

Reparations and damages in Polish-German relations (Historical overview)

Stanisław Żerko



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1. Introduction

In summer 2017, Poland saw a vigorous revival of the debate on German war reparations. Although the discussion on this subject had already been held in the autumn of 2004, now the intensity of the dispute which erupted after Jarosław Kaczyński's speech on 1 July 2017 is far greater than it was thirteen years earlier.

In his speech at the 5th Policy Congress of Prawo i Sprawiedliwość – PiS (Law and Justice) in Przysucha near Radom, the leader of the ruling party spoke, among other things, about the damage incurred by Poland during World War II: „Have we received (...) any compensation for the huge losses from which, in fact, we haven't recovered to this day? Poland has never renounced its compensation claims. Those who think so are mistaken”¹. In the weeks that followed, these words were often referred to by government members, in particular, Prime Minister Beata Szydło, Foreign Minister Witold Waszczykowski and Minister of National Defense Antoni Macierewicz. Officially, however, the Polish government did not demand any reparations from Germany and Minister Waszczykowski said that further analysis and expert opinions were needed before any claims were lodged.

At the end of summer 2017, two specialised bodies of two Parliaments, German and Polish, shared their separate expert opinions with the public. The conclusions presented in both documents were contradictory. The expert opinion issued by the Research Services of the German *Bundestag* dated 28 August 2017 stated that Polish claims would be termed unfounded on legal grounds, because the Polish government had formally relinquished its right to reparations in 1953, and allegedly, the case was considered closed after the signing of the „2+4” treaty in 1990. Moreover, the German expert opinion held that regardless of this, the limitation period has expired to bring reparations claims².

The expert opinion of the *Sejm* (Polish lower chamber) Bureau of Research, published on 11 September 2017, did not challenge the one issued by its German counterpart because both of them were being prepared at the same time. The author of this document claimed: „(...) there are grounds to argue that the Republic of Poland has every right to seek compensation from the Federal

¹ An official speech recording: <http://pis.org.pl/aktualnosci/jest-w-nas-wiara-w-przyszlosc-i-w-polske>

² <https://www.bundestag.de/blob/525616/211fd144be8368672e98ecd6a834fe25/wd-2-071-17-pdf-data.pdf>

Republic of Germany and the allegation that these compensation claims had expired or had been barred by the statute of limitations is unfounded". Therefore, „the German state should compensate for the damage incurred by the Polish state during World War II”³. However, it was inescapably clear that the Polish expert opinion did not put forth any legal solutions for the reparations to be received.

Although the authors of both expert opinions made reference to the history of German war reparations for Poland, each of them did so selectively. Similarly, politicians and commentators would overlook essential aspects of the issue, or sometimes presented them in a way that was inconsistent with the facts. Moreover, huge amounts of reparations were quoted, for example, by the right-wing weekly „Sieci”, supporting PiS, whose cover featured \$6 billion⁴ in reparations. Also, public television, following the propaganda line of the ruling party, joined the campaign for claiming reparations from Germany.

The aim of this study is to provide a brief but fairly comprehensive account of the reparations issue and war damages viewed as a problem in the history of relations between Poland and the Federal Republic of Germany⁵. The present overview ends with issues related to the unification of Germany.

For the purpose of further discussion of the matter, it should be noted that the term „reparations” in Polish scholarly literature is assumed to denote the part of war indemnification meant to partially compensate for property loss incurred by the state. Civil law damages, covering individual claims of persons harmed by Nazi Germany in 1939-1945, are a different matter, although in the case of post-war Polish-German relations, one related to the issue of reparations. Yet, the addressee of reparations and civil law damages is the same, i.e. the country which started the war and lost it. In this case, the addressee is Germany and not Russia because Russia, which sometimes appears in public debates as a potential addressee of Polish claims, did not lose World War II. On the contrary, it was the Soviet Union (whose legal successor is the Russian Federation) that codedecided on the scope of reparations imposed on the defeated Germans by the victorious powers.

³ <http://www.sejm.gov.pl/media8.nsf/files/KKOI-AR4BNP/%24File/1455%20-%2017%20EN.pdf>

⁴ „Sieci”, 7-15 August, 2017.

⁵ Among publications discussing this matter one should list: K. Ruchniewicz, *Polskie zabiegi o odszkodowania niemieckie w latach 1944/45 – 1975*, Wrocław 2007; W. Jarząbek, *Władze Polskiej Rzeczypospolitej Ludowej wobec problemu reparacji i odszkodowań od Republiki Federalnej Niemiec 1953-1989*, „Dzieje Najnowsze” XXXVII, 2005, 2, pp. 85-104. More recent German publications on the issue of reparations and damages after World War II comprise: J. Fisch, *Reparationen nach dem Zweiten Weltkrieg*, Munich 1992; C. Goschler, *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945*, Göttingen 2005.

In addition to that, Poland also lodged restitution claims demanding the return of looted goods that had belonged either to the state or Polish citizens, among them works of art. This particular problem has not been resolved yet.

The fourth group comprised claims related to insurance and annuity matters and pre-war obligations.

The present study focuses on the first two groups of claims because they were of vital importance for the relations between Poland and the Federal Republic of Germany.

2. Historical background

The issue of reparations imposed on Germany after the First World War (payments from other defeated countries were of minor importance) was one of the major problems in international relations in Europe in the 1920s. The so-called Young Plan (1929) provided that Germany would pay reparations until 1988. However, in the face of the global economic crisis, in June 1931 the decision was made (the „Hoover Moratorium”) to suspend payments of both reparations and debts for a year. A year later, at the Lausanne Conference on 9 August 1932, an agreement was reached ordering Germany to pay only a relatively small amount of DM 3 billion in the future. However, the agreement was never ratified, as a result of which all reparations payments ceased. The matter was finally settled decades later, after the reunification of Germany.

During the Second World War, it was clear that after their victory, the Allies would want to burden Germany with reparations, as was the case after the Great War of 1914-1918. It should be noted that the lesson from World War I was learned, as the reparations then imposed on Germany proved uncollectible. The starting point of Allied debates on reparations was a declaration by the anti-Hitler coalition of 5 January 1953 known as „United Nations Declaration Against the Economic Plunder of the Territories Occupied by the Enemy”, signed by 17 countries (including Poland). However, this document did not actually mention reparations as such⁶.

It was not until the Yalta (Crimea) conference in February 1945 that the question of reparations and compensation was discussed by the leaders of the Big Three (US, UK, USSR). The „Protocol on the Talks between the Heads of Three Governments at the Crimean Conference” signed on 11 February stipulated that reparations should be demanded from Germany in three forms: one-time confiscation of part of the national wealth of Germany (also located outside its territory), deliveries of goods from current production and use of German labour. The leaders of the Three Powers took the position that even though full compensation for the losses incurred was unfeasible, it must, however, be as extensive as possible. Even at that time, the scope of the reparations was the subject of dispute between the Anglo-Americans and the Soviet Union. Therefore, the amount of \$20 billion (from confiscated goods and deliveries of goods from current production) was adopted as the starting point for further discussion. If this solution had been adopted, half of the sum

⁶ L. Gelberg, *Prawo międzynarodowe i historia dyplomatyczna. Wybór dokumentów*, vol. 3, Warsaw 1960, pp. 53-54.

would have gone to the USSR. That was a Soviet-American offer; the British delegation was of the opinion (as recorded in the document in question) that „no figures of reparations should be mentioned”⁷.

It was also announced that a joint reparations commission whose task would be to determine the size and method of compensation for the damage inflicted by Germany would be established in Moscow. The Moscow reparations commission met on 21 June; two issues were discussed – the amount of reparations and the compensation payment procedure. It was, as it turned out later, the only meeting of this group.

At the Potsdam Conference in the summer of 1945, the subject of reparations was one of the main points of contention. The \$20 billion figure was not discussed and despite the insistence of the Soviet Union, the total amount of reparations was not determined.

The Potsdam Conference resolution of 2 August 1945, included a statement on the demarcation of the border between Poland and Germany, which was to run along the Oder-Neisse line. It has to be emphasized, however, that the territorial acquisitions in the west were treated by the Big Three as compensation to Poland for the Kresy, the eastern provinces of the Republic lost to the USSR. It was recorded in the Potsdam document that the territories placed under Polish administration should not be considered part of the Soviet occupation zone in Germany. In addition, Poland was granted, separately, the right to reparations. This is an important provision in view of the claims made in Germany, and sometimes also in Poland, that the western and northern territories were actually part of the reparations.

The manner of obtaining the reparations was agreed on during the conference and defined in its resolution of 2 August 1945, which provided that „in accordance with the Crimean resolution Germany would be ordered to compensate to the fullest extent for the losses and sufferings of the Allied nations”. The Big Three decided that the transfer of German reparations to the other states would take place through the Three Powers. The Soviet Union was to settle Polish reparations claims from its own share and the remaining countries were to receive them through the United States and Great Britain⁸. It became quite obvious that the mediation of the USSR meant depriving Poland of its profits from the reparations.

