SOCIAL LEGISLATION IN WARTIME

The Compensation of War Victims

General Principles: I

The following article contains a comparative survey of the basic conditions for the grant of compensation to war victims, and thus forms a sequel to the articles published in recent issues of the *Review*[1] concerning such compensation in France, Germany, and Great Britain.

Although this survey is largely based on the legislation in force in the three countries mentioned, it was not thought possible to restrict it entirely to those countries. Reference will therefore be made by way of example to the solutions adopted after the war of 1914-1918 in Belgium, Italy, and the United States, whenever such reference is considered necessary to illustrate and bring out clearly the application of the principles analysed.

Legal Basis of Compensation

The legal basis of the claim of war victims to compensation is of importance not only on moral grounds but also because that legal basis has a decisive influence on the rules for the payment of compensation.

The organisation and application of the system will differ according to whether the claim is based on a concept of compensation, of recompense, or of relief; the conditions for the granting of compensation and the amount granted will vary in those three cases.

An attempt will be made below to indicate the principles underlying modern legislation concerning pensions for war victims, whether regular soldiers or persons called up for military service.

Legal Basis of the Claim in the Case of Regular Soldiers

Voluntary service with the colours, which is the situation of regular soldiers, involves the acquisition of certain rights, the extent and conditions of which are known in advance to the individual concerned. Those rights include the grant of a pension, varying with pay or rank, after a certain number of years of service. If it is impossible for the soldier to remain in the service because of

[1] Cf. *International Labour Review*,, Vol. XLI, No. 1, Jan. 1940, pp. 47-63; No. 2, Feb. 1940, pp. 152-165; and No. 3, March 1940, pp. 276-291

infirmity resulting from the performance of his duties, he may receive a proportionate pension; and similarly in the event of death attributable to his service.

A proportionate long-service pension does not correspond to the extent of the injury suffered, which is twofold: the loss of the soldier's pay and the loss of the opportunity of promotion which would have involved an increase in his pay. The proportionate pension is always less than the pay actually received at the time of the injury, and if the soldier's service ceases early in his career his pension is far from being as large as the long-service pension which he would have received after a normal period of service with normal promotion.

This system cannot, of course, be applied to conscript soldiers. As the right to a pension implies that it is impossible for the soldier to remain in the service, his injuries must be deemed incurable; moreover, the rate of pension depends on the amount of the pension for length of service and thus cannot be adapted to the severity of the injuries or to their effects on the individual's earning capacity in civil life.

In view of these facts the countries with conscript armies had introduced changes in their pension schemes even before the war of 1914-1918 so as to adapt the pensions more closely to the severity of the injuries and make them independent of the condition of unfitness for further service; this was done by an Act of 1906 in Germany, by an Act of 1912 in Italy, and by the system of discharge gratuities in France. At the present time, regular soldiers who are disabled as a result of their service have usually a choice between a proportionate *long-service* pension for the rank which they hold and the *disablement* pension provided for soldiers called up for service.

Legal Basis for the Claim in Modern Armies

During or after the war of 1914-1918 the need for providing adequate compensation adapted to circumstances for those who were sick or injured and for the survivors of those who died soon led all the belligerent countries to establish their systems of compensation for war victims on a new basis. The basis selected varied according to the conception of the nation's obligation in virtue of which the pensions were to be paid. This obligation could be considered: (*a*) as a debt of gratitude or remuneration for services rendered; (*b*) as an obligation to grant relief, based on the right of every individual to live and on the interdependence of all members of society; (*c*) as an obligation to make good the injury suffered, this obligation deriving from the conception that no citizen should be required to contribute more than his fair share in the service of the community; (*d*) as an obligation derived from the conception that the State is responsible for all its acts, including the acts of the Government.

National Gratitude: Remuneration for Services Rendered.

The nature of the services rendered by combatants may lead the authorities to grant pensions as an expression of the gratitude

of the nation to those who have defended its property and its freedom. These benefits are then considered either as remuneration for services rendered or as the payment of a debt owed by the nation. The basis for calculating the allowance would be the extent of the services rendered, no account being taken of the injury suffered by the individual. But the pensions paid to war victims are not intended as remuneration for a service which, in the case of combatants, cannot be assessed; on the contrary, they are intended to provide compensation for some injury. The injury can be attributed to the services rendered, but its extent has no connection with the duration or nature of those services.

