officiel of March 23, 2001, p. 4561) and interpreted through an exchange of memoranda in August 2001 (Journal Officiel of August 10, 2002, p. 13727). It was later amended and added to twice: on February 2, 2005 (Journal Officiel of March 31, 2005, p. 5812) and on February 21, 2006 (Journal Officiel of March 30, 2006, p. 4755 – correction Journal Officiel of April 15, 2006, p. 5710).

[62] This fund orders the disbursements from the *Caisse des Dépôts et Consignations*, which completes the payments.

[63] The Commission felt that the blocking of accounts held by Jews and the Aryanization measures prevented their holders from taking action to balance their accounts.

franc in 1941). However, if these amounts are shown to be less than $3,000, the exact adjusted amount is taken from the so-called Fund A[65] and the balance, up to $3,000, is taken from the so-called Fund B[66]. In addition, a lump-sum payment of $1,000 is made to all claimants for any proven account for which the adjusted balance is less than $3,000.

If the proven amount is between $3,000 and $10,000, the sum awarded is $10,000 and is taken from Fund A[67]. This is true for accounts at banks, the postal service, the *Caisse des Dépôts et Consignations* and all other financial institutions. The above rule applies to each identified account. The same rules apply to bank safe-deposit boxes[68].

With regard to *accounts placed under temporary administration* (i.e. Aryanized accounts), the adjusted amount is payable by the government[69] and a supplemental payment is made, depending on the case, under the same conditions that apply to identified accounts not placed under temporary administration[70].

As mentioned earlier, the sums collected to benefit the General Commissariat for Jewish Questions or for the billion franc fine are not payable by the C.D.C. but rather are the government's responsibility (law of June 16, 1948) and will therefore not be taken from Fund A.

When, despite an *affidavit* attesting to credible facts, *no account can be identified*, the Commission recommends that a sum equivalent to $1,500 be awarded to each person who was supposedly an account holder, regardless of the number of claimants. This sum is automatically increased to $3,000 and charged to Fund B and then, if this Fund is depleted, to Fund A. The deadline for filing such affidavits was February 2, 2005.

Finally, direct survivors of the Holocaust born before 1945 who resided in France between 1940 and 1945, who were still living as of January 11, 2006[71], and who were holders of a proven account or completed an affidavit and who received or who will receive compensation for their own bank assets may also claim a one-time

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[64] In point of fact, accounts could only be identified based on the blocked accounts report of December 20, 1941 given that, in principle, all subsequent archives had been destroyed.

[65] This Fund, which initially had a total of $50 million and is supplied by financial and banking institutions bound by the Agreement (the only banks not party to the Agreement are Barclays et JP Morgan), must still be replenished and is expected to be used for payment of sums originally charged against Fund B (see below) once the latter fund is depleted. As of January 31, 2007, only 26.5% of the initial resources of Fund A had been used up.

[66] This fund, which is supplied by the same institutions, initially totaled $22.5 million and was not meant to be replenished. In point of fact, this Fund was not depleted after the lump sum payment of $1,500 and a second payment in the same amount was made (a final lump sum payment of $1,000 is awarded for a total of $4,000). As of January 31, 2007, the Fund B usage rate was 126.99% of the initial resources. This result can be explained by the fact that Fund B is now supplied only by capital gains resulting from foreign exchange effects. Fund B is expected to be closed, as a result of its depletion, some time in 2007. Thereafter, deductions that were to be made from this fund will be made from Fund A.

[67] Of course, if the identified amount is greater than $10,000, the exact amount is taken from Fund A.

[68] The same rules apply to bank safe-deposit boxes.

[69] The financial institutions at which these accounts were opened cannot, in fact, be held liable. In the Commission's view, spoliation was the fault of the public authorities since the temporary administrators were considered agents of the Vichy government.

[70] In other words, depending on the amount identified, the total sum will be $4,000, $10,000 or even more, and in the latter case, the government alone will be responsible for payment.

[71] In the event of death after this date, the supplemental compensation is paid to the heirs.

compensatory payment of $15,000, regardless of the number of accounts charged to Fund A[72].

C) Follow-Up to the Recommendations

Once the Commission has deliberated, recommendations[73] are made within 10 to 15 days and announced to the claimants. They are then either sent to the Prime Minister's office[74], if the compensation is payable by the government, which makes the decisions[75] regarding compensation[76], or to the United Jewish Welfare Fund (FSJU), for bank or postal account assets, which orders that the payments be made from Fund A and/or B.

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This is a brief summary of the economics of the mechanism that is now in its third operating cycle, following the change in the Commission's members in September 2005.

As of April 1, 2007, 23,591 claims (material, bank-related or a combination of the two)[77] had been filed[78]. Through the course of the sessions organized to date and under the so-called "single judge" procedure[79], 22,208 compensation recommendations, 8,888 of which are bank-related, have been made[80], for a total of 316.4 million euros[81]. The sums paid for bank-related spoliations total approximately 31.4 million euros. The average amount of recommended compensation for material claims is roughly 28,000 euros[82].

Overall, most recommendations benefit elderly and even very old people who are often of modest or very modest means.

It is unfortunate that this effort to deliver justice to the victims of spoliations initiated, or at least approved, by the French authorities, was not made earlier[83].

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[72] This should apply to some 300 people.

[73] Because of the legal nature of recommendations, any legal remedy is inadmissible.

[74] Directorate of Administrative and Financial Services (compensation unit).

[75] Only these "decisions" may be appealed before a court based on clearly established case law (CE, February 17, 1950, *Min. of agric. v. Mrs. Lamotte*, *Rec.* p.110). However, to date only a few appeals have been lodged which are currently being reviewed at the Administrative Court of Paris.

[76] Payment is made by the *Office national des anciens combattants et victimes de guerre* (ONAC – National War Veterans and War Victims Administration).

[77] So-called "material" claims (furniture, business assets, etc.) account for approximately two-thirds of the files.

[78] 5% of all claims are filed by "direct victims", i.e. people who can show a loss suffered directly (spoliation of their own property, internment, deportations).

[79] The decree of June 20, 2001 gives the Chairman the option to rule alone. Claims reviewed according to this procedure are chosen based on urgency, which is determined according to the claimant's personal situation and the absence of any special problems.

[80] Recommendations for denial and withdrawals are not more than 10%.

[81] As of January 31, 2007, compensation payable by the government represents 90% of the total compensation recommended versus 10% for compensation for bank-related spoliations.

[82] The decree of June 20, 2001 allows claimants who object to a recommendation made by the Commission but only in case of material error or on the bases on a new element, to request another review of their claim. Objections do not exceed 2% of the recommendations issued.

[83] It should be noted that, unlike other European countries, France has not set a **deadline** for submitting claims for compensation.

PRIME MINISTER

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Commission for the Compensation of Victims of Spoliation Resulting from Anti-Semitic Legislation in Force during the Occupation
– CIVS –

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