All the other countries entitled to reparations participated in a conference held in Paris in November and December 1945. The final act of this conference

⁷ *Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944-2004*, vol. 2: *Dokumenty (Documents)*, S. Dębski – W. M. Góralski (eds.), Warszawa 2004, doc. 4.

⁸ *Ibidem.*, doc. 9.

was adopted on 21 December 1945 by three powers (the United States, Great Britain and France) and fifteen other allied countries (Albania, Australia, Belgium, Czechoslovakia, Denmark, Egypt, Greece, the Netherlands, India, Yugoslavia, Canada, Luxembourg, Norway, New Zealand, and the Union of South Africa). It was the first post-war agreement establishing international legal bases for regulating the problem of reparations and compensation. On 26 May 1952, in Bonn, the three western powers and West Germany concluded an agreement on the settlement of problems related to war and occupation. This document extended the provisions included in the Paris agreement of 1945 and laid down the principles according to which Germany was to pay compensation to the victims of Nazi persecution⁹. The third agreement, of vital importance, was the London agreement of 27 February 1953 on German foreign debts. According to the provisions of this agreement German reparations payments were to be postponed pending a peace treaty with Germany¹⁰. It should be added that until the turn of the 1989/90 the necessity of signing such a treaty was one of the fundamental propositions of the official international legal doctrine in West Germany.

At the same time, compensation legislation was being designed in West Germany. On 18 September 1953, the *Bundestag* passed the first „Federal Law for the Compensation of the Victims of National Socialist Persecution”. This act was replaced by a new one adopted by the West German parliament on 29 June 1956, which was later amended on 14 September 1966 (the so-called Final Act). These acts excluded many groups of people harmed by Germany, including former forced labourers and citizens of those countries with which the Federal Republic did not maintain diplomatic relations.

In the agreement concluded in Luxembourg on 10 September 1952, West Germany pledged to pay DM 3 billion to Israel (with which it did not yet maintain diplomatic relations), and DM 450 million to Jewish organizations which were members of the Conference on Jewish Material Claims Against Germany. Furthermore, in the years 1959-1964, the Federal Republic of Germany concluded agreements on the payment of global compensation to the victims from the following countries (in the order of signing the agreements): Luxembourg, Norway, Denmark, Greece, the Netherlands, France, Belgium, Italy, Switzerland, the United Kingdom and Sweden.

⁹ The same day in Bonn, Western powers also signed the so-called general agreement (Generalvertrag), which restored almost full sovereignty of the Federal Republic.

¹⁰ U. Rombeck-Jaschinski, *Das Londoner Schuldenabkommen. Die Regelung der deutschen Auslandsschulden nach dem Zweiten Weltkrieg*, Munich 2005; for general idea see: H. Rump, *Die Deutsche Frage und die Reparationen*, „Zeitschrift für Ausländisches Recht und Völkerrecht” vol. 33 (1973), pp. 344-371, here p. 347ff.

3. German reparations for Poland and the so-called coal clause

As has already been mentioned, the decision to pay German reparations to Poland through the Soviet Union in practice meant that the former would be deprived of the associated profits. The implementation of the Big Three conference provisions in this area was one of the clearest examples of the economic exploitation of Poland by its eastern neighbour in the post-war period¹¹.

Two weeks after the Potsdam Conference, on 16 August 1945, an agreement between the USSR and the communists-dominated Polish Provisional Government of National Unity was signed in Moscow¹². It was an executive act for the reparations provisions of the Potsdam Conference. It was agreed that the Soviet government would cede 15% of its reparatory deliveries to Poland. At the same time, the Polish side was made by the Soviet Union to accept an extremely disadvantageous coal clause. For many years to come the Polish government controlled by Moscow was bound by a treaty to deliver to the USSR huge amounts of coal, i.e. between 8 and 13 million tonnes a year, at „a special preferential price”. A secret annex appended to the treaty set that price at an average of \$1.22 per tonne of coal and \$1.44 per tonne of coke. They were many times, even 10 times, lower than the world prices at that time. Presumably, the money received barely covered the cost of mining and transport. The loss suffered by Poland was aggravated by the fact that the global coal market was booming at that time and the hard currency from the sale of coal would have been much welcomed by the devastated country. Years later, after the October transformations, Polish losses caused by the coal clause were estimated at \$836 million taking into consideration the world prices of 1956¹³.

Another example of the economic exploitation of Poland by the USSR was a less-known agreement related to the issue of German reparations.

¹¹ A. Korzon, *Niektóre problemy polsko-radzieckich stosunków gospodarczych w latach 1945-1957*, in: „Studia z Dziejów Rosji i Europy Środkowo-Wschodniej”, vol. 28, p. 135ff.; A. Skrzypek, *Mechanizmy uzależnienia. Stosunki polsko-radzieckie 1944-1957*, Pułtusk 2002.

¹² *Problem reparacji...*, vol. 2, doc. 10. See H. Różański, *Śladem wspomnień i dokumentów (1943-1948)*, Warsaw 1987, p. 326ff.

¹³ The losses were assessed at 586 million dollars, given the world price of coal from the years 1946-1953, and at 525 million dollars in trade between Poland and the USSR at prices in the same period. Taking into account the prices of 1956, Polish losses were estimated at 733 million dollars in trade between Poland and the USSR in the same period. J. Dołęga, Ł. Kulesa, R. Tarnogórski, *Wykonanie przez ZSRR postanowień reparacyjnych umowy poczdamskiej wobec Polski*, in: *Problem reparacji...*, vol. 1, p. 160, footnote 13 (excerpts from this document *Ibidem.*, vol. 2, doc. 73).

This agreement, concluded on 7 September 1945, regulated the turning over to Poland of the steam engines located on its territory as part of the reparations settlement. Therefore, Poland had to pay for about 2,000 mostly old, 1920s-manufactured steam locomotives that once belonged to Germany (1/3 of them needed repair), although according to the provisions of the Potsdam Conference, they should have been turned over gratuitously as they were located on the territories acquired by the Polish state. Besides, those steam engines would have been of no use to the USSR due to the wheelbase difference¹⁴.

Irrespective of the huge losses incurred by Poland with regard to the coal clause, the value of goods received as part of compensation was illusory at times. For example, the list of goods delivered in 1949 contained books on Marxism-Leninism written by luminaries of the doctrine, printed in Polish in East Germany (6 million copies), including as many as 1 million copies of „The History of the Communist Party of the Soviet Union (Bolsheviks): Short Course”. These publications were estimated to account for about 10% of the value of deliveries in that year¹⁵.

Apart from machinery, production plants, steam engines, rolling stock, ships, fuel, chemicals and other useful materials, the goods received by Poland as part of reparations from Germany also comprised tableware, watches, hunting weapons, garden tools, and furniture. Those goods were sent mainly from the Soviet occupation zone and, later, from East Germany, although a certain number of industrial facilities (disassembled machines and equipment) also came from the Western occupation zones. It was of crucial importance here that Poland's communist government had no idea what sum of money given to the USSR by Germany formed the basis for calculating the 15% due to Poland. Above all, however, Poland incurred severe losses as a result of the almost gratuitous coal deliveries to the USSR.

Poland's Kremlin-controlled government would agree to any reduction of reparations from Germany, whenever the Soviet Union wished so. By 1947, Poland's share of reparations delivered through the USSR had been reduced from 15% to 7.5% (the volume of coal deliveries to the USSR was also halved). Likewise, in May 1950, when the USSR decided to reduce by half the outstanding reparations amount, the government of the Polish People's Republic had to follow suit.

¹⁴ *Problem reparacji...*, vol. 2, doc. 12; and also: P. Długołęcki, *Siekierka na kijek*, „Polityka” of 22 April 2015.

¹⁵ *Problem reparacji...*, vol. 2, doc. 50.

4. The Bierut government statement of 23 August 1953

In August 1953, Moscow decided that the burden of reparations should be completely lifted off the GDR's shoulders. This was done, in fact, two months after the Soviet Army's bloody suppression of the anti-Communist workers' uprising in East Germany and after the toppling of Lavrentiy Beria (one of the charges later brought against Beria was his policy on the German case)¹⁶. The Soviet Union revised its German policy again and resolved that it had become necessary to economically support the GDR. The next impulse was the London agreement of 27 February 1953, in which the Western states agreed to defer all claims against the Federal Republic of Germany related to World War II until the signing of a peace treaty¹⁷. Poland did not participate in the London conference, but the conference provisions were binding for the Federal Republic of Germany.

