

World Jewish Restitution Organization

Position Paper on Romanian Law No. 165/2013

September 17, 2013

Romanian Law No. 165/2013, “The Measures to Complete the Compensation Process in the Form of Restitution in Kind or Equivalent, in the Case of Real Estate Confiscated Abusively During the Communist Regime of Romania,” was passed by the Parliament on April 16, 2013 and took effect on May 20. The legislation was enacted in response to a 2010 European Court of Human Rights judgment ordering Romania to rectify its systemic failure to process claims and award restitution and compensation in a timely manner. The new law establishes new agencies, processes, and deadlines to speed restitution and compensation for existing private property and communal property claims. It moves from paying compensation in shares of the Property Fund to issuing points that can be used to purchase auctioned property or redeemed for cash.

This World Jewish Restitution Organization (WJRO) position paper reviews the legislation and discusses limitations that should be addressed by legislative amendments or through the implementing regulations. Parliament eliminated certain highly problematic provisions from earlier drafts, such as a proposed cap on compensation. However, the legislation still contains a number of problematic provisions that should be addressed:

- The legislation unfairly changes the method for determining compensation in a way that will result in significantly lower compensation.
- The law’s failure to grandfather in settled claims that were not finalized because of government inaction will cause further delays and substantial reductions in compensation.
- The law establishes too long a deadline for resolving claims already registered with the Central Compensation Commission.
- Claimants seeking to redeem their compensation points for cash will be subject to an unreasonable delay without interest or adjustment for inflation.
- Deadlines for claimants to provide supplemental documentation are too tight and do not account for delays in obtaining documents from government entities.
- The law could enable property subject to pending court cases to be auctioned.
- The ten-year delay in the transfer of properties in public use is unnecessarily long.
- The law maintains ambiguity about its application to Holocaust-era confiscations.

Additionally, the WJRO urges Parliament to pass legislation to address the following important issues not addressed by Law No. 165/2013:

- Provide restitution and/or compensation to the Jewish community for heirless Jewish property confiscated during the Holocaust.

- Compensate religious and national minorities for buildings that were nationalized and demolished in a commensurate way to the compensation awarded to individuals for such buildings under existing law.
- Clarify specific areas of ambiguity in existing restitution law.
- Establish a new period for individuals to file claims for private property restitution, and authorize submission of new communal property claims when incorrect government legal interpretations prevented claims or records of the properties were not available during the claims period.
- Limit the incentives for local authorities to delay property transfers by appealing restitution decisions.

Notwithstanding the need to amend the legislation, the WJRO recognizes that the legislation, if properly implemented, could speed the resolution of property claims. The legislation establishes multiple tight deadlines for state agencies and local and county entities. WJRO urges active and sustained engagement by the Romanian government to monitor and ensure compliance by all relevant government entities with the legislation. The WJRO also encourages the government to enforce non-compliance by any government entity with the law through the sanctions provided in chapter five of the law.

I. Background

A. Prior Legislation

Beginning in the 1990s, Romania has passed a series of laws for private and communal property restitution resulting in complex processes that sometimes overlapped or conflicted and were not efficiently enforced.

Most recently, Law No. 247/2005 sought to harmonize the administrative procedures in previous laws for restitution of different types of property. When property could not be returned, the law provided for “just and equitable” compensation based on market value using international standards. Compensation was to be paid out of a newly established Property Fund (Fondul Proprietatea) consisting of shares of certain state-owned companies. The law established the National Authority for Property Restitution (“ANRP”) and the Central Compensation Commission. The Central Compensation Commission was charged with reviewing and processing all claims decisions made by local authorities.

Delays in listing the Property Fund on a regulated market limited its effectiveness as a means for providing compensation. Emergency Ordinance No. 81/2007 enabled beneficiaries of the Property Fund to receive up to 500,000 Romanian lei in cash, with the rest payable in shares. This option was then suspended by Emergency Ordinance No. 62/2010 due to budget problems.

