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HOLOCAUST AND RESTITUTION

Part I

Ethical and Property Dilemma

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SEVERAL IDEAS ON HOLOCAUST AND RESTITUTION IN HISTORICAL OVERVIEW: Serbian Ethical and Property Dilemma and the Legacy of Anti-Semitism*

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The restitution process started in Eastern Europe only after the fall of the Berlin Wall and the collapse of the Soviet Union (1989–1991). While the Holocaust was the official policy of Nazi Germany from 1941, denials of the Holocaust were associated both with the radical, neo-fascist political right, and certain intellectual circles or individuals belonging to the radical left, generally associated with support or cooperation with communist Cold War regimes, or authoritarian regimes after the fall of communism. The ideological, and especially the revolutionary left was dividing the world into exploiters and exploited, questioning both the values and private property, and human suffering. Public debate on the draft law on the elimination of the consequences of seizing the assets of Holocaust victims and regulation of Jewish heirless property looted during the Holocaust began on December 18, 2015. It was anticipated that the Government of Republic of Serbia should launch a legislative initiative by the end of 2015. Already announced restitution model should be related to the Jewish national and religious communities network. The model applied in the Slovak Republic foresaw monetary compensation paid to the Union of Jewish Religious Communities as a consequence of negotiations between the government and the representatives of the Jewish community.

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Key words: restitution, Serbia, Jewish heirless property, Holocaust, Terezin Declaration

"When the World Jewish Congress prompted the international Jewish community to establish the World Jewish Restitution Organization (WJRO) in 1992, with the support of the Israeli government, we set out to write an overlooked chapter of the Holocaust – to attain the historic justice the Jewish people had been denied for half a century. As a result of international pressure and with the courage of a new generation, numerous countries have been forced to confront the dark periods of their history. This painful process of moral and material restitution represents a defining moment in the history of the Holocaust. The world media has played a central role in generating international pressure on governments and financial institutions. It was clear to the media that at stake were not merely financial claims, but rather a moral struggle for historic justice. The core of that struggle was to uncover the truth about the conduct of those states and nations that had collaborated with the Nazis and stood by while the Jews were being killed and plundered. The Nazis and their accomplices intended to liquidate the Jewish people by a brutal process of delegitimization and de-humanization. They stripped the Jews of their rights, their assets, and of their very status as human beings. Therefore, the struggle to regain Jewish property is first and foremost a quest to restore human dignity and basic human rights, including the right of repossession, to the Jewish people – to the heirs of the six million Jews who perished in the Holocaust" (Edgar M. Bronfman, President, World Jewish Congress, Israel Singer, Secretary General, World Jewish Congress) (Bronfman and Singer 2001, VIII).

Denial of the right to property and full property inheritance, and denial of the community rights on inheritance of the heirless property of the Holocaust victims, may also appear in a form of the Holocaust denial, an implicit contestation of the rights of Jews to human, political and legal equality, and a particular a form of discrimination of the state of Israel and other Jewish worldwide associations within international political relations and in realization of their property rights.

I spent the summer of 1997 on New York University "Religion in America" international program, when *New York Times*, on July 23, a published a list of more than 1,800 dormant Swiss Banks accounts related to the victims of the Holocaust

(Schapiro 2003, 140–141).[1] On that early morning, in a LaGuardia place café, I had an opportunity to face, far from home, from the other side of Atlantic, the horrible legacy that has also been my personal living environment. The list triggered more than 20,000 inquiries from Holocaust survivors and their families. The Swiss banks case coverage, after the first class action against the Swiss banks was filed in previous year of 1996, was warning, again and again, that people disappeared together with their properties, property rights, and memories related also to the properties. Property looting, destruction, disappearance or changing of ownership was also part of the recent past of Belgrade, to which I belonged since I was born. And although I was wandering through the aisles of former Jewish neighborhoods of Dorćol, during the uncountable years of my youth, it was then, on that very morning of 1997, in the heart of Manhattan, that I became aware of the horror of the human tragedy of those who were my previous fellow citizens. The horrors of the Holocaust were not just murder and torture. Usurpation of private property was erasing essential traits of human social and personal dignity and identity. I was becoming aware of new forms and proportions of dehumanization in Serbian (Yugoslav) society that was approaching the final stage of its disintegration: structural poverty, institutional weakness, political disorientation. The Swiss banks accounts list instantly appeared as a more frightening testimony than any recorded scene of torture, execution site, or any other mass atrocity.[2] "As visitors and natives walk along the boulevards and streets of Belgrade, they are hard pressed to see any

1 See also: (Rubin, 1998, 66–82); Swiss Confederation's FDHA/FDFA (Federal Department of Home Affairs, Federal Department of Foreign Affairs) report on the state of work on Nazi-looted art, in particular, on the subject of provenance research, 2008, 1–33.

2 Leaders of Jewish organizations began their search in 1995, but Swiss Banking authorities recognized that only $32 million dollars was found in 774 accounts. The US Congress launched hearings in April 1996. Institutional pressure on banks the Swiss establishment is interpreted as "ransom and blackmail". On January 9, 1997 two carts full of documents relating to Nazi accounts waiting to be shredded were accidentally found. On February 5, 1997, the three largest Swiss Banks established a $100 million escrow account as a Humanitarian Fund for Victims of the Holocaust. On February 26, the Swiss governement established a" Special Fund for Needy Victims of the Holocaust/Shoa". The Swiss National Bank was to contribute $100 million francs. The class action suit on the US courts was filed on October 21, 1996. On July 23, 1997, the Swiss Bankers Association listed 1,756 dormant accounts along with the names of their owners and of people with power of attorney over them, etc.

signs of Jewish life, either the life that now is or the vibrant life that once was" (Gordiejew 1999, XIII).

Yugoslav Jews were from diverse backgrounds. They settled during several periods of mutually distant and different character. Before the Second World War Yugoslav Jewry was proportionally smallest among all European nations, numbering about 76.000. The number was temporarily increased to about 82.000 in the years immediately preceding the Holocaust after the arrivals of Jewish refugees from Central Europe. One explanation for the small number of Jews in the total Yugoslav population were most likely overall poverty, particularly long duration of feudalism with the consequences of long-term foreign domination, and the relatively small number of developed cities. About 40% lived in Belgrade, Zagreb and Sarajevo. Important communities existed in Bitola, Novi Sad, Subotica and Osijek. As the largest part of the Yugoslav population was among the peasantry (80%), Jewish urban visibility was additionally emphasized (4,2% in Belgrade, 5,8% in Zagreb, 9.2 in Sarajevo, 6.4% in Novi Sad, 5.4% in Subotica).

The history of anti-Semitism in pre-war Serbia was not extended. This phenomenon revealed certain peculiarities: predominantly rural population and alienation of the capital and major cities of the rural hinterland, demographic disturbances during World War I, rural immigration, and finally the emergence of the Russian political emigration after the October Revolution of 1917, which brought about a systemic anti-Semitic feelings with the mechanisms of propaganda. Otherwise the Serbian 20th century policies tended to connect two Russian chauvinisms, Tsarist and Soviet, providing a continuity of impacts. Russian "anti-cosmopolitan" campaigns have already been linked to anti-Semitism and anti-Zionism, and the tendency of the Jews from Russian history was transferred from Tsarist to the Soviet political culture and practice (Korey 1983, 146–147).

Within Serbian intellectual circles and in public life, during the second half of the thirties, anti-Semitism was becoming a casual phenomena of growing chauvinism and clericalism, as conspiracy theories were becoming substituent of rational political visions of the common Yugoslav future. Denying Yugoslav unity was leading to the denial of ethnic relations harmonization and see, while the seek for a "final solution" was also imposed as a paradigm in international relations, characterized by the rise of Nazi Germany. Yugoslavia was trying to avoid confrontation with Germany and Italy, in deference to the internal anti-Semitic pressures (Milosavljević 2010; Dajč and Samardžić 2011, 66–89).