On 19 August 1953, Poland's government adopted a resolution accepting the USSR's „proposals” to renounce, as of 1 January 1954, „in its entirety the part of reparations due to the People's Republic of Poland under the agreement between Communist Poland and the Soviet Union”. At the same time, the Bierut government (the president of the Polish People's Republic was also the prime minister) adopted a resolution in which it welcomed „with gratitude” the USSR's decision to release Poland „from obligations resulting from the coal clause”. The document also stated that the Polish government „declared its willingness to continue exporting fixed amounts of coal to the USSR under the terms of regular trade agreements”¹⁸. There is every indication that the Kremlin created *junctim* between the discontinuation of buying Polish coal by the USSR for a song and the renunciation of German reparations by the government in Warsaw. Moreover, it seems that there were no Polish-Soviet negotiations on the issue. Jan Sandorski was right saying that „The pace of events allows us to state that the Polish side was presented with a *fait accompli*”

¹⁶ G. Wetting, *Die sowjetische deutsche Politik am Vorabend des 17. Juni*, in: *17. Juni 1953. Arbeiteraufstand in der DDR*, I. Spittmann – K. W. Fricke (eds.), Cologne 1982, pp. 56-69; A. Knight, *Beria. Prawa ręka Stalina*, Warsaw 1996, p. 197ff.; F. Thom, *Beria. Oprawca bez skazy*, Warsaw 2016, p. 848ff.

¹⁷ *Problem reparacji...*, vol. 2, doc. 59 (exerpts).

¹⁸ *Ibidem*, doc. 60.

by the Soviet government"¹⁹. One can only wonder whether the waiving of its right to reparations was the result of the Soviet dictatorship, or whether the leaders of the communist party in Poland used to passively accept any decision that was made in the Kremlin.

On 22 August, the USSR and the GDR concluded an agreement on the „complete discontinuation, as of 1 January 1954, of reparations from the German Democratic Republic (...)”. A day later, on 23 August 1953, the Bierut government held a short half-hour meeting, during which the „proposals of the Soviet government to the government of the Polish People’s Republic” were accepted without any further discussion. Similarly, unanimous endorsement (with 35 people present) was given to the „Statement of the Government of the People’s Republic Poland” submitted by the minister of foreign affairs. In this document, the Polish communist government „declared to renounce reparations payable to Poland as of 1 January 1954”. It was added that this decision did not apply only to the German Democratic Republic, but to the „German people” in general, who were to be helped „not only to strengthen their economy, but also create the necessary conditions for the reconstruction of their unity and the emergence of a united, peaceful and democratic German state, in which the Polish nation is vitally interested”²⁰.

It is difficult to say why the Bierut government waived Poland’s right to reparations from Germany as a whole²¹, rather than from the German Democratic Republic only – as did the Soviet Union, as a matter of fact as a result of talks between both government delegations which ended with the signing of a bilateral agreement on this matter. This proved total subservience of the government in Warsaw to the USSR and the demotion of the Bierut government to the status of a satellite country carrying out orders from outside. The unilateral declaration of the Polish government looked particularly lame by comparison with the announcements on the results of talks between the GDR and the USSR published around the same time²².

The decision on the waiver of reparations (damages) was made at the peak of Poland’s subjection to the eastern hegemon. The idea of rejecting the Soviet „proposals” did not even cross the minds of the then party-state leaders of the

¹⁹ J. Sandorski, *Nieważność zrzeczenia się przez Polskę reparacji wojennych a niemieckie roszczenia odszkodowawcze*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny”, Annual vol. 66, issue 3, 2004, p. 65.

²⁰ *Problem reparacji...*, vol. 2, doc. 64.

²¹ The fact that the renunciation concerned Germany as a whole, was additionally confirmed by Władysław Gomułka in a conversation with Willy Brandt 17 years later (see below).

²² These announcements are summarised in J. Sandorski, *Nieważność zrzeczenia się przez Polskę reparacji wojennych...*, p. 62ff.

People's Republic of Poland, especially because the proposals were closely related to economic pressure, i.e. the prospect of having to continue complying with the provisions of the August 1945 coal clause. Some of the experts in international law, notably Jan Sandorski (Adam Mickiewicz University, Poznań), insisted years later (2004) that Bierut's consent to the waiving of reparations had been given under pressure linked to economic coercion and therefore it could be considered invalid from the very beginning (*ab initio*)²³. According to Sandorski, „in the period discussed, Poland was a sovereign entity in the light of international law. Its domestic and foreign policy was under strong political pressure from the Soviet Union, which, however, did not affect its position with regard to international law. On many occasions, however, this pressure assumed a form that was in blatant contradiction of the applicable international law, and could have been considered a violation of the sovereignty of the Polish state. It is for this reason that the 23 August 1953 statement should be denied the power to produce legal effects and be considered null and void”²⁴.

After a while, even Polish government advisers pointed out that the Bierut government's declaration had gone much further than the Soviet one. Firstly, the USSR had made it very clear that the declaration concerned the GDR, and not Germany as a whole. Secondly, the USSR-GDR agreement referred only to the „complete discontinuance of reparations”, rather than their waiver. Thirdly, while the USSR had used the term „reparations”, the Bierut government applied a broader term, i.e. „indemnification”. In its confidential memorandum of 24 May 1971, the Commission for the Examination of the German Compensation Problem emphasised that the 1953 declaration had contained errors which „might bring adverse legal and economic consequences for Poland's subsequent claims against the Federal Republic of Germany”²⁵.

²³ J. Sandorski, *Nieważność zrzeczenia się przez Polskę reparacji wojennych...*, pp. 53-69; J. Sandorski, *Zrzeczenie się w 1953 r. przez Polskę reparacji wobec Niemiec w świetle prawa międzynarodowego*, in: *Problem reparacji, odszkodowań i świadczeń w stosunkach polsko-niemieckich 1944-2004*, vol. 1: *Studia*, W. M. Góralski (ed.), Warsaw 2004, pp. 123-155. See also: J. Sandorski, *Nieważność umów międzynarodowych*, Poznań 1978.

²⁴ J. Sandorski, *Nieważność zrzeczenia się przez Polskę reparacji wojennych...*, p. 68.

²⁵ *Problem reparacji...*, vol. 2, doc. 88.

5. Under the Gomułka government

For political reasons, the new team, wielding power in Poland since October 1956, could not question the validity of the Bierut government's declaration of 23 August 1953. During Władysław Gomułka's visit to Moscow on 14-18 November 1956, the Polish side raised the issue of irregularities related to German reparations²⁶. During the May 1957 talks in Moscow, the Polish delegation headed by Gomułka pointed out the losses incurred by Poland as a result of implementing the provisions of the 16 August 1945 treaty. In reaction to this, Nikita Khrushchev implied that the USSR might stop supporting the idea of the Polish-German border along the Oder-Neisse Line²⁷. In the end, however, both parties agreed on the final protocol (signed on 4 July), under which the USSR consented to transfer a certain amount of money (22.4 million rubles) to at least partially compensate the overdue reparations payments²⁸.

Unable to challenge the declaration of August 1953, Poland kept raising the issue of compensation for individuals who had suffered at the hands of the German occupying forces. These claims encountered serious difficulties at a time when there were no diplomatic relations between Poland and the Federal Republic. But even then, for instance, the head of the Chancellor's Office, Hans Josef Globke, quoted ideological and political motives to justify the reluctance to pay compensation to Polish citizens. During his meeting with the Polish Catholic MP Stanisław Stomma in May 1958, Globke said: „You know that we have acknowledged our guilt regarding the Jewish people, and perhaps you know how big a task it has been to make amends to the Jewish people. But the case of Poland is different from that of Israel. In Poland there is a communist regime that would use our compensatory contribution for its benefit. We do not negate the need of *Wiedergutmachung*, but it is difficult to carry out in relation to Poland in these specific conditions”²⁹.

In the event of concluding a treaty with Germany, the Polish Ministry of Foreign Affairs was considering the necessity of demanding a settlement of property issues. Two directors in the Ministry of Foreign Affairs, Manfred Lachs

²⁶ *Tajne dokumenty Biura Politycznego. PRL – ZSRR 1956-1970*, with an introduction by A. Paczkowski, London 1998, doc. 3.

²⁷ *Ibidem*. doc. 4.

²⁸ *Polskie dokumenty dyplomatyczne (Polish Diplomatic Documents) 1957*, K. Ruchniewicz – T. Szumowski (eds.), in collaboration with P. Długołęcki, Warsaw 2006, doc. 158.

²⁹ *Polskie dokumenty dyplomatyczne 1958*, D. Jarosz – M. Pasztor (eds.), Warsaw 2011, doc. 157.

and Mieczysław Łobodycz, the authors of the memorandum issued on 3 January 1959, referred to, among other things, the restitution of goods, damages for prisoners of the German concentration camps and former forced labourers, and compensation for the economic exploitation of the Polish territories illegally incorporated into the Reich in 1939³⁰. In the unsigned comprehensive analysis of February 1959 on the Soviet draft of a peace treaty with Germany³¹, the Foreign Ministry was working on the assumption that the reparations renunciation of 1953 could not imply Poland's waiver of damages³². Furthermore, on 7 July 1959, Deputy Minister Marian Naszkowski, referring to the Soviet draft of the peace treaty, wrote that because in 1953 Poland had waived its „reparations claims”, one should demand, for example, that the Germans compensate Polish citizens harmed during the German occupation of the country „at least in the amount in which they have compensated or compensate their own citizens on the basis of German legislation”³³.

