



COMMISSIE Individuele
TEGEMOETKOMING Slachtoffers
WOII Transporten NS

Advisory Report of the Committee on Individual Compensation for Victims of WWII Transport by NS

June 26, 2019



Introduction

During the Second World War, Dutch Railways (hereinafter 'NS') was instructed by the German occupier to transport more than one hundred thousand people from the Netherlands to the country's borders, destined for concentration and extermination camps outside the Netherlands. NS sent the occupier invoices for this. Many of the deportees were killed in these camps. NS regards its cooperation with these deportations to be a black page in the history of the company.

In recent decades, often in consultation with organisations dedicated to victims of war, NS has therefore paid a great deal of attention to collectively commemorating, honouring and learning from the suffering inflicted on so many during this period.

On 27 November 2018, on moral grounds, NS decided, in addition to these collective forms of recognition, to make individual financial compensation available to those most directly affected by its actions, namely those who were transported by NS on behalf of the occupying forces to the camps at Westerbork, Vught or Amersfoort and from there were put on transports to concentration and extermination camps outside the Netherlands. This initiative is the result of a number of conversations that Holocaust survivor Salo Muller, both of whose parents died in the camps, has had with NS in recent years. Mr Muller emphatically drew attention to the importance of individual recognition of the role played by these transports during the Second World War and the suffering they caused. NS fully supports this initiative and for this reason set up the 'Committee on Individual Compensation for Victims of WWII Transport by NS' in January 2019. The Committee consists of the following members: Job Cohen (chairman), Ellen van der Waerden and Lilian Gonçalves-Ho Kang You. The Secretary of the Committee is Eva van Ingen. This independent Committee was given a twofold task when it was established:

1. The publication of an advisory report to NS on the question of how individual compensation for survivors and next of kin of the transports described above during the Second World War can take shape.
2. Ensuring the actual implementation of the scheme.
To this end, NS has set up the Foundation for Individual Compensation for Victims of Second World War Transport by the NS ('Stichting Individuele Tegemoetkoming Slachtoffers WOII Transporten NS'), and has asked the members of the Committee to form its board.

This Advisory Report answers the first question put to the Committee, namely how an individual scheme to be adopted by NS for the benefit of those transported at the time and their surviving relatives, can be given form.



1. Advisory task of NS

When establishing the Foundation, NS formulated the following scope as regards the group(s) that should qualify for the individual scheme to be drawn up: *'(...) those most directly affected by its actions, namely those who were transported by Dutch Railways (NS) on behalf of the occupying forces to the camps at Westerbork, Vught and Amersfoort and from there were then put on transports to concentration and extermination camps outside the Netherlands by the occupying forces.'*

At a later stage, NS explained this scope in more detail at the request of the Committee: *'(...) The target group of the compensation scheme includes the following persons:*

- a. the surviving survivors of the Transports. This group concerns people who were transported from the Netherlands during the Second World War with the Transports to said camps, who returned after the war and are still alive today,*
- b. the surviving widows or widowers and the still living children of those who were transported to the concentration and extermination camps with the Transports and did not return from them.*

The above list is included in the Articles of Association of the Foundation. It has been added to this list that the Board of the Foundation may advise NS to make funds available to persons other than those referred to under a. and b. above. It goes without saying that any others must also have been transported with the Transports.

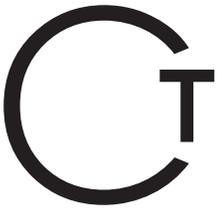
*NS's desire to pay compensation is based on the fact that NS operated extra/special trains on behalf of the occupying forces with the aim of transporting people to the extermination and concentration camps. In other words, trains that were operated specifically for the purpose of the programme of ethnic cleansing of the occupier (which involved, in particular Jews, Roma and Sinti – these people/groups have been documented by the occupier). That is, trains for which NS invoiced the occupier.
(...)*

When asked, NS explained in more detail that 'programme of ethnic cleansing of the occupier' meant genocide, more specifically, the persecution of Jews, Roma and Sinti with the aim of the occupier to exterminate them as a population group. NS did not provide the Committee with any indication or range concerning the amount of the compensation in advance.