According to the census of 1931, in Serbia lived up to 30,000 Jews, about 40% of the total Jewish population of the Kingdom of Yugoslavia. Jews played an important role in economic and cultural development. Since the end of the nineteenth century their integration with the local majority, the Serbs, was accelerated (Ristović 2008, 172). Anti-Semitism in Serbia originally echoed alien impacts, as being brought as a system of prejudice and hate by the Russian White-guard immigration in the twenties of the twentieth century, and further progressed as Yugoslavia, precisely after 1934, was approaching economic, and thus the political sphere of Nazi Germany. The strengthening of the anti-Semitism subsequently took place under the impressions of appearance of Jewish refugees, 1938–1941, from Germany, Austria and the Sudeten area, as about 40,000 settled in Yugoslavia, and about the same number passed through the Yugoslav territory (Dajč and Vasiljević 2014, 142–144). Discrimination of the Jews began with their release from German companies in 1938, and since the end of 1940 first official discriminatory regulations have been published (Aleksić 1997, 50–57).

Yugoslavia was not initially a military objective of Nazi Germany. The occupation of Yugoslavia in April, 1941, was followed only after the Yugoslav rejection of previously signed non-aggression treaty which provided German troops an undisturbed connection with eastern Mediterranean. Jews were only targeted victims in occupied and divided Yugoslavia, from 1941, although the Slovenian and Roma ethnic group were also low quoted in the Nazi system of racial classification. In Serbia, the collaborating government under German occupation actively participated in implementation of the Holocaust. By late 1941 the SS hierarchy determined to embark on a policy of killing all the Jews under Nazi control. Singular examples of self-sacrifice amidst the Serbian population in attempts to protect individuals among the Jewish victims also implied all the seriousness of such risky behavior.

Anti-Semitic Regulation in parts of Yugoslavia occupied by Germany included confiscation of property, expulsion from homes, compulsory registration, expulsion from jobs and services, concluding with arrests, deportation and imprisonment in concentration camps. Already on April 16, 1941 German authorities ordered that all Jews should be registered and 9,145 out of about 12,000 signed up. Others have fled or taken refuge. The property of Jews was looted, including the building of the Jewish Community (Municipality), where the Nazi Kulterbund was set. The General Plenipotentiary Management for the economy in Serbia founded

the Jewish commissar management of home and land ownership. The Management was expected to seize the entire Jewish movable and immovable property and transfer the assets at the disposal of German military authorities. In a further step, the management of the assets was entrusted to Serbian collaborationist government. The money from the sales of assets was aimed at the German Army in the form of the Serbian government's contribution. The preemption in purchase of looted Jewish property was given to Germans and members of the local German community by the Commissar Administration (Živković 1975).

The looting of Jewish property began even before the establishment of German military rule in Belgrade (Ristović 2001, 69). Between April and August 1941, Jews were registered and marked with yellow stripes. Sephardic synagogue in Belgrade Bet Yisrael in Cara Uroša street was first converted into a military warehouse of looted Jewish property, and then set on fire in 1944 during the retreat of German troops (69). "During the summer of 1941, a large number of regulations, decrees and orders has been published in the official newspapers and the daily Novo Vreme where the Jews (and often Roma) have been denied all sorts of freedoms and rights." (Dajč and Vasiljević 2014, 146).

German occupation and Serbian civil authorities – "Government of National Salvation" of General Milan Đ. Nedić, showed great interest in Jewish properties. In early May 1941, the German military commander for Serbia ordered the blockade and seizure of Jewish stakes and other values in banks. "Regulation concerning the Jews and the Gypsies", dated May 31, 1941, banned the work in all public services and the professions, access to public establishments, use of public transportation means. Registering of Jewish property was completed by 14 June. Newspapers Naša Borba openly called for the looting of Jewish property: "The Jews are the holders of 1,200 house – palaces in Belgrade. So, what are we thinking about? These houses by a decree should become a state property" (Dajč and Vasiljević 2014, 147).

Yugoslav Jews were murdered by shooting, gassing, hanging, starvation and disease. Within Yugoslavia about 39,000 were murdered in concentration camps, as well as about 24,000 in camps abroad. Finally, almost immediately after the end of the World War II, the organized postwar emigration to Israel, between 1948 and 1952, cut the surviving population in half (Gordiejew 1999, 68).

The Independent State of Croatia (NDH) founded in April 1941 as a quisling state immediately after its foundation passed a number of laws that that success-

fully facilitated the Holocaust. In late June 1941, the NDH passed the law that addressed all Jews as "dangerous elements" that should be taken to concentration camps (Hamović 1997, 198). The result of the Holocaust in the NDH that also included Bosnia and Herzegovina with its large Sephardic and Ashkenazi population was that only 9,000 of 40,000 Jews survived (Goldstein1999, 136). In The Semlin Judenlager (that was later transformed in *Anhaltelager Semlin*) about 7,500 Belgrade Jews were executed that made it the symbol of Holocaust in Belgrade and Serbia. The location at the Sava's left bank placed the camp on the territory of the NDH but it moved under the NDH authority and control in its late stage after the April bombing of Belgrade in 1944. Even though NDH police was running the camp until it was closed in summer 1944, it was still used for facilitating Nazi interests (Browning 1992, 427).

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The Holocaust was not only a profound disorder in the history of Serbian and Yugoslav Jews. Their identities have also followed the trauma of state and national transformation, wandering and conflict in the twentieth century.

The post-war Yugoslav communist government among the first formal acts included the nationalization of private property in order to ensure economic foundations of political power. The February 6, I945 decree transferred to state ownership, under the management of the state Administration of National Property, all German and *Volksdeutsche* properties, all property of war criminals and their accomplices, all property of persons condemned by civil or military courts to loss

of property to the benefit of the state, and also the property of absent persons who were carried off by the invader stares during the occupation, as their property had been transferred to third persons by the Nazi occupation authorities or collaborating governments. In 1948, in a letter addressed to the National Assembly of Yugoslavia by the President of the Economic Council, submitting reasons for the supplementation of the basic law on nationalization, after stating that the proposed nationalization extension would nationalize some 3,100 additional enterprises the President of the Council stated: "Henceforth there will no longer be in Yugoslavia industrial concerns which are not included within the social sector of our economy" (Herman 1951, 515–517).

"Even prior to the promulgation of the new Yugoslav Constitution and the enactment of nationalization laws, between 70 and 80 per cent of Yugoslav industry had passed under state control by this method" (Herman 1951, 516).

The looting of Jewish property was becoming a deep trauma in the general history. Jewish property in Europe was estimated at $10–15 billion in 1938 prices (and only 18–20 percent was restituted) (Zabludoff 2007, 1–2). The Holocaust was eventually even continued in Eastern Europe by other means, as the Jewish assets remained the property of the repressive state apparatus. Especially the Immovable property was grabbed, sometimes moreover becoming subject of reparations, and its traces were additionally concealed.

Since the very founding of the modern Jewish state in Palestine, communist Yugoslavia has developed a hostile attitude toward Israel. The Yugoslav Jewish community was held hostage, and as such treated by Yugoslav foreign policy. During the seventies and eighties, even after the death of President Josip Broz Tito (1980), there were indications that secret Yugoslav services trained Palestinian warriors and terrorists.

