

OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – UKRAINE (AS OF 13 DECEMBER 2016)

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A. OVERVIEW

Prior to World War II, contemporary Ukraine had been sub-divided and its territories split amongst Poland, Romania, and the Soviet Union (the largest part). By 1940, Stalin unified Ukraine as the Ukrainian Soviet Socialist Republic adding to it the territories annexed from Poland and Romania. But Ukraine was invaded and again dismantled when on 22 June 1941, Hitler invaded the Soviet Union. Most of Ukraine was then ruled by the Germans with some areas included in the General Government (portion of Poland administered by the Third Reich), as well as the Reichskommissariat Ukraine. Romania was awarded significant parts of Southern Ukraine administered as the region of Transnistria. Thus, despite significant differences between various areas, especially between German and Romanian zones of occupation, the Holocaust in Ukraine generally refers to the German Wehrmacht-administered territories, and the Reichskommissariat Ukraine, nominally under civil rule, as well as Romanian-controlled Transnistria, which is, however, regarded as a special case in its own right. (Dennis Deletant, “Transnistria and the Romanian solution to the ‘Jewish Problem’” in *The Shoah in Ukraine; History, Testimony, Memorialization* (Ray Brandon and Wendy Lower (eds.), 2010) pp. 156-189.)

In the German military administered area of Ukraine, roughly 20 ghettos were set up. A total of 160 ghettos were set up in the Reichskommissariat Ukraine. Jews and other targeted groups were killed during pogroms and mass shootings. Between 29 and 30 September 1941, Einsatzgruppe C – special German unit designated to kill Jews – killed 33,771 Jews at Babi Yar in Kiev. Later, other targeted groups such as Red Army soldiers, Soviet activists, Ukrainian nationalists, and Roma were also killed at Babi Yar, bringing the death total to more than 100,000 at that one location.

Before the war, there were approximately **2.8 million** Jews in Ukraine (out of 41 million inhabitants). The Ukrainian Jewish population was among the largest in Europe. Approximately **1.5 million** Jews died in the entire territory of Ukraine (including Jews living in the areas annexed by Romania, Hungary and the Russian Federation). Most were killed and buried in ravines and mass graves by Einsatzgruppen C and D, Romanian and German troops and Ukrainian police. Little was done to keep the shootings a secret. The Holocaust was a much more public affair in Ukraine than in Poland where Jews were sent to extermination camps. Approximately one-third (1/3) of Ukraine’s Jewish population was evacuated or escaped, including those drafted in the Red Army. A total of **9 million** Ukrainians, Jews and non-Jews, died during the war.

Approximately **95,000** Jews and between **50,000 and 120,000** Roma live in Ukraine today.

At the end of World War II, as the Ukrainian Soviet Socialist Republic, Ukraine was a party to the Paris Peace Treaties of 10 February 1947 ([Treaty of Peace with Bulgaria](#), [Treaty of Peace with Hungary](#), [Treaty of Peace with Finland](#), [Treaty of Peace with Italy](#), [Treaty of Peace with Romania](#)).

Ukraine declared independence in December 1991. It became a member state of the Council of Europe on 9 November 1995 and ratified the European Convention on Human Rights in 1997. As a result, suits against Ukraine claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR).

Ukraine endorsed the Terezin Declaration in 2009, but it did not endorse the 2010 Guidelines and Best Practices.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. As of 13 December 2016, no response from Ukraine has been received.

Private Property Restitution

Private immovable (real) property, as defined in the Terezin Declaration 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 ("Terezin Best Practices") for the purpose of restitution, is:

property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

Jews and other targeted groups in Ukraine were subjected to property confiscation during the war. One scholar describes the grab for Jewish property in Zhytomyr, Ukraine as follows:

Since few Jews in the Ukraine possessed any gold, silver, or cash, the greater part of the plundering operation against the Jews centered on the confiscation of apartments, furniture, bedding and other household items. On December 12, 1941, General Commissar Klemm ordered that all Jewish property be handed over to the commissariat office. During summer and fall 1941, local Ukrainian militiamen grabbed Jewish belongings, which was not only in violation of Nazi decrees but

also stirred up local unrest. The regional commissar's housing office and inventory commission took possession of Jewish property and redistributed it among the local officials and privileged groups, to county commissars, military commanders, and ethnic Germans. In Rivne, in neighboring General Commissariat Volhynia-Podolia, County Commissar Werner Beer held a sale from his office, announcing to other German officials in the area that he had Jewish watches, jewelry, cigarette holders, and other personal effects.

Assisted by local Ukrainian and ethnic German clerks, the county commissar's office carefully listed the addresses of Jews who had been "resettled" and the contents of their dwellings. Letters from local O.T. representatives, ethnic Germans, army officials and other Reich Germans in the area streamed into the inventory commission's office with request for beds, tables, chairs and cupboards. In July 1942, Klemm's deputy in the inventory commission, Plisko, issued detailed instructions regarding the confiscation of Jewish property, thus putting a temporary halt to the distribution of Jewish valuables by local officials who were taking items without proper paperwork. He advised the county commissars not to dispose of the original lists of property registered by the Jews (who were now mostly dead) because these lists (although potentially incriminating) were the most complete records available.

(Wendy Lower, "'On Him Rests the Weight of the Administration': Nazi Civilian Rules and the Holocaust in Zhytomyr" in *The Shoah in the Ukraine: History, Testimony, Memorialization* (Ray Brandon & Wendy Lower, eds. 2010), p. 236.)