If the concept of remuneration or recompense is taken as a basis for the claims of war victims it provides no definite basis for determining the amount of the compensation, since the obligations arising out of these concepts depend not on the extent of the injury but on the value of the individual's services. The only influence that these concepts might have would be a subsidiary one on the amount of the basic pension, which must be justified and assessed in the light of other principles.

Relief Based on Social Solidarity.

The conception of the benefits to be granted to war victims as being in the nature of relief is rooted in the obligation of the community to assist persons who are not capable of self-support and if necessary to provide them with the whole of their livelihood. This conception of the claim to relief as determining the liability of the State towards war victims is based, in part at least, on a criterion that has no connection with the ideas of charity or pity. The obligation to grant relief may be considered as deriving, on the one hand, from the right of every individual to live and, on the other hand, from the fact that it is in the interests of the community not to overlook this right, the infringement of which would involve social disorders and demoralisation. Thus relief cannot be considered as alms but rather as the payment of a social debt; the right of the individual to live and the resulting obligations of the community form a part of positive law. This conception, which is sometimes laid down in modern constitutions, means in practice a steady development of legislation providing free pensions for the aged, for widows, and for persons unable to work who are in necessitous circumstances. The principle of the interdependence of all members of society and the consequent obligation to grant relief provides a sound basis for determining the obligations of the State towards war victims, both as regards the right to compensation and as regards the amount of the pensions to be paid. The extent of these obligations will depend on the needs of the claimants, and the amount of the pension must be such that it makes up the amount of income considered necessary for livelihood. The obligation to grant relief will cease wherever, as a result of any circumstances, the claimant is able to exist without the assistance of the community. This system does not grant any definite right to war victims who are not wholly or partly deprived

of their ability to earn a livelihood, even though they have suffered injuries to their health or a loss of property. This means that the scope of relief measures may be very limited.

In determining the needs which justify the grant of relief by the community the authorities may, it is true, grade claimants and make distinctions not only according to the habits, mode of life, and social environment, of the individuals, but also according to the circumstances rendering them incapable of earning a living.

The scope of the measures for the benefit of war victims may thus be extended; in defining necessitous circumstances account can be taken of the obligation of the community to provide the individual with a certain standard of living or to enable him to develop his faculties to the full. Pensions may be granted on a liberal scale, and war victims may be given facilities for their return to suitable employment; but there is no recognition of the right to full compensation for the injury suffered. In affording relief, the community is, by its voluntary act, taking account of the social fact of interdependence; this act is itself a social fact, which transcends the individual and grants him certain compensation without actually recognising his right to such compensation, since the amount depends not so much on the extent of the injury as on the extent to which the community considers that it should and can provide compensation

Compensation to Restore Equality of Sacrifice.

Though the concept of solidarity, when invoked merely as a basis for relief, cannot confer on the individual a right to compensation for any injury received in defending the community, it can confer such a right if it is taken as implying equality of sacrifice for all citizens and not simply as an obligation on the part of the community to help those who have no means of livelihood. The principle that no citizen should be required to make greater sacrifices than his fellows to the State is one of the most definite juridical applications of the idea of solidarity. When the services required by the community of an individual involve an injury greater than the sacrifice required of all other members of the community, the obligation arises for the community to distribute over all its members the burden of the injury in question in order to restore the equality of sacrifice. If founded on this principle, legislation to make good loss caused by war, whether the loss be material damage or bodily injury, is a compensation measure in the strict sense; those affected have a claim to compensation which rests on their rights as individuals. It is the existence of the injury and not the situation of the injured person which creates the right; the use to which the indemnity is put is no concern of the State.

Liability of the State for Damage Resulting from its Acts.

The claim of war victims to compensation may also be based on the liability of the State in connection with the operation of a public service. This liability of the State does not imply any idea of fault. The question is, out of what funds an injury resulting from the

working of a public service should be made good. Legislation concerning civil liability is not legislation of the arbitrary type, brought into existence simply by the will of the legislative authorities ; it is a direct and necessary consequence of a higher principle of equity dominating the whole system of law on which organised societies are founded. This principle has also penetrated into modern public law and does not permit any one citizen to suffer more than others from the acts of the public authorities, which are supposed to be carried out in the interests of the community as a whole. Hence, the principle of the liability of the State for the consequences of governmental acts links up with the idea that no citizen should make greater sacrifices than his fellows for the benefit of the community. These two ideas are based on the same conception of the equity to be observed in the relations of the State to the individual.

If State liability is taken as the basis of the claims of war victims the amount and nature of the benefits due to them can be clearly defined. They are entitled to complete compensation for the injury suffered as a result of national defence ; the only obstacle which could prevent the exercise of this right would be material impossibility.