The Polish government raised the issue of damages even with the United Nations (formal notes were deposited in 1960 and 1969), yet Bonn's position was unyielding. In a confidential report of 27 April 1968, prepared for the Political Bureau of the Central Committee of the Polish United Workers' Party (henceforth PZPR), the Ministry of Foreign Affairs explained that the Federal Republic of Germany “basically insists that the indemnification issue could only be resolved in a peace treaty with a united Germany”. Although the government in Bonn started paying out compensation to various groups of people who had been subject to persecution by the Third Reich, any claims relating to ethnic persecution, as was stated in the report, could not be pursued, which meant that a solid majority of Polish victims of German terror had been deprived of the right. „Moreover, to make obtaining compensation even more difficult for Poles, a regulation was adopted that the payment of damages abroad was conditioned by the existence of diplomatic relations with the country whose citizens would receive it”. Besides, the FRG authorities were of the opinion that compensating for damages was a voluntary humanitarian gesture rather than fulfilment of legal obligation³⁴.

The representatives of the West German government consistently referred to the Bierut government's statement of 1953. They kept emphasising that

³⁰ *Polskie dokumenty dyplomatyczne 1959*, P. Długołęcki (ed.), Warsaw 2011, doc. 3.

³¹ The analysis comprised an article saying that the reparations payment by Germany is considered to be fully settled.

³² *Polskie dokumenty dyplomatyczne 1959*, doc. 67.

³³ *Ibidem*, doc. 247.

³⁴ *Problem reparacji...*, vol. 2, doc. 81, Appendix.

the issue of „claims related to World War II” should not be raised any longer. Władysław Gomułka and the party-state officials had no intention of addressing the issue at that time anyway, maintaining that the recognition of the Oder-Neisse border by West Germany and the establishment of bilateral relations should be an absolute priority. On 6 May 1968, the Political Bureau of the PZPR Central Committee decided that the reparations issue should be kept off the agenda³⁵.

However, the decision was not final. A new impetus came from the UN General Assembly, which adopted on 26 November 1968 (on the Polish initiative) the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity³⁶. At the same time, the Polish Ministry of Foreign Affairs recommended that “a clear distinction be made between war reparations and civil law claims”³⁷. Shortly after (6 May 1970), following Prime Minister Józef Cyrankiewicz’s decision, a Commission for the Examination of the German Compensation Problem was set up under the auspices of the Ministry of Finance. One of the Commission’s tasks was to „assess Polish losses and damage incurred during the Second World War, which can constitute a basis for the Polish claim for indemnification against the Federal Republic of Germany”³⁸. This was yet another body that the Polish authorities set up to determine the scope of war losses. The establishment of the Commission indicated that the government in Warsaw intended to put forward claims against the FRG.

The authorities in Bonn were convinced that the 23 August 1953 declaration was not sufficient to consider the issue of the German reparations for Poland definitely resolved. During the Poland-West Germany negotiations, preceding the signing of the treaty of 7 December 1970³⁹, West Germany representatives sought a confirmation of the Bierut government’s declaration⁴⁰. However, the

³⁵ An extract of the minutes of the debate – *Ibidem*.

³⁶ In the 1960s., the Polish delegation was active in the UN Human Rights Commission, where it addressed, among other things, the issue of damages for the former prisoners of German concentration camps and former forced labourers in the Third Reich., see: K. Ruchniewicz, *Polskie zabiegi...*, p. 148ff.

³⁷ *Problem reparacji...*, vol. 2, doc. 82.

³⁸ *Ibidem*, doc. 83.

³⁹ The most accurate reconstruction of the progress of negotiations: W. Jarząbek, *Polska Rzeczpospolita Ludowa wobec polityki wschodniej Republiki Federalnej Niemiec w latach 1966-1976. Wymiar dwustronny i międzynarodowy*, Warsaw 2011, p. 195ff.

⁴⁰ For the 2 April 1970 guidelines for the third round of talks, see: *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland*, 1970, vol. 1, Munich 2001, doc. 141. Interestingly enough, Bonn earlier claimed that compensation matters should not be discussed at all in during the negotiations [Director Ruete’s memorandum of 19 December 1969, *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland*, 1969, vol. 2, Munich 2000, doc. 404].

German negotiators failed to push through the inclusion of a provision about waiving the reparations by Poland. This provision was supposed to state that „Both parties will make no claims that result from World War II against each other”⁴¹. What is more, Warsaw was considering the possibility of challenging that statement on the grounds of its interim character (until the conclusion of a peace treaty), and also because it contained inconsistencies.

Nevertheless, on 5 October 1970, during the negotiations before the signing of the treaty of 7 December 1970, Deputy Minister of Foreign Affairs Józef Winiewicz said: „We do not see (...) the need to discuss the reparations problem. The 1953 declaration of the Polish government remains in force and it does contain a waiver of reparations. That declaration is well known and its content indicates what position the Polish government will take and how it will affect the future”. However, this verbal confirmation was of limited importance – it was not made in public. Also, when this round of the negotiations was drawing to a close, Winiewicz himself said: „We do not know today how the reparations issue would have turned out at a peace conference. We have said that today, 25 years after the end of the war, we are moving away from the concept which was valid then. The interpretation presented in the report is correct, but the matter may look different if a peace treaty were to be concluded”⁴². The „Preliminary Information” submitted to Prime Minister Józef Cyrankiewicz on 1 December 1970 by the Commission for the Examination of the German Compensation Problem, comprised arguments that could be used to undermine the validity of the Bierut government’s declaration⁴³.

During his meeting with Chancellor Willy Brandt on 7 December 1970, Gomułka said: „It is common knowledge that back in 1953 the Polish government waived its right to reparations from Germany as a whole, which included the Federal Republic of Germany. We shall not return to this issue irrespective of how we see it now”⁴⁴. Gomułka’s words also had limited official and legal value because he was not a government official but only a rank-and-file MP and a member of the Council of State. However, it should be noted that the First Secretary of the PZPR Central Committee told the West German chancellor

⁴¹ *Problem reparacji...*, vol. 2, doc. 85.

⁴² W. Jarząbek, *Władze Polskiej Rzeczypospolitej Ludowej...*, pp. 92, 93.

⁴³ *Ibidem*, p. 93. *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland*, 1970, vol. 3, Munich 2001 contains only a circular issued on 8 October 1970, simply informing about this round of negotiations and omitting the issue of renouncing the reparations by the PRL (doc. 456).

⁴⁴ W. Jarząbek, *Władze Polskiej Rzeczypospolitej Ludowej...*, p. 95. For the German record of the conversation see: *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland*, 1970, vol. 3, doc. 589. Talking to Gomułka in the W. Brandt’s memoirs: W. Brandt, *Begegnungen und Einsichten. Die Jahre 1960–1975*, Hamburg 1976, pp. 535-540.

that he would be willing to waive claims for individual citizens in exchange for a large loan for Poland with an advantageous interest rate.

In a statement issued on 8 December 1970, the day following the conclusion of the treaty between the People's Republic of Poland and the Federal Republic of Germany, the West German government announced that „the Polish delegation has once again explicitly confirmed the validity of the Polish Government's declaration” of 23 August 1953.

6. After establishing diplomatic relations between Poland and West Germany

On 21 June 1971, Foreign Minister Stefan Jędrzychowski wrote in an „urgent memorandum” that „claims against the Federal Republic of Germany should be addressed” after the 7 December 1970 agreement on the foundations of normalization of Polish-German relations became effective. In fact, „a whole package of our claims, with the exception of reparations, (i.e. civil damages claims, restitution, insurance and annuity cases and other financial settlements of a civil nature from the pre-war and war periods)” should be pursued. The Minister justified the exclusion of reparations referring to the 1953 declaration and the „confirmation by the Polish delegation of this declaration during the negotiations with the Federal Republic on a treaty on the foundations of normalization”. He proposed seeking an „agreement providing for the lump sum payment of compensation, excluding damages due to the victims of illegal medical experiments” because the latter was to be settled shortly. Jędrzychowski pointed out, however, that the amount of claims would not be a decisive factor in the negotiations because „specific political decisions (...) must take into consideration both the domestic and international situations of both countries”⁴⁵.

The Polish Ministry of Foreign Affairs also considered the possibility of reinterpreting the 1953 declaration. In the Department IV draft memorandum of 13 May 1972, the Ministry emphasized that „bearing in mind the content of the documents, in connection with which the above mentioned Polish government’s declaration of 1953 was issued [i.e. the USSR-GDR agreement of 22 August 1953 – S.Ż.], the declaration must be definitely interpreted as relating only to the reparations and, if necessary, it should be argued that it applies only to the Democratic Republic of Germany”.

During a parliamentary meeting held in June 1972 and devoted to the agreement on the foundations of normalization of Polish-German relations Stefan Olszowski, the successor of Stefan Jędrzychowski as the Minister of Foreign Affairs, confirmed the position of the government in Warsaw, according to which Poland had never relinquished its civil law claims for damages against the West German government.