Notwithstanding the systematic plunder of Jewish property in Ukraine during the war, to date, Ukraine does not have any laws governing the restitution of private property. In its contribution to the 2012 Green Paper on the Immovable Property Review Conference, Ukraine stated:

[T]he absence of specific legislation on restitution in Ukraine makes the restoration process under certain articles of Terezin Declaration and the "Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascist and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II" scarcely possible. [...]
(2012 Green Paper on the Immovable Property Review Conference, p. 119 (Ukraine).)

In the absence of restitution legislation we do not have figures on the number of properties that may have been restituted outside a structured legal restitution regime.

Since endorsing the Terezin Declaration in 2009, Ukraine has not passed any laws dealing with the restitution of private property.

Communal Property Restitution

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution is:

property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

The Association of Jewish Organization and Committees of Ukraine (VAAD) is one of the main umbrella Jewish organizations in Ukraine, along with the **Jewish Council of Ukraine**. VAAD was established in 1991 and brings together 265 organizations from 94 cities, including religious communities, city communities, Jewish schools, cultural organizations, associations of prisoners of ghetto camps and concentration camps, youth organizations and others.

VAAD and the **Eurasian Jewish Committee on Restitution** have conducted an assessment on the amount of Jewish communal property in Ukraine. According to their calculations, as of 2009, there are 2,500 Jewish communal properties being “misused” – i.e., have not been returned – including not only synagogues but also other buildings formerly owned by Jewish communities. (Josef Zissels, “The Case of Ukraine”, in *Holocaust Era Assets – Conference Proceedings* (2009) (“Zissels”), p. 668.) That figure is in addition to another estimated 10,000 to 15,000 plots of land that belonged to the Jewish community of Ukraine that have not been restituted. (*Id.*)

There is no specific law in Ukraine, which governs communal property restitution. However, there are a number of regulations and decrees, which relate to the return of religious property for use by religious organizations, including:

- The **Decision of the Ministerial Council of USSR No. 83 from 5 April 1991, “On the register of listed buildings which are not subjects for restitution for permanent use by religious organizations”** (with amendments and appendices) (became invalid on 14 February 2002);
- The **Law of Ukraine from 17 April 1991 “On rehabilitation of victims of political reprisals”** (with amendments and appendices);
- The **Law of Ukraine from 23 April 1991 “On freedom of worship and religious organizations”** (with amendments and appendices) (Article 17 in particular);

- **The Decree of the President of Ukraine No. 125 from 4 March 1992 “On measures for restitution of iconic property to religious organizations”;**
- **Decree of the Cabinet of the Ministers Ukraine No. 112 from 18 February 1993 “Regulations on the indemnification payment order, restitution of property or indemnification of its costs to rehabilitated people”;**
- **Ordinance of the President of Ukraine No. 53/94-rp from 16 June 1995 “On restitution of iconic property to religious organizations;**
- **The Order of the Cabinet of Ministers Ukraine No. 357-r from 16 June 1995 “On passage of iconic constructions where the states archives are, to religious organizations”;** and
- **The Order of the Cabinet of Ministers Ukraine No. 137 from 14 February 2002 “On conditions of passage of iconic constructions – outstanding monuments of architecture to religious organizations”.**

(See *Zissels*, pp. 655-656.)

In 1994, **VAAD** and the **World Jewish Restitution Organization (WJRO)** entered into an agreement which stated that if Jewish communal property is restituted, a special fund will be established by which the **VAAD** Board of Directors – on behalf of the Jewish community – will be empowered to veto decisions regarding the future of the restituted property.

Josef Zissels, Chairman of **VAAD**, reported in 2009 during the Prague Conference on Holocaust Era Assets that the religious Jewish communities have been given “about fifty buildings of former synagogues out of several hundreds known to us now, which is less than 10 percent. Together with the synagogues that remained open during Soviet times, they total about 60 buildings.” (*Zissels*, p. 654.) Zissels also stated that “[t]he transfer of iconic constructions to Jewish communities is being carried out even more slowly than transfers to representatives of other faiths who also retrieve buildings of their temples or mosques with great difficulties.” (*Id.*, p. 656.)

Given the wide-ranging destruction of the pre-war Jewish community in Ukraine, in a majority of instances, restituted synagogues have been transferred to communities that had no connection with the former owners. In addition, sometimes when there are competing claims to the same property from communities that have no ties to the former community, relationships or “friendships” with the local officials determine who will be granted the property. (*Zissels*, p. 665.)

Zissels has also offered insight into why restitution languishes in Ukraine:

The Ukrainian legislators and the population as a whole perceive the idea of restitution negatively for many reasons. It took a long time and much effort to destroy moral universal categories in these countries, including the category of

property. In Ukraine, the worst kind of “small village” mentality dominates society: what is lost is lost. New owners do not wish to recognize that they are using someone else’s property, which, as it was taken away from its lawful owners during reprisals and genocide, is therefore stolen property, the use of which is a crime equal to direct larceny by all civilized norms. And in this case, we are not talking about “concepts” of some fringe elements, but about the dominant psychology in the whole society, including the political “elite”.
(*Zissels*, pp. 668-669.)

The **WJRO** reported in 2009 that proposed legislation had been drafted on the restitution of confiscated religious property to religious communities but that no major progress had been made to pass the law. (World Jewish Restitution Organization, “Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe”, June 2009, p. 32 (Ukraine).) We do not have information on current efforts made to pass communal property restitution legislation.

Since endorsing the Terezin Declaration in 2009, Ukraine has not passed any laws dealing with the restitution of communal property. In recent years, most successful cases of restitution have taken place as a result of tacit and behind-the-scenes lobbying on behalf of the Jewish groups.

Heirless Property Restitution

The Terezin Declaration states “that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.” (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also “encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators.” Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.
(Terezin Best Practices, para. j.)

Since endorsing the Terezin Declaration in 2009, Ukraine has not passed any laws dealing with the restitution of heirless property.

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