

# **POSITION PAPER ON RESTITUTION IN FORMER YUGOSLAVIA\***

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## ***BACKGROUND ON RESTITUTION IN THE FORMER YUGOSLAVIA***

Approximately 82,000 Jews lived in the Kingdom of Yugoslavia before the Holocaust. Only approximately 15,000 survived (Romana 1980, 573–590). The murder of Jews in Yugoslavia was accompanied by the wholesale expropriation of Jewish communal and private property. Almost 70 years after the Holocaust, the mission of providing a small measure of justice to the victims through the return of their property is far from complete.

This World Jewish Restitution Organization (WJRO) position paper is prepared for the conference on Nationalization, Confiscation, and Restitution in Belgrade, Serbia. It reviews the current state of restitution of private property, Jewish communal property, heirless formerly-Jewish owned property, and Jewish cultural property that was confiscated or sold under duress during the Holocaust and/or subsequently nationalized under the communist regime in the countries of the former Yugoslavia, other than Serbia.

An accompanying WJRO position paper, to be presented at the conference, discusses in detail the current state of restitution in Serbia. That position paper also contains a background discussion – relevant to this paper – on the internati-

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onal consensus on restitution expressed in the 2009 *Terezin Declaration on Holocaust Era Assets and Related Issues* (WJRO 2009) and the 2010 *Guidelines and Best Practices for Restitution* (2010), and re-affirmed at the 2012 *Immovable Property Review Conference in Prague* (WJRO 2012).

## ***I. Background on the World Jewish Restitution Organization***

Following the collapse of the Communist regimes in Eastern Europe, the leading world Jewish organizations established the World Jewish Restitution Organization to address the restitution of Jewish property and to remind the world that the time has come to redress the enormous material wrongs caused to European Jewry during the Holocaust.

WJRO is the legal and moral representative of world Jewry in pursuing claims for the recovery of Jewish properties in Europe (with the exception of Germany and Austria). WJRO consults and negotiates with national and local governments for the return of Jewish communal property and heirless private property and the payment of full compensation in cases where restitution is impossible. WJRO also works for the restitution of private property and for compensation to Holocaust survivors. Together with local Jewish communities, WJRO establishes local foundations to file restitution claims and use the proceeds to support survivors and local Jewish life.

The member organizations of WJRO are: Agudath Israel World Organization, American Gathering/Federation of Jewish Holocaust Survivors, American Jewish Committee, American Jewish Joint Distribution Committee, B'nai B'rith International, Center of Organizations of Holocaust Survivors in Israel, Conference of European Rabbis, Conference on Jewish Material Claims Against Germany, European Jewish Congress/European Council of Jewish Communities Joint European Delegation, Jewish Agency for Israel, World Jewish Congress, World Zionist Organization, NCSJ – Advocates on behalf of Jews in Russia, Ukraine, the Baltic States & Eurasia

## ***II. Bosnia and Herzegovina***

Bosnia and Herzegovina participated in the 1998 Washington Conference on Holocaust- Era Assets and the 2009 Holocaust-Era Assets Conference in Prague

and endorsed the Terezin Declaration. Bosnia and Herzegovina is also a signatory to International Council of Museums' (ICOM) Code of Ethics.

### ***A. Communal, Private, and Heirless Property***

Bosnia and Herzegovina has no law for the restitution of immovable communal or private property confiscated during the Holocaust era. It also has no law for the restitution of confiscated, heirless Jewish property.

In the absence of legislation dealing with the restitution of communal property, the return of religious property has been handled on an ad hoc basis, often at the discretion of local authorities. The Jewish community has not benefited from this ad hoc system due, in part, to its small population. Since 1995, the date of the establishment of the current system of government in Bosnia and Herzegovina, the Jewish community has not received a single confiscated communal property back.

The Jewish community has identified 130 formerly Jewish-owned communal properties and has signed an agreement with the WJRO to establish a foundation which will receive and manage any restituted communal property.

In 2005, the government's Council of Ministers established a Commission for Restitution in Bosnia and Herzegovina to consider various approaches to the restitution of property confiscated during and after World War II. Based on the Commission's research, draft restitution legislation – the "Law on Denationalization" – was prepared, but has made no significant progress.

### ***B. Art, Judaica, and Other Cultural Property***

Bosnia and Herzegovina has no restitution law in place that covers movable property.

Bosnia and Herzegovina's cultural institutions do not conduct provenance research, and it is not known if restitution of any objects from cultural institutions has taken place. At the same time, some museums, notably the National Museum of Bosnia and Herzegovina, hold artifacts of unclear provenance. (The National Museum also holds the famous Sarajevo Haggadah which was sold to the Museum in 1894.)