Basis of the Claim to Compensation in National Laws

The consequences of the theoretical obligation of the community to grant compensation are never fully admitted in legislation. Whether the right is formally laid down (as in France) or merely admitted implicitly (as in Belgium, Germany, Italy, the United States, etc.) a compromise is always effected between the right of the individual and the interests of the community—between the obligation to grant compensation and the financial possibilities of doing so. The fear of imposing an undue burden of expenditure on the State is doubtless the main reason why practically every country has rejected the solution of paying pensions equivalent to the actual loss of income. Great Britain and South Africa were the only countries which, in their legislation at the end of the war of 1914-1918, allowed the claimant to choose a pension equal to the loss or decline of income from his occupation, but this option has not been retained in the new British legislation, and at the present time it is usually the cost of living—that is, the sum required to provide a livelihood for the disabled person—which is taken as a basis for compensation. The amount payable is sometimes a fixed sum (as in the United States), and sometimes varies under the influence of the concepts of remuneration or recompense for services rendered (as in Belgium, Canada, France, Great Britain, and Italy), but the basic allowance is always determined by the cost of living. To fix pensions according to the cost of living, however, is one of the fundamental characteristics of systems based on the idea of public relief ; they aim at providing for the subsistence of war victims who are unable to work and, by definition, the pensions provided must enable the pensioner to maintain a specified standard of living.

Thus in all the laws, no matter what their basic principles may be, the compensation is, in practice, a compromise, only partly covering the loss actually suffered by the claimant, and in this respect there is no distinction between relief measures and compensation legislation.

On the other hand, whatever may be the method adopted for calculating the compensation and the relationship between the compensation and the loss suffered, if the purpose is to make good some injury no condition as to necessitous circumstances can be imposed. So long as the claimant has suffered an injury attributable to this service, he is entitled to compensation.

The benefit of relief measures, on the contrary, must, by definition, be reserved for persons who are unable to maintain, without the help of the community, what is considered to be a reasonable standard of living. That is the fundamental distinction between relief measures and compensation.

On this basis, it is possible to classify as compensation legislation the laws in force in France, Germany, and Great Britain, and those adopted after the war of 1914-1918 in Belgium, Italy, the United States, etc.

It is true that this classification is not strictly accurate in all its implications, because in all those countries the payment of certain benefits (for example, parents' pensions) is subject to conditions of economic dependence or necessitous circumstances. On the whole, however, it accords with the principles underlying the legislation of those countries, which, generally speaking, do not make their pensions dependent on the economic situation of the claimants, as was done, for example, in the Central European countries after the war of 1914-1918, when the benefits granted to war victims were systematically administered as part of the poor relief measures of the country, no benefits being paid if the claimant had a substantial income from another source.

Conditions for Claiming Compensation

The right of war victims to compensation is affected in the first place by the rules defining the military formations or services to which the legislation applies.

In the present article, however, it was not feasible to make a comparative study of the rules laid down in the different countries to define the scope of their compensation or pension laws. It would be impossible to assess exactly the implications of these rules without considering whether the provisions in question cover all persons liable to suffer one of the injuries mentioned in the legislation or not. That would involve a study of the various types of military organisation adopted in each country during the war and a comparison of the military organisation with the scope of the pensions legislation. Such an enquiry would go far beyond the scope of this study, and in any case the conclusions reached would have little more than academic value, since in most cases injury caused by the war to persons not covered by the military pensions legislation is covered

by special provisions concerning civilian war victims. The conditions under which persons falling within the scope of the legislation may claim compensation will therefore be considered without any reference to the clauses defining those persons. Any differences that may exist between the national laws as to their exact scope will be ignored.

The acceptance of the claims of ex-service men or their survivors for compensation for injury suffered is always dependent on the origin and severity of the injuries, which must be attributable to the soldier's service and reach a specified degree of severity, with sufficiently marked consequences, before compensation can be granted.

In most of the laws, as was pointed out, the right to certain benefits depends on the claimant's being actually in want, or at least in straitened circumstances.

As a general rule, also, claims for compensation are not accepted as valid unless they are submitted within a certain time limit, beyond which the ex-soldier or his survivors are precluded from making any claim.

The above conditions do not, of course, exhaust the list of those that are laid down for the granting of compensation ; there are also conditions of nationality, age, family situation, marriage, etc., which apply more particularly to survivors. These, however, are subsidiary conditions, which may affect the extent of the rights of war victims once they have satisfied the general conditions concerning the origin or severity of the disability, the time limit for submitting claims, and the means test, if any. The present study will deal only with the general conditions.