B. Terezin Declaration

Romania, along with forty-five other countries, approved the Terezin Declaration on Holocaust Era Assets and Related Issues at the conclusion of the Prague Holocaust Era Assets Conference on June 30, 2009.

The Declaration recognized the importance of returning or providing compensation for property taken from Holocaust victims. The Declaration “[noted] the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution.” Further, the Declaration “[noted] that the protection of property rights is an essential component of a democratic society and the rule of law, [acknowledged] the immeasurable damage sustained by individuals and Jewish communities as a result of wrongful property seizures during the Holocaust (Shoah), [and recognized] the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933-45 and as its immediate consequence.”

The Declaration emphasized the importance of addressing private property claims of former owners, heirs, or successors through either restitution or compensation “in a fair, comprehensive and nondiscriminatory manner.” The participating countries called for restitution and compensation processes that were “expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant.”

C. Guidelines and Best Practices

On June 9, 2010, forty-three countries, including Romania, endorsed the Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II (“Guidelines and Best Practices”). The Guidelines and Best Practices reaffirm the Terezin Declaration, identify principles, and provide detailed rules for countries to apply in their property restitution legislation and claims processes.

The Guidelines and Best Practices acknowledge the immeasurable damage to individuals and communities from the confiscation of their properties and notes that the protection of property rights is “an essential component of democratic society and the rule of law.”

The Guidelines and Best Practices call for in rem restitution as the “preferred outcome.” When in rem restitution is not possible, the Guidelines and Best Practices urge other solutions including “substituting property of equal value or paying genuinely fair and adequate compensation.”

The Guidelines and Best Practices emphasize the importance of an efficient, open, and fair process:

The property restitution and compensation processes, including the filing of claims, should be accessible, transparent, simple, expeditious, non-discriminatory, inter alia by encouraging solutions to overcome citizenship and residency requirements, and uniform throughout any given country. Restitution and compensation procedures should not be subject to burdensome or discriminatory costs for claimants.

Additionally, “[d]ecisions should be prompt and include a clear explanation of the ruling.” The Guidelines and Best Practices also call for swift final resolution of settled claims: “Transfer of property title or payment of compensation should be effected promptly.”

D. European Court of Human Rights Pilot Judgment

On October 12, 2010, the European Court of Human Rights issued a pilot judgment, applicable to all similar cases, in *Maria Atanasiu and Others v. Romania* holding that the Romanian private property restitution laws violated the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court held that Romania’s failure to respond to restitution claims filed under existing legislation violated the right of access to a court (Article 6 § 1 of the Convention) and that Romania’s failure to provide compensation to applicants violated the right to peaceful enjoyment of their possessions (Article 1 of Protocol Number 1 of the Convention). *Atanasiu* at 23, 32.

The Court found that Romania’s complex legislation resulted in inconsistent judicial practice and lack of legal certainty about the interpretation of the laws. *Id.* The Central Compensation Commission, charged with processing claims, lacked resources and did not have a time limit for processing claims. *Id.* The Court concluded that “it is clear from the present case that the ineffectiveness of the compensation and restitution mechanism continues to pose a recurrent and large-scale problem in Romania.” *Id.* at 36.

The Court ordered Romania to change its legislation within eighteen months of the date the judgment would become final (January 12, 2011). All other similar cases against Romania were adjourned for the same eighteen month period. *Id.* at 43-44.

II. The New Legislation (Law No. 165/2013)

The Romanian Parliament passed Law No. 165/2013 in response to the European Court of Human Rights judgment.

The legislation maintains the principle of providing in rem restitution of property confiscated during the Communist regime and full compensation when in rem restitution is not possible. Art. 1 ¶¶ (1)-(2).¹

A. Restitution Process

Available Properties: The law establishes a ten-month process with specific deadlines for (1) local committees to develop a report on the farmland and forests that may be subject to restitution, (2) counties to tabulate the reports, and (3) the State Domain Agency and the ANRP to use the tabulations to initiate legal proceedings earmark properties for in kind restitution or sale in public auction to recipients of compensation points. Art. 5-6. The law suspends all existing administrative procedures for property restitution claims involving agricultural lands and forests until the local committees develop reports. Art. 7.

