IMMOVABLE PROPERTY REVIEW CONFERENCE OF THE EUROPEAN SHOAH LEGACY INSTITUTE:

STATUS REPORT ON RESTITUTION AND COMPENSATION EFFORTS

Prague, November 2012

Presented by the Conference on Jewish Material Claims Against Germany ("Claims Conference") and the World Jewish Restitution Organization ("WJRO")[1]

The following is an overview of the status of property restitution efforts in recent years in several countries in Central and Eastern Europe, based upon the best available information available at the time obtained by the Claims Conference and the WJRO, with assistance from the Kantor Institute of Tel Aviv University. Governments, non-governmental organizations, and individual experts with more recent and pertinent information are invited to suggest modifications and offer comments by e-mail to the WJRO at wjro@wjro.org.il

Ambassador Milos Pojar, Chairman of the Organizing Committee for the Holocaust Era Assets Conference, held in Prague, June 26 – 30, 2009 ("Prague Conference"), wrote the following prelude to the conference, explaining its goals:

> "More than six decades after World War II the terrible ghosts of the Holocaust have not disappeared. The perverse ideology that led to the horrors of the Holocaust still exists and throughout our continents racial hatred and ethnic intolerance stalk our societies. Therefore, it is our moral and political responsibility to support Holocaust remembrance and education in national, as well as international, frameworks and to fight against all forms of intolerance and hatred."

[1] The WJRO consists of the following member organizations: Agudath Israel World Organization; the American Gathering of Jewish Holocaust Survivors and Their Descendants; the American Jewish Committee; the American Jewish Joint Distribution Committee; B'nai B'rith International; the Centre of Organizations of Holocaust Survivors in Israel, the Claims Conference; the Council of European Rabbis; the European Jewish Congress/European Council of Jewish Communities – Joint Delegation; the Jewish Agency for Israel; the NCSJ: Advocates on Behalf of Jews in Russia, Ukraine, the Baltic States & Eurasia; the World Jewish Congress; and the World Zionist Organization.

Among its other objectives, the Prague conference was convened to discuss and develop practical ways to implement Ambassador Pojar's call to do the substantial work that still needed doing to deal with what had happened on European soil during the Holocaust. The Prague Conference addressed a number of areas through which the victims and memory of the Holocaust might be supported, including the following: social welfare; looted art and cultural property; Jewish burial sites; remembrance and access to documentation; and the restitution of immovable property seized during the Holocaust.

During the Prague Conference, discussions and negotiations led to the development and approval by forty-six countries of the Terezin Declaration, which announced a program of activities geared towards ensuring assistance, redress and remembrance for victims of Nazi persecution. With respect to real property confiscated during the Holocaust, the Terezin Declaration stated:

> "Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures … which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless."

In addition, among the activities to be pursued following the Prague Conference, the Terezin Declaration identified "the European Shoah Legacy Institute," which would proceed with the "work of the Prague Conference [including] to develop and share best practices and guidelines [relating to] Immovable (Real) Property." To that end, one year later, in June 2010, forty-three countries 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" or "guidelines"). The guidelines identify principles and provide detailed rules for countries to apply in their property restitution legislation and claims processes.

The Guidelines and Best Practices specify the property that is its focus:

> "Restitution and compensation laws should apply to immovable (real) property which was owned by (i) religious or communal organizations, or (ii) private individuals or legal persons and then subject to confiscation or other wrongful takings during the Holocaust (Shoah) Era between 1933 – 1945 and as its immediate consequences" (Guidelines and Best Practices ("GBP"), paragraph a).

Thus, cognizant of the fact a number of states have legislation dealing with the restitution of, or compensation for, property nationalized by communist regimes after World War II, the guidelines unmistakably call for governments to provide remedies for the confiscation of communal, religious and private real property that was seized during the Holocaust era.

The Guidelines and Best Practices also urge governments to no longer ignore the matter of heirless 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. Heirless property 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 inheritance" (GBP, paragraph j).

Further, the guidelines suggest a possible approach related to heirless property – much of which remains in the possession of governments, at various levels – by applying proceeds of sales of such property to finance "special funds … for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence" (GBP, paragraph j).

A number of other standards for states to incorporate in developing legislation and claims processes dealing with Holocaust-related confiscations are embodied in the Guidelines and Best Practices:

- "Restitution and compensation processes should recognize the lawful owner or holder of other legal property rights as listed in property record files as of the last date before the commencement of persecution against them by the Nazis, Fascists and their collaborators during the Holocaust (Shoah) era between 1933 and 1945 including the period of WWII" (GBP, paragraph c);

- The claims process, "including the filing of claims, should be accessible, transparent, simple, expeditious, non-discriminatory [without] citizenship and residency requirements … uniform throughout any given country [and] should not be subject to burdensome or discriminatory costs for claimants" (GBP, paragraph d);

- There should be "unfettered and free access to all relevant local, regional, and national archives, including those … required to confirm the right of ownership and other legal property rights to immovable (real) property" (GBP, paragraph e);

- "Decisions should be prompt and include a clear explanation of the ruling" (GBP, paragraph f);

- "Restitution *in rem* is a preferred outcome, especially for publicly held property [but when] not feasible or not possible … other acceptable solutions may include substituting property of equal value or paying genuinely fair and adequate compensation" (GBP, paragraph h); and

- "Privatization programs should not compromise claimants' rights, including the right to claims property confiscated or otherwise wrongfully taken by the Nazi and Fascist regimes, and their

> collaborators during the Holocaust (Shoah) era between 1933 and 1945 … At the same time, restitution laws should provide protections for current good faith occupants of restituted property"
> (GBP, paragraph i)

Almost three and a half years ago, in a paper submitted to the Prague Conference, we wrote the following, specifically related to the status of immovable property seized during the Holocaust:

> "The murderous assault on European Jewry during the Holocaust included robbery on a massive scale. The seizure of Jewish property and the property of other victims by the Nazis and their allies was not an ephemeral, coincidental aspect of the Holocaust, but part of its essential driving force[.]
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> The process of seizing Jewish assets may have varied from country to country, but the objective in all areas under Nazi influence was the same: to expropriate Jewish property, whether owned by religious groups, communities or individuals, as comprehensively as possible … this goal, in turn, required that certain Jewish property be identified and led, in some countries, to its registration and seizure in close conjunction with measures related to the deportation and destruction of the Jewish people. Property seizures, in other words, became part of the process of annihilation[.]
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> While there have been positive steps relating to the restitution of immovable (or real) private and communal property seized from the Jews, progress … for the most part, has been slow at best. A substantial number of formerly Jewish-owned, real properties confiscated during the Holocaust era, especially in the countries of Central and East Europe … have not been returned, nor has compensation been paid, to their rightful owners. Indeed, well over six decades after the end of World War II and almost twenty years after the collapse of the Iron Curtain, an overwhelming portion of such confiscated property remains in the hands of governments (at some level) or local populations, protected by prevailing (or the absence of pertinent) national laws."

This description, unfortunately, continues to aptly depict the situation today. Put simply, in the years since the adoption of the Terezin Declaration and the Guidelines and Best Practices – "historically unprecedented documents," according to the European Shoah Legacy Institute – the conduct of East European states regarding Holocaust property seizures have been, regrettably, less than historic.

Indeed, very little has been done by most of the East European states that endorsed, or at least participated in the development of these documents. States which did not have a restitution law several years ago addressing Holocaust era property seizures, still don't have such a law; states which had some

form of legislation – albeit for property confiscated by communist regimes after the Holocaust – did not, in any way, modify their laws to incorporate the principles embodied in the Guidelines and Best Practices; one state which did not have a private property restitution law at the time of the Prague Conference has since enacted legislation, but it excludes Holocaust era confiscations; and another state, following the adoption of the Terezin Declaration and guidelines, actually removed a compensation for confiscated property bill from consideration. Finally, in those countries where prolonged delays were reported in deciding communal and private property claims, nothing has been done to expedite matters.

In sum, restitution of property confiscated during the Holocaust proceeds exceedingly slowly, if at all. Poland, for example, home to the largest pre-war European Jewish population, has, if anything, moved backwards since the Prague Conference. The government decided not to go forward with a compensation bill that had been pending for years, and that was on top of having failed to enact any antecedent bills over the previous 20 years. That leaves the difficult path of litigation in the Polish court system as the sole recourse for former property owners, many of whom are elderly, in need and do not live in the country. Croatia, as another example, proposed an amendment eliminating a discriminatory citizenship requirement imposed by its restitution law, but the government seems to have abandoned the draft amendment. And Romania, time and again criticized by various European institutions for its ineffective restitution system, has suspended compensation for confiscated property payments. Little has changed in other countries in the three years since the Prague Conference. They continue to have restitution laws which – in terms of what property is covered, what property has been returned, what has been paid, who can claim, and the transparency and accessibility of the process – leave much to be desired.

This is not to say that there has been absolutely no progress since the Terezin Declaration and guidelines; there has been, however slight. Serbia, for example, did finally pass a private property restitution law in 2011. Although it excludes property seized during the Holocaust – a condition that, hopefully, will be modified – the law also notes that heirless property of Holocaust victims will be addressed in separate legislation. And Croatia, however slowly, has been working on a proposal to establish a foundation to deal with injustices perpetrated against Holocaust victims. In addition, Lithuania enacted legislation – *The Law on Good Will Compensation for the Real Estate of Jewish Religious Communities* – which provides compensation; some of which will soon be distributed as a one-time payment to Holocaust victims, and a larger part which will be applied to religious, cultural and educational purposes for the Jewish community in Lithuania over the next decade. While the law does not return any real property to the community, and the amount of compensation for confiscated communal property represents only a small fraction of the value of all of the formerly Jewish-owned communal property in the country, it is a step in the right direction.