Robbery or destruction of movable and immovable Jewish property was one of the methods and goals of the Holocaust. Holocaust, however, has developed its latter forms even after the total defeat of the Nazi state and its allies in 1945, as totalitarianism was not defeated in World War II, nor eradicated in post-war Europe. Jews in communist Yugoslavia and in other eastern European states under Soviet influence or domination have been deprived of important layers in human rights, including the right and an obligation to a general confronting with the human, ethical and material consequences of the Holocaust. The largest part of the Jewish property was looted, abducted, lost or taken over by the states, or transferred

to other aficionados of ownership. Left-wing intellectual and media propaganda was supporting, during the following decades, the communism or Eastern European communist regimes, thus implicitly legitimizing looting and nationalization of Jewish property as an extension of the Holocaust.[3]

The restitution process started in Eastern Europe only after the fall of the Berlin Wall and the collapse of the Soviet Union (1989–1991). The fall of communism opened a space to "an increasing qualitative extension of memory arising from the growing incorporation of the events of World War II, while the various European national memories are becoming more and more affected by the Holocaust and its multiple taints. One may ultimately foresee, that in such a process, where the different collective memories in Europe may undergo a kind of settling of accounts among themselves, a common European canon of remembrance will be established" (Diner 2003, 42). The process was also the impetus to a general dealing with the material and ethical consequences of the Holocaust, in humanities, social sciences and legal proceedings, both in Western Europe and the United States. Restitution was obstructed or slowed by the state administrations, while intellectual circles warned that restitution may recoat new injustices, or further legitimize the capitalist order. The future of Jewish property looted during the Holocaust becoming a collateral, or even deliberate victim of the government corruption and postmodern scholasticism.[4]

3 More in: (Yakira, 2010, 1–62). Analysing the impacts of left-wing Holocaust denial and anti-Israeli propaganda ran by Noam Chomsky, author concludes: " If not from the outset, at least after the fact, a community of deniers is formed, in effect a subculture, a bio- or ecosystem of denial. It assumes different forms and manifests different measures of intensity. It is, to be sure, an amorphous community, but it has real character and even a sociopolitical structure. Participation in this community is based on loose agreement concerning the denial of the Holocaust and particularly the theoretical and ideological implications of such denial. Despite their ideological identity, its members find it easy to ally themselves with deniers on the extreme right. The boundaries of the community are vague and meandering. There is a hard core, and there is a wide periphery of supporters, devotees, fellow travelers, and those who simply indulge them. One way or another – and whatever excuse they give for this support – the fellow travelers are always strongly anti-Israeli (and usually anti-American too). It is an international community, based on shared codes and a shared language or, at times, jargon, consensus about a basic credo, a feeling of victimhood, and shared secrets."

4 "The growing awareness concerning the Holocaust we do observe in Europe since 1989 seems to be a phenomenon largely moored in a basic anthropological assumption – the obvious, indeed organic interconnection between restituted private property rights and the evocation of past memories, or vice versa: restitution of property as the result

While the Holocaust was the official policy of Nazi Germany, denials of the Holocaust were associated both with the radical, neo-fascist political right, and certain intellectual circles or individuals belonging to the radical left, generally associated with support or cooperation with communist Cold War regimes, or authoritarian regimes after the fall of communism. The ideological, and especially the revolutionary left was dividing the world "into exploiters and exploited in a way that sometimes leaves no room for other victims". In case of 20th century France, "the proletariat has only one enemy, and that is the class to which Dreyfus belongs, the exploiting class. There is only one just struggle, the struggle against exploitation". "Both in Rassinier and in his faithful followers on the radical French left one can find this syndrome: one must not allow the crime that was committed at Auschwitz, as it were, to blind us to the main thing, which is the suffering of those who are truly exploited – the workers, people of the Third World, the Palestinians. What happened at Auschwitz was, in the last analysis, just another instance, among many, of the true source of all crimes: colonialism, imperialism, capitalism, and Zionism." (Yakira 2010, 21).

"Anthropologically property and memory are in a manner of relation that is indeed epistemic." (Yakira 2010, 40). The issue of Jewish property looted during the Holocaust, or nationalized in communism was not within the scientific or ethical priorities of post-war Yugoslavia. Two large waves of Jewish immigration to Israel took place in 1948–1952, and in 1990s.The violent disintegration of Yugoslavia (1991–1999) postponed important reform processes for the future. Moreover, during the random privatization in the nineties the question of Jewish property was appearing further complex to solve. A part of Jewish property, looted or nationalized, has changed its bearers. Time was relentless factor of neglect in institutions, and the public and public policy oblivion.

Liability to return or compensate the heirless property to Serbian Jewish communities should not have direct connection with the participation of Serbian collaborating government in the Holocaust during the Nazi occupation, however institutional and moral order must face the consequences resulting in that "zero" year of our recent past, the 1941. The role of the quisling Serbian government belongs into general ethical issues in dealing with the overall totalitarian past. The

of recovered memory. This intriguing anthropological conjunction between property and memory can help explain why World War II and the Holocaust may well enjoy a long future in an emergent common European memory" (Diner, 2003, 39–40).

distinctive attitude, in this regard, in dealing with the consequences of the Holocaust, referring primarily to the Jewish property confiscated during the Holocaust, including heirless property, is the legal requirement announced by the Article 5, Paragraph 3 of the Serbian Law on Property Restitution and Compensation from 2011. This Article announces legal obligation to adopt a special law that will regulate dealing with the consequences of the seizure of property to victims of the Holocaust on the territory of the Republic of Serbia in cases where victims have no legal heirs. The Republic of Serbia has signed the Terezin Declaration adopted in 2009 in a former concentration camp for Jews in the Czech Republic. Declaration was proclaimed by representatives of 49 countries and the EU, and it invites and obliges all signatory States to return property which was confiscated from victims of the Holocaust during World War II.[5]

Public debate on the draft law on the elimination of the consequences of seizing the assets of Holocaust victims and regulation of Jewish heirless property looted during the Holocaust began on December 18, 2015. It was anticipated that

5 "During the Holocaust, the Nazis used state apparatus to confiscate Jewish property, including both private property, such as homes, art and jewellery; and communal infrastructure, like synagogue buildings and graveyards. To this day, much of it has not been returned and the property remains in the hands of modern states. Sadly, many Holocaust survivors now live in dire poverty, and the return of their property could give them a better quality of life in their final years, and a legacy to pass on to their descendants.

In 2009, 47 countries (including all 28 EU-member states) came together to make the so-called Terezin Declaration, where they pledged to speed up the restitution of private and communal property to Holocaust survivors and their heirs. The following year, 43 countries endorsed a set of guidelines and best practices for the return of, or compensation for, confiscated property. At a follow-up conference in Prague in 2012, it was clear that many countries were not on track, and in a number of cases the situation has even decelerated.

In Croatia and Latvia, the relevant legislation has been delayed. In Romania, the processing of claims and payments has been extremely slow. Recent legislation risks further delays and reductions in compensation payments. In Hungary, discussions continue about restitution for heirless and hitherto unclaimed property formerly owned by Jews. Poland has one of the worst records on restitution of private property. It back-tracked on some of the commitments it made at the 2009 Terezin Conference, and was the only one of the 47 countries not to send a delegate to the 2012 Prague Conference.

The great injustice about the delays in restitution payments mean that some of the Holocaust's victims will pass away without ever seeing their property returned". The 2014 European Elections. A Jewish Manifesto. The Board of Deputies of British Jews, 9–10.

the Government of Republic of Serbia should launch a legislative initiative by the end of 2015. Already announced restitution model should be related to the Jewish national and religious communities network. The model applied in the Slovak Republic foresaw monetary compensation paid to the Union of Jewish Religious Communities as a consequence of negotiations between the government and the representatives of the Jewish community (Kuti 2009, 327–328).

References:

Aleksić, Vesna. S. 1998. „Otpuštanje Jevreja službenika Opšteg jugoslovenskog bankarskog društva A. D. 1940. godine." *Godišnjak za društvenu istoriju* 4 (1)/1997: 49–63.

Aleksić, Vesna. S. 2002. *Banka i moć, Socijalno-finansijska istorija Opšteg jugoslovesnkog bankarskog društva 1918–1945*. Beograd: Stubovi kulture.

Bronfman, Edgar M, and Israel Singer. 2001. *Foreword. The Plunder of Jewish Property during the Holocaust. Confronting European History*. Ed. Avi Baker, London: Palgrave.

Browning, Christopher. 1992. "The Final Solution in Serbia – The Semlin Judenlager – A Case Study." *Jewish Studies* 6: 407–427.

Dajč, Haris, and Maja Vasiljević. 2014. "Kretanje nepokretne jevrejske imovine kao posledice Holokausta." *Limes plus* XI(2): 139–154.

Dajč, Haris, and Nikola Samardžić. 2012. "Belgrade Synagogues after WWII." In *International Conference Architecture and Ideology, Belgrade 28–30th August 2012*. Ed. Mirjana Roter Blagojević, Marko Blagojević and Marta Lazar, 1–19. Beograd, Arhitektonski fakultet.

Dajč, Haris, and Nikola Samardžić. 2011. "The Serbian Orthodox Church and the Church of England 1918–1941." *The South Slav Journal* 30(3–4): 66–89.