2. Considerations of the Committee with regard to its advisory task: scope of the scheme and amount of the compensation.

At the start of its work, the Committee was well aware that the design of a scheme that fulfils NS's intentions and can also be accepted by those involved as 'appropriate and reasonable' is an extraordinarily complex, if not almost impossible, task.

This applies in the first place to determining the scope of the scheme. There are many different groups and individuals who suffered during the war because of the actions of the occupying forces. Where these persons were transported by rail on the instructions of the occupying forces, NS was involved in this. This also concerns groups and individuals who



do not fall within the contours of the scope given to the Committee, but who often have had to deal with a great deal of suffering during, but also often long after the end of the war, sometimes up to the present day. The exclusion of certain groups from this scheme may therefore seem incomprehensible to those concerned and their surviving relatives. The Committee is very much aware of this, but in accepting its task it has also taken NS's defined scope and intention as its starting point. The Committee will return to this point in section 4.1

It is also extremely difficult to answer NS's request for advice on the amount of the individual compensation. After all, how can a sum of money be used to respond to the suffering inflicted, and what would an 'appropriate' sum even look like? The Committee is convinced that there is no reasonable or appropriate amount of money that can compensate in any way for the suffering inflicted on the persons covered by the scheme. Therefore, there can be no true 'compensation'. The Scheme concerns 'reparations', which must be seen as a moral gesture by which NS wishes to express the recognition of its share in the individual suffering inflicted by the occupying forces on those involved and their direct surviving relatives.

3. The Committee's approach

In order to arrive at its opinion on which groups should be covered by the scheme and the level of compensation that should be granted, the Committee followed two tracks.

3.1. Consultations

The Committee contacted historians and researchers working at the NIOD Institute for War, Holocaust and Genocide Studies, the Nationaal Archief (the national archives of the Netherlands) (in which a former archivist of the Netherlands Red Cross was also involved because of the recently transferred archives from the War Aftercare Department), and the Camp Westerbork Memorial Centre. They were asked about the historical context of the transports to camps inside and outside the Netherlands, the different groups that came into contact with them, the number of people involved within those groups that might now be able to apply for the Scheme, and possible ways that these organisations could support the Committee in processing applications during the implementation phase. Information was also obtained from Stichting 1940-1945 and the Sociale Verzekeringsbank (Social Insurance Bank, SVB).

In this way, the Committee has attempted to arrive at a well-founded picture of which groups fit within the limits set by NS and how many people could approximately make use of this Scheme. As regards the latter aspect (number of entitled people), Statistics Netherlands (CBS) carried out a further analysis at the Committee's request.

The Committee has chosen to involve only the above-mentioned experts in its work. Consultation with interest groups, representatives of stakeholder groups and people



who wanted to convey their personal history was therefore not initially sought. The Committee did, however, meet with Salo Muller, initiator of the Scheme to be drawn up, and his adviser, L. Zegveld, LL.M. The Committee also held a number of meetings with NS directors during the advisory period in order to inform them of the progress and to ask for clarification of the preconditions and terms of reference that NS provided to the Committee, in particular – as stated above under section 1 with regard to the scope of the Scheme.

At a later stage, the Committee did seek contact with some representatives of relevant groups. The aim was to inform them of the broad outlines of the draft opinion that was ready at the time, to hear their views on it and to involve them in the implementation of the Scheme in order to make it as effective as possible as soon as it opens up.

The Committee experienced these discussions as constructive and helpful in finalising its advice.

During these interviews, the Committee was asked, among other things, to specifically consider those transported who did not survive the camps and did not have a spouse, children, or were still children themselves when they died. These war victims are not eligible for the Scheme. Recognition for their suffering and fate was requested of NS. In this context, some of the consulted representatives specifically suggested that consideration should be given to carrying out an in-depth investigation into the role of NS in transport during the Second World War. The Committee will return to this point in section 4.1

3.2. Benchmark reparation schemes

The Committee has examined which schemes, whether established in the past or existing now, could assist in drawing up the requested opinion. To this end, the Committee has created a benchmark in which schemes are included for individual reparations for victims of the Second World War, as well as individual reparations for victims from the Criminal Injuries Compensation Fund and under the Act on Compensation for Emotional Losses (Wet Vergoeding Affectieschade), which came into force recently.¹

In drawing up this benchmark, a number of aspects were compared with each other, including:

- the group of eligible persons,
- the level of the amounts paid out,
- the conditions attached to the payments, and
- the period in which the scheme was established.