The indemnification issue resurfaced during Minister Olszowski’s first visit to Bonn on 13-14 September 1972. During his meeting with Stefan Olszowski,

⁴⁵ *Problem reparacji...*, vol. 2, doc. 90.

his opposite number, Walter Scheel (*FDP*) himself observed that „in the London convention of 1953, to which the German Federal Republic was a party, the issue of reparations and compensation was deferred until a peace treaty with Germany and it should be negotiated with a future all-German government”. He added, however, that „Poland waived, of its own free will [sic! – S. Ż.] its reparations claims against Germany”. On the other hand, the Federal Republic „does not feel entitled to address the indemnification question prior to a peace conference – until it is convened, these matters should be put aside, since it cannot be ruled out that other Eastern European countries will successively submit similar claims”. Moreover, Chancellor Brandt told Minister Olszowski that he had been facing internal obstacles over the damages question, especially from „the younger generation, which was neither responsible for the damage and loss inflicted nor willing to identify with the offences and crimes perpetrated by part of the older generation”⁴⁶.

Walter Scheel had a wide array of convoluted excuses to be used at any time. In a long memorandum summarising the outcomes of his visit to Bonn, Minister Olszowski explained the position of West Germany. The officials he talked to emphasised that „potential claims for damages made by Polish citizens can not be satisfied for fundamental and formal reasons, i.e. the deadline for submitting the relevant applications was 31 December 1969”. However, irrespective of this, Poland abandoned reparations claims on 23 August 1953 and confirmed this during the negotiations on the 1970 treaty. In addition, „Poland had never recognized the FRG government as the successor of the Third Reich, subscribing to the theory of two German states instead. Therefore, in the case of compensation it would be illogical to put forward a hypothesis that the Federal Republic was the only one to represent the German nation”. It was also added that „in so far as there could be any obligations in this respect, these could be the result of the actions undertaken by the Third Reich and its bodies. Thus, the problem of compensation could be, in accordance with the provisions of the London Protocol of 1953, discussed only with the all-German government during the negotiations on a peace treaty with Germany”. Minister Olszowski was also told that „mutual presentation of this kind of ‘bills’ would not do any good to mutual relations because the Federal Republic would also have to make claims related to the relocation of the German population and loss of property left on the former German territories currently belonging to Poland”.

⁴⁶ W. Jarząbek, *Rozmowy ministra Stefana Olszowskiego w czasie wizyty 13-14 września 1972 roku w Bonn*, „Rocznik Polsko-Niemiecki” 2003, no. 11, pp. 183, 184, 189.

Minister Olszowski summarised the Polish counter view in the following words: „We realised that we did not agree with the arguments put forward by the Federal Republic with regard to this question. We can not fetishise the formal aspect of the issue as it is of lesser importance than people’s hopes and expectations. People make laws and it is up to people to make such laws that would serve them. We expressed our hope that the Federal government would examine the issues and change its position. For our part, we declared our readiness for confidential or open consultations in this matter, stressing that the solution to this problem can not be delayed. Minister Olszowski also added that the arguments presented by the Polish side “had been somehow tacitly accepted by the West German side”⁴⁷.

During Olszowski’s visit, an agreement was reached as to providing compensation in the amount DM 100 million for the Polish victims of pseudo-medical experiments (concluded in Geneva on 16 November 1972)⁴⁸. However, the Federal government did not consent to pay damages to prisoners of German concentration camps. Minister Olszowski’s „Pro memoria” Project for Pope Paul VI stated, in November 1973, that the compensation for surviving former prisoners had been estimated (including the restitution of looted private property, taking the rates applicable in Germany) at about DM 3.2 billion. „This is the most important – justified by humanitarian reasons and a basic sense of justice – matter for the Polish society and the basis of our compensation claims against West Germany”. It was complained that „the Federal Republic refuses to help and compensate Polish prisoners of concentration camps while it has recognised compensation claims made by citizens of other countries. This means that Poles are considered, just as in the previous centuries, second-class citizens and openly discriminated against”⁴⁹.

In his speech in Poznań in late March 1973, Gomułka’s successor as the First Secretary of the PZPR Central Committee, Edward Gierek, pointed out that the account had yet to be settled for the damage inflicted upon the Polish nation by the criminal Nazi system; for losses which would be felt by our society for a long time to come. Those are matters of paramount importance from both political and moral perspective⁵⁰. The non-paper forwarded to Chancellor

⁴⁷ *Polskie dokumenty dyplomatyczne 1972*, W. Borodziej (ed.), in collaboration with P. Długołęcki, Warsaw 2005, doc. 190. For the German record of the Olszowski-Scheel meeting (13 September 1972) see: *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland, 1972*, vol. 2, Munich 2003, doc. 266. The Olszowski-Willy Brandt meeting the next day – *ibidem*, doc. 273.

⁴⁸ This problem was discussed in depth in: K. Ruchniewicz, *Polskie zabiegi o odszkodowania...*, p. 97ff., 202ff.

⁴⁹ *Polskie dokumenty dyplomatyczne 1973*, P. M. Majewski (ed.), Warsaw 2006, doc. 214.

⁵⁰ K. Ruchniewicz, *Polskie zabiegi o odszkodowania...*, p. 227.

Brandt on 11 April 1974 by the head of the Foreign Department of the PZPR Central Committee Ryszard Frelek, mentioned the sum of „at least DM 600 million“ to satisfy the most urgent claims of the former Polish prisoners of concentration camps⁵¹.

At the time, Poland's room for manoeuvre was significantly restricted by efforts made to obtain further loans (the already mentioned non-paper referred to Polish hopes for DM 3 billion of financial loan and DM 7 billion of investment loan). Poland succeeded in obtaining a loan of DM 1 billion in 1975 (the so-called jumbo loan). According to an earlier suggestion, its size and advantageous interest rate were considered „a hidden form of compensation“ by West Germany⁵². The agreement on the satisfaction of pension claims (a lump sum of DM 0.7 billion, subsequently increased to DM 1.3 billion), signed on 1 August 1975 in Helsinki, was of a different kind⁵³.

The German side claims that during these negotiations, members of the Polish delegation confirmed the renunciation of reparations claims, but no documents confirming this have been found in the Polish archives⁵⁴. The German interpretation seems quite unlikely as the document prepared for Gierek ahead of his meeting with Chancellor Helmut Schmidt in Helsinki included a large section under the heading „The Problem“ relating to damages for Polish citizens – former prisoners of German concentration camps⁵⁵. What is more, Polish diplomacy continued to be interested in all aspects of issues related to reparations and damages. A document drawn up at the Polish embassy in Germany in October 1981 included a sentence stating that „the problem of compensation remains an open question in our relations“⁵⁶.

The problem of individual claims also remained open throughout the 1980s, when the Polish government repeatedly brought it up. Initially, during the martial law period, the whole issue of claims was also considered part of the response to the „active support of the policy of sanctions and restrictions against Poland“ (undated Foreign Ministry report, spring 1982). However, the

⁵¹ *Polskie dokumenty dyplomatyczne 1974*, A. Kochański, M. Mokrzycki-Markowski (eds.), Warsaw 2007, doc. 96.

⁵² *Ibidem 1973*, doc. 217.

⁵³ W. Jarząbek, *Polska Rzeczpospolita Ludowa...*, p. 457ff.; K. Miszczak, *Deklarationen und Realitäten. Die Beziehungen zwischen der Bundesrepublik Deutschland und der (Volks-)Republik Polen von der Unterzeichnung des Warschauer Vertrages bis zum Abkommen über gute Nachbarschaft und freundschaftliche Zusammenarbeit (1970-91)*, Munich 1993, p. 139ff.

⁵⁴ E.g., the record of Gierek-Schmidt talks in Helsinki could not have been found; for more on this, see: W. Jarząbek, *Władze Polskiej Rzeczypospolitej Ludowej...*, p. 99.

⁵⁵ *Polskie dokumenty dyplomatyczne 1975*, P. Machcewicz (ed.), in collaboration with P. Długolecki, Warsaw 2010, doc. 209.

⁵⁶ W. Jarząbek, *Władze Polskiej Rzeczypospolitej Ludowej...*, p. 100.

analysis of the current situation made the author of the document „conclude that there was no real chance of pushing through compensation claims of Polish citizens against the Federal Republic”. The reasons comprised „the existing decidedly negative German position, i.e. the rejection of our claims”, as well as the West German side’s conviction that „the Germans have already overcome the past, have been given a ‘morality certificate’ and Bonn’s consent to negotiate the compensation problem with us would mean, among other things, questioning again its moral and political position as an equal member of the international community”⁵⁷.