Tabulating Outstanding Claims: Within four months of the effective date of the law, local real estate committees must tabulate the remaining restitution applications, in order to determine the land required to complete the restitution process. Art. 8. By March 1, 2014, the National Real Estate Registry and Real Estate Publicity Agency must develop a report of the outstanding claims and available land. Art. 10.

Final Deadline for Restitution: The law sets a deadline of January 1, 2016 for the resolution of all restitution applications for farmland and forests. Within 30 days of the deadline, a person whose claim has not been resolved may file a court action. Art. 11.

Replacement Property: If it is not possible to return a farmland or forest, the law requires that the former owner or the heirs be offered a replacement property. Art. 12-14.

Public Institutions: In rem restitution of properties occupied by public institutions of education, public health, or culture is contingent upon the owner renting the property to the public institution for ten years at market value, as determined by the government. Art. 45.

B. Compensation Process

New Compensation Agency: The legislation establishes a National Committee for Real Estate Compensation, reporting to the Prime Minister's office. The National Committee is charged with completing the in rem restitution and compensation process, including validating or invalidating and ordering the issuance of restitution and compensation decisions. Art. 17. The National Committee is meant to replace the Central Compensation Commission. Art. 18 ¶ 3.

¹ The law seeks to limit profiteering from the purchase of rights to properties. Purchasers of the rights to a title owner's restitution receive reduced compensation, not to exceed 15% of the value of the property above the price paid to the title owner. Art. 1 ¶ (3); Art. 24.

New Compensation Fund: The legislation also establishes a National Fund for Farmland and Other Real Estate, under the jurisdiction of the State Domains Agency. The National Fund initially will be comprised of farmland owned by the state that is not subject to restitution in kind. Other state-owned real estate may be added to the fund. After January 1, 2016, farmland subject to restitution that was not restituted will be added to the fund. The National Committee will make public the value of each asset in the National Fund by January 1, 2015, and within 30 days for any property subsequently transferred to the fund. Art. 20.

Valuation and Points: When a local entity determines that in rem restitution is not possible, it must provide documentation to the Secretariat of the National Committee. The Secretariat will review the documents and determine the value of the property based on the public notary grid in force on the effective date of the law. Art. 21. Under the previous law, the valuation was made based on international assessment standards. The new legislation repeals those prior provisions. Art. 50. The value of the property will be translated into points, with one point equal to one Romanian leu. The National Committee will review the Secretariat's proposal and make a final determination. Art. 21. The National Committee must provide notice of its decision within 45 days of an affirmative decision and 60 days of a negative decision. Art. 25.

Use of Points: Claimants may use points to purchase property out of the National Fund at weekly public auctions beginning in January 1, 2016. Art. 27. The recipient of points may convert the points into cash, but only after waiting three years (and no earlier than January 1, 2017). Cash will be paid to a recipient over a seven-year period. Art. 31. In other words, a recipient would not receive the full sum until ten years after the decision.

C. Pending Compensation Claims

Cases Previously Approved: Compensation awarded and approved by the Central Compensation Commission prior to the effective date of the law, and court rulings final by that date, must be paid in yearly installments over five years beginning on January 1, 2014. Art. 41.

Cases Registered But Not Yet Approved: Claimants with claims that were registered with the Central Compensation Commission but were not approved prior to effective date of the law may choose to seek in rem restitution from the local real estate committee. Otherwise, the cases will be transferred to the National Committee to determine compensation under the new legislation. Art. 42. These cases must be resolved within five years from the effective date of the law. Art. 34.

D. Measures to Speed Up the Resolution of Claims

Deadlines for Claimants: Claimants who are notified that they need to submit additional documentation have 90 days and can apply for an additional 60 days. Art. 32.

Deadline for Resolution of Claims: The law establishes deadlines for entities to approve or reject individual claims. The deadlines range from one year to three years from January 1, 2014, based on the number of applications submitted to the entity. Art. 33.