Origin of the Disability

The conditions concerning the origin of the disability include : (1) the existence of a relationship of cause and effect between the soldier's service and the injury or disease found to exist either during his service with the colours or within a time limit fixed by the legislation after his discharge ; (2) the existence of a medical relationship between the disability attributable to his service and that on which the claim to compensation is based.

To supply proof of a relationship of cause and effect between the soldier's service and his disability does not necessarily imply that the whole of that disability must be shown to be due to the strain or danger of his service. The service may merely have aggravated a pre-existing condition, in which case one must consider whether it is necessary to determine what fraction of the disability is due to his service and whether compensation should be paid for that fraction only. The special case of a condition aggravated by the soldier's service will be dealt with separately below.

Attribution to Service of Disabilities Occurring within a Statutory Time Limit.

Disabilities from which a soldier is found to be suffering while serving with the colours or before the expiration of a certain time

limit laid down in the legislation may be legally presumed to be attributable to his service or may be accepted as such only in so far as the existence of a relationship of cause and effect between his service and the disability can be reasonably proved.

Legal presumption of imputability. When the legislation establishes a legal presumption that the disability is attributable to service, any disability which is discovered during the period of presumption must be considered as due to the soldier's service.

When a man is accepted for military service, he is deemed to be in good health and fit to bear the fatigues and dangers involved. As soon as he is under the supervision of his commanding officer, he has no possibility of avoiding the obligations and risks imposed on him. In return for this presumption of good health at the outset and subordination to a military authority, the soldier and his survivors are given the guarantee that any accidents occurring during his period of subordination to the military authority will be considered as due to his service, even if they were brought about by chance or by inadvertence or some fault on the part of the soldier himself.

Diseases contracted or aggravated during the period of service are deemed to be due to the fatigue and state of low resistance resulting from the general obligations imposed on the soldier. Even diseases which appear after the ex-soldier has ceased to be under a military authority may be presumed to be attributable to his service. If one considers that the strain of the service is such as to reduce the soldier's powers of resistance to disease, it must be concluded that this condition continues for a certain time after his discharge and therefore that diseases contracted or aggravated during that period after his military service may nevertheless be attributed to his service.

In those circumstances, it is unnecessary to show proof of a relationship of cause and effect between the disability suffered and any fact or group of facts connected with his military service. The mere certification of some disability during the period of presumption is sufficient for that disability to be attributed to his service.

If the legal presumption thus established is conclusive, any disability that exists must be attributed to the soldier's service. On the other hand, a conditional legal presumption can be rebutted by proving that in the special circumstances the infirmity cannot be considered as attributable to his service.

The evidence adduced cannot destroy the legal presumption unless it definitely shows that the hypothesis accepted by the legislation cannot apply to the particular case.

If the facts advanced in opposition to the legal presumption merely create in the mind of the judge a more or less intuitive, and therefore arbitrary, counter-presumption, this cannot suffice to overthrow the presumption established in the law. A mere possibility cannot destroy the legal presumption.

The question whether proof to the contrary has been given is for the judge to determine in each case. It is a point of fact in respect of which the judge's decision cannot be quashed.

In any case, a mere interpretation of medical theory, which is in a constant state of evolution, is not sufficient to overthrow the legal presumption ; it cannot, of course, be a question here of anything other than an interpretation of medical theory, for there can be no ignoring the soundly-established concrete data of science. If science is sufficiently advanced to permit of undoubted proof to the contrary, that proof should be sought and exhibited. In short, when the legal presumption is conditional it can be rebutted by a scientific fact but not by mere medical opinion. [1]

It is only in very exceptional cases that provision is made for conclusive presumption ; such provision is found only in the United States, where it applies only to disabilities reducing the claimant to a state of indigence. Subject to that reservation, the legal presumption of imputability is or was merely conditional and liable to be overthrown by proof to the contrary in Canada, the United States (for infirmities other than those mentioned), France, Italy, and Belgium.

In Canada the presumption applied to all injuries detected prior to the demobilisation of members of the Canadian Expeditionary Forces.

In the United States the period of legal presumption expired on 1 January 1925 for those who took part in the war of 1914-1918 and were suffering from any neuro-psychiatric infirmity, tuberculosis, etc.