The Committee is once again aware that there is no comparable situation to the one it currently faces. A difference that makes it difficult to compare concerns, for example, the different objectives that the awarding authorities have sought to achieve with the different schemes.

¹ The Committee has relied on publicly available information and information provided by various experts



The reparation payment schemes that the Committee has examined in particular are:

- The schemes of IG Farben, Krupp, AEG Telefunken, Dynamit/Nobel, the Volkswagen Humanitarian Fund and the Siemens Humanitarian Aid Fund.
- The National Fund of the Republic of Austria for Victims of National Socialism in Austria (Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus);
- The Individual Payments reparation scheme of the 'Stichting Marorgelden Overheid' (aimed at the restitution of Jewish property);
- The Het Gebaar ('The Gesture') foundation (for the Dutch East Indian community);
- The compensation fund of the French Government.

The main aspects of these schemes are briefly set out below.

The schemes of IG Farben, Krupp, AEG-Telefunken and Dynamit/Nobel, the Volkswagen Humanitarian Fund and the Siemens Humanitarian Aid Fund

These schemes were open to victims who had worked as forced labourers during the war. Most of the payments were made in the period from the late 1950s to the early 1960s and ranged between €300 and €1,000. Some companies did not make payments until the 1980s and 1990s and these amounts ranged between €1,000 and €5,000.

The National Fund of the Republic of Austria

The group of stakeholders in this reparation scheme from 1995 consisted of the victims of National Socialism in Austria. The purpose of the payments was to express Austria's special responsibility' for the injustice inflicted on the victims. This was therefore more of a 'symbolic gesture' than compensation; the amount was in the region of €5,087. At a later stage (2001), a number of persons were also compensated for property loss or damage from another fund for a total amount of €8,630.

Maror funds

The group of stakeholders in the Individual Benefits reparation scheme of the Stichting Marorgelden Overheid in the Netherlands for the year 2000 consisted of:

- natural persons born before May 1945 from at least one Jewish parent and two Jewish grandparents on the side of this parent, and
- natural persons born before May 1945 who were persecuted or robbed because of their Jewish heritage in or from the Netherlands, as long as these persons were living in the Netherlands for some time during the Second World War and were still alive on 8 May 1945.

If these stakeholders were no longer alive at the time the application was submitted, their widows or widowers and children were eligible for a payment. It was stipulated that they were each entitled to a proportional share of the payment made of the person concerned. The amount of the individual payments was set at €10,182. In the preamble to the Reparation Payment Scheme, it was considered that the Dutch government: 'in recognition of shortcomings established at a later date in the restoration of rights after



the Second World War and in government action in this area, has, among other things, promised to make funds available in order to finally do justice to the criticism of the treatment of the victims of persecution concerned in the restoration of rights and the consequences that this had for their future existence’.

Het Gebaar (‘The Gesture’)

The stakeholders in the Individual Payments reparation scheme of the ‘Het Gebaar’ foundation from the year 2001 were the victims of the Japanese occupation in the Dutch East Indies between 1942 and 1945 with the Dutch nationality, who were established in the Netherlands before 1967. The amount of the individual payments was set at €1,822. This compensation was mainly intended as recognition of the ‘cold, formal and bureaucratic treatment’ of the victims by the Dutch government.

The French Government

The Scheme on which the Committee is required to give its advice is often compared with the payment made by France in 2014 to the United States in respect of the role played by the French railway company SNCF in the Second World War. In this case, money was made available by the French authorities as compensation for victims who were deported from France by SNCF during the Second World War. The purpose of this payment was to put an end to legal proceedings against SNCF by Holocaust survivors in the United States. Through this scheme, the French state obtained final discharge from the United States. The stakeholder group was defined as Holocaust survivors deported from France, their spouses, or heirs who were not entitled to a pension or compensation from other funds. The total amount was more than 60 million dollars (approximately 48 million euros), with the final sum per individual payment depending on the number of claimants who availed themselves of the scheme. A distinction was made between survivors, surviving spouses and heirs of survivors in the amount of the benefit.