### ***III. Croatia***

Croatia participated in the 1998 Washington Conference on Holocaust-Era Assets and in the 2009 Holocaust-Era Assets Conference in Prague and endorsed the Terezin Declaration. Croatia is also a signatory to ICOM's Code of Ethics.

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.

#### ***A. Communal 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. 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 more than ten years ago, the government has returned only 15 (non-cemetery) properties. 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.

#### ***B. Private Property***

The Act on Restitution/Compensation also governs the restitution of immovable private property in Croatia.

The law limits the target property included – the text of the law states only that property confiscated after May 1945 by the Communist regime may be recovered. 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 sta-

tement, noting that the law only “indirectly encompasses confiscation of property committed earlier ... during ... the Holocaust era” (ESLI 2012, 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.<sup>1</sup> Subsequently, the post-war and post-communist path to recovering Holocaust era confiscations is, at best, convoluted (ESLI 2012, 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.

The Act on Restitution/Compensation also limits 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 is offered for partial value of property and, frequently, in government bonds;<sup>2</sup>
- A legal heir 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;

1 See discussion below regarding the absence of Jewish property owners in Croatia at that time.

2 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 (ESLI 2012, 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.

- A decentralized claims process, involving numerous local restitution offices, proved complex and confusing, deterring potential claimants;
- Positive (municipal-level) decisions in favor of claimants are 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 remain 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, a substantial number of the claims had not been resolved. In addition, for claimants that successfully recovered their property, charges were sometimes imposed which ranged from 10–25% of the property's value. Further, neither the Act on Restitution/Compensation, nor any related regulations or decrees, 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.

Additionally, 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. 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.

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/Com-

pensation to address the country's discriminatory policy toward former property owners who are not Croatian citizens. Parliament never voted on the proposed amendment.<sup>3</sup> In addition, beginning in early 2012, the government worked on a proposal for a foundation to supplement the current restitution law and address the confiscation of formerly Jewish-owned property or provide symbolic compensation for Jewish survivors of Croatian descent. An early draft of the proposal indicated the foundation would be financed through the sales proceeds of certain heirless private and communal Jewish property. However, there appears to have been no progress on establishing a foundation since it was proposed in 2012.

### *C. Art, Judaica, and Other Cultural Property*

In 1989, some libraries that had been looted from Jews and handed over to the National and University Library were restituted to the Jewish community. But otherwise cultural property has not generally been restituted in Croatia.

Croatia's cultural institutions do not conduct provenance research, but awareness was raised concerning the need to do so when the European Shoah Legacy Institute's Provenance Research Training Program held a workshop in Zagreb in March 2013. The workshop was under the auspices of Croatia's Ministry of Culture and co-hosted by the Museum Documentation Center and the Croatian State Archives, along with the Jasenovac Memorial.

Spoliated objects are known to be in a number of institutions throughout Croatia, especially the Mimara Museum, the Strossmayer Galerie, and the Museum of Arts and Crafts of Zagreb.

The WJRO helped initiate cooperation between the National and University Library in Zagreb and the National Library of Israel for a project to ensure the cataloging of all Hebrew and other Jewish-language books and manuscripts in the country.

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<sup>3</sup> 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.

## ***IV. Macedonia***

Macedonia participated in the 1998 Washington Conference on Holocaust-Era Assets and is a signatory to ICOM's Code of Ethics. Macedonia participated in the 2009 Holocaust-Era Assets Conference in Prague and endorsed the *Terezin Declaration*.

Macedonia's Law on Denationalization, enacted in 2000, addresses the restitution of confiscated immovable private and communal property.

### ***A. Communal Property***

The Law on Denationalization (2000) covers communal property seized beginning in August 1944 and provides for the return of property *in rem* when possible. In 1997, the Jewish Community of Macedonia presented the government with a list of 40 communal properties, which led to the eventual settlement of all communal property claims (in 2002).

In exchange for relinquishing all remaining communal property claims, the settlement provided the Jewish community with the following: (i) four properties – a dilapidated building and two small shops in Bitola, as well as a plot of land in Skopje, none of which yield much income; and (ii) a government bond, to be paid over 10 years (2004–2013), for general community needs.

### ***B. Private Property***

The Law on Denationalization also provided the following regarding private property: property confiscated after August 1944 was covered; claimants had to be Macedonian citizens on the date of the law's enactment; and compensation by government bonds, equal to the value of the property, when restitution *in rem* was not possible.

The claims program proceeded extremely slowly (the deadline for claims was 2004) and has been complicated by the extensive property ownership documentation required, the fact that the properties had changed hands multiple times (or were developed or renovated since the time of seizure), by lengthy bureaucratic procedures, and by various political influences.