Court Challenges: Claimants may file court actions challenging the determinations issued on their claims or the failure of an entity to meet the statutory deadlines for issuing determinations. Art. 35.

E. Enforcement

The legislation establishes penalties for violation of the legislation, including the failure of local or county entities to meet deadlines or adhere to other aspects of the legislation. Chap. 5.

III. Aspects of the Legislation Requiring Amendment

A. Reduced Compensation through Shift Away from International Assessment Standards

The legislation will significantly reduce compensation provided to claimants. Prior to this law, compensation was calculated using international assessment standards. The new legislation provides for compensation to be calculated based on the public notary grid. The public notary grid contains minimum values used to calculate notary fees for that year. The grid does not state the market value of the property. Accordingly, compensation awarded under the new legislation will not be commensurate with the market value of the confiscated property. WJRO urges that Parliament amend the legislation to return to the use of international assessment standards, in order for compensation to be “genuinely fair and adequate,” as called for in the Guidelines and Best Practices.

B. Failure to Grandfather in Settled Claims Awaiting Government Action

The unfairness of the reduced compensation calculations is most acute for pending cases. Cases that were settled by the Special Restitution Commission but not yet finalized by the Central Compensation Commission will not be finalized using the international standards required at the time of settlement. Many of these cases were awaiting the evaluation procedure for assessing the compensation amount, while others had been assessed but were awaiting a compensation title. These cases had been delayed by the government’s administrative difficulties and by the government’s decision to suspend issuance of compensation titles and payment of titles on July 1, 2010. On March 15, 2012, the government continued the existing suspension and further suspended the assessment of compensation due for buildings. Under article 42 of the new law, these pending cases will be transferred to the National Committee to have the compensation amount determined, even if the compensation amount had already been calculated under the prior procedures.

A new compensation calculation based on the public notary grid will significantly reduce the compensation. Comparisons of the previous assessment of properties based on international standards and the new assessment based on the public notary grid shows that compensation will decrease by as much as 65%.

Fairness dictates that these cases that were awaiting Central Compensation Commission action should be settled based on the previous law, with determination of compensation based on international standards.

C. Delays in Resolving Claims Registered with the Central Compensation Commission

Pending cases also face unnecessary delays. Article 34 provides that cases already decided by the Special Restitution Commission and registered with the Central Compensation Commission for establishing compensation amounts prior to the effective date of the law must be settled within five years. The five-year period is excessive because these claims were already at an advanced stage. This further delay fails to meet the standard of an expeditious process as articulated in the Terezin Declaration and the Guidelines and Best Practices.

These cases should be handled in the order they were recorded and at least one-fifth of these cases should be resolved each year. Additionally, claimants should receive compensation with interest and adjusted for inflation so that the additional delays in processing claims and awarding compensation do not cause further depreciation of the value of the compensation.

D. Delays in Paying Cash Compensation

WJRO urges the Parliament to amend article 31 to reduce the waiting period and the installment period for cash compensation and to adjust cash compensation to inflation and pay interest to compensate for the delays. A claimant who opts to redeem points for cash, instead of property, is required to wait an additional three years. Even then, the claimant will only be paid in installments over seven years. Considering the delays in settling claims, and the advancing age and financial and medical needs of claimants who are Holocaust survivors, requiring ten years to pay compensation is unfair to claimants. The ten years fall well short of fulfilling the principle in the Guidelines and Best Practices that “payment of compensation should be effected promptly.”

E. Narrow Deadline for Claimants to Submit Additional Documents

The deadline for claimants to submit additional documentation should be extended. Article 32 requires claimants to submit any requested additional documents within 90 days. The claimant can ask for an additional 60 days. This deadline does not adequately take into account the time needed for claimants to obtain additional documents. Additionally, the deadline penalizes

claimants who are waiting for a government agency to provide a document. The time limit for providing documents should be tolled to reflect the time when the documents are under the control of a government agency, not the claimant.