Whatever the various reasons governments continue to advance for not facing the difficult issue of restituting property seized from victims of the Holocaust, it becomes even more troubling that the unfinished business of Holocaust restitution prevailing at the time of the Holocaust Assets Era Conference, over three years ago, remains, overwhelmingly, unfinished.

"A country that has not addressed its past is not free to move onto the future. The remaining ghosts of the past must hence be fought and old offences must be compensated."[2] And, yet, for most East European nations, Holocaust restitution remains a low, if any sort of, priority.

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[2] Daniel Schatz and Ruth Deech, "Ghosts of the Past, Op-ed: Israel, US must ensure that Poland compensates Jews over property seized by Nazis," published by Ynet News, 27 August 2012.

This report is not intended as a comprehensive survey, either of all countries or of any individual country. The goal is not simply to provide a "report card" on the current status, in the handful of countries highlighted, of Holocaust confiscations, but to serve as a catalyst – against all of the odds, and there are many – to action for all countries. We again hope, as we did three years ago, that such a report proves a useful launching point for more serious, systematic discussions about, and more honest engagement with, the problem of the failure to restitute or provide compensation for the immovable property confiscated during the Holocaust.

CROATIA

Of the over 25,000 Jews that lived in the region of pre-war Yugoslavia which became Croatia, approximately 6,000 survived the Holocaust. Currently, the country's Jewish community numbers about 2,000 members, more than half of whom live in Zagreb. While Croatia has enacted laws governing the restitution of communal and private property nationalized during the communist period, the Jewish community has recovered few properties using the established procedure. In addition, the laws relating to the restitution of confiscated private property – in one way or another – exclude from eligibility virtually all Jewish Holocaust survivors who were formerly property owners.

Communal and Religious Property

The *Act on Restitution/ Compensation of Property Confiscated During the Yugoslav Communist Rule* (1996) ["Act on Restitution/Compensation"], as modified in 2002, governs the restitution of confiscated communal property in Croatia.[3] The Jewish Communities of the Republic of Croatia submitted 135 claims for communal buildings and land pursuant to the Act on Restitution/Compensation. Since the claims filing deadline almost ten years ago, the government has returned only 15 (non-cemetery) properties.[4] However, there has been no substantive progress with respect to the return of confiscated Jewish communal property for years.

Aside from the communal property claims submitted pursuant to the law, discrete agreements between the government and individual religious communities – such as with the Catholic Church – have led to the return of some confiscated communal property. No such government agreement exists with the Jewish community of Croatia.

Private Property

[3] The Act on Restitution/Compensation includes the following, among other types of property: undeveloped construction land; agricultural land, forests and forestry land; and residential and business facilities, including apartments and business premises.

[4] The Jewish Communities of the Republic of Croatia identified 67 cemeteries and 126 other formerly Jewish-owned communal properties as having belonged to the Jewish community prior to World War II in the region of Yugoslavia that became Croatia.

The Act on Restitution/Compensation also governs the restitution of immovable private property in Croatia. The law, however, limits both (i) the target property included – the text of the law states only that property confiscated after May 1945 by the Communist regime may be recovered;[5] and (ii) who is eligible – only former owners of the property who are Croatian citizens or citizens of a country with a bilateral treaty with Croatia may recover. The restitution law suffers from a number of other problems as well, including the following:

- compensation offered for partial value of property and, frequently, in government bonds;[6]
- legal heirs must be Croatian citizens;[7]
- a decentralized claims process, involving numerous local restitution offices, proved complex and confusing, deterring potential claimants;
- positive (municipal-level) decisions in favor of claimants often reversed by a higher (Ministry of Justice) tribunal, without a clear basis for reversal;
- severely limited notification of the claims process; and
- many claims unresolved years after the claims filing deadline

Government statistics disclose that over 46,000 private property claims were submitted. Remarkably, 15 years after the expiration of the filing deadline, less than 60% of the claims had been resolved.[8] Further, neither the Act on Restitution/Compensation, nor any related regulations or decrees,

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[5] The Croatian government asserts that the Act on Restitution/Compensation "includ[es] the restitution of immovable property confiscated or seized by Nazis, Fascists and their collaborators during the Holocaust era," then modifies the statement, noting that the law only "indirectly encompasses confiscation of property committed earlier … during … the Holocaust era" (Report of the Government of Republic of Croatia to Immovable Property Conference ("IPRC"), pp. 1, 2). In fact, in the short period after the war and before communist nationalization took effect, it seems that property seized during the Holocaust in Croatia could have been recovered. (**But see** discussion at pp. 7-8 regarding the absence of Jewish property owners in Croatia at that time.) Subsequently, the post-war and post-communist path to recovering Holocaust era confiscations is, at best, convoluted. (**See** Report of Croatia to IPRC, p. 2.) It should also be noted that (i) the title of the Croatian restitution law – *Act on Restitution/ Compensation of Property Confiscated During the Yugoslav Communist Rule* – does not mention Holocaust era confiscations; (ii) the text of the law refers to property confiscated after May 1945; and (iii) several high-level government officials have unequivocally told WJRO representatives that the restitution law does not cover Holocaust-related confiscations.

[6] While some have suggested the law encourages "natural restitution," that is, the return of the actual property confiscated, the fact is that partial compensation is paid in most cases, with restitution in rem occurring only in rare circumstances (**see** Report of Croatia to IPRC, pp. 1-2). The law sought to protect current owners who purchased their property in good faith and, while successful claimants are supposed to receive substantially equivalent substitute property in such cases, in fact, that rarely occurs. Instead, such claimants typically receive payment from a government-established Restitution Fund. Meanwhile, current owners of confiscated property not purchased in good faith are responsible for its return or for paying compensation to the property's rightful owner. Owners of property not covered by the Act on Restitution/Compensation are paid with 20-year government bonds (in inverse proportion to the value of the property at issue). The government bonds may be used to purchase immovable property held by Croatia or shares of the Croatian Privatization Fund. With respect to appropriated enterprises, compensation is paid through shares of interests in the Croatian Privatization Fund.

[7] A legal successor must be a direct descendant of a former property owner, as well as a Croatian citizen or citizen of a country with a bilateral treaty with Croatia on the day the Act on Restitution/Compensation was enacted.

[8] In addition, for claimants that successfully recovered their property, charges were sometimes imposed which ranged from 10-25% of the property's value.

impose any time limit within which restitution decisions must be made. As a result, it has not been unusual for the process to take ten or more years to resolve a private property claim.

Most, if not all, Jewish-owned property in Croatia was seized prior to May 1945, but the Act on Restitution/Compensation makes it extremely difficult, if it is at all possible, to recover property confiscated during that time. Moreover, even if the law permitted restitution of Holocaust-related confiscations, few Croatian Jews survived the Holocaust, and very few remained in Croatia or retained Croatian citizenship after the war. Thus, they would have been, and continue to be, precluded from recovering under the law's discriminatory citizenship condition. Not surprisingly, according to Cedek, a non-profit, non-governmental Croatian organization dedicated to the return of confiscated Jewish assets in the country, less than 5% of formerly Jewish-owned private property seized during the Holocaust has been returned to former owners or the heirs of former owners.[9]

Croatia has, in recent years, attempted – so far, unsuccessfully – to deal with certain problems related to its restitution law. Several years ago, for example, the Ministry of Justice drafted a proposed amendment to the Act on Restitution/Compensation to address the country's discriminatory policy toward former property owners who are not Croatian citizens. Parliament never voted on the proposed amendment.[10] In addition, since early 2012, the government has worked on a proposal for a foundation which would address the injustices perpetrated against victims of the Holocaust. In broad outline, the foundation would include the following components:

(i)	social welfare:	assistance for Holocaust survivors in need;[11]
(ii)	legal assistance:	advice for former property owners whose property was nationalized during the communist regime on how to proceed through the Croatian legal system;
(iii)	compensation:	symbolic payments for confiscated property for Jewish Holocaust survivors of Croatian origin with foreign citizenship; and

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[9] Apart from the systematic destruction of most of Croatian Jewry during the Holocaust, certain former Jewish-Croatian property owners face a further obstacle. Yugoslavia prohibited Jewish Holocaust survivors who sought to immigrate to Israel after 1945 from leaving the country, unless they renounced their Yugoslavian citizenship and their ownership rights to property. The law, often referred to as Tito's Law, remains in effect in Croatia to this day.

[10] In July 2010, the Supreme Court of the Republic of Croatia affirmed a ruling of the Administrative Court of the Republic of Croatia holding that a foreign national – in the case in issue, a Brazilian – has the right to compensation for property nationalized during the communist regime. The Supreme Court decision, in effect, held that part of the prevailing restitution law was unconstitutional. The government subsequently proposed the amendment to the Act on Restitution/Compensation, mentioned in the text, which would have allowed certain foreign nationals to make compensation claims for confiscated property. The draft amendment, as noted in the text, never got so far as a Parliamentary vote.

[11] The proposed government assistance is limited to survivors in need residing in Croatia and does not extend to survivors of Croatian origin in need living outside of the country. In contrast, Hungary, for example, established a fund – financed by a small portion of the value of heirless, formerly Jewish-owned, private property – which provides assistance to survivors of Hungarian origin, wherever they currently live.

(iv) education: support for educational and cultural activities related to teaching about the Holocaust in Croatian Jewish communities, through schools, festivals, research and publications.

An early draft of the proposal indicated the foundation would be financed through the sales proceeds of certain heirless private and communal Jewish property.