Diner, Dan. 2003. "Restitution and Memory: The Holocaust in European Political Cultures." *New German Critique*, 90. Taboo, Trauma, Holocaust: 36–44.

Goldstein, Ivo. 1999. *Croatia: A History*. C. Hurst & Co. Ltd. London.

Gordiejew, Paul Benjamin. 1999. *Voices of Yugoslav Jewry*. State University of New York Press: New York.

Hamović, Miloš. 1997. "Destiny of Jews in Bosnia and Herzegovina during World War Two." *Jewish Studies* 7: 198–209.

Herman, Samuel. 1951. "War Damage and Nationalization in Eastern Europe." *Law and Contemporary Problems* 16(3): 498–518.

Korey, William. 1983. "In History's "Memory Hole": The Soviet Treatment of the Holocaust." *Contemporary Views on the Holocaust*. Ed. Randolph L. Braham, 145–156. Kluwer Nijhoff Publishing.

Kuti, Csongor. 2009. *Post-communist Restitution and the Rule of Law*. Central European University Press.

Milosavljević, Olivera. 2006. *Potisnuta istina: kolaboracija u Srbiji 1941–1944*. Beograd: Helsinški odbor za ljudska prava u Srbiji.

Milosavljević, Olivera. 2010. *Savremenici fašizma (1). Percepcija fašizma u beogradskoj javnosti 1933–1941.* Beograd: Helsinški odbor za ljudska prava u Srbiji.

Molnar, Aleksandar. 2002. „Antisemitizam kao oblik rasizma." *Nova srpska politička misao* 1:1–58.

Molnar, Aleksandar. 2006. *Rasprava o demokratskoj ustavnoj državi. 5. tom: Rat od kulta Votana do holokausta.* Beograd: Institut za filozofi ju i društvenu teoriju: Fabrika knjiga.

Ristović, Milan. 1996. „Jugoslavija i jevrejske izbeglice 1938–1941." *Istorija 20. veka* 1: 21–41.

Ristović, Milan. 2001. „Pljačka umetničkog i kulturnog blaga Srbije u Drugom svetskom ratu i problemi njegove restitucije: nekoliko fragmenata." *Istorija 20. veka* 19/1: 65–78.

Ristović, Milan. 2005. *Nemački 'novi poredak' i Jugoistočna Evropa, 1941/42 –1944/45 – planovi o budućnosti i praksa.* Beograd: Službeni glasnik.

Ristović, Milan. 2008. „Progonjeni i njihovi saučesnici: solidarnost i pomoć Jevrejima u Srbiji 1941–1944." *Izraelsko–srpska naučna razmena u proučavanju holokausta. Zbornik sa naučnog skupa, Jerusalim–Jad Vašem 15–20. jun 2006*, uredio Jovan Mirković. Beograd: Muzej žrtava genocida: 169–250.

Rubin, Seymour J. 1998. "The Washington Accord Fifty Years Later: Neutrality, Morality, and International Law." *American University International Law Review* 14(1): 66–82.

Schapiro, Jane. 2003. *Inside a Class Action. The Holocaust and the Swiss Banks.* The University of Wisconsin Press: Madison.

Todorović, Vladimir, Rajić, Siniša and Strahinja Sekulić. 2014. *Restitucija. Komentari zakona.* Projuris: Beograd.

Yakira, Elhanan. 2010. *Holocaust Denial and the Left. Post-Zionism, Post-Holocaust. Three Essays on Denial, Forgetting, and the Delegitimation of Israel.* Cambridge University Press.

Zabludoff, J. Sidney. 2007. "Restitution of Holocaust-Era Assets: Promises and Reality." *Jewish Political Studies Review* XIX (http://jcpa.org/article/restitution-of-holocaust-era-assets-promises-and-reality/).

Živković, Nikola. 1975. „Građa o pljački jevrejske movine u Srbiji i Banatu za vreme II svetskog rata." *Jewish studies/Zbornik jevrejskog istorijskog muzeja* 3: 277–284.

Živković, Nikola. 1975a. *Ratna šteta koju je Nemačka učinila Jugoslaviji u Drugom svetskom ratu.* Beograd: Institut za savremenu istoriju.

Rezime:
Nekoliko ideja o Holokaustu i restituciji kroz istorijsku perspektivu: etička i imovinska dilema Srbije i nasleđe antisemitizma

Proces restitucije počeo je u Istočnoj Evropi tek nakon pada Berlinskog zida i raspada Sovjetskog Saveza (1989–1991). Iako je Holokaust bio zvanična politika nacističke Nemačke od 1941. godine, poricanja Holokausta povezana su i sa radikalnom, neo-fašističkom političkom desnicom i sa određenim intelektualnim krugovima ili pojedincima koji pripadaju radikalnoj levici, uglavnom u vezi sa podrškom ili saradnjom sa komunističkim hladnoratovskim režimima ili autoritarnim režimima nakon pada komunizma. Ideološka, a posebno revolucionarna levica delila je svet na eksploatatore i iskorišćene, dovodeći u pitanje vrednosti i privatnu svojinu, kao i ljudsku patnju. Javna rasprava o Nacrtu zakona o otklanjanju posledica oduzimanja imovine žrtava i regulacije jevrejske imovine bez naslednika opljačkane tokom Holokausta počela je 18. decembra 2015. godine. Zaključeno je da Vlada Republike Srbije treba da da zakonodavnu inicijativu do kraja 2015. Već najavljeni model restitucije trebalo bi da bude povezan sa mrežom jevrejskih nacionalnih i verskih zajednica. U okviru nacrta zakona predviđena je i primena modela restitucije koji je primenila Slovačka i koji omogućava novčanu kompenzaciju koju bi država plaćala jevrejskim zajednicama.

Ključne reči: restitucija, Srbija, jevrejska nepokretna imovina bez naslednika, Holokaust, Terezinska deklaracija

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THE SALE OF CONFISCATED JEWISH IMMOVABLE PROPERTY IN SERBIA DURING WORLD WAR II FOR FINANCING WAR DAMAGES TO GERMANS*

Original Scientific Article

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This paper describes two financial operations German occupational authorities in Serbia undertook and performed simultaneously in order to finance German war production. The first one is confiscating and selling Jewish immovable property, at first directly through German institutions, later through Serbian Državna hipotekarna banka Bank. The second one is payment of war damages to Germans in Serbia and Banat, citizens of the Reich and Kingdom of Yugoslavia, personally or to their firms, they incurred between March 27, 1941 and the end of April war.

Key words: Državna hipotekarna banka Bank, Jewish property, Jewish community, war damages, Commissariat for Jewish immovable property, auction.

Jews in Serbia during occupation in World War II shared destiny with their compatriots that happened to live in areas under Nazi rule or political influence. Regarding policy of German occupational authorities towards Jews in our country, domestic historiography mainly focused on phys-

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ical extermination of Jewish population, while issue of their property, especially immovable one, was always collateral topic. Historiography attempts to perceive destiny of Jewish property were mostly limited to seizing of valuables and art treasures, plundering of movable property and confiscation of immovable properties.[1] This paper perceives the destiny of Jewish immovable property in Serbia during World War II, from its seizing in first months of occupation until final sales, in mid 1943. The research simultaneously follows two issues that are, when it comes to practice of local Nazi authorities towards Jewish property in occupied countries, always present and correlated. One of them resulted from general Nazi policy towards Jews, to grab their property and use it for financing war efforts of the Reich, the other one being endeavors of corrupted local officials in occupational institutions to profit personally as much as possible from seized Jewish property.

Jews in Serbia until World War II

According to census of 1931, around 30,000 Jews lived in Serbia (Ристовић 2008, 172). Jewish population in Serbia lived almost exclusively in towns. Most of Jews – 10.388, in 1939 lived in Belgrade (Кољанин 2008, 56), where, by historical accident, after formation of Kingdom of Yugoslavia developed both Sephardim and Ashkenazi community.[2] Sephardim communities in Serbia also existed in: Niš, Kragujevac, Šabac, Leskovac, Pirot, Požarevac, Novi Pazar, Priština, Kosovska Mitrovica. In Vojvodina Ashkenazi communities were organized in: Novi Sad, Sombor, Subotica, Petrovgrad, Senta, Pančevo (Lebl 2002).