Dutch legislation and regulations on compensation for intangible loss or damage for victims of crime.

Criminal Injuries Compensation Fund

The Committee also had a look at the Criminal Injuries Compensation Fund (Schadefonds Geweldsmisdrijven). This fund pays out compensation to be determined equitably to victims (or surviving relatives) of crimes who have not received compensation for their damage or loss in another way. These payments relate to both pecuniary and non-pecuniary loss. The Criminal Injuries Compensation Fund distinguishes six injury categories to which fixed amounts are linked. For example, persons who have suffered psychological injury as a result of the loss of a loved one as a result of murder



or manslaughter can claim a benefit in Category 3 of >€5,000. For the loss of several relatives due to murder or manslaughter, a payment in Category 4 of >€10,000 can be claimed.²

Decree on Compensation for Emotional Losses

The Act on Compensation for Emotional Losses (Wet Vergoeding Affectieschade) came into force on 1 January 2019. The Decree on Compensation for Emotional Losses sets amounts for the losses of relatives that do not consist of financial loss. The victim's partner, children and parents can be compensated for this emotional loss if the victim has died or suffered serious and permanent damage as a result of a crime. The amount of the compensation is between €12,500 and €20,000 per entitled person according to a table laid down in the Decree. The compensation must be paid by the party responsible for causing the death or serious and permanent injury of the victim.

Conclusion

On the basis of the above, the Committee concludes that:

- (1) there are no historically identical cases;
- (2) different criteria have been developed for determining the extent of intangible loss or damage;
- (3) the ranges used provide the Committee guidance in determining the amount of the reparation.

4. Findings of the Committee

4.1. Scope of the Scheme

The Committee has established that the definition given by NS with regard to the scope of the intended Scheme applies to those who have been transported from the Netherlands from the Jewish community and from the Roma and Sinti communities to concentration and extermination camps outside the Netherlands, with the aim of the occupier to exterminate them as a population group.

The Committee does not take as starting point that there should always be transit via Westerbork, Vught or Amersfoort. After all, there are (albeit to a limited extent) cases known of persons from the Jewish community who have been transported directly by rail from other places in the Netherlands to concentration and extermination camps outside the Netherlands with the aim of the occupier to exterminate them as a population group, for example from Amsterdam and the Apeldoornsche Bos.³

In addition, those from the Jewish community who were transported to Westerbork, Vught, or Amersfoort by order of the occupying forces with the aim of transporting them

² *List of Injury Categories of the Criminal Injuries Compensation Fund, 1 January 2019*

³ *Jewish mental health institution.*



to concentration or extermination camps outside the Netherlands should be eligible: collectively the 'Stakeholders'.

This also means that those who were not placed in camp Westerbork (then still a refugee camp) by order of the occupier, but by order of the Dutch government in the period October 1939 to 1 July 1942, and were not transported from there to concentration or extermination camps abroad, are not eligible for the Scheme.

On the basis of the experts and bodies consulted and its own investigations, the Committee is of the opinion that sufficient information is known about the transports carried out by NS on the instructions of the occupying forces, which gave instructions to do so for the purpose of genocide, and for which NS has sent invoices to the occupying forces. In addition, there is sufficient information on the identity of the persons who were deported to determine which persons, or their survivors, may be eligible for the Scheme.

4.2. Level of compensation

With regard to the level of compensation, the Committee has already pointed out that setting amounts is an extremely difficult task.

The benchmark shows that there are no identical cases. Each of the schemes and reparations included therein describes a unique situation that makes it extremely difficult to make comparisons between them, also because different reparations/payments were sometimes granted decades ago. The Injury List of the Criminal Injuries Compensation Fund does, however, provide points of departure for amounts of intangible loss or damage that are currently compensated to the surviving relatives of victims of a violent crime. In addition, the Decree on Compensation for Emotional Losses provides ranges for compensation of intangible loss or damage to surviving relatives in the event of death due to a violent crime.