Guidelines and Best Practices

Croatia participated in discussions leading to the drafting of – and endorsed – the Terezin Declaration and the follow-up "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").[12]

The Guidelines and Best Practices urge governments to "develop their own national programs and legislation for addressing or revisiting the compensation and restitution of confiscated immovable (real) property" seized during in the years 1933-1945, during the Holocaust era. Croatian law, however, is ambiguous on this issue, apparently allowing recovery of or payment for pre-May 1945 confiscations, but only after following a difficult to prove, tortuous path. Further, the restitution law of Croatia falls far short of a number of other standards advocated in the Guidelines and Best Practices in critical respects. The guidelines, for example, reject discriminatory citizenship requirements for restitution, and seek uniformity in decision-making as well as prompt resolution of claims (GBP, paragraphs d, f and h). In contrast, Croatian law imposes a discriminatory citizenship condition as a prerequisite to obtaining restitution or compensation, and has a decentralized claims processing system, often resulting in inconsistent decision-making and an unreasonably long time to resolve claims. In addition, compensation in the form of government bonds – which diminishes the real value of the award because of constraints related to how, where and when the bonds can be cased or used – or in amounts representing a small portion of a property's value, paid over an extended time period, is contrary to the guideline principle of paying "genuinely fair and adequate compensation" (GBP, paragraph h). Although the Act on Restitution/Compensation established a claims procedure to address claims for confiscated communal property, virtually no property has been returned to the Jewish community in the past decade.

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[12] **See also** above, pp. 1-3. The Terezin Declaration was developed at the Holocaust Era Assets Conference in Prague, in June 2009. The conference was convened, among other reasons, to "review current practices regarding … restitution and, where needed, define new effective instruments to improve these efforts." Forty-six governments endorsed the Terezin Declaration, which described programs and activities that would assist victims of the Holocaust in a number of areas. Pursuant to the Terezin Declaration, detailed restitution guidelines responsive to property confiscated during the Holocaust were subsequently negotiated and endorsed by most of the Terezin Declaration signatories and embodied in the "Guidelines and Best Practices" issued in June 2010.

Finally, the Guidelines and Best Practices also encourage states "to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators" (GBP, paragraph j). Since the Holocaust Assets Conference in Prague in 2009, the Croatian government has tinkered, recently, with a proposal for a foundation that apparently envisions the use of proceeds from the sale of some heirless Jewish property to finance foundation activities related to assistance for Holocaust survivors, restitution and Holocaust remembrance. However, there has been no reported progress regarding the proposal for months. As a result, Croatia remains without legislation for the restitution of confiscated heirless Jewish property, including heirless property in the government's possession.

HUNGARY

Two-thirds of the approximately 825,000 Jews that lived in pre-war Hungary were destroyed during the Holocaust. About 100,000 Jews currently reside in the country. Hungary has made efforts to address the restitution of or compensation for confiscated Jewish property but, significantly, the private property claims process suffered from numerous problems and there remains a substantial backlog of pending claims, years after the filing deadline.

Communal Property

Act XXXII on Settlement of Ownership of Former Real Properties of the Churches ("1991 Act") stated that compensation would be provided for communal property that had been confiscated after January 1946 and that certain nationalized religious property could be claimed and used by religious organizations, so long as the property was necessary to meet a community's religious needs. A subsequent amendment offered religious organizations the option to apply for government-funded annuities, purportedly representing the monetary value of a particular religious community's remaining, unrestituted communal property.

MAZSIHISZ, the Federation of Hungarian Jewish Communities, the umbrella agency of Jewish organizations and communities in Hungary, obtained the use of a number of buildings pursuant to these laws. In addition, MAZSIHISZ concluded an agreement with the government through which it waived its right to claim any additional, formerly Jewish-owned communal property in exchange for a government annuity bond.[13]

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[13] MAZSIHISZ apparently waived its right to 152 designated, formerly Jewish-owned communal properties in exchange for the annuity, which was then valued at approximately $75 million. The annuity has yielded about $5 million for use by MAZSIHISZ each year. It should be noted, however, that approximately 1,200 cemeteries and 2,600 other communal properties have been identified as having belonged to the Jewish community in pre-war Hungary.

MAZSIHISZ also reached an agreement which resulted in the government financing the maintenance of Jewish cemeteries seized during the Holocaust. The government further provided support for the preservation of various historic sites, including the Great Synagogue on Dohany Street, one of the largest synagogues in Europe. (**See** Report of Ministry of Public Administration and Justice to IPRC, p. 2.)

Private Property

Act No. XXV of 1991 (providing partial compensation for property damage caused in the period May 1939 – June 1949) and *Act No. XXIV* of 1992 (providing compensation for property damage sustained through implementation of certain laws in the period May 1939 – June 1949) deal with the restitution of private property illegally seized during World War II and/or subsequently nationalized by the Communist regime.[14] However, a number of circumstances related to the private property claims process deterred, or otherwise made it difficult for, many potential claimants and generated frequent complaints, including the following:

- no in rem restitution;
- severely limited compensation – reflecting a small percentage of a property's market value – and a modest payment ceiling;[15]
- only Hungarian citizens – at the time the property was seized or the date of the relevant law's enactment – or foreign nationals with a primary residence in Hungary in December 1990 eligible for compensation;
- narrow definition of heir;
- data privacy laws and limited archival access made ownership documents difficult to obtain;
- limited worldwide notification of the process; and
- claims processing exceedingly slow with extensive delays in payments[16]

In 1993, the Constitutional Court of Hungary directed the government to implement certain provisions of the Paris Peace Treaty of 1947 (to which the country was a signatory), which required heirless and otherwise unclaimed Jewish property to be returned to the Jewish community for "relief and rehabilitation" of Holocaust survivors and to help reinvigorate the Hungarian Jewish community. Subsequent negotiations involving MAZSIHISZ, the WJRO and the Government of Hungary led to the establishment, in 1997, of the Jewish Heritage of Public Endowment ("MAZSOK"). The foundation was established with the dual mission of assisting Hungarian Holocaust survivors and enhancing Jewish cultural heritage and traditions in the country. As a preliminary outlay, the government transferred the following "initial assets" to MAZSOK: (i) a HUF 4 billion ($15-20 million) bond – which was used for modest monthly pension supplements to local Holocaust survivors;[17] and (ii) several immovable properties and paintings – used to generate income for the use of local Jewish institutions.[18]

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[14] Report of Ministry of Public Administration and Justice to IPRC, p.1.

[15] Moreover, compensation was not in cash, but in the form of government bonds or vouchers supporting agricultural enterprises in Hungary. Payments in state bonds, of course, diminish the real value of the compensation because of limitations on how, where and when the instruments can be cashed or used.

[16] Some 1,200,000 of the approximately 1,500,000 private property claims filed have been approved for payment. Compensation has totaled over 81 billion Hungarian forints, in the form of government bonds or agricultural vouchers.

[17] When MAZSOK first distributed the annuity supplement, there were over 20,000 Holocaust survivors in Hungary. By April 2011, the Holocaust survivor population in Hungary had diminished to around 9,300. (**See** Report of Ministry of Public Administration and Justice to IPRC, pp. 3-4.)

[18] **See also** Report of Ministry of Public Administration and Justice to IPRC, p.3. However, numerous families were entirely eliminated among the over half million Jews in Hungary that were murdered in the Holocaust. As a result,

In addition to the restitution laws, Hungary has made other, recent efforts to address the massive property confiscations that occurred during the Holocaust. In November 2007, for example, the government approved the establishment of a special joint commission – consisting of representatives from the government, local Jewish community and WJRO – to resolve all remaining, open property restitution matters, including heirless Jewish property, looted art, insurance, bank accounts and other business interests. The joint commission had begun to address these issues when the newly elected administration of Prime Minister Victor Orban summarily disbanded the group in the spring of 2010. Since then, no effective replacement for the joint commission has been organized by the government.

As a result of negotiations with the WJRO, the government – in light of the advanced age, condition, and urgent needs of so many Hungarian Holocaust survivors – also agreed to the WJRO request for a fund to assist Hungarian Holocaust survivors in need. The fund would consist of a $21 million down payment, made by the government, against the value of all heirless, formerly Jewish property in Hungary.[19] In December 2007, the Hungarian government transferred $12.6 million – representing the first three years of the five-year $21 million commitment – to MAZSOK. Pursuant to an agreement between MAZSOK and the Claims Conference, one-third of those funds were distributed to survivors living in Hungary, while two-thirds were distributed by the Claims Conference for the benefit of survivors of Hungarian origin living outside of Hungary. However, as of November 2012, the government of Prime Minister Orban has withheld the final two years of the government commitment for the benefit of Hungarian survivors who do not reside in Hungary.

Guidelines and Best Practices

Hungary participated in discussions leading to the drafting of – and endorsed – the Terezin Declaration and the Guidelines and Best Practices. Notwithstanding its restitution laws, Hungary has, in a number of respects, failed to meet standards advanced in the guidelines. For example, the guidelines favor restitution in rem, especially for property in the government's possession (GBP, paragraph h), but Hungarian law explicitly rejects returning the actual property that was confiscated. In Hungary, there are prolonged, unreasonable delays in adjudicating property claims and in making the compensation payments once claims are positively decided, while the guidelines insist on prompt decisions and payment (GBP, paragraphs f, h). The guidelines urge that compensation be "genuinely fair and adequate" (GBP, paragraph h), but Hungary offers extremely limited compensation. Moreover, obtaining relevant documentation to establish property ownership has consistently proven to be difficult, in contrast to the guidelines' standard that claimants "have unfettered and free access to all relevant local, regional, and national archives" (GBP, paragraph e).