F. Selling Contested Property at Auction

Article 20 provides that all land available for restitution that was not restituted by the January 1, 2016, deadline for finalizing all claims will become part of the National Fund and will be sold at auction for compensation points. Property subject to restitution claims pending in court cases should be exempted from this provision. Otherwise, the property that is the subject of a pending case could be sold at auction to former owners of other properties.

G. Delayed Transfer of Properties in Public Use

The mandated delay in allowing successful claimants unfettered use of their restituted property occupied by public institutions should be reduced to seven years. The ten years provided in article 45 is excessive. The previous legislation required only five years, and many public institutions did not require five years to move to other properties.

The WJRO urges the government to set rent at seven percent or more of the market value of the property in order to meet the requirement in the legislation for rent to be based on the market rate. The WJRO asks the government to expedite publication of the list of public use buildings and the rent for these properties.

H. Ambiguity about Scope of Property Included

The legislation should specifically state that it applies to property seized during the Holocaust. The current language referring to property confiscated during the Communist regime is ambiguous. The current language should be interpreted to include Jewish property seized during the Holocaust because such property was effectively returned by a December 1944 decree and then subsequently nationalized by the Communists. However, the legislation should be amended to specify “the period of September 6, 1940 – December 22, 1989” for Jewish owned property to remove the ambiguity.

IV. Areas Not Addressed by the Legislation

WJRO urges Romania to address the following important outstanding issues relating to restitution that were not addressed by the legislation.

A. Heirless Property

Romania committed to restitution or compensation for Jewish heirless property in the Treaty of Peace, signed in Paris on February 10, 1947. Article 25 of the treaty required Romania to restore

all property taken from people on account of their racial origin or religion. Where restitution was not possible, Romania was required to pay fair compensation. Paragraph two of article 25 required Romania to transfer all heirless or unclaimed Jewish-owned property to the Jewish community to be used for “relief and rehabilitation” of Holocaust survivors and the Jewish community. The return of heirless and unclaimed Jewish-owned property was to have taken place within 12 months of the coming into force of the treaty on September 15, 1947.

Decree No. 113/1948 authorized the Jewish community to take over any heirless Jewish-owned property and use the property “to help the needy Jewish population.” However, the decree was not fully implemented.

The 2009 Terezin Declaration, approved by Romania, recognized the importance of addressing heirless Jewish-owned property. The Declaration provided that “the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, *the vast majority of whom died heirless*” (emphasis added). The Terezin Declaration noted that the proceeds from restitution and compensation of heirless property could benefit needy survivors and fund ongoing Holocaust education.

The 2010 Guidelines and Best Practices, endorsed by Romania, called for countries to provide restitution and compensation of heirless and unclaimed property: “States are encouraged to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators.” As the Terezin Declaration noted, the Guidelines and Best Practices stated that the proceeds from the sale of heirless property could be used to aid needy Holocaust survivors, commemorate destroyed communities, and provide Holocaust education.

B. Compensation for Demolished Communal Buildings

In contrast to the restitution law for individuals, religious and national minorities are not entitled to compensation for buildings that were nationalized and demolished. This discrepancy in the restitution laws is particularly damaging because of the nationalizations of education, health, and social welfare institutions between 1948 and 1950.

C. Clarification of Ambiguous Interpretations

There has been ambiguity about compensation for an existing building when the state built additions to the building. In a number of cases, courts have overturned the Special Restitution Commission’s narrower interpretation of the applicable compensation in these cases.

There also is a need for further clarification that religious and national minorities, including the Jewish community, are entitled to restitution for assets that were used to serve the community

needs but, for administrative or other reasons, were registered in the name of separate institutions. These institutions include schools, hospitals, and social welfare facilities.

Additionally, existing legislation should be amended to make clear that the Special Restitution Commission has the authority to determine whether properties “donated” to the Communist regime were transferred to the state voluntarily or based on abusive pressure. Current law grants the Special Restitution Commission this authority, but because of ambiguity in the law, the Special Restitution Commission has required applicants seeking restitution of “donated” property to ask a court to cancel any “donation” that had been made in front of a public notary. This administrative requirement to file a separate court action for each case causes unnecessary delays and expenses.