In France, the Decree of 20 January 1940 lays down that infirmities resulting from wounds noted before the soldier is discharged entitle him to a pension unless it can be shown that these wounds were not due to war action or to accidents sufferred as a result of and in the course of his service, the burden of proof resting on the State.

Unless the State can show proof to the contrary, any disease contracted by a soldier on active service is presumed to be due to his service if its existence is discovered within a certain time limit.

This presumption of origin applies to diseases discovered : (*a*) during any period when the soldier or seaman in question is on active service ; (*b*) within the 30 days following any such period ; (*c*) before the individual is discharged in the case of a soldier or seaman who has been on active service for 90 days, whether consecutive or not.

According to the Decree, claimants in whose case there is no presumption of origin are free to advance proof of any kind that their infirmities are really attributable to their war service. Conversely, when there is a presumption of origin the State may bring any kind of evidence to prove the contrary.

Italian legislation excludes from the legal presumption of imputability to service any injuries suffered by soldiers serving in offices or engaged in sedentary work outside the zone of operations.

In Belgium the presumption extended to all injuries discovered within the statutory time limit, but the rates of compensation

[1] Charles VALENTINO : *La présomption d'origine* (Paris, 1927).

differed according to whether the infirmity or death was actually due to the performance of the soldier's duty—that is, was caused as a result of his service—or whether it was merely presumed to be attributable to his service because the injury was discovered within the statutory period.

All injuries noted during the period of service or during the six months following the discharge of the soldier or within a period of six months from the date of promulgation of the Act of 25 August 1920 were considered as being attributable to his service. All injuries suffered by men who had taken part in the war of 1914-1918 were therefore presumed to be attributable to their service if they were discovered before 25 February 1921. Similar rules applied in the case of death.

Disability attributable to service in the absence of presumption. When there can be no legal presumption that the disability is attributable to service, either because the infirmity is not discovered within the statutory time limit or because the legislation makes no provision for such a presumption, the ex-soldier or his survivors must as a rule " prove " that the condition in question is due to the period of service.

In Germany the existence of a relationship of cause and effect between the service and the disability is taken to exist if it seems probable. The claimant must therefore show in the first place that his injuries were probably due to his service; the legislation does not require him to bring formal proof nor does it state what conditions constitute probability. This is therefore a case of mere presumption left largely to the personal opinion of the official or magistrate responsible for dealing with the case.

In Great Britain, on the other hand, the legislation would seem to require proof of a definite relationship of cause and effect between the service and the disability. It stipulates that there must be definite direct or collateral evidence sufficiently good to leave no doubt in the mind of the certifying authority that the disability or its aggravation is in fact attributable to war service.

The same obviously holds good in countries in which there is a legal presumption if for any reason this legal presumption does not apply to the disability in question because it is reported too late or because of the nature of the service, etc.

In the absence of any legal presumption, then, the question of the influence of the service on the origin or development of any disability remains a question of individual opinion or conviction as to the value of the evidence advanced in support of the claim.

When the relationship of cause and effect is sufficiently clear the disability may be presumed to be attributable to service. It would seem that absolute proof of a direct relationship of cause and effect is scarcely ever required, but this type of presumption, which is left to the intelligence and wisdom of the official or magistrate responsible, is very different from the legal presumption discussed above. In this case it is the claimant who must show that there is sufficient evidence of a relationship of cause and effect between his service

and his disability. He must convince the responsible official that any affection from which he suffers was brought on by his service. Thus, the personal views of the official and his convictions arising out of those views are the decisive factor.

Medical Justification of the Claim; Time Limits.

The existence of a disability recognised as attributable to service is not a sufficient reason for the payment of compensation unless it can be shown that the disability in question was responsible for the state of disablement or the death in respect of which the pension is claimed.

In the case of both death and disablement a relationship must be shown to exist between this event or condition and the disability caused by the claimant's service. This relationship must be proved by certificates from a doctor or doctors who treated the case or by some other evidence sufficient to convince the administrative or judicial authority that the relationship exists. It is always the claimant who is responsible for proving the medical relationship of cause and effect, the existence of which is a matter of fact left to the responsible authority to decide.

The fact that the widow of a seriously disabled man is entitled to a reduced pension (reversionary pension), even if his infirmities were not responsible for his death, does not invalidate the above rule. For in this case the widow's claim would seem to be based mainly on the desire to provide some compensation for the fact that the disabled man was unable as a result of his infirmities to earn enough to provide for the future of his family. That desire is probably supplemented by a certain presumption that the man's physical resistance was reduced by his infirmities, but this would seem to be a very secondary consideration. The widow's claim to a reversionary pension is based much more on the economic consequences legally attributed to her husband's infirmities than on any presumption of reduced powers of resistance. That is why under the laws of certain countries the widow of a seriously disabled man may claim either a reversionary pension (in France) or relief in place of the pension (in Germany), even although it can be shown that the infirmities resulting from his service had no influence whatsoever on his death.