Finally, the Guidelines and Best Practices encourage states to seriously address the issue of heirless and unclaimed Jewish property (GBP, paragraph j). Hungary has acted in the area of heirless

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estimates of the value of heirless Jewish property located in Hungary range from several hundred millions of dollars to billions of dollars, far exceeding the government's initial payment to MAZSOK.

[19] The request for a fund to help Hungarian Holocaust survivors in need, wherever they currently reside, was accepted by the government as a "down payment" against the total value of heirless Jewish property since the parties realized that an informed assessment of all, or substantially all, heirless Jewish property would require a comprehensive inventory and appraisal of the heirless property. Such activities were envisioned, but would clearly be time-consuming, and many Hungarian survivors were in immediate need of various forms of assistance.

property: through the formation of MAZSOK; by organizing the joint commission to fully address the issue; as well as by its $21 million commitment to assist Hungarian survivors in need. And, yet, the government unilaterally eliminated the joint commission without establishing an effective replacement. Moreover, the $21 million assistance fund, which the government has suspended, was, from the outset, only intended as a good faith, first installment or down payment for the hundreds of millions of dollars worth of heirless Jewish property in the country, a substantial portion of which remains in the possession of the government or was reprivatized.

LITHUANIA

During the Holocaust, the Nazis and their local collaborators killed 90% of the approximately 220,000 Jews that lived in pre-war Lithuania. Lithuania has implemented a claims program for the restitution of, or compensation for, confiscated private property, which was beset by problems, and recently enacted legislation providing for compensation for certain confiscated, formerly Jewish owned, communal property.

Communal or Religious Property

The *Law on the Procedure for the Restoration of the Rights of Ownership of Religious Associations to Existing Real Property* (1995) provided a one-year period for religious groups to claim "religious" property – almost exclusively houses of worship – confiscated after July 1940. Under this law, religious communities that were functioning in the Republic of Lithuania prior to July 21, 1940 and whose property was nationalized are eligible to make claims for restoration of their property rights. The current religious communities recognized as the rightful successors to such communities – as deemed by the "supreme authority" of the particular religious community – were, likewise, entitled to make claims. The deadline to submit applications for such communal property restitution was December 2001.

Under the restitution law, most of the communal and religious property of the Jewish community could not be claimed, due to the Jewish communal structure which was different from that of other faiths. For example, there is no "central church" of the Jewish community in Lithuania with a "supreme authority" (such as a church bishop) to determine an appropriate successor organization or to file claims. Furthermore, prior to World War II, the Jewish communal sets in Lithuania were owned by a myriad of different religious and community congregations and organizations and, due to the almost total destruction of Jewish life in Lithuania during the Holocaust, it was almost impossible to prove any direct legal successor link between those pre-War entities and the Jewish community that exists today.

While the government returned a handful of properties to the small Jewish religious community under the 1995 law, in an attempt to rectify the defects of the law as mentioned above, in June 2002 the government established a commission, to consider the restitution of Jewish communal property which is not considered "religious."

Prior to the war, there were approximately 1,500 Jewish communal properties (including 174 cemeteries) in Lithuania. However, most were destroyed during the Holocaust or by the Soviet regime and, therefore, those building were not eligible for any restitution or compensation. In 2005, the Jewish community prepared an inventory of confiscated communal properties which it submitted to the government, identifying 438 standing buildings that it deemed eligible for restitution. After a review of almost two years, the government ultimately accepted that 152 of those properties would be eligible for restitution under the proposed amendments to the law.

After considering several versions of restitution legislation, in 2009, the government proposed a compensation law, based on what it claimed was 30% of the official value of those 152 properties. In June 2011, Lithuania's parliament approved *The Law on Good Will Compensation for the Real Estate of Jewish Religious Communities*, authorizing the payment of 128 million litas (around 53 million USD), over 10 years from 2013-2023, to compensate the Jewish community for communal property seized by the Nazi and Soviet occupation regimes. The law provides that the compensation is to be used for religious, cultural, health, sports, and educational needs of Lithuanian Jews in Lithuania. Under the law, compensation funds will be transferred to a foundation designated by the government which will be administered by a governing body representing the Jewish Community in Lithuania, the Religious Jewish Community of Lithuania and other Jewish religious, health, cultural and education organizations. The law also provides that 3 million litas (1.25 million USD) will be made in one time payments in 2012 "to support people of Jewish nationality who lived in Lithuania and suffered from totalitarian regimes during the period of occupation."

In 2005 the Lithuanian Jewish Community and WJRO signed a cooperation agreement to establish a joint foundation – the Lithuanian Foundation for the Preservation of Jewish Heritage – which was to be the successor to former communal Jewish property, and receive and manage any restituted property or related compensation. Following the passage of the June 2011 law, this Heritage Foundation formed a separate entity, the "Good Will Compensation Foundation" which was designated in Spring 2012 by the government to receive the compensation under the 2011 law and decide on the allocation of the funds to be received between 2013 – 2023.

Private Property

The law pertaining to the restitution of private property in the Republic of Lithuania is governed by the *Law On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property* (1997) ("Law on the Restoration of Rights"), as modified by several subsequent amendments. The law provides that former property owners, and heirs of property owners, are eligible to recover property seized under the laws of the USSR or otherwise unlawfully nationalized, so long as claimants are Lithuanian resident citizens.[20] The restitution process raised a number of concerns.[21] During the application period, 1991 –

[20] The *Law on Citizenship* (2002) provides that any person who held Lithuanian citizenship before June 1940, or that person's direct descendants, retains Lithuanian citizenship, so long as they did not repatriate. Lithuania determines citizenship requests on a case by case basis. However, by the time of the law's operation, the deadline for filing private property claims had expired, thus, the legislation did not grant anyone the opportunity to file a restitution claim.

The Law on the Restoration of Rights prohibited many foreigners of Lithuanian origin from recovering their confiscated property. For example, Jewish property owners who sought to immigrate to (and become citizens of) Israel following World War II were not allowed to leave the country without renouncing their Lithuanian citizenship

2001, the Lithuanian government received approximately 9,500 claims for private houses and over 57,000 applications for the return of land.[22]

Lithuania has no law for the restitution of heirless private property.

Guidelines and Best Practices

Lithuania participated in discussions leading to the drafting of – and endorsed – the Terezin Declaration and the follow-up Guidelines and Best Practices. In spite of its restitution laws, Lithuania has in various ways fallen short of the standards articulated in the guidelines for private property restitution. The guidelines, for example, urge restitution in rem (GBP, paragraph h), but relatively few claimants have been able to recover their actual property. The guidelines also insist on prompt decisions and payment of compensation (GBP, paragraphs f, h), but years after the expiration of the claims deadline, a significant number of claims remain to be adjudicated.

On the other hand, the government, through enactment of *The Law on Good Will Compensation for the Real Estate of Jewish Religious Communities,* has provided certain funds that will be distributed, in the form of a one-time symbolic payment, to victims of World War II, and will provide additional funds to be distributed over a ten-year period for religious, cultural and educational purposes for the local Jewish community. The law does not return any real property to the community – which is encouraged by the Guidelines and Best Practices – and the total compensation that will be offered for the confiscated communal property, compared to the value of total property which was seized, is relatively small, yet the law is clearly a welcome reaction to the Terezin Declaration and the subsequent guidelines.

Finally, the Guidelines and Best Practices want states to "to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators" (GBP, paragraph j). Lithuania has no legislation for the restitution of confiscated heirless Jewish property, including heirless property in the government's possession.

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and their rights to property in the country.[20] In addition, until 2006, the Lithuanian government did not recognize dual citizenship for ethnic Russians, Poles, and Jews who emigrated from Lithuania to a country considered an ethnic homeland.[20] For example, Lithuanian Jews who emigrated to Israel or Lithuanian Poles who emigrated to Poland lost their Lithuanian citizenship. The Constitutional Court ruled in 2006 that the Constitution permits dual citizenship only under limited circumstances. The current citizenship law came into force on April 1, 2011 and reflects this ruling.

[21] In addition to the problem of precluding "repatriated" persons from recovering their property, there are concerns as to the lack of sufficient substitute properties – when the actual property in question could not be returned – and the amount of compensation paid.

[22] By January 2011, the government claimed that compensation had been paid, or property returned, to 98% of claimants for lands and forest, and to over 72% of the claimants for property in urban areas. Further, according to government statistics, from 1991 – 2011, compensation was paid to 4,567 claimants and property restituted to 2,250 claimants.

POLAND

Prior to World War II, Poland was home to approximately 3.5 million Jews, the largest Jewish population in Europe.[23] Jewish individuals, communities and institutions in Poland collectively owned hundreds of thousands of private and communal immoveable properties.[24] However, Poland stands virtually alone among former Soviet-bloc countries in failing to address the wrongful seizures of private property during the Holocaust and its aftermath. Moreover, while Poland has a claims process for the restitution of confiscated communal property, the procedure is plagued with problems and moves exceedingly slowly.

Communal Property

The Law on the Relationship Between the State and Jewish Communities (1997) ("Jewish Communities Law") governs the restitution of Jewish communal properties. The properties covered – including cemeteries, synagogues and buildings serving religious, educational, cultural and social purposes – belonged to Jewish religious groups and were seized beginning September 1, 1939 by German occupying forces.[25] Significantly, communal properties located in the Vilna/Lvov belt – an area, formerly in Poland, where Jewish life flourished and many Jewish-owned communal properties were located before the war – are not covered by the Jewish Communities Law, as that region was taken from Poland during the war, and later remained outside of its borders.