Bonn’s position was still unyielding. In a confidential, so-called urgent memorandum of 13 February 1986, Minister of Foreign Affairs Marian Orzechowski stressed that even though the Polish government „had waived war damages (reparations) from Germany” in 1953, „contrary to subsequent interpretations offered by the Federal Republic, Poland did not abandon in this declaration pursuing individual claims of Polish citizens for war crimes and crimes against humanity”. The Minister suggested „that the compensation claims against the FRG be resumed in a determined manner”⁵⁸. In December 1986, a comprehensive diplomatic note on the matter in question was submitted to the German Foreign Ministry, specifically denying the allegations that Poland had renounced all compensation claims in 1975. The German Federal government replied that the People’s Republic of Poland had waived its right to all kinds of claims in 1953, had confirmed this in 1970 and had made no claims in 1975. So it was no longer claimed that Poland relinquished compensation also in 1975. It was also added that the London agreement had deferred the reparations issue pending the conclusion of the peace treaty. What is more, the government in Bonn objected to dividing the compensation payments into benefits for the state and benefits for its citizens. The Polish government submitted another diplomatic note to Bonn in October 1988, with a similar result.

⁵⁷ *Problem reparacji...*, vol. 2, doc. 110.

⁵⁸ *Ibidem*, doc. 111.

7. In a new reality

After a political changeover in Poland in 1989, the damages issue remained one of the focal points in negotiations with the FRG. In reply to a parliamentary question, Minister of Foreign Affairs Krzysztof Skubiszewski confirmed in his speech on 16 October 1989 that „the 1953 disastrous waiver of claims” remained legally binding. At the same time, he announced that he would support efforts to secure payment of individual damages⁵⁹. In a message sent to President Richard von Weizsäcker on 7 November, President Wojciech Jaruzelski wrote about the need for „moral and material compensation” for the victims of German oppression suffered during the occupation⁶⁰.

The November visit of Chancellor Helmut Kohl to Poland was seen as an event opening a new chapter in Polish-German relations. While talking to the *chargé d'affaires* on the eve of the chancellor's visit, his advisor, Horst Teltschik tried to discourage the Polish side from making a strong point about the Oder-Neisse border and the compensation. He argued that it could result in creating certain expectations which Chancellor Kohl would not be able to meet, which, in turn, „would lead to disappointment with the outcomes of the visit and might thus offset the positive message of the package prepared for the visit”⁶¹.

During his historic visit to Poland, the head of the West German government remained adamant about the compensation matter, despite the insistence of Prime Minister Tadeusz Mazowiecki. The position of the Polish prime minister was weakened by the dire economic situation of the country; Poland's debt to the Federal Republic alone reached the level of DM 8 billion in spring 1987⁶². Meanwhile, Chancellor Kohl was hiding behind an excuse that „the federal government has already spent DM 105 billion since 1950 satisfying various claims. Germany was assured many times that it was the final payment made by it and then it turned out that some kind of compensation was demanded again”. The chancellor stressed that he did not want to set a precedent that would encourage other countries to make their claims and besides, Poland waived its right to reparations in 1953. Mazowiecki replied that it was not a question of reparations, but civil law claims of Polish citizens⁶³. The compensation issue

⁵⁹ *Problem reparacji...*, vol. 2, doc. 121.

⁶⁰ „Rzeczpospolita”, 9 November 1989.

⁶¹ <http://www.msz.gov.pl/resource/3679701b-b91f-4789-91de-be82b89c3bd8:JCR>, doc. no. 69.

⁶² W. Borodziej, *Wstęp*, in: *Polska wobec zjednoczenia Niemiec 1989-1991. Dokumenty dyplomatyczne*, W. Borodziej (ed.), in collaboration with D. Pick, Warsaw 2006, p. 15.

⁶³ *Polska wobec zjednoczenia Niemiec*, doc. 27. It was recorded elsewhere in the protocol that Chancellor Kohl mentioned the amount of DM 100 billion.

got overshadowed by Prime Minister Mazowiecki's suggestion that chancellor Kohl become an advocate for the total or partial cancellation of Polish debts by the West⁶⁴. Due to West Germany's approach, the issue of damages was omitted altogether in a long Joint Statement signed by Prime Minister Tadeusz Mazowiecki and Chancellor Helmut Kohl⁶⁵. Asked about this at the 16 November press conference, Chancellor Kohl replied: „I consider some of the demands for compensation which I have heard here in Poland unrealistic. We are aware of the scale of human tragedy but the Federal Republic has already paid some benefits to Poland and, overall, it has borne a heavy burden of paying DM 100 billion in damages to different countries”. He added, however, that he would reconsider the matter⁶⁶.

Nonetheless, the calls for damages to be paid to the victims of the Third Reich were still quite loud. The Organisation of Poles Injured by the Third Reich founded by party activists associated with the communist authorities was active on the political stage⁶⁷. The Speaker of the *Sejm* Mikołaj Kozakiewicz, who visited the Federal Republic of Germany as the head of the Polish parliamentary delegation on 11-16 December 1989, was the politician who at that time most strongly advocated the compensation question. Professor Kozakiewicz brought to Bonn a statement regarding compensation for the 40,000 victims of Nazi persecution who were still alive at that time and about 800,000 former forced labourers. In this document, Mikołaj Kozakiewicz referred to the bills presented to the *Bundestag* by two West German parties, i.e. the Social Democratic Party of Germany and the Green Party. The bill proposed by the Green Party put the amount of compensation at a minimum of DM 2.1 billion⁶⁸. On 14 June in Bonn, Kozakiewicz gave the number of two million Poles who had made claims against Germany and stressed that a „decent solution” of this problem is „conditio sine qua non for mutual understanding and future reconciliation”⁶⁹. The fact that the Speaker spoke of damages amounting to DM 200 billion was recalled by Chancellor Kohl during his meeting with Prime Minister Mazowiecki in Frankfurt (Oder) on 8 November 1990, when he stated that „it had made a bad impression”⁷⁰.

⁶⁴ *Ibidem*, doc. 29

⁶⁵ *Ibidem*, doc. 28.

⁶⁶ „Gazeta Wyborcza”, 16 November 1989.

⁶⁷ See: *Polska wobec zjednoczenia Niemiec*, doc.6, pp. 24-26.

⁶⁸ M. Rybiński, *Trudna sprawa odszkodowań*, „Rzeczpospolita”, 15 December 1989. The amount mentioned above does not appear in the cryptograms and reports of 1989 regarding Mikołaj Kozakiewicz's visit, disclosed several years ago by the Polish Ministry of Foreign Affairs: <http://www.msz.gov.pl/resource/3679701b-b91f-4789-91de-be82b89c3bd8:JCR>.

⁶⁹ M. Tomala, *Patrząc na Niemcy. Od wrogości do porozumienia*, Warsaw 1997, p. 406.

⁷⁰ *Polska wobec zjednoczenia Niemiec*, doc. 84.

On 2 February 1990, chancellor's advisor Horst Teltschik wrote in his diary that on that day, Chancellor Kohl had instructed the government spokesperson to issue a statement which featured, for the first time, „two demands” to Warsaw, made in the context of the permanent status of the Oder-Neisse border being confirmed: „Poland must waive its right to indemnification and offer a prospect for the regulation, in a treaty, of the rights of its German minority”. Teltschik added that Chancellor Kohl, bearing in mind that the Speaker of the *Sejm* [Professor M. Kozakiewicz – S. Ż.] had already spoken of DM 200 billion in damages, „wished”, among other things, „to prevent Polish demands from being actually raised”⁷¹.

Summing up his visit to West Germany (5-8 February 1990), Minister Krzysztof Skubiszewski argued that the Polish „initiative to search for extra-legal pragmatic ways of resolving the compensation problem had not been rejected and was being analysed by appropriate ministries in the Federal Republic”. He also suggested that a foundation should be set up „with a view to providing financial assistance to the victims”⁷². Meanwhile, Chancellor Kohl recorded success. During his Camp David talks (24-25 February 1990), he easily convinced U.S. President George H.W. Bush that raising the issue of reparations could seriously delay the unification process. The chancellor also said that the Federal Republic had already paid about DM 100 billion in damages, of which Poles had allegedly obtained a large („grosse”) amount. This was not true, as by then the Germans had paid Poles only DM 100 million, so barely a fraction (1%) of the amount mentioned by the chancellor. It was not also true that – as Kohl tried to persuade President Bush – that money was squandered by the corrupt regime and did not reach the Poles harmed by the Nazi system⁷³.

On 27 February, an expert opinion was prepared for Chancellor Kohl, recommending that a treaty on cooperation and good partnership with Poland should be signed after the unification of Germany. The treaty was to contain the final recognition of the border as well as a waiver of reparations by Poland and the commitment to respect the rights of the German minority. The authors

⁷¹ H. Teltschik, *329 dni. Zjednoczenie Niemiec w zapiskach doradcy kanclerza*, Warsaw 1992, p. 105.

⁷² *Polska wobec zjednoczenia Niemiec*, doc. 39.