This payment of a pension when no relationship of cause and effect can be shown to exist between the death or disablement and the service is exceptional, and is to be met with only in the case of the reversionary pension to a widow when death cannot be attributed to the husband's service. This right is rarely granted, and the new British legislation, for example, does not contain any such provision, although the legislation applying to victims of the war of 1914-1918 did so.

The obligation to establish a medical relationship between the death or disablement and the physical lesion resulting from service is thus a general rule governing the right to a pension, there being apparently only one exception: French legislation provides

that if death occurs within one year of the date on which the soldier returns home it is deemed to be due to a disease or wounds attributable to his service unless evidence can be brought to the contrary.

The second obligation imposed on claimants is that they must make application for their pension within a certain period from the date of their discharge or from the date of origin of their infirmities. The only justification for this rule is that it is difficult, if not impossible, in many cases to establish a relationship of cause and effect between a man's service and his infirmities if the latter do not appear until several years after his discharge. On the other hand, it may be argued that although it is difficult or even impossible to prove such a relationship because of the long period that has elapsed this is not a sufficient reason to deprive the claimant of his right to a pension. Although the first manifestations of the infirmity do not appear for some considerable time, the medical relationship between an affection due to service, the origin of which is not contested although no claim was based upon it at the time, and certain disorders occurring at a much later date may be perfectly clear. It is the claimant who is always responsible for showing the relationship between the occurrence which has been recognised as due to his service (by presumption or by legal proof) and the condition on which he bases his claim. However difficult it may be for the claimant to supply such proof, he should have the possibility of asserting his rights, and such a possibility would not open the door for unfounded claims because it is always the administrative or judicial authority who must decide whether the condition in question is in fact attributable to the claimant's service.

Most laws, however, lay down time limits beyond which war victims cannot make good their claims.

In the case of disabled men, the period for submitting claims for pensions after the war of 1914-1918 expired on 31 December 1928 in Belgium, 1 April 1922 in Germany, 31 December 1923 in Italy, etc.

In France applications for a pension must be submitted within five years of the date on which the infirmity is detected or on which the claimant's service comes to an end. If, however, the infirmity is due to wounds resulting from military action or accidents suffered as a result and in the course of service there is no time limit for claiming a pension.

In Great Britain, under the present regulations, the time limit is reckoned from the date of termination of the soldier's service or the end of the war, whichever is the earlier. The claim must be submitted within seven years, but this is not an absolute limit, as the responsible Minister may in certain duly justified cases accept later claims.

In the case of survivors, applications for pensions are always in order if submitted within the time limits mentioned above in connection with disablement claims. In all other cases, the claim must be made within a certain period following the date of death. Widows and orphans may, as a rule, claim pensions irrespective of the period that elapses between the soldier's discharge and his death.

In Great Britain, however, widows, orphans, and parents, are not entitled to pensions unless death occurs within seven years from the date on which the soldier is wounded or from the date of his discharge in the case of illness. It is a question here of the latest date, not for the submission of a claim (for which no time limit is laid down), but for the event of death in order that it may create a valid claim.

With regard to parents, the time limit begins at the date on which they satisfy the conditions of age and necessitous circumstances required by the legislation. The only exception to this rule would seem to be in Germany, where applications for parents' pensions must as a rule be submitted within three years of the death of the person in respect of whom the claim exists.

Aggravation of Existing Disability Attributable to Service.

The strain or danger of war service may not only give rise to entirely new infirmities irrespective of the previous state of health but may also affect the development of existing affections or infirmities.

If compensation is to be paid for an infirmity aggravated by war service the aggravation must be mainly attributable to the claimant's service with the colours, since the right to compensation depends on the presumption of a relationship of cause and effect between the claimant's service and his injury.

If an aggravation of an infirmity after the soldier's discharge is obviously due to the normal development of a state of health which was not affected by his service, either because his service was short or because the nature of the affection renders such an influence impossible, no compensation is due. When the presumption of imputability to service applies to aggravations of a disease noted within a specified period (as was the case in Canada, the United States, Italy, and Belgium, and also in France under the scheme originally established by the Act of 31 March 1919), the presumption is rebutted if it can be shown that the aggravation in question merely represents the normal development of a state of affairs which existed when the soldier entered the army. On the other hand, whenever war service can be considered as having been the real or presumed cause of the aggravation, the question arises whether the compensation should cover the whole of the injury suffered or only that fraction due to the influence of war service.