D. Submitting New Claims

The government should establish an additional period for individuals to submit claims for restitution of private property. The claims period established under Law No. 10/2001 – initially six months and then extended twice by three months each to February 14, 2002 – was particularly inadequate for Romanians living abroad. Because effective foreign notice of the claims process was not provided, Romanians living abroad often were not aware of the opportunity to file a claim until after the deadline had passed.

Additionally, the government should accept new claims for the restitution of Jewish communal property for two narrow categories of properties. First, submissions should be authorized for properties with buildings sold after the enactment of Law No. 58/1974. The ANRP initially interpreted the restitution law for religious and national minorities to exclude the properties. While this interpretation was later reversed, the properties were excluded from the claims list.

Second, the Jewish community should be permitted to file new claims for communal property that was not claimed because documents were not available. The Romanian Jewish community faced unique problems in identifying communal property because of the devastation from the Holocaust. The disappearance of entire document repositories, combined with limited access to other archives, prevented the Jewish community from filing certain claims before the deadline. Additionally, certain properties belonging to Jewish organizations were not in community records because they were given to the Jewish community under a 1949 decree but were immediately nationalized. These properties have only now been identified through the Caritatea Foundation’s documentation and research.

E. Delays Caused by Appeals

Under the restitution law for religious and national minorities, local authorities have an incentive to appeal a decision returning a property to a former owner, because the appeal delays the transfer of the property until the court decision dismissing the appeal is final. This delay

commonly takes a number of years, during which time the original owner continues to be denied use of the property. The law should be amended to provide that if the appeal is dismissed, then the initial date of the Special Restitution Commission decision should be deemed the date that the ownership of the property was returned to the former owner. The former owner accordingly would collect rent for the period that the property transfer was delayed and, for public institutions, that period would count toward the ten-year delay in the transfer of the property mandated by article 45 of the new legislation.

V. Importance of Ensuring Compliance

WJRO encourages the government actively to ensure compliance with the legislation and to enforce its provisions. The legislation is complicated and relies upon compliance with numerous interrelated deadlines by multiple local and national governmental entities. For example, within a month after the effective date of the legislation, each administrative-territorial unit was required to establish a Local Committee for Land Inventories. Art. 5. Each Local Committee has six months to report on farmland and forests available for restitution. Art. 6 ¶ 1. The National Real Estate Registry and Real Estate publicity Agency must then endorse each report and submit it to the county real estate committee. Art. 6 ¶ 2. The county real estate committee must then tabulate all reports within one month of receiving them and forward the tabulation to the State Domain Agency and the National Authority for the Restitution of Property, which then has two months to change the legal status of each property. Art.6 ¶¶ 4-5. Delays at any stage in this process will delay restitution. In particular, the legislation suspends all administrative proceedings and other administrative steps for farmlands and forests until the Local Committee develops its report. Art. 7.

There already have been delays in implementation of the legislation. While the government did issue the implementing regulations, the government has not yet finalized the list of public use buildings or established the rent for these buildings.

The Council of Europe's Committee of Ministers recognized the importance of "close and constant monitoring of the application of the new law so that the competent authorities can, if necessary, rapidly intervene including through legislative measures" *See* Press Release, Council of Europe, June 6, 2013, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=DC-PR079\(2013\)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE..](https://wcd.coe.int/ViewDoc.jsp?Ref=DC-PR079(2013)&Language=lanEnglish&Ver=original&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE..)

Given the complexity and scale of the legislation, the WJRO urges the Romanian government to monitor application of the law and to ensure compliance by all relevant government entities. The government should enforce non-compliance by any government entity through the sanctions provided in chapter five of the law. Together with the amendments suggested in this paper,

active and sustained involvement by the Romanian government is necessary to ensure successful implementation of the new law.