⁷³ *Dokumente zur Deutschlandpolitik. Deutsche Einheit. Sonderedition aus den Akten des Bundeskanzleramtes*, H. J. Küsters, D. Hofmann (eds.), Munich 1998, doc. 860; W. Weidenfeld (mit P. M. Wegner und E. Bruck), *Aussenpolitik für die deutsche Einheit. Die Entscheidungsjahre 1989/90*, Stuttgart 1998, p. 266 and 268. Kohl completely ignored that subject in his memoirs: H. Kohl, *Pragnęłam jedności Niemiec. Kai Diekmann i Ralf Georg Reuth relacjonują rozmowy z Kanclerzem*, Warsaw 1999 (for Camp David's talks see: p. 179ff.) and H. Kohl, *Erinnerungen 1990-1994*, p. 34ff.

of the report claimed that a confirmation of the waiver would be well received by German public opinion. Another expert opinion, dated 6 March, stated that Poland's striving for individual damages should be considered a striving for reparations which the Polish People's Republic had renounced in 1953. However, the document allowed for some payments to be made through a foundation established to that effect⁷⁴.

When on 2 March 1990 the spokesperson of the German government issued a statement in which Chancellor Kohl proposed linking the resolutions of the *Bundestag* and the GDR's People's Chamber regarding the Oder-Neisse border with a confirmation of the waiver as well as a provision, in a treaty, on the recognition of the rights of the German minority, a public uproar ensued in Poland. The spokesperson of the Polish government, expressing her indignation, pointed out in her statement that the Polish government had never linked the border issue to any other issue, such as, for example, the waiver of reparations. „If the German side wants to widen the matter, then we will demand compensation for more than a million Poles who were forced labourers in the Third Reich during World War II”⁷⁵. The same statement was repeated by Prime Minister Mazowiecki in his interview for the West German television stations, also broadcast on Polish television TVP⁷⁶. On 5 March (Chancellor Kohl's meeting with Foreign Minister Hans-Dietrich Genscher) and on 6 March (coalition talks), the West German ruling parties (*CDU/CSU* and *FDP*) agreed on a modified joint resolution submitted by their parliamentary clubs. Although there is a reference in the text to the Polish waiver of reparations (i.e. war damages) as a final and binding act, they were not supposed to be termed „demands” in the present document. Chancellor Kohl modified his position under the influence of the Vice-Chancellor and the Minister of Foreign Affairs⁷⁷. He himself explained that he had been misunderstood and on no account had he intended to create a *junctim* between these issues⁷⁸.

⁷⁴ *Dokumente zur Deutschlandpolitik. Deutsche Einheit...*, doc. 195 and 206. See: Z. Mazur, *Polska w procesie jednoczenia Niemiec*, in: B. Koszel, K. Malinowski, Z. Mazur, *Niemiecka polityka wobec Polski 1990-2010*, Poznań 2012, pp. 48-49.

⁷⁵ „Rzeczpospolita”, 3-4 March 1990; M. Ludwig, *Polen und die deutsche Frage. Mit einer Dokumentation*, Bonn 1990, pp. 65-66.

⁷⁶ „Rzeczpospolita”, 6 March 1990.

⁷⁷ There is no mention of this subject in the memoirs of the latter, only very briefly about the debate in the *Bundestag* on 8 March 1990 (the topic of reparations is completely omitted); H. D. Genscher, *Erinnerungen*, Berlin 1995, pp. 743-744; see: K. Malinowski, *Polityka Republiki Federalnej Niemiec wobec Polski w latach 1982-1991*, Poznań 1997, pp. 251-256; and D. Bingen, *Polityka Republiki Bońskiej wobec Polski. Od Adenauera do Kohla 1949-1991*, Kraków 1997, pp. 257-258.

⁷⁸ „Rzeczpospolita”, 7 March 1990.

During the debate in the *Bundestag* on the issue (8 March), Wolfgang Bötsch (*CSU*), speaking for the Christian fraction, insisted that in 1953 the Polish People's Republic had renounced not just reparations, but also all civil law claims and damages. The chancellor asserted in turn that he was setting no additional conditions on the recognition of the Oder-Neisse border, but at the same time he made a remark about the Polish waiver of reparations and the rights of the German minority. The opposition fiercely attacked this informal linking of the border recognition with the other two questions, claiming that this evidently awkward statement was likely to be interpreted as pressure⁷⁹. The *Bundestag* adopted the resolution of the coalition parties by a majority vote.

The reparations issue continued to trouble Chancellor Kohl. On 12 March, during an off-the-record conversation with several selected journalists (including Daniel Luliński of „Trybuna Ludu”), he denied having created a „*junction*” between reparations as well as the cultural rights of persons of German decent and the border treaty”. He said, however, that he expected „Prime Minister Tadeusz Mazowiecki and his government to issue a unilateral statement addressing the matter in question” or to be sent a letter of assurances. He justified his request saying „I know the Poles, I must be careful and can not leave the matter of reparations on the table. It was left there 20 years ago, under different chancellors, and it has remained there ever since”. These words clearly imply that Chancellor Kohl was aware of the fact that Poland could successfully challenge the validity of the Bierut government’s declaration of 1953. „Since a treaty with Poland will be a peace treaty settling the border issue, we can not leave the reparations question open”. The chancellor complained that the Israeli ambassador had already approached him with this respect and „other countries were also waiting for such an opportunity”. He pointed out that since 1980 Poland had received from the Federal Republic DM 8 billion in aid „including parcels [sic! – S.Ż.] and current loan guarantees”. He also said: „(...) I am prepared to provide further significant economic aid for Poland. I understand the predicament of the Mazowiecki government, but the reparations issue must be taken off the table”⁸⁰.

And so, even though the Polish government was not raising the question of reparations in 1990, Chancellor Kohl was seeking additional formal assurances from Warsaw. At the same time, in talks with his allies, he complained that it had been so many years since the war and Poland was still seeking the same

⁷⁹ *Verhandlungen des Deutschen Bundestages*, 11 Wahlperiode, Stenographische Berichte, vol. 152, Plenarprotokolle, 200. Sitzung, den 8. März 1990, Bonn 1990, p. 15 405ff.; for the summary, see: Z. Mazur, *Polska w procesie jednoczenia Niemiec*, pp. 52-54.

⁸⁰ *Polska wobec zjednoczenia Niemiec*, doc. 41.

reparations which it itself renounced back in 1953. He argued that allowing this matter to be discussed would be an incentive for other countries to make financial demands, too. In this respect the chancellor managed to secure the support of the US President during their Camp David talks in late February. In contrast, the French president was critical of the *junctim* between border recognition and the reparations issue. Kohl had to explain to President François Mitterrand (in a telephone conversation on 14 March 1990) that he was not imposing any conditions on Poland, but merely expressing „a wish” that Warsaw „would once again confirm what it already declared in 1953 and 1989 [mistake – he must have meant 1970 – S.Ż.] with regard to German compensation and the rights of the German minority”⁸¹. Meanwhile, Horst Teltschik was consulting various experts, including those from the Ministry of Foreign Affairs, about the issue of possible reparations claims. In a memorandum for the chancellor dated 15 March, Teltschik pointed out that the Federal Republic of Germany had never pledged to pay reparations, and no country had brought such claims. Germany should avoid any commitments of this kind at all costs („unter allen Umständen vermeiden”). Therefore, the current government as well as the government of a future united Germany must oppose the demands of those who are in favour of a peace treaty. This will enable the federal government to claim, wrote the chancellor’s advisor, that the unification of Germany equals the settlement of the reparations issue⁸².

In the meantime, the subject in question had already fallen off the agenda. Nonetheless, talking to Hungarian Prime Minister József Antall on 21 June, Chancellor Kohl complained that the Poles had not publicly renounced their right to reparations. He said: „it is absurd to speak of reparations when at the same time it is demanded from us that we ultimately let go of one-fourth of the former territory of the Reich – the part not actually conquered by Hitler”⁸³.

Almost from the very beginning of the Federal Republic, the basis of its so-called legal standing was pointing to the absence of a conference ending World War II and stressing the necessity of negotiating a peace treaty. Chancellor Kohl referred to that on 8 November 1989 during the *Bundestag* debate over the state of the nation as well as during the November talks in Warsaw⁸⁴. A few weeks later, it turned out that the West German government strongly objected to the possibility of signing a peace treaty and took actions to design

⁸¹ H. Teltschik, *329 dni*, p. 144.

⁸² *Dokumente zur Deutschlandpolitik. Deutsche Einheit...*, doc. 222.

⁸³ *Ibidem*, doc. 322. Translated by: Z. Mazur, *Polska w procesie jednoczenia Niemiec...*, p. 77.

⁸⁴ See, e.g.: „Gazeta Wyborcza”, 10 November 1989.

a different form of a treaty⁸⁵. This diplomatic mini-offensive was launched for fear that the reparations issue should be brought up. One should not forget that the London agreement provided that the problem of reparations would be regulated in a peace treaty. As early as 30 April, the decision was made that it was the „treaty on the final settlement with respect to Germany” that was negotiated. In a protocol of the Paris meeting of the „2+4” conference, it was unequivocally stated that „neither a peace treaty nor a peace settlement are envisaged”⁸⁶.