In the event of death the degree to which the disability was aggravated by war service is never separately assessed, and compensation is paid as if death were actually due to infirmities contracted while on service.

In the case of disablement the situation is different, and two systems exist.

The first system follows from the position that it is impossible in practice to discriminate between those consequences of a disease which are probably due to war service and those representing the normal evolution of a pre-existing state of ill-health: only

the total disability can be assessed. Consequently, certain laws, such as those of Great Britain and Italy, expressly or implicitly provide that compensation must be paid for any disability only partially due to war service as if it were wholly attributable to the strain and danger to which the soldier was exposed while with the colours. The same system existed in France under the original scheme laid down by the Act of 31 March 1919.

On the other hand, in Belgium, Germany, the United States, and since 20 January 1940 in France, the legislation or regulations state that compensation must be proportionate to the aggravation of the pre-existing state, the degree of incapacity existing when service began being deducted from the total degree of injury.

Compensation is thus paid for the whole of the aggravation that is found to have taken place since the claimant's service began and not simply for that part of the aggravation attributable to his war service. The Belgian, German and United States legislation further provides that pre-existing disabilities cannot be deducted from the total disability unless they were officially recorded when the claimant was enrolled.

French legislation adds that a pension payable in respect of the aggravation of a pre-existing infirmity must be based on the total percentage of invalidity resulting from the earlier infirmity and its aggravation if that percentage is 60 per cent. or over.

The second system, which was formerly applied in Austria, is based on exactly the opposite conception. The view is taken that only that fraction of the aggravation of the disability which can be attributed to war service can be taken into consideration in determining the compensation. In the case of a pre-existing disease the aggravation must be divided into two parts, the one being assumed to be due to the normal development of the disease and the other attributable to war service. There is no need to point out the great hardships that may result from such a conception.

Minimum Degree of Loss Suffered

Whatever method may be adopted for assessing the injury resulting from death or disablement, the compensation is always based on some economic loss; it is impossible to assess in terms of money and compensate with a pension the suffering caused by the loss of a husband, a father, or a son, the amputation of a limb, blindness, or the ravages of a disease. The injury suffered must therefore be assessed in its material aspects.

The basis for the payment of compensation is always the loss of income resulting from the death of the family breadwinner, or the reduction (actual or presumed) in his earnings in the event of incapacity. But the conditions under which a sufficient degree of material loss is considered to exist vary considerably from legislation to legislation, and even for different categories of claimants within the same country. The provisions applying to disabled persons and to survivors will be examined successively.

Disabled Persons.

Infirmities involving a very slight loss of working capacity are considered as relatively unimportant, since physiological and occupational adaptation can quickly take place and, in the end, the injured person suffers no appreciable loss. In accordance with this principle most laws grant a pension only when a certain minimum degree of incapacity is shown to exist; this may be calculated either in terms of actual loss of earning capacity or in accordance with a schedule showing the average degree of incapacity for work involved in various types of infirmities.

The minimum is fixed at 25 per cent. incapacity in Germany and 10 per cent. in the United States. In countries in which a schedule is applied showing the average percentage of loss of working capacity for each type of injury, the minimum for pension purposes is sometimes 10 per cent. (in Belgium and, in the case of infirmities resulting from a wound, in France) or 20 per cent. (in Great Britain and, in the case of infirmities resulting from disease, in France) or about 30 per cent. (in Italy). It should be added that in Great Britain and in Italy, when an infirmity involves a degree of disablement lower than the minimum for pension purposes, a lump sum or a temporary pension during the period of physiological and occupational rehabilitation are, or have been, granted.

Survivors.

In the case of survivors, as was mentioned, the material loss is the decline in income resulting from the death of the family breadwinner; the degree of severity of the loss therefore depends on the extent to which the former soldier contributed towards the maintenance of the dependants.

In practice, the payments made to survivors rarely depend on the actual amount of the contribution of the deceased towards the needs of his family. The amount of that contribution is presumed by the law according to the age and capacity or incapacity for work of the survivors, the number of persons maintained by the deceased, his rank or occupation, and the degree of relationship to the deceased.