In 2000, the Jewish community of Poland (represented by the Union of Religious Jewish Communities – "JRCP"), together with the WJRO, established the Foundation for the Preservation of Jewish Heritage ("Foundation"). By agreement, Poland was divided into a number of jurisdictions in which formerly Jewish-owned communal property had been confiscated. In each of the jurisdictions, the

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[23] Etta Prince-Gibson, "Give It Back," The Jerusalem Report, March 1, 2010; Monika Krawczyk, "Restitution of Jewish Assets in Poland – Legal Aspects," Justice, No. 28 Summer 2001, p. 24.

[24] Max Minckler & Sylwia Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property," Humanity in Action 2008, http://www.humanityinaction.org/knowledgebase/115-roadblocks-to-jewish-restitution-poland-s-unsettled-property; Krawczyk, "Restitution of Jewish Assets in Poland," p. 24.

[25] Poland also passed legislation establishing five regulatory commissions to address the restitution claims of various religious communities. Each regulatory commission consists of representatives from the government and a designated religious community and is responsible for processing the communal property restitution claims for that community. Thus, for example, the Polish Government Commission on the Restitution of Jewish Property consists of an equal number of members from the Polish State Treasury and the Union of Jewish Communities.

Foundation or one of nine designated Jewish communities was given the responsibility for the restitution process and Jewish heritage preservation. In the period 1997 – 2000, the JRCP and the nine Jewish communities submitted claims for the confiscated, formerly Jewish, communal property in their jurisdictions.

The Foundation is responsible for approximately 3,500 claims (including 600 for cemeteries) submitted by the claims deadline, while the other Jewish communities submitted another 2,000 claims (including several hundred for cemeteries). As of August 31, 2012, of the total of 5,504 authorized claims filed by all Jewish communities, the pertinent Regulatory Commission had adjudicated (entirely or partially) only 2,289 claims. Thus, almost seven decades after the end of the Holocaust, over twenty years after the fall of the iron curtain, and ten years after the claims filing deadline, the Polish government agency designated to adjudicate Jewish communal property claims has resolved well under 40% of the authorized cases submitted. Further, of the claims that have been adjudicated (in full or in part), only about 45% were positive decisions or settled by agreement, which led to the return of the contested property or related compensation.

A substantial portion of the Regulatory Commission's positive decisions, resulting in the return of actual property, has consisted of cemeteries and synagogues.[26] Generally speaking, these represent the less valuable properties claimed and are almost always in serious disrepair when transferred.[27] Moreover, decisions involving the return of such properties have placed the recipient Jewish community in "Catch 22" dilemmas. Polish law requires a property owner – under threat of penalty – to maintain and preserve his/its property.[28] The cemeteries and synagogues restituted to the Jewish communities – which, over the years, usually have not been maintained, indeed, were permitted to deteriorate and were often desecrated while in the possession of the government or other parties – almost always require extensive and expensive work. Nonetheless, the government, after returning such dilapidated, untended properties, requires the Foundation or communities to immediately repair the property and bear the onerous costs of improvement and upkeep.[29]

Private Property

Since 1990, the Polish government has made commitments and proposed numerous draft laws – none enacted – to deal with the restitution of confiscated private property.[30] In 2001, for example, the Sejm passed a bill, proposed by Prime Minister Jerzy Buzek, which provided for compensation of 50% of the value of the confiscated property in issue, but only to Polish citizens. President Aleksander Kwasniewski vetoed the bill. Subsequently, during the successive administrations of Prime Ministers

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[26] The Jewish Communities Law provides for the return of property in kind when possible, otherwise, substitute property or compensation is offered.

[27] Resolution of many of the remaining claims – for the more valuable properties – has been typically delayed, pending more detailed evidence (which is often impossible to obtain), or due to administrative obstacles.

[28] **See** Prince-Gibson, "Give It Back."

[29] Prince-Gibson, "Give It Back"; Krawczyk, "Restitution of Jewish Assets in Poland," p. 25.

[30] **See** Daniel Schatz and Ruth Deech, "Ghosts of the Past, Op-ed: Israel, US must ensure that Poland compensates Jews over property seized by Nazis," published in Ynet News, August 27, 2012.

Marek Belka, Kazimierz Marcinkiewicz and Jaroslaw Kaczynski, virtually identical versions of a bill, first issued in 2005 – entitled "On Compensation for Real Estate and Some Other Property Assets Seized by the State" – were proposed, but never voted on by the Sejm. The bills did not provide for in rem restitution, excluded compensation for property seized in Warsaw, offered severely limited compensation, and proposed a burdensome claims process. Around October 2008, a similar bill was proposed by the administration of Prime Minister Tusk. Prime Minister Tusk who, months earlier, had promised that a previous bill would be passed by the Sejm by the fall of 2008, pledged to present the October 2008 bill to the Sejm for a vote by year's end.[31] There was no vote on the bill; it was not even submitted to the Sejm – either in 2008, or any time after. Later, in May 2009, another (and what turns out to be the most recent) bill – resembling the draft legislation proposed in October 2008 in all significant respects – appeared on a government website. That bill also was never submitted to the Sejm for consideration.[32] In fact, while the government has issued numerous draft laws with respect to regulating private property restitution, Poland has never enacted a single law pertaining to immovable properties seized from private owners in the country during the Holocaust era and its aftermath.[33]

Having failed, repeatedly, to pass a restitution or compensation law, notwithstanding recurring commitments to do so, the government shifted tactics in the spring of 2012. Claiming that such a law was superfluous, various Polish officials made it clear that the government would not move forward with the compensation for confiscated property bill (still pending three years after it was first proposed). Instead,

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[31] Minckler & Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property."

[32] The most recent proposed legislation addressing the matter of confiscated immoveable property, published by the Polish Treasury Ministry in May 2009, suffered from a number of problems, including the following:

- no in rem restitution;
- property confiscated prior to 1944 and Warsaw property not included;
- unspecified compensation;
- the unspecified compensation to be paid in installments, over a lengthy 15-year period; and
- a burdensome and costly claims process which would make it extremely difficult, particularly for elderly and foreign claimants, to file – much less prove – claims.
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[33] Indeed, the "country that endured many of the most prolific cases of Nazi genocide and thievery, and then much of the harshest effects of Communist property expropriation, has failed to enact a workable claims process for property stolen between 1939 and 1989. (Minckler & Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property.")

Poland did establish a compensation procedure for certain property expropriated during World War II, which was no longer located within its borders. After the outbreak of World War II, approximately one-third of what was pre-war Poland – roughly, territory east of the Bug River – became part of Ukraine, Lithuania and Belarus. In recent years, the European Court of Human Rights directed Poland to compensate owners who had been forced to abandon their property in this region. **See** Case of Broniowski v. Poland, application no. 31443/96, 22 June 2004. In response, Poland eventually enacted the "Eastern Territories (or Bug River) Law," which became effective October 2006. The law established a claims process providing severely limited compensation – 20% of a property's current market value, to be paid in four installments, over a number of years, starting in 2009 – for the loss of private immoveable property located in what had constituted, before World War II, eastern Poland.

In addition, pursuant to a 1960 treaty between Poland and the United States, Poland paid $40 million, over a 20-year period, for claims by U.S. citizens related to the loss of commercial and personal property which had been confiscated in Poland. Ultimately, only 5,022 claimants received compensation, an average payment of less than $5,000 per claimant.

the government insisted that claimants wrongfully deprived of property should pursue their remedy in the Polish legal system.[34]

Yet, bringing such a lawsuit places a claimant – including foreign, elderly applicants – on a complex, expensive and time-consuming path.[35] An individual cannot simply file a complaint in a Polish court to recover property seized during the Holocaust or its aftermath. The country's legal system does not permit it. Rather, Polish law requires a claimant to initiate and pursue separate, but sequential, civil and administrative proceedings. Thus, an aggrieved party seeking restitution must first submit a claim to the appropriate administrative agency and exhaust all administrative procedures before bringing a lawsuit to the civil courts. The agency, it should be noted, lacks the authority to remedy an illegal land expropriation. It may only determine whether a particular seizure occurred in violation of the law prevailing at the time of confiscation. In fact, administrative declarations that a property expropriation is null and void are uncommon, as most property in the communist era was confiscated pursuant to legally issued – albeit altogether unjust – laws.[36] In effect, a claimant seeking restitution of private property

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[34] In a letter to Prime Minister Tusk, dated May 29, 2012, Steve Schwager, Co-Chairman of the WJRO, noted there was nothing new or helpful to Holocaust survivors in the government's recommending that claimants bring restitution claims in Polish courts. That option, after all, had been available for years, but had been rejected as impractical long ago by the overwhelming majority of potential claimants, in large part, due to the burdensome costs, excessive time involved, and procedural and legal obstacles of litigation. In its letter, the WJRO inquired whether the government's suggestion that restitution claimants go to court was to be accompanied by any modifications in Poland's legal system or pertinent laws which, over the years, had discouraged innumerable, victimized property owners from bringing restitution lawsuits. Not until four months later, by letter dated September 25, 2012, did Krzysztof Miszczak, Director of the Office of the Plenipotentiary of the Prime Minister for International Dialogue, respond on behalf of Prime Minister Tusk. Mr. Miszczak's letter, however, was disappointing, utterly failing to address the principal concerns raised by the WJRO.

[35] "The restitution process … is usually very complex and time consuming (each administrative decision may be appealed and/or submitted to judicial review) because it involves legal actions at the junction of administrative and civil law." (Krawczyk, "Restitution of Jewish Assets in Poland," p. 27.) In addition, without an official claims program to recover confiscated private property, "[v]ictims of private property expropriation … are relegated to the Polish civil courts, where arguably over-stringent ownership and inheritance verification laws, processing times that can span many years, and the legislative residue of the Communist era are just a few of the obstacles they can expect to face." (Max Minckler & Sylwia Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property.")