The „2+4”⁸⁷ treaty signed in Moscow on 12 September 1990 made no mention whatsoever of reparations or damages. Recalling this, the German commentator Michael Stürmer wrote in „Die Welt” on 14 September 2017 that the circumvention of the matter was a „masterpiece of diplomacy”. Nonetheless, the view that the „2+4” treaty closed all the issues related to World War II with regard to Germany, has sometimes been questioned in legal texts because of various claims for damages⁸⁸.

Neither were the matters related to indemnification included in the Polish-German treaty of good neighbourship and friendly cooperation of 17 June 1991, for which the Polish government of the day was criticized⁸⁹. But a Foundation for Polish-German Reconciliation was set up and funded with a relatively small amount of DM 500 million for the „victims of Nazi persecution” (an agreement of 16 October 1991). Earlier on (8 November 1990), in a meeting with Prime Minister Tadeusz Mazowiecki, Chancellor Kohl stressed that those funds should not be regarded as compensation but „only as support, as aid” because the „former Polish government waived its right to indemnification”⁹⁰.

Only those who were still alive on 8 January 1992, i.e. on the day when the first installment was transferred by the Federal Republic to the Foundation’s account, were eligible to apply for financial assistance granted by the Foundation. The aid was limited to the victims of severe persecution by the German occupying forces. The money could be granted only to those among former

⁸⁵ In 2015, „Der Spiegel” weekly revealed parts of the documents on this issue dated February-April 1990.

⁸⁶ J. Barcz, *Udział Polski w konferencji 2+4. Aspekty prawne i proceduralne*, Warsaw 1994, p. 166.

⁸⁷ *Problem reparacji...*, vol. 2, doc. 125.

⁸⁸ Czaplinski pointed to such voices in his earlier study, W. Czaplinski, *Zewnętrzne aspekty międzynarodowoprawne zjednoczenia Niemiec. Problematyka sukcesji państw*, in: *Zjednoczenie Niemiec. Studia politologiczno-ekonomiczno-prawne*, Poznań 1996, p. 355, footnote 19.

⁸⁹ See, e.g., the record of the ratification debate in the *Sejm* on 13 September 1991, in: *Polska – Niemcy. Dobre sąsiedztwo i przyjazna współpraca*, J. Barcz – M. Tomala (eds.), Warsaw 1992, pp. 121-202.

⁹⁰ *Polska wobec zjednoczenia Niemiec*, doc. 84.

forced labourers who had been deported to Germany to work for at least six months or had been forced to work in their place of residence before they turned 16. To this day, the Foundation has been stressing that the funds it paid „were not compensation, but symbolic humanitarian aid from Germany for the victims of Nazi persecution in Poland”⁹¹.

Only after years of difficult international negotiations (with the participation of representatives of the American government and Jewish organisations), was it agreed that a one-off payment be made by Germany as symbolic financial compensation to surviving victims of forced and slave labour, including Polish ones. On 16 February 1999, Chancellor Gerhard Schröder and representatives of 12 leading German companies announced a joint initiative to set up a fund financed by both the German industry and the government to pay damages to former forced labourers. The outcome of this initiative was the law on the creation of a Foundation „Remembrance, Responsibility and Future” passed on 6 July 2000 in the German *Bundestag*. Furthermore, on 17 July relevant agreements, i.e. a Joint Statement of all the participants of the negotiations and an FRG-USA agreement, were signed in Berlin. It was decided then that Polish victims would receive over DM 1.8 billion, and the payments would be made by the „Polish-German Reconciliation” Foundation. The disbursement of funds ended on 30 September 2006. Financial compensation had been made to nearly 484 000 people for a total of more than 3.5 billion zlotys (975.5 million euros)⁹². All this was a „voluntary humanitarian gesture” (*ex gratia*).

The issue of war reparations for Poland resurfaced briefly in 2004. On 10 September that year the *Sejm* adopted (with just one abstention) a resolution stipulating, among other things, that „Poland has not yet received adequate financial compensation and war reparations for the immense damage and material and non-material losses caused by the German aggression”. MPs also called on the government to „take appropriate action in this matter” with respect to the German government⁹³. However, the resolution was just a recommendation and was strongly rejected by the then government of the Republic of Poland (Prime Minister Marek Belka, Foreign Minister Włodzimierz Cimoszewicz), who regarded the claims as not having legal bases and adversely affecting Polish-German relations.

⁹¹ <http://www.fpnpl.pl/wyplaty/robotnicy.php>

⁹² *Ibidem*.

⁹³ <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WMP20040390678/O/M20040678.pdf>

8. Conclusion

The view that from the legal perspective, the issue of German reparations and war damages for Poland is closed is the one that predominates among experts in international law. However, an important fact to be noted here is that no procedure has been indicated so far that could be followed in a potential Polish pursuit of claims against Germany.

Regardless of this, the problem of the Federal Republic's reparations/damages to Poland as a partial compensation for the losses inflicted on the Polish state and its citizens by the German aggressor and invader remains open on a political level, and most certainly on an ethical one. Even a brief presentation of the history of the German authorities' endeavours not to pay reparations and compensation benefits to Poland and its citizens or to reduce them as much as possible, paints a picture of a policy of ruthless defense of German financial interests, so remote from the declared commitment to reconciliation. Representatives of the West German authorities resorted in this conflict to various arguments and dodging the issue so as not to transfer any significant amounts to Poland.

The Bierut government's declaration of 23 August 1953, i.e. made at the time of Poland's heaviest dependence on the USSR, became the basis of West Germany's legal position, according to which Poland is eligible for neither reparations nor damages from Germany. Until today, the German side has been emphasising that the fact that in the years 1945-1953, due to Moscow's policy, Poland was basically deprived of any income from German reparations, is irrelevant from its point of view. The ruling circles of the Federal Republic and the German public choose to conveniently ignore the fact that – apart from destruction, economic exploitation and war crimes – Poland's 45-year-long dependence on the USSR and the resultant economic backwardness of our country are some of the ominous consequences of the war planned, prepared and started by Germany in 1939.

The culmination of the efforts made by the successive Bonn governments with regard to reparations and damages was marked by Helmut Kohl's policy when negotiating an external framework of the unification of the two German states (1989-1990). At the time, the chancellor even resorted to manipulation, an example of which can be his conversation with the US President in late February 1990. During that meeting, the chancellor was trying to convince George Bush that the Federal Republic had paid out a total of about DM 100

billion, of which „large amounts” had been transferred to Poland in the 1970s. In fact, at that time, West Germany had paid only DM 100 million to Poland, which represented only a small fraction (1‰) of the total amount mentioned by Kohl. Contrary to what the chancellor claimed, this modest amount was not „squandered” by the „corrupt Polish regime”. It should also be noted that at the same time Chancellor Kohl even tried to create a *junctim* between the recognition of the Oder-Neisse border and Poland’s confirmation of the reparations waiver.

For forty years, West Germany emphasized that a series of issues related to World War II should be fully resolved in a peace treaty. In the early 1990s, a decision was taken in Bonn not to sign such a treaty, precisely because the reparations problem would otherwise have to be dealt with. Therefore, using the formula of the „2+4” treaty „on the final settlement with respect to Germany”, in which the matter of reparations was not mentioned at all, was a great success of German diplomacy. Since then, the Federal Republic has held the opinion that the „2+4” treaty closed all the issues related to World War II with regard to Germany, including the problem of reparations and compensation.

In total, throughout the entire period of its existence, the Federal Republic of Germany has paid out to Poland only a relatively small amount of about 6 billion zlotys for the victims of the 1939-1945 period⁹⁴. One can only appreciate how negligible the payments were when taking into account the fact that Poland was the most devastated country during World War II.

Moreover, it has been stressed that „none of the categories of payments was intended to fulfil specific legal claims”⁹⁵. The Germans consistently avoided using the term „compensation”, always indicating that all those limited benefits had been paid on a voluntary basis (*ex gratia*) as a form of humanitarian aid. As was emphasised by Jerzy Sułek, „The FRG took on moral and political responsibility for Nazi crimes, but not legal responsibility in the sense of international law”⁹⁶. Payments were always preceded by political agreements, which were, as a rule, the result of tough negotiations. In general, there was a lack of political will on the German side to deal with the criminal past with respect to Poland also on the material level.

⁹⁴ This amount has recently been given by J. Barcz, *Odszkodowania wojenne od Niemiec dla Polski po upływie 70 lat od zakończenia II wojny światowej w świetle prawa międzynarodowego*, „Państwo i Prawo” 11/2017, p. 30 (estimates quoted in accordance with Sułek’s calculations).

⁹⁵ *Ibidem*.

⁹⁶ J. Sułek, *Na drodze do porozumienia i pojednania z Niemcami. Wybór tekstów z lat 1989-2009*, Warsaw 2009, p. 319 (originally published in: „Przegląd”, 7 September 2008).

The political stance maintained by the Federal Republic for several decades caused „many categories of victims of the Third Reich from Poland to remain without any compensation. Either they died and their heirs did not obtain anything from Germany, or, for various formal reasons, they did not meet the requirements set by the German side”⁹⁷.

⁹⁷ *Ibidem.*

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