### *C. Heirless Property*

In 2002, pursuant to the Law on Denationalization, the government set up a Holocaust Fund. The fund is responsible for managing formerly Jewish-owned heirless property (or related compensation), creating a Holocaust Museum and Education Center – officially opened on March 10, 2011 – maintaining Jewish heritage sites (including cemeteries), and sponsoring Holocaust-related education programs.

The Jewish community of Macedonia identified 1,700 heirless Jewish properties. The government initially transferred 500,000 Euros and 35 plots of land to the Holocaust Fund to settle 450 of the heirless property claims. In December 2007, the government and the Jewish community reached a universal agreement which resolved all remaining claims. Pursuant to the agreement, Macedonia allocated 17 million Euros for the completion and initial operation of the Holocaust Museum. The Association of Macedonian Jews in Israel, however, maintains that among its members are former owners of Macedonian property and/or heirs of former owners who could rightfully claim a number of the properties that have been identified as heirless.

### *D. Art, Judaica, and Other Cultural Property*

Research on cultural objects that were plundered by Bulgaria has yet to be done.

It is thought that a number of Macedonia's cultural institutions hold artifacts that may have belonged to Jewish victims of the Holocaust. Museums in Macedonia do not conduct provenance research, and it is not known if any restitution of Jewish-owned cultural movable artifacts has taken place.

### *V. Montenegro*

Montenegro, then part of Serbia, did not participate in the 1998 Washington Conference on Holocaust Era Assets but is a signatory to ICOM's Code of Ethics. In 2009, Montenegro participated in the Holocaust-Era Assets Conference in Prague and endorsed the Terezin Declaration.

### ***A. Communal Property***

Montenegro has not returned two houses purchased by the women's organization of the Jewish community in Belgrade prior to the Second World War as a summer resort. The Jewish community in Belgrade and the Federation of Jewish Communities in Serbia (SAVEZ) continue to seek restitution of these properties.

### ***B. Art, Judaica, and Other Cultural Property***

It does not seem that cultural institutions in Montenegro are conducting provenance research. It is equally unknown if any restitution of cultural property has taken place.

## ***VI. Slovenia***

Slovenia participated in the 1998 Washington Conference on Holocaust-Era Assets and in the 2009 Holocaust-Era Assets Conference in Prague and approved the *Terezin Declaration*. Slovenia is also a signatory to ICOM's Code of Ethics.

Slovenia has no legislation for the restitution of communal property, while the Denationalization Act of the Republic of Slovenia, passed by Parliament in 1991, deals with the restitution of confiscated private property.

### ***A. Communal Property***

Over the years, notwithstanding the absence of a communal property restitution law, the Jewish Community of Slovenia has received several properties, including a synagogue in Lendava, through agreements with the government. The Jewish community and WJRO agreed in 2006 to establish a foundation which would receive and manage any restituted Jewish communal property or related compensation.

Slovenia has no legislation for the restitution of heirless property.

In recent years, the government has appointed two commissions – the Committee for the Unresolved Question of Religious Communities (in 2000) and the Sector for Rectification of Committed Injustices (September 2005) – to study the issue of the restitution of communal and heirless property. WJRO and the Jewish community prepared a report in 2011 on formerly Jewish-owned immovable property.

## ***B. Private Property***

The Denationalization Act requires a claimant to have Slovenian citizenship and only includes property confiscated beginning in 1945. The claims process suffered from lack of trained personnel, inadequate ownership records and a resulting lack of transparency and inconsistent decision-making.

While approximately 40,000 private property restitution claims were filed, Jewish property owners and their heirs generally did not qualify to file claims. Most of the Jewish population was killed or driven out of the country during the Holocaust, and the Slovenian restitution law covered only property confiscated starting in 1945. Moreover, as described above, under “Tito’s Law,” Slovenians who immigrated to Israel between 1948 and 1950 were coerced to renounce their Yugoslav citizenship and to forfeit their property to the State as a prerequisite to leaving the country. The Jewish community has insisted, unsuccessfully thus far, upon the elimination of this law.

WJRO continues to negotiate with the Slovenian government for restitution, with discussions involving, in large part, the comparison of the reports prepared by the government and the WJRO and Jewish community on confiscated property covering communal, private and heirless property.

## ***C. Art, Judaica, and Other Cultural Property***

It is not clear whether the necessary research on the history of plunder in Slovenia – which involves access to Italian and other records – has been done. It seems unlikely that provenance research is conducted by the cultural institutions, and it is not known whether national institutions hold looted cultural property, or whether any restitution has taken place.

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