[36] **See** Krawczyk, "Restitution of Jewish Assets in Poland," p. 26. Moreover, most former owners whose property had been seized by the Nazis and their collaborators lost title to their property as a result of the "Post-German and Deserted Properties Decree." Under the decree, any property an owner (as of September 1, 1939) did not recover, within 10 years of 1945, passed to the state. Of course, in the 1945-1955 period during which claims were accepted, virtually no Jews, much less Jewish property owners, were left in Poland; most had been murdered, while few that did survive the war returned to or stayed in Poland. Thus, they could not recover their seized property pursuant to the decree in the time period specified. And, of course, during that time, Jewish Holocaust survivors were fully occupied with other, more immediate matters – such as searching for family members and friends, and trying to rebuild their lives, typically in foreign lands, with alien cultures and languages, bereft of their possessions. In sum, to require the survivors to return to Poland and claim their stolen property in what, often, was a hostile post-war environment was, too put it mildly, unrealistic.

While this decree is no longer in force, titles to properties apparently continue to accrue to the state by virtue of its provisions. Indeed, the Supreme Court of Poland affirmed this presumption – that properties which were not recovered between 1945-1955 escheat to the state – in 1987. **See** Krawczyk, "Restitution of Jewish Assets in Poland," p. 27.

stolen by the communist regime pursuant to its unjust laws cannot successfully argue to a Polish court the unconstitutionality of the communist government, its laws or the implementation of its laws, but must show that the communist law was not properly followed to be able to recover his stolen property.[37]

Nonetheless, should such a rare administrative ruling be obtained – that property in issue was seized in breach of pertinent communist nationalization laws – the claimant may then, and only then, file a lawsuit for restitution or related compensation in the Polish civil court system.[38]

Thus, even should a claimant be deemed to have standing, no claimant that is only able to prove that her property was seized by the Germans and/or their collaborators during the Holocaust era will be able to obtain restitution or related compensation. There is no law in Poland which specifically covers and permits recovery of property seized during the Holocaust. Thus, it is most unlikely that litigation will bring a significant number of interested parties anything more than additional frustration and resentment.[39]

Guidelines and Best Practices

Poland participated in discussions leading to the drafting of the Terezin Declaration and the follow-up Guidelines and Best Practices. While Poland has subsequently waffled regarding its endorsement of these documents, its actions have sent a clear message.

The Guidelines and Best Practices are motivated, at least in part, by the failure or inadequacy over the years of regular court systems and laws to effectively address the extraordinary circumstances of the Holocaust, particularly in the realm of the restitution of confiscated immovable property. Thus, the guidelines encourage governments to "develop their own national programs and legislation for addressing or revisiting the compensation and restitution of confiscated immovable (real) property,"

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[37] **See** Minckler & Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property."

[38] In addition to other difficulties the property restitution claimant faces in bring a lawsuit in the Polish judicial system, "[t]he processes of Nazification and Communization … involved the destruction of volumes of written documentation proving property ownership, line of inheritance, and birth certification … directed, especially in the case of Nazism, specifically against the Jews. The loss of this form of documentation was to prove one of the largest impediments to property restitution in the future[.]" (Minckler & Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property.")

[39] In the September 25, 2012 letter to Steve Schwager – **see** footnote 30 above – Krzysztof Miszczak, the Prime Minister's representative, asserted that "Poland shares the conviction that restitution is of paramount importance." And, yet, the Polish government has failed to enact an effective, indeed, any restitution law. Furthermore, while a small number of successful restitution claims may have been brought over the years by Jewish Holocaust survivors in Polish courts, the country's regular legal system is simply not equipped to effectively and expeditiously address the nature and magnitude of the property crimes perpetrated during the Holocaust. Nonetheless, without offering any credible supporting data, Mr. Miszczak asserted in his letter that "The provisions of the Polish law, as well as numerous decisions of Polish high-instance courts in favour of the interests of those who lost property during and after World War II, and also the administrative practice, make it possible for a significant majority of interested parties to recover their property in kind or obtain a compensation representing its total value." Mr. Miszczak then seeks to substantiate this assertion with another, again, providing absolutely no supporting evidence, that "even the uncertain and approximate data available to us at present allow for making the above statement."

seized 1933-1945 (GBP, paragraph a), by applying the principles embodied in the document.[40] Poland, however, has developed no national program, nor enacted a law, which permits the recovery of, or compensation for, private immovable property confiscated from its population during the Holocaust. Indeed, it has abandoned moving forward with any legislation to deal with the problem of Holocaust confiscations.

Nonetheless, the most recent version of Poland's compensation for confiscated property bill offers insight into the government's "thinking." The bill did not include property confiscated during the Holocaust, nor did it provide for restitution in rem, both critical features of the "Guidelines and Best Practices" (GBP, paragraphs a, g, h). The bill also failed to disclose the compensation amount to be offered, making it impossible to measure against the "genuinely fair and adequate" standard advocated by the guidelines. But whatever compensation the government might have had in mind, that amount would have been substantially diminished in value in being paid over a prolonged, 15-year period, which itself is contrary to the prompt payment standard of the guidelines (GBP, paragraph h). Finally, the bill outlined a burdensome and costly claims process, which would have proven especially difficult for elderly, foreign – especially survivor – claimants. Foreign claimants, for example, would most likely have had to retain a local representative or attorney, archival information would have been difficult to procure, claimants would have faced problems ascertaining the proper regional agency to approach in submitting a claim, establishing who is a legitimate heir would have had to be done in a Polish court, and there was no time limit under the bill within which decisions had to be made. (**But see** GBP, paragraphs d (calling for an "accessible, transparent, simple, expeditious, non-discriminatory … and … not … subject to burdensome or discriminatory costs" claims process); paragraph e ("unfettered and free access" should be provided to government archives); and paragraph f ("[d]ecisions should be prompt [with] a clear explanation").

Finally, the property of countless Jewish families killed during the Holocaust passed to the possession of Poland and the country, albeit unintentionally, continues to benefit from such assets. Nonetheless, there is no Polish legislation for the restitution of heirless confiscated property.

[40] **See** Introduction to "Criteria for Guidelines and Best Practices" within the "Guidelines and Best Practices."

ROMANIA

Approximately 725,000 persons identified themselves as Jewish in pre-war Romania. Over an estimated 300,000 Romanian Jews were murdered during the Holocaust, and only about 11,000 currently live in the country. Romania has a number of laws dealing with the restitution of confiscated communal and private immoveable property, but claims processing, as well as the restitution of, or compensation for, such property has proceeded exceedingly slowly and, in many instances, has been non-existent.

Communal Property

A number of applicable laws, government and emergency orders, and decisions govern the restitution of immovable, communal property confiscated from religious and minority organizations or institutions. In 1997, the Federation of Jewish Communities in Romania ("FEDROM") and the WJRO established the Caritatea Foundation, which assumed responsibility for submitting claims for confiscated, formerly Jewish communal property, as well as for managing any recovered property or related compensation.

Ultimately, the Caritatea Foundation submitted 1,980 claims to the pertinent government agency.[41] Since the expiration of the 2003 deadline for communal property claims, that government agency apparently has adjudicated less than 500 claims, half of which have been resolved positively, as a result of which the Caritatea Foundation has received 37 properties, seventeen plots of land and some compensation.

The Foundation has registered its concern regarding various problems with the claims process: some involve legislative deficiencies – including that no compensation is provided for demolished or certain modified buildings, and that property appraisals are not based on market value; while other concerns relate to the prolonged delays in resolving claims due, in significant part, to difficulties in obtaining relevant documentation, limited archival access and the high level of proof required. For a number of years, the Foundation has not received the compensation called for by positive rulings already decided in its favor.

Private Property

Romania has a particularly complex system with respect to private property restitution. For example, in certain cases an individual may make a confiscated property claim through an administrative process governed by special regulations while, in other cases, the court system, pursuant to the country's civil law, must be used. At the same time, separate laws exist for claiming different types of property -- such as for forest land, agricultural land, state farms, or residential property – which has led to

[41] Approximately 2,600 communal properties, as well as 807 cemeteries have been identified as belonging to the Jewish community in Romania prior to World War II.

inconsistent results by the courts and administrative agencies.[42] Moreover, some laws – passed in the 1990s – entitled former owners to restitution in rem while subjecting precisely the same property to privatization. Romanian courts, as a result, were inundated with lawsuits. Subsequent legislative attempts were intended, but did little, to alleviate the situation.

Law No. 112 (1995), for example, enabled current tenants to purchase the buildings they lived in while entitled former owners of such buildings to receive compensation.[43] Several years later, *Law No. 10* (2001) was enacted, in large part, to resolve the prevailing confusion, but it served to further confound the state of affairs. *Law No. 10* entitled former property owners to restitution in rem, while granting tenants a five-year lease. Problem was, many properties in issue already had been purchased by tenants pursuant to *Law No. 112*. The result: even more lawsuits were generated, as former property owners challenged the tenants' ownership titles.[44]

Further, under *Law No. 10*, potential claimants faced a number of other problems, including the following: property seized during the Holocaust was not clearly covered; effective foreign notice of the claims process was not provided; no compensation for demolished buildings; uncooperative government archives made ownership records difficult to obtain; and there was no compensation mechanism when natural restitution was not feasible. In addition, claims had to be submitted to a decentralized system of local councils which confused potential claimants and led to inconsistent decisions by the councils. Moreover, Romanian law sets no time limit for resolving restitution claims, which resulted in prolonged delays in rulings, as "the lack of deadlines for responding to claims … has … basically shut down all access for rightful owners to courts of law."[45]

Through *Law No. 247* (enacted in 2005; amended 2008), Romania again sought to rectify and simplify the restitution process for confiscated private property, as well as to provide a payment mechanism. Among other matters, *Law No. 247* provided for the following:

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[42] The European Court of Human Rights has registered its concern, noting that "not all courts and not even all panels within one court have the same practice (some of them accept and others reject claims based on Civil Code.)" (European Parliament Study, "Private Property Issues Following the Change of Political Regimes in Former Socialist or Communist Countries," 2010, p. 110.) In sum, "[t]he Romanian framework for restitution of property lacks coherence and unity. The progressive development of the restitution policy has [led] to different approaches in restitution for different types of properties with separate institutional set-ups for implementation. The result is … an uncertain and ineffective system." (European Parliament Study, p. 101.)

[43] *Law No. 112* was a response to "the avalanche of law suits and the lack of consistent jurisprudence in the Romanian courts." (European Parliament Study, p. 104.)

[44] Subsequently, in 2009, Romania enacted *Law No. 1*, which clarified that property purchased by tenants pursuant to *Law No. 112* was protected and did not have to be returned to former owners who, the law then declared, were only entitled to compensation. (European Parliament Study, pp. 105 – 106.)

[45] European Parliament Study, p. 109. Over, 200,000 private property claims were submitted pursuant to the 2003 deadline set under *Law No. 10*. As of 2010, seven years later, only some 119,000 of the claims had been adjudicated and of the adjudicated claims, in less than half was some sort of remedy proposed. In the end, as of 2010, only 5% (or about 10,300) of the over 200,000 claims made under *Law No. 10* were determined to be eligible for (but have not yet necessarily received) compensation.

- property confiscated after 1945 was covered (identical to *Law No. 10*);[46]
- "just and equitable" compensation reflecting market value when property cannot be returned;
- shift in the presumption of property ownership from the State to the claimant;[47] and
- extension of document submission deadline for previously filed claims

Law No. 247 (together with Government Decision No. 1481, issued in 2005) also authorized establishment of the *Proprietatea Fund* ("Property Fund"), out of which compensation was to be paid when confiscated property could not be returned in kind. The Property Fund is an investment fund which consists of shares of a number of state-owned companies and, at least initially, was to hold the equivalent of 4-5 billion Euros in registered capital. Once the fund was listed on the Bucharest Stock Exchange, fund shares were to be issued as compensation to eligible claimants. To date, however, Property Fund shares have not been listed on any regulated market and, thus, shareholders cannot trade or easily cash in their shares. The European Court of Human Rights has concluded that "compensation by securities to Proprietatea Fund does not yet represent effective compensation because their market value cannot be established."[48]

In sum, in spite of legislation that appears beneficial, the restitution process in Romania, when implemented, has been profoundly flawed, with overlapping rights and procedures, significant delays in rulings and payments, and frequent confusion as to outcomes. This may, in part, explain why there are over 1,000 Romanian property restitution claims before the European Court of Human Rights ("ECHR") and why Romania has been on the losing side of many restitution cases decided by the court. While the ECHR does not have the jurisdiction to compel states to enact property restitution laws per se, nor is authorized to address a country's nationalization process, once a country does enact restitution laws, the court can rule on whether the process is implemented in a "fair and effective manner."[49] In that respect, the ECHR has frequently criticized Romania for its exceedingly slow process and ineffective payment mechanism,

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[46] Although both *Law Nos. 10* and *247* refer only to property confiscated beginning in 1945, *Law No. 641* (enacted December 1944) abolished all laws and decrees – including anti-Jewish decrees of the Antonescu regime – issued in the period 1941-1944. That law, in effect, returned all confiscated Jewish properties to their former owners, prior to their subsequent communist nationalization. The Romanian government also issued Ordinance No. 83 (1999), which states that citizens whose property was affected by racial persecution between September 6, 1940 – March 6, 1945 had the right to submit restitution claims. Nonetheless, the situation relating to property seized during the Holocaust remains ambiguous; officials of the Romanian Jewish Emigrants' Association in Israel and the Foundation for the Restitution of Jewish Properties in Romania have maintained and complained – including to the Committee of Ministers of the Council of Europe, in December 2005 – that properties of Jewish citizens seized during the time of Antonescu's regime during World War II remain registered as State properties.

[47] *Law No. 247* provides that a claimant's title to a property should be presumed by law, unless otherwise shown by the State. This mitigated the previous difficulty of proving one's right to restitution in an environment where property ownership documents were often lost, missing or otherwise difficult to access in relevant archives. In fact, however, the presumption of ownership called for by *Law No. 247* apparently is not applied and claimants still are asked to furnish property titles, which remain quite difficult to obtain.

[48] European Parliament Study, p. 112. Moreover, in 2010, the government put into effect *Emergency Ordinance No. 62* which, retroactively, blocked the already reduced compensation payments for property that certain claimants had opted to take, in lieu of waiting for the Property Fund to function. And, subsequently, in March 2012, the government suspended compensation payments for restitution pursuant to *Emergency Decree No. 4*.

[49] European Parliament Study, p. 114.

consistently ruling in favor of former Romanian property owners and often directing the government to return contested property or pay appropriate damages.[50] However, despite ECHR warnings that the payment mechanism in the country, among other problems, was insufficient, Romania made no effort to remedy the situation.[51] As a result of Romania's failure to effectively respond to ECHR rulings – ordering that timely and fair compensation be paid to claimants whose property had been confiscated – the court, in February 2010, decided to apply the "pilot judgment procedure."[52] In the case of Atanasiu and Poenaru v. Romania (2010)(in which the ECHR held that cases involving claimants seeking property restitution from Romania raised issues related to property rights and to receiving a fair hearing under the European Convention of Human Rights) the court directed the Government of Romania, within eighteen months, to undertake all necessary measures – whether legislative, administrative or budgetary – to deal with the protracted delays in returning seized property and to provide a remedy in a timely fashion for the thousands of people seeking relief.[53]

Finally, Decree No. 113 (June 1948) entitled the umbrella organization for Jewish communities to take over the assets of deceased Jews, without descendants, who were victims of persecution, and to manage such property until there was legal clarification or a rightful heir emerged. The decree, however, has never been fully implemented.

Guidelines and Best Practices

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[50] For example, in The Affair Radu vs. Romania, which involved the State's seizure of an apartment in 1983, the ECHR, after a review of *Law Nos. 10* and *247*, determined that:

> "the deprivation of the Claimants…right to ownership of the apartment … [c]ombined with the total absence of indemnification for almost nine years, has subjected them to a disproportional and excessive burden, incompatible with their right to respect for their property guaranteed by Article 1, Protocol 1 [of the Convention Safeguarding the Rights of Man which states: 'Every physical or moral person has the right of respect for his assets. He cannot be deprived of any of his property.']"

The ECHR ordered Romania to restitute the property at issue or to pay the claimants material compensation for the property and an additional payment for "moral damages."

[51] Indeed, the ECHR rulings have identified a number of problems with respect to Romania apart from the inefficient nature of the Property Fund payment device, including an inconsistent and contradictory restitution process, and deliberate delays in processing claims and drafting judgments. As a result of such deficiencies, the ECHR has fined Romania 12 million Euros, more than any other member country of the Council of Europe has been penalized.

[52] A "pilot judgment" enables the ECHR to address a large group of identical cases (emanating from a country) arising from the same fundamental problem. Typically, a pilot judgment not only addresses the issues in the cases before the court, but also provides directions to the State about how to resolve similar cases that arise. (European Parliament Study, p. 96.)

[53] An ECHR decision in a pilot judgment will usually give the violating State a specified time period within which to address the problem(s) described, before imposing sanctions, which can include exclusion from the Council of Europe.

Romania participated in discussions leading to the drafting of – and endorsed – the Terezin Declaration and the Guidelines and Best Practices. While Romania has attempted to deal with the restitution of confiscated property, its efforts not only have been ineffective, they have caused vast confusion and frustration, resulting in very little justice.

The principles endorsed by the Guidelines and Best Practices favor restitution and compensation processes that are "transparent, simple … and uniform throughout [the] country" (GBP, paragraph d), provide for "[d]ecisions [which are] prompt and include a clear explanation of the ruling" (GBP, paragraph f), pay "genuinely fair and adequate compensation" and do so "promptly" (GBP, paragraph h), and include communal and private property seized during the Holocaust (GBP, paragraph a). In stark contrast to these standards, the Romanian restitution process has proven to be extremely complex, involving laws which permit, and courts and administrative agencies which issue, conflicting and inconsistent decisions. Such decisions, typically, are made much too long after claims are filed – there being no legally imposed time limit within which judgments must be made. While it is unclear whether the restitution laws cover property confiscated during the Holocaust, it is quite clear that, years after the claims filing deadlines – both for confiscated communal and private property – a substantial portion of the claims have not been adjudicated. Finally, the Property Fund, the mechanism specifically established to provide compensation for eligible claimants when returning the contested property is not possible, simply does not function and, in any event, Romania issued a decree earlier this year which suspended compensation payments.

The Guidelines and Best Practices also are interested in restitution and compensation being provided for heirless or unclaimed property left by victims of Holocaust persecution. Several years after World War II, the Romanian government did issue a decree authorizing the umbrella organization for Jewish communities in Romania to receive and manage heirless Jewish property. The decree was never implemented and Romania has not, in any other way, addressed the restitution of confiscated Jewish heirless property since that time, including heirless property in the government's possession.

SERBIA

The Nazis and their collaborators murdered all but about 1,500 of the pre-war Jewish population in Serbia of approximately 16,000 persons. Around 1,000 Jews currently live in the country. The restitution process for returning confiscated communal property in Serbia has been, for years, at a standstill, while the recently opened claims process for private property restitution already has been the target of numerous complaints.

Communal Property

The law *On the Restitution of Property to Churches and Religious Communities*, enacted in 2006, regulates the return of confiscated communal property for certain "traditional" churches and religious communities, including the Jewish community.[54] The property covered by the law includes"agricultural lands, woods and woodland, construction sites, residential and business buildings, apartments and business premises and movables of cultural, historical or artistic significance." A government-established restitution board – the Directorate for Restitution of Communal and Religious Property – is responsible for adjudicating the communal property claims, having the value of the contested property appraised, and awarding the property or compensation (through cash or government bonds) to be paid. Substitute property or (market value) compensation is to be provided when in rem restitution is not possible. Only property seized from 1945 is covered.

The provision of the law which only includes property confiscated beginning March 1945 – in effect, excluding communal property seized during the Holocaust – caught the attention of the European Commission against Racism and Intolerance ("ECRI").[55] The ECRI expressed its concern, stating that it "recommends that the Serbian authorities amend the Law on the Restitution of Property to Churches and Religious Communities to ensure that property confiscated before 1945 is restituted. Furthermore, ECRI strongly urges the Serbian authorities to ensure that the restitution of property is conducted satisfactorily and without discrimination." [56]

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[54] The law recognizes five "traditional" churches – the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church, the Christian Reformed Church and the Evangelical Christian Church – and two "traditional" religious communities, the Islamic and Jewish communities.

[55] The Council of Europe established the ECRI as an independent human rights body which conducts country-by-country monitoring work, specializing in issues related to racism and intolerance.

[56] The ECRI noted that excluding restitution for communal property taken during the Holocaust continues to pose a problem for the Jewish community, which had its property seized before 1945. (European Commission against

SAVEZ, the Federation of Jewish Communities in Serbia, submitted over 500 communal property claims by the expiration of the claims filing deadline in 2008.[57] However, SAVEZ has recovered only

two apartments – and even those had been committed to the Jewish community prior to restitution proceedings under the law – before the communal property restitution process stopped.[58]

Private Property[59]

In October 2011, Serbia enacted *The Law on Restitution of Property and Compensation* ("Restitution and Compensation Law") which addresses private property restitution.[60] While the law states that it "shall apply on the restitution of the property whose confiscation was the consequence of the Holocaust on the territory which now forms the territory of the Republic of Serbia" (Article 1), in fact, the law only covers property seized after March 1945 (Article 6), has an extensive list of exceptions to the property that can be returned in kind[61] and provides for extremely limited compensation.[62] It also has suffered from problems of implementation.[63]

Racism and Intolerance Report on Serbia, March 23, 2011, p. 13, http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Serbia/SRB-CbC-IV-2011-021-ENG.pdf.

[57] SAVEZ had identified 609 pre-war properties as having belonged to Jewish communities in the country, including synagogues, schools, mikvehs, orphanages, old age homes and 120 cemeteries.

[58] The government indicated that it was suspending the communal restitution process until it was able to ascertain the amount of compensation that might have to be paid for confiscated private property under a law that – while it had not at that time been drafted, much less enacted – was finally passed in October 2011.

[59] While Serbia did not have a private property restitution law until 2011, certain former property owners from what was the Socialist Republic of Yugoslavia were able to obtain some compensation under two settlement agreements involving the U.S. Yugoslavia paid a total of $20.5 million to a number of persons who were U.S. citizens at the time their property in Serbia was taken; a 1948 agreement covered property seized 1939-1948, while a 1965 agreement covered property nationalized 1948-1964. Jews who had sought to immigrate to Israel from Yugoslavia, beginning in 1948, were forced to renounce their Yugoslavian citizenship and title to any property in the country as a condition for being allowed to obtain an exit visa. These former Yugoslav citizens were excluded from these two agreements, as well as from any other relief, including *The Law on Restitution of Property and Compensation* (2011).

[60] It appears that pressure from the European Union ("EU") may have played a significant part in Serbia passing the law. (European Parliament Study, "Private Property Issues Following the Change of Political Regime in Former Socialist or Communist Countries," 2010, p. 122.)

Several years before passage of the Restitution and Compensation Law, Serbia initiated a program under the *Law on Reporting and Recording a Claim of Nationalized Property*, which required former property owners or heirs of former owners to register their potential restitution claims as a prerequisite to being able to bring a claim for restitution, once Serbia enacted a private property restitution law. As it turned out, Article 41 of the Restitution and Compensation Law, passed in 2011, allows property restitution claims to be made "regardless whether [an individual] submitted a claim in accordance with the Law on Reporting and Recording Seized Property."

[61] Among property exempted from in rem restitution are the following: property used by every level of government or by foreign government officials; property used for health care, educational, cultural or scientific purposes;

Curiously, the Restitution and Compensation Law specifically states that a separate, "special" law will be enacted to address the "[e]limination of the consequences of property confiscation from the Holocaust victims and other victims of fascism on the territory of the Republic of Serbia who have no living legal inheritors" (Article 5). No such law has yet been enacted. Moreover, while appearing to indicate that it will deal with the issue of heirless Jewish property confiscated during the Holocaust, the law, at the same time, excludes claims by former Jewish owners of property in Serbia wrongfully taken before March 1945, when all Jewish-owned property was seized.

Guidelines and Best Practices

Serbia participated as an observer to the Holocaust Era Assets Conference in Prague, June 2009, in which the Terezin Declaration was issued and, after which, the Guidelines and Best Practices were developed. While the Restitution and Compensation Law may represent Serbia's good faith attempt to deal with the issue of confiscated property, pursuant to the Terezin Declaration and the guidelines, as well as to satisfy EU expectations, only several months following the opening of the claims process, there already are troubling signs.

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property already sold in the privatization process or held by state-owned enterprises; and (in an unclear catch-all provision) property "in all other cases anticipated by this Law." (Restitution and Compensation Law, Article 18)

[62] The amount of individual compensation that will be paid is obtained by following a formula which makes any individual payment dependent on the total amount to be paid for private property restitution and the total number of eligible claimants that will be paid (over an extended time period). An indication of the convoluted nature of the compensation formula is offered in Article 31 of the Restitution and Compensation Law: "The amount of compensation shall be determined in Euros by multiplying the compensation basis with the coefficient equal to the ratio between the amount of two billion Euros and the total sum of individual compensation basis determined by decisions on the compensation right increased by the estimated undetermined bases referred to in paragraph 5 of the Article. The coefficient shall be expressed with two decimal places."

In any event, compensation for confiscated property, in the end, is likely to be little more than a token payment. (**See** Djurdje Ninkovic, "The Law of Restitution of Property and Compensation in Serbia (2011) – Heir Beware!" (April 27, 2012) at http://ebritic.com/?p+183744 , in which Mr. Ninkovic, a former Serbian Minister of Justice, analyzes the Restitution and Compensation Law and concludes that compensation will be "virtually worthless.")

[63] While restitution claims began to be accepted as of March 2012 (and may be submitted through 2014), additional regulations apparently still have to be issued for the Restitution and Compensation Law to be effectively implemented. In addition, archives and land registries were "either not up to date or completely lacking in some parts of the territory," which pose serious obstacles for claimants trying to prove property ownership. (European Parliament Study, p. 124.) Further, before passage of the law, the European Commission was concerned that "weaknesses in the rule of law and prevalent corruption [in Serbia] continued to limit legal predictability and undermined trust in the legal system among economic operators, in particular as regards effective enforcement of property rights." (European Commission Staff Working Document: Serbia 2010 Progress Report (Brussels November 2010) pp. 26-27; http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf.) The European Commission has indicated that it is troubled with state of the Restitution and Compensation Law, noting that "[t]ransparent and non discriminatory implementation … has to be ensured and further measures taken to fully establish legal clarity over property rights." (European Commission Opinion on Serbia's Application for Membership in the European Union, October 12, 2011, http://ec.europa.eu/enlargment/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf.)

The Guidelines and Best Practices urge governments to develop legislation which addresses the compensation and restitution of confiscated immovable property seized during the Holocaust period, in the years 1933-1945 (GBP, paragraph a). Serbia, however, notwithstanding clear complaints from local and international Jewish groups, among others, excludes property wrongfully taken prior to March 1945 from the ambit of its law. Further, while it is too early in the process to determine the efficacy of the restitution and compensation claims process, certain concerns have been identified which warrant monitoring, including the following: whether, with so many legal exemptions, there is any significant restitution in rem – which the guidelines favor (GBP, paragraph h);[64] whether the outdated and incomplete land registries, as noted by the European Parliament, become a major hindrance to substantiating property claims; and whether the opaque recipe related to determining – and the funds available for – compensation result in prompt and genuinely fair compensation, as sought by the guidelines (GBP, paragraphs g, h). In addition, the European Commission's general caution about "the weaknesses in the rule of law and prevalent corruption [which] limit legal predictability … in particular as regards effective enforcement of property rights," at a minimum, threatens to undermine not only the guidelines' goal of transparency and uniformity in decision-making (GBP, paragraph d), but much more.

Finally, as noted, Article 5 of the Restitution and Compensation Law explicitly indicates that Serbia will pass a special law that will address heirless Jewish property. Until such a law is enacted, Serbia remains without legislation providing for the restitution of confiscated Jewish heirless property, including heirless Jewish property in the government's possession. (**See** Guidelines and Best Practices, pargraph j.)

[64] For example, "publicly held property," some of the very property the Guidelines and Best Practices indicates should be returned in rem (GBP, paragraph h) is explicitly excluded from restitution in kind by the Restitution and Compensation Law.