In the case of the widow and children, it is generally assumed that they were economically dependent and have therefore suffered a material loss. The age above which children are no longer conclusively presumed to be dependent is fixed at 16 in Germany, 18 in France, and 16 or 18 in Great Britain, according as the child's father was a soldier or an officer.

After the war of 1914-1918, however, an exception to this rule was made in most of the central European countries, where widows' and orphans' pensions were granted only when the claimants were in necessitous circumstances.

In Belgium, France, Germany, Great Britain, Italy [1], and the United States, on the other hand, the right to a widow's or orphan's pension does not depend on the material situation of the claimant.

[1] Provisions applying to victims of the war of 1914-1918.

The position is different for parents and collateral relatives, who may never claim benefits unless they are in necessitous circumstances or were at least economically dependent on the deceased.

It should be remembered that in Germany (supplementary pensions) and in Great Britain (special pension rates for widows incapable of self-support or with family responsibilities, and special education grants for children) the pecuniary circumstances of widows and orphans influence the rate of benefit although they do not affect their right to compensation.

The rules for assessing the degree of economic dependence or the pecuniary circumstances in France, Germany, and Great Britain, are summarised below.

Pecuniary Circumstances

France.

The only type of benefit under French legislation which is made conditional on pecuniary circumstances is the parents' pension, which cannot be paid in full unless the income from other sources is less than 15,000 francs a year in the case of a single claimant or 20,000 francs in the case of two parents. Moreover, the parents' pension is only granted to the father and to the mother from ages 60 and 55 respectively. No age condition is imposed, however, if the parents or either of them is infirm or suffering from incurable disease.

It should be noted, however, that the supplementary assistance which may be granted to war victims in addition to the statutory benefits—a particularly important factor in the case of orphans and the children of seriously disabled men (wards of the nation)—is always dependent on the claimant's being, if not actually indigent, at least in straitened circumstances.

Germany.

German legislation does not insist on the existence of necessitous circumstances in the case of disabled persons, widows, or orphans, except when it is a case of granting relief because there is no valid claim to a pension or a case of granting a supplementary pension in addition to that normally due under the legislation.

The supplementary pension is payable only if the income of the claimant does not exceed a sum varying between 80 and 125 marks a month according to the place of residence, degree of loss of earning capacity, etc. This maximum may be increased to take account of family responsibilities, and certain sources of income are not included in reckoning the total income for this purpose. For example, any income earned by the widow up to 30 marks a month is exempt.

In the case of parents, the conditions concerning pecuniary circumstances are much more strict, the pension being reserved for parents maintained by the deceased and suffering from a general loss of earning capacity deemed to be not less than two-thirds, provided always that they are not entitled to claim maintenance from any other person who could reasonably provide it. Moreover,

the right to a pension may not be granted unless the monthly income of the parties does not exceed from 52 to 60 marks, according to the place of residence, when there are two parents, or 80 per cent. of those figures when there is a single parent. A mother who is fit for work but is responsible for the maintenance and education of children is deemed to be incapable of self-support. When the income exceeds the above limits or when the persons responsible for the maintenance of the parents would have considerable difficulty in meeting their obligations, parents' relief may be granted. This relief may also be provided when the condition of dependence on the deceased soldier is not entirely fulfilled.

Great Britain.

In British legislation there are quite a number of benefits which are payable only when the pecuniary circumstances call for them, but apart from parents' pensions these benefits are of only secondary importance among the various pensions and allowances payable to war victims.

The pecuniary circumstances of the claimant are taken into account for the payment of family allowances as a supplement to the disability pension, but only if the pensioner was an officer. The special education grant which may be paid in respect of any child over the age of eight years is always subject to a condition of pecuniary necessity, whether the claimant was a soldier or an officer. Similarly, the pension to the unmarried wife of a deceased soldier is payable only in the light of her pecuniary circumstances.

Parents' pensions are granted only to persons who are wholly or partially incapable of self-support and have not adequate resources.

The amount of the parent's pension is left to the discretion of the competent Minister, who fixes the amount according to the circumstances of the claimants within certain statutory limits.

(To be continued.)

Regulation of Employment in Germany

Introduction

In the issue of the *Review* of November 1939 particulars were given of the wartime measures adopted in France and Great Britain to organise the employment market in such a way as to ensure the best possible use of the available labour in the conduct of the war. In the introduction to that article it was stated that in some countries, such as Germany, where the economic system had been under the control of the authorities for some time back in accordance with a plan in which national defence was one of the dominant factors, these problems of labour supply were not new