1 Issue of seized Jewish property in Serbia during World War II was not investigated in separate studies, although it was discussed in almost all papers in a context of Nazi policy towards Jews. In a very voluminous historiography on holocaust, lots of studies and contributions in scientific periodicals, Jewish property is secondary topic, mostly fragmentarily observed. Prosecution and killing of Jews and grabbing of their property are not regarded as a historical entity, at least not in domestic historiography, not as two clearly defined and firmly correlated events, for only that approach can give overall picture of the holocaust. Jewish property as an aspect of Jewish tragedy was considered in papers by: Jaša Romano, Milan Ristović, Milan Koljanin, Vesna Aleksić, Jovanka Veselinović, Haris Dajč and Maja Vasiljević.

2 Before forming of Kingdom of Yugoslavia, in Vojvodina, in regions under Habsburg monarchy, dominated Ashkenazi, and south of Sava and Danube, in the Ottoman empire, Sephardic community. After unification in 1918, both populations form their communities in Belgrade and develop at the same time (Dajč and Vasiljević 2014, 141)

Jewish community in the Kingdom of Yugoslavia was legally equalized and socially integrated. Jews were, by the Vidovdan Constitution (*Vidovdanski ustav*) of 1921, secured full equality with all legally accepted religions.[3] Among Jews in Serbia existed social differentiation, so many different professions were present (Dajč and Vasiljević 2014, 142). Anyway, professional structure of Jewish population was adapted to historical circumstances they lived in and to activities they traditionally pursued. Approximately 80% of all employed Jews worked in commerce, banking, industry and craftsmanship with another 10.8% engaged in other professions: physicians, lawyers, clerks in state and local administrative institutions, and other (Mosbaher 1940/1941, 127; Кољанин 2008, 63). Since they were practicing the most profitable professions, importance of Jews in economic life of Serbia exceeded manifold their percentage in overall number of inhabitants.[4] Traditionally enterprising, Jews in Belgrade managed to accumulate significant capital and come into possession of valuable properties and buildings at attractive locations in the city center.[5]

Already during their preparations to attack Yugoslavia during March and beginning of April 1941, Germans contemplated "Jewish issue". The preparations included gathering of intelligence on Jewish community in Yugoslavia. This task was given to German intelligence officers and numerous group indoctrinated by Nazi ideology – the *Volksdeutsch* (Кољанин 2008, 506). With their help, German occupational authorities very quickly managed to compile precise lists of Jews in Serbia and Banat and catalogue their property (Dajč and Vasiljević 2014, 144)

Occupation and first measures of German authorities against Jews

The first discriminatory measures against Jews at the territory occupied by their troops, German occupational authorities performed even before the signing of act on capitulation of Yugoslav army. Already on April 16, 1941 in Belgrade a commissioner of Special unit of political police issued a decree that was published

3 Jewish denomination was even ranked among four most important in Yugoslavia, together with Orthodox, Catholic and Muslim ones (Petranović and Zečević 1987, 127–128).

4 Participation of Jews in commerce was ten times more than that in general population (Кољанин 2008, 63).

5 On Jewish buildings in Belgrade, see: (Šuica 2014).

by posters all over the city that all Jews, under threat of death penalty, have to report until 8 A.M. on April 19 to city police headquarters at Tašmajdan. Of approximately 12,000 Belgrade Jews, 9,145 reported to be enumerated. Enumeration was performed by Gestapo, in charge of Jewish issue. Three sets of card indices were made: general, property and card index of spouses of those Jews in civil service (Manošek 2007, 42–43).

Right after invasion of Yugoslav capital German soldiers and *Volksdeutsch* made real coursing on Jewish shops in Belgrade. According to data of Chamber of commerce in Belgrade on April 6, 1941 there were altogether 837 Jewish shops, 432 out of them textile and wear articles shops.[6] First merchandise to be grabbed was the one in goldsmith and jeweler stores and fashion wear stores, later in the others as well.

Impression on situation in Belgrade and the way Jewish property was treated in the first days of occupation can be perceived from the post-war report of State Mortgage Bank:

"At the very beginning of occupational rule terror started: people of Jewish nationality were registered and marked with yellow ribbons on their hands, and straight after they were used for forced labor. Decrees were issued that banned Jews to visit all public places. Right after that, their shops were marked as Jewish, which meant German soldiers and Germans were free to plunder them. Flats of Jews were taken to accommodate members of German minority that came in numbers to Belgrade to take away Jewish possessions and merchandise. German army wholeheartedly supported compatriots in that. The whole convoys of military trucks and cars were carrying possessions and merchandise from Belgrade to German settlements in Srem and Banat."[7]

Real organized plundering of Jewish property, however, started after imposition of occupational rule. First Jewish stores were marked, and in Jewish flats in Belgrade were accommodated members of German national minority in Serbia, and there were around 20,000 of them in Belgrade only.

6 Arhiv Jugoslavije/AJ (Archives of Yugoslavia), Državna komisija za utvrđivanje zločina okupatora i njihovih pomagača/DK (State commission for determining crimes of occupier and its helpers), fund 110, Report of Survey commission for State Mortgage Bank.

7 AJ, DK, Report of Survey commission for State Mortgage Bank.

Two institutions were instrumental for implementation of Nazi policy towards Jews in the Third Reich: Chief office for Reich security (RSHA) for physical extermination and Commissariat for four-year commerce plan of Reich for plundering Jewish property. Since the vertical of Nazi state administration and its institutions truly reflected in the system of German occupational authorities in Serbia (Aleksić 2010, 52–72), in the headquarters of Military commander in Serbia there were two centers dealing with Jews. Implementation of policy measures was entrusted, as in all occupied territories in Europe, to police-security apparatus led by Wilhelm Fuchs, while Jewish property was in competence of Headquarters of General Representative for Commerce in Serbia, led by Franz Neuhausen.[8] This institution was only formally subordinated to Military commander in Serbia, since Neuhausen received his directives on how to deal with commerce directly from Herman Goering (Aleksić 2008, 301–318). Military commander of Serbia issued at the end of May a decree that formally empowered Neuhausen to control Jewish property.[9] Both institutions built diversified bureaucracy apparatus, so in each of field commander offices, territorial military authority, in Serbia there were officials responsible for Jewish issues and Jewish flats (Browning 1992, 408).

After establishing their rule on Serbian territory and forming occupational administration institutions in April, Germans started to elaborate systematic seizing of immovable Jewish property. Already in May a decision was made that against Jews should be applied same measures implemented in occupied part of France and the Netherlands (Manošek 2007, 44).

Commander of German occupation command in Serbia issued first legal act on May 30, 1941 and it related to position of Jews and their property. By this

8 AJ, 110, F. No. 959, Indictment against Franz Neuhausen. An excerpt of indictment states: "Office of general commissioner for commerce in Serbia dealt with immovable property, directly all the way to 1943. Until that time, said institution sold significant part of it. Since 1943 indict dealt with mentioned property through State Mortgage Bank, the one he previously conceded to immobilities confiscated from Jews, so afterwards State Mortgage Bank was selling goods instead of General commissioner and amounts received transferred into a German account with that bank. Money received from sales of Jewish property was used to pay huge occupational expenditures imposed to Serbia" (Koljanin 1992, 21–22; Browning 1992, 408).