The Committee notes, however, that the considerations concerning the amount of the sum involve the fact that although NS was an essential link in the transport to the concentration and extermination camps, it cannot be held responsible for the existence of these camps and the crimes that were committed there.

5. Opinion of the Committee

On the basis of the above, the Committee recommends that a scheme be established with the aim of providing financial compensation to concerned parties, or their surviving lineal descendants, who were still alive on 27 November 2018, the date on which NS and Salo Muller reached agreement that this scheme should be put in place.

The following section outlines who should be eligible for the compensation and how high it should be.



In doing so, the Committee has taken as its starting point the desire to arrive at a level of reparation which, on the one hand, can be described as a moral gesture, but on the other hand, is sufficiently substantial in terms of reasonableness and fairness.

5.1. Stakeholders

The Scheme will be opened to those who were transported from the Netherlands from the Jewish community and from the Roma and Sinti communities to concentration and extermination camps outside the Netherlands, with the aim of the occupier to exterminate them as a population group.

In addition, those from the Jewish community who were transported to Westerbork, Vught, or Amersfoort by order of the occupying forces with the aim of transporting them to concentration or extermination camps outside the Netherlands are eligible. Persons from the aforementioned groups are referred to below as Stakeholders. If they are no longer alive, their widow/widower or their children will be eligible for an allowance, as explained below under 5.2.

5.2. Level of Individual Compensation

The Committee recommends that the individual compensation be determined as follows:

- for the Stakeholder as described in Section 5.1 at €15,000;
- if the Stakeholder is no longer alive, for the widow/widower of the Stakeholder at €7,500;
- if the Stakeholder did not have a widow or widower, or if he or she is no longer alive, children of the Stakeholder, who are still alive may jointly qualify for a payment as follows:
 - if the oldest child still alive was born before 8 May 1945, a total amount for the children together of €7,500;
 - if the oldest child still alive was born after 8 May 1945, a total amount for the children together of €5,000.

The Scheme is always based on the situation as it was on 27 November 2018, the date on which NS decided to establish the Scheme. This means that any people who would qualify for an individual allowance on 27 November 2018, but who died after that date, shall be replaced by their heirs.

For a more detailed explanation of the above, the Committee refers to the Reparation Payment Scheme. The aim is for the Scheme to enter into force on 1 August 2019.



5.3 Collective expression of recognition

The Committee is aware that the current Scheme does not provide for two groups of transported Jews, Roma and Sinti, i.e.:

- those who did survive the war, but were no longer alive and had no partner or children, and
- those whose partner or children were no longer alive on the aforementioned reference date.

This is a substantial number, including at least the approximately 20,000 children who were put on transport during the war to extermination camps where they were almost immediately gassed.

The Committee notes that these groups are materially excluded from the scope of the scheme: they do not have any direct surviving relatives (anymore) who could be eligible for compensation. However, this does not alter the fact that recognition of their fate and NS's share in it merits explicit attention. The Committee advises NS to consider, in consultation with the groups concerned, a collective expression of recognition of the suffering and fate of the large group of transported prisoners, for whom the Scheme can no longer be invoked.

5.4 Historical research

The Committee advises NS to conduct an in-depth investigation into the role of NS during the Second World War, focusing on 'transports during the war', with a view to deepening historical insight and reflecting on its own actions during the war years.

As noted earlier, representatives of the groups consulted expressly stated that there is a great need for more information and historical insight into the role played by NS during the war.

The Committee endorses this, especially now that it has become apparent that the perspective of 'transports during the war' in its entirety has never been the subject of historical research.⁴ Investigating sources that can shed more light on the execution of transports commissioned by the occupying forces can deepen one's understanding of this episode in the history of the company, contribute to the historical perspective on the war years in the Netherlands and thus also do justice to the sentiment of other victims of the transports by order of the occupying forces who are not covered by the individual compensation on which this advice has been issued.

⁴ *The study of A.J.C. Rüter, Rijden en Staken. De Nederlandse Spoorwegen in Oorlogstijd, from 1960, only deals with this to a very limited extent.*