9 AJ, DK, 110, F. No. 959, Indictment against Franz Neuhausen. Franz Neuhausen himself at the trial after the war stated that his headquarters was responsible for implementation of decree on confiscation of entire Jewish property in Serbia; *Лисш уредаба војної заповедника у Србији* No. 8 of May 31 and No. 16 of July 25, 1941; More details in: (Божовић 2012, 102–103).

legal act of German occupation authority, all Jews in Serbia were deprived of legal functions and professional titles, and were banned from practicing following professions: lawyer, physician, dental surgeon, pharmacist, veterinary surgeon etc. Imposed was forced labor for all Jews of both genders from 14 to 60 years of age. Also, Jews were banned to change place of residence without consent of Regional command. They were banned to dispose of property they had to report to Regional command within ten days of that decree, with details about its whereabouts. All transactions performed in violation with said decree became invalid.[10]

All commercial enterprises whose owners or co-owners until April 5, 1941 were Jews, had to be reported until June 15 to appropriate German Regional command, as per enterprise seat. That Decree related also to Jewish commercial enterprises whose seat was outside territory of Military commander in Serbia, for those businesses performed in occupied territory. Jewish enterprises were considered all those whose owners or lessees were Jews, and companies whose at least one holder was a Jew, limited liability companies, then companies with one third of Jewish shareholders or with more than one third in possession of Jewish shareholders, and finally companies with Jewish manager or more than one third of supervisory board members Jewish. Jewish property also comprised joint-stock companies whose president of executive board or more than one third of executive board were Jews. General Representative for Commerce in Serbia could declare some company Jewish if it was largely under Jewish influence. All Jewish commercial enterprises, and all legal entities apart from commercial enterprises that had more than one third of Jews among their members or management, had to report their bonds, shares in commercial companies, secret shares in commercial enterprises and their immovable property and asset rights.[11] Until June 14, 1941 with Regional command in Belgrade, property was registered by 3498 Jews and Roma, huge majority of them being Jews (Veselinović 1992, 173).

In the next period several amendments to that legal act and some new acts relating to Jews ensued. At the end of June 1941, Military commander in Serbia declared act that appointed German commissars for all property lots that remained

10 "Decree regarding Jews and gypsies", *Листи уредаба Војної заповедника у Србији* No. 8, 31st May 1941, 85–88.

11 "Decree regarding Jews and gypsies", *Листи уредаба Војної заповедника у Србији* No. 8, 31st May 1941, 85–88.

after deportation of Jews.[12] Commissar managers were appointed also for companies and shops whose owners were Serbs opposing Reich, that is clearly evident from the list of Serbian and Jewish enterprises and shops claimed by the occupier, kept in Belgrade Court of Commerce. Known is the case of pharmacy of Svetislav Trajković, situated at the address Knežev spomenik 2, whose whole family was shot and property confiscated.[13] According to said decree the commissars were empowered to sell Jewish property and use that money to cover their expenses, and pay remainder to one of the banks specified by Military commander.[14]

By the end of first war year in Serbia, Germans finished a process of seizing Jewish immovable property. Since most of Jewish men were shot in summer and autumn of 1941, under pretext that is a part of reprisal for losses army suffered by partisans, those who survived massacre, mostly women and children, were ordered on December 8, 1941 to come to police and bring food for three days and keys to their apartments with names and addresses (Browning 1992, 409–410).

Commissar managers for Jewish immovable property

After they grabbed Jewish movable property, merchandise and valuables, Military commander in Serbia, at the end of July, issued decree appointing German commissars for all property lots that remained after deportation of Jews.[15] Commissars were appointed not only to Jewish shops and companies, but also to those whose owners opposed Nazis.[16]

At the beginning of September 1941 General Representative for Commerce in Serbia organized Commissar Administration for Jewish immovable property in order to sell Jewish property. The Commissariat was typical institution of the kind Franz Neuhausen founded in Serbia. Since Commissariat was directly under competence of his headquarters, the control over sales was in accordance with the policy he implemented in Serbia. Although policy towards Jews in all occupied ter-

12 "Act related to amendment of decree regarding Jews and gypsies of May 30, 1941", *Листи уредаба Војної заповедника у Србији* No. 16 of 25th July 1941.

13 AJ, DK, 110, Report of DHB, 6.

14 AJ, DK, 110, Report of DHB.

15 "Act related to amendment of decree regarding Jews and gypsies of May 30, 1941", *Листи уредаба Војної заповедника у Србији* No. 16 of 25th July 1941.

16 The list of Jewish and Serbian companies occupier seized is kept at Belgrade Court of Commerce.

ritories was a part of general Nazi policy, under competence of two most important persons of the Third Reich, Heinrich Himmler and Hermann Goering, with sale of Jewish property Neuhausen pretty much worked on his own, especially when it meant personal benefit for himself and his associates. He made bold moves, no doubt because he had personal support of Hermann Goering, the second man in state hierarchy of the Third Reich.[17] That proved true already during selection of officials to manage Jewish property on behalf of Commissar administration. The Commissariat was led by Nicholaus Würth, a German from the Reich, who was commercial representative in Belgrade before the war. No doubt his acquaintance with Neuhausen, who was also representative of German companies, dates back to that period. His assistant was the architect Leopold Štefl, a German from Sarajevo, while legal representative of Commissariat was Slavko Barle, lawyer from Belgrade. Out of 70 officials of this institution, most were Germans; others were Russian emigrants and Croatians.[18]

How institution that was supposed to be in charge of Jewish property functioned in Serbia is illustrated by a report of State Mortgage Bank, whose leaders were, during occupation, in position to closely cooperate with Neuhausen and so had direct insight in the manner his headquarters operated: "Commissar management was miserable, their technical service useless. All was directed towards maximizing the profit from properties, so nothing else was done, no renovations of buildings, not even most urgent repairs. Commissar management was interested solely in money: gather as much income as possible, sell as much properties as possible. It was evident there was no control over actions of commissars, so Commissariat was a nest of most unscrupulous corruption."[19] That obtaining personal benefit from sales of Jewish property and houses was the most important goal of this institution is proved by the fact that salaries in the Commissariat were 8,000 to 30,000 dinars monthly, while at the same time in State Mortgage Bank average officials salary was 2,200 dinars.

The manner in which Commissar management sold Jewish property shows the character of that institution. Sales of immovable property the Commissariat

17 More details in: (Алексић 2008).

18 AJ, 110, DK, Report of DHB. Among high officials of the Commissariat are also mentioned: Genadije Malkov, engineer Vasilije Baumgartner, Irina Koteljnikova, Hauska, Turin, Dasović.

19 AJ, 110, DHB, 7.

practiced through direct negotiations, without advertising, and buyers were acquaintances of officials or were sought through agents. Properties were sold at prices much lower than in free property market. Representatives for ownership transfer were Belgrade lawyers Slavko Barle, who was also official of Commissariat, and Janko Olip. Sale of Jewish property through Commissariat began in September 1941 and lasted about a year. In that period in Belgrade only 136 properties were sold, in total value of 147,600,822 dinars.[20] Germans bought majority of Jewish immobilities, 68 mostly large ones, Serbs 61, Russian emigrants 4 and Croatians 3. Commissariat sold most valuable properties to Germans under very favorable conditions, so proportion of sales to Germans in total income was proportionally the largest. Serbs were buying mostly smaller objects, so their percentage in total income from sales was 33%. Most Serbian buyers were small capitalists and small scale savers who, following traditional mentality of that social layer, tried to purchase property cheap.[21]

After extermination of Jews and confiscation of their immovable property were almost finished at the beginning of 1942, German authorities started with the gathering of Jewish property that was left with citizens for safekeeping. At the end of May 1942, Military commander in Serbia ordered that all persons who were keeping movable or immovable property or are in debt with Jews, have to declare its value to German authorities.[22] This legal act of German occupational authorities, unknown to international public law and morality, reached new heights in ruthless plundering of Jewish property in Serbia. Documents and securities – bonds, bank-books, bills of exchange, checks and shares were all considered to be Jewish property with third party. All transactions that were legally concluded before April 5 1941 General Representative for Commerce in Serbia could nullify if there was a doubt they were fictive transactions and their validity was unproved. Domestic authorities and citizens were obliged to report Jewish property to General Representative for Commerce in Serbia. In this Order term of Jewish property in possession of other persons was precisely defined with detailed and all-encompassing explanation what this obligation relates to:

20 AJ, 110, DHB, 7.

21 AJ, 110, DHB, 7.

22 "Act related to amendment of decree regarding Jews and gypsies of May 30, 1941", *Листи уредаба Војної заповедника у Србији* No. 16, 25th July 1941.

"The obligation to report is extended to all contracts concluded with Jews from April 6, 1941 even if they were not concluded with intention to hide or put aside Jewish property. The obligation to report is extended to those property values and requests from Jews, where owner, the one who keeps them or debtor has to assume that it is Jewish property in question."[23]

Execution of these orders was responsibility of Serbian authorities. To avoid any hiding, obligation of reporting Jewish property was severely legally sanctioned. Punitive measures for ignoring this order prescribed by German occupational administration included fine sentence and imprisonment, in more severe cases penal servitude or death sentence.

Sale of Jewish property through State Mortgage Bank

Although Commissar administration over Jewish property sold properties at favorable price and at a time when axis powers were constantly advancing at all fronts, sales were going slow for citizens were abstaining from such a purchase. At the end of summer 1942 *Vermacht* had no longer dominance over its opponents so buyers of Jewish property were no longer to be found no matter what conditions were. Since sale of Jewish property through Commissariat stopped altogether, Germans had to find better way to revive sales of these properties. That way was found by Germans ceding Jewish immovable property to Serbia, so it can sell it over State Mortgage Bank and forward money to them. Procedure through which German commercial authority in Serbia used to sell remaining Jewish immovable property is an example of impertinent, treacherous and absolute grabbing of valuables. Germans envisaged handing over management of Jewish property to State Mortgage Bank, so that deposit guarantee is Jewish property.[24]

This unexpected decision is connected with urgent need Germans had for finances. Already in the first half of August 1942 the chief of principal finance group with Administrative headquarters, Dr Lindermann, started talks with representatives of State Mortgage Bank, Ministry of finance and Serbian national bank on a loan with State Mortgage Bank, where seized Jewish property, managed by Commissariat for immovable properties, would be ceded to Serbia as a compen-

23 "Act related to amendment of decree regarding Jews and gypsies of May 30, 1941", *Листи уредаба заповедника Србије*, No. 32, 10th April 1942, 227–228.

24 AJ, DK, fund 110, Državna komisija za utvrđivanje zločina okupatora i njhovih pomačaga u Srbiji F. No. 959, Indictment against Franz Neuhausen.

sation for credit received. After that, hastily was made legal framework to enable this transaction. Military commander in Serbia on August 13, 1942 signed Act on compensation of war damages to Germans.

"German citizens and members of German nation who sustained any kind of damage on occupied Serbian territory in movable and immovable things since March 27, 1941 can be compensated, if that damage occurred due to combat activities, theft, plundering, anti-German activities, interning or profit loss. Cost of compensation is covered by Serbia."[25]

The procedure of damage evaluation was performed by field commands, and deadline for applications was October 31, but later it was extended to the end of 1942. Administrative headquarters, before that Decree was passed and before Germans had any possibility to apply for eventual damages, estimated that amount will be two billion dinars.[26] Government of national salvation enacted this financial operation. By the end of August 1942 Presidency of ministerial board of the Government of national salvation enacted Act on ownership of Jews in Serbia.

"Property of those Jews, who were citizens of Kingdom of Yugoslavia or were with no citizenship, if it is situated on Serbian soil, belongs to Serbia without any compensation. Exempted from this is property of Jews – former citizens of German Reich, now with no citizenship."[27]

Implementation of this Act was entrusted to Minister of finance. By decision of Minister of finance already on August 31 1942 management of all Jewish property German authorities ceded to Serbia was entrusted to State Mortgage Bank.[28]

Transfer of immovable Jewish property to Serbia happened unexpectedly and through very speeded up procedure. Background of this hasty transaction is urgent and pressing German need for finances. That can be undoubtedly concluded from agreement on sale and income collection of Jewish property between German occupational authorities and institutions of Serbian administration. At the meeting between representatives of German occupational authorities, Ministry of finance and Serbian national bank, on September 8 1942, conclusion was: "As a payment of material damage suffered by Germans in Serbia, State Mortgage Bank approves

25 Act on compensation of Germans for war damages, *Листи уредаба заповедника Србије,* бр. 38, August 15 1942.

26 AJ, DK, 110, Report of State Mortgage Bank.

27 *Службене новине* бр. 69, 28. August 1942.

28 AJ, fund 125, State Mortgage Bank, F. No. 538.

to Serbian state a credit of 2 billion dinars."[29] That sum was later reduced to one billion. Since it was impossible to assume at what rate Jewish properties would sell, Germans extorted from domestic authorities to make State Mortgage Bank by the end of 1942, according to the Act on compensation for war damages, disposable to Administrative headquarters a billion dinars. The first tranche of 250,000 dinars, State Mortgage Bank approved already on September 19, before it took over Jewish property from Germans.[30]

The procedure with handling and cashing Jewish property that Germans handed over to Serbia was managed by Administrative headquarters. By that, General Representative for Commerce in Serbia was denied direct control over Jewish property. That issue will not be discussed in this study, although it is very important for the insight of relations between certain institutions in occupation system in Serbia. It could be concluded that main reason for that were large malversations by Commissariat for Jewish immobilities and slow sale of Jewish property.

General representative had right to transfer and handle Jewish property until properties were handed over to State Mortgage Bank. Using doubtful interpretation of one of the articles of mentioned Act, Neuhausen was delaying full hand-over of Jewish property, as can be concluded from one letter to the Ministry of finance: "Regarding handling and hand-over to Serbia of said property, crucial is Art. 4 of said Act (refer to mentioned gentlemen noted author D. A.) that says it is generally still under my competence. Only if I cede handling and sale, then handling and sale are entrusted to State Mortgage Bank in Belgrade."[31] In his competence Neuhausen also kept handling and sale of Jewish immobilities and property of Jews, foreign citizens who happened to be in the territory of Serbia, and those Jewish properties and houses for which Commissariat already received deposit and commenced sale procedure. He also kept under his control certain companies with Jewish capital that were performing well, under pretext he will better organize their business since these companies are very profitable.[32]

29 AJ, DHB 125, F. No. 539, Report of chairman of Managing board, Dr Harold Turner of September 8, 1942.

30 AJ, DHB, 125, F. No. 538.

31 AJ, DHB, 125, F. No. 538, A letter of General representative for commerce in Serbia to Ministry of finance of Serbian government of October 6 1942.

32 AJ, DHB, 125, F. No. 538, A letter of General representative for commerce in Serbia to Ministry of finance of Serbian government of October 6 1942.

Council for administering property of Serbia

State Mortgage Bank approached this business professionally and responsibly, although it was clear the whole operation was imposed in order to collect additional finances to serve exclusively to occupier. In September 1942 the management of the bank defined necessary codes and acts and formed bodies needed to sell Jewish property. The bank was ordered to do whatever needed to take over that property from present managers and to start sales of all property straight afterwards. For managing Jewish property, bank operations were exempted from *Act on state bookkeeping* and *Law on principal control.* For direct managing of these operations it was decided to form a Council for administering Jewish property that would have, as one of its members, a representative of Ministry of finance.[33] Executive board of the Bank, following that decision, on September 2 appointed members of the Council for control and management of state property.[34] (In official document that council is titled Council for administering Serbian property at State Mortgage Bank). It approached business in accordance with defined Bank practice. For estimation of each property it appointed a commission that established property value according to bank's *Code on estimations for intended sale.*[35] Each commission for city homesteads consisted of two bank representatives and one representative od Ministry of finance. Out of two bank representatives, one had to be an engineer from Technical department of the bank. For estimations of agricultural estates representative from bank's Technical department was replaced by an agricultural clerk. The Council also determined the order in which sales are to be made, date of auction and other terms of sale. Sales were performed according to the Code for sale of immovable properties of Serbia, by which public invitation for sale had to be appear twice in joint ads in dailies: *Novo vreme, Obnova,*

33 AJ, DHB, 125, F. No. 538, Decisions of Ministry of finance of August 31 1942.

34 AJ, DHB, 125, F. No. 136, Minutes of I session of Council for administering property of Serbia of September 14 1942. Council members from Bank became: Brana Stefanović, Rista Zlatanović, Kosta Krnajski – Council president, Nikola Skrbić and engineer Vasa Spasić. Directorate of the Bank deputised as Council secretary Dušan Mandarić, department chief of DHB, and Ministry of finance for their Council member delegated Dr Stevan Milačić, department chief in Ministry of finance.

35 AJ, DHB, 125, F. No. 536, Minutes of VI session of Council for administering property of Serbia of October 8 1942.

Donauzeitung and *Srpski narod.*[36] The sale was performed by public auction or direct negotiations, as per Council's discretion. The sale became finally effective when approved by bank's Executive board and announced to buyer in writing. The sale was not performed if at least estimated value was not reached for auctioned property. The sale through direct negotiations could be performed only if on previous auction estimated value was not reached for that property.[37]

State Mortgage Bank received on October 3, 1942 from Commissar management for Jewish immobilities first lists with 339 Jewish houses and estates with data for registration. Council for administering property of Serbia straight away appointed persons in charge for received objects and ordered to have objects assessed, so they could be sold,[38] and required from Ministry of finance empowerment so State Mortgage Bank can enter ownership rights of Serbia, to sell and validly transfer ownership to buyers and make valid settlements and other legal actions, as envisaged by the Act on transferring Jewish property to Serbia.[39]

The first public invitations for sale of Jewish property in Belgrade, where houses and flats on attractive locations in city center were offered, State Mortgage Bank published at the end of November 1942. Anyway, out of nine offered objects at auctions on November 26 and 28, only one was sold. The objects in streets Vlajkovićeva, Prote Mateje, Kralja Zvonimira, Lamartinova and Visokog Stevana were not sold since price determined by the Commission was not met at auctions, while for those in streets Dositejeva and Uzun Mirkova, due to high asking price, no bids were made.[40]

In the January 1943 the Council for administering property of Serbia offered, at public auction, sale of lot of houses and flats in Belgrade center and estates on the

36 AJ, DHB, 125, 536, Minutes of VIII session of Council for administering property of Serbia of October 12 1942.

37 AJ, DHB, 125, 536, Minutes of VIII session of Council for administering property of Serbia of October 12 1942.

38 AJ, DHB, 125, 536, Minutes of VI session of Council for administering property of Serbia of October 8 1942. For managers of Jewish houses taken over from the Commissariat the Council mostly choose former officials of State Mortgage Bank, who were for meager compensation, sometimes only for a right to live in, overseeing houses until their sale.

39 AJ, DHB, 125, 536, Minutes of V session of Council for administering property of October 6 1942.

40 AJ, DHB, 125, 536, Minutes of 24th session of Council for administering property of Serbia, held on November 30 1942.

periphery and in the area close to city, but number of interested buyers was small, so for Jewish property on majority of locations there were no bids whatsoever.

Having in mind interest of buyers for larger objects, public sales of Jewish properties were going slow, so already in March 1943, the Commissar of State Mortgage Bank, Dr Kam, asked Bank manager to modify determining of starting bid price. At the meeting of representatives of Bank and Ministry of finance on March 15, it was agreed to offer property for sale at prices determined by commission that would be gradually decreased by 20% until they reached prices at which those properties could sell faster.[41]

The other obligation imposed on State Mortgage Bank regarding ceded Jewish properties was payment of war damages who after March 27 were in Serbia. Executive board of State Mortgage Bank on September 19, 1942 decided that in bank books in a group "Active current accounts" should be opened an account titled "Administrative headquarters – Jewish property, immobility I" (*Ver Waltungsstab – Judenvermoegen, Immobilien I*) at disposal solely by Administrative headquarters. To that account were registered amounts received from sales of Jewish property that was ceded to Serbia according to already mentioned Act. From this account were paid adjudicated war damages by the Act issued by Military commander in Serbia on August 13, 1942. [42]

The total amount of war damages paid to Germans through State Mortgage Bank was 1,003,014,531.59 dinars. Of that, funds received from sales of Jewish property given to Bank by the Council for Serbian property made 226,894,441.21 dinars, for that was amount of net purchase price of properties. From Jewish property, including immovable properties, Jewish deposits in banks and valuables, General Representative for Commerce in Serbia collected through Bankarsko društvo a.d. Beograd altogether 330,000,000 dinars (147,600,822 from sale of immobility only). The remainder of amount that bank gave Germans at disposal came from own sources, and was just fictively secured by oral mortgage on Jewish property.[43] Total amount collected from sale of Jewish property in Serbia, therefore is 556,894,441.21 dinars, and from immobility were gathered around 375 million

41 AJ, DHB, 125, 536, Minutes of conference held at State Mortgage Bank on March 15 1943.

42 AJ, DHB, 125, 538, A letter of Directorate for banking business of State Mortgage Bank to Department of general secretariat of September 19 1942.

43 AJ, 110, DHB, 11.

dinars. It is difficult to establish what the real value of confiscated Jewish property in Serbia was, but it was certainly manifold higher than the sum collected through sales. One of the reasons was that significant part of value went into pockets of greedy officials of German occupation administration. The second one is that properties were sold at law prices, since buyers were reluctant to buy immobilities of such origin. How the public regarded these sales is convincingly illustrated by a note of one of contemporaries. Grigorije Gliša Babović, protopresbyter of Šabac, on July 14, 1943 wrote in his diary:

"Today the community bought from Hipotekarna banka (a commissar of German army) the Jewish synagogue for 480,000 dinars. They will cede it to Red Cross for child nursery and day care. Several other Jewish houses remained unsold although prices were very low. Many, actually majority, condemn buying these houses.

Najdan Milićević, an inn keepe, whose house and inn at Makiška burned totally in the autumn of 1941, bought a Jewish house in Karađorđeva 44. When the bank clerk handed him the keys, he told him:

– Well, now just pray to god the war finishes soon.

– Good willing, said Najdan.

But one present shoemaker interfered:

– But also pray to god for whom to win. For if the Russians and the English win, you know what to expect.

Proprietor Najdan lowered his head at that" (Babović 2005, 492–493).

Sources:

Arhiv Jugoslavije/AJ (Archives of Yugoslavia):

Državna komisija za utvrđivanje zločina okupatora i njihovih pomagača (DK) 110 (State commission for determining crimes of occupier and its helpers, fund 110)

Državna hipotekarna banka (State Mortgage Bank) (fund 125)

Laws and periodicals:

Лист уредаба заповедника Србије

Службене новине 1941–1944.

References:

Алексић, Драган. 2008. „Франц Нојхаузен и привредна политика нацистичке Немачке у Србији". *Токови историје* 1–2: 301–318.

Алексић, Драган. 2010. „Србија под немачком окупацијом у Другом светском рату". *Ослобођење Београда 1944. године: Зборник радова*, Edited by Животић Александар, 52–72. Београд: Институт за новију историју.

Aleksić, Vesna S. 2002. Banka i moć, socijalno-finasijska studija Opšteg Jugoslovenskog bankarskog društva a.d. 1928–1945. Beograd: Stubovi kulture

Бабовић, Григорије Г. 2005. *Дневник 1941–1944.* Шабац: Шабачко-ваљевска епархија.

Божовић, Бранислав. 2012. *Страдање Јевреја у окупираном Београду 1941–1944.* Београд: Музеј жртава геноцида.

Browning, Christopher. 1992. "The Final Solution in Serbia – The Semlin Judenlager – A Case Study." *Jewish Studies* 6: 407–427.

Dajč, Haris and Maja Vasiljević. 2014. „'Kretanje' nepokretne imovine beogradskih Jevreja kao posledica holokausta." *Limes plus* 2: 139–154.

Koljanin, Milan. 1992. *Nemački logor na Beogradskom sajmištu 1941–1944.* Beograd: ISI

Кољанин, Милан. 2008. *Јевреји и антисемитизам у Краљевини Југославији 1918–1941.* Београд: Институт за новију историју.

Lebl, Ženi. 2002. *Do „konačnog rešenja": Jevreji u Srbiji.* Beograd: Čigoja štampa.

Manošek, Valter. 2007. Holokaust u Srbiji – vojna okupaciona politika i uništavanje Jevreja 1941–1942. Beograd: Službeni list SRJ.

Mosbacher, Eduard. 1940/1941. *Jugoslovenski Jevreji u svetlu statistike.* Jevrejski narodni kalendar. VI, Beograd 5701/1940–1941.

Petranović, Branko and Momčilo Zečević. 1987. *Jugoslovenski federalizam. Ideje i stvarnost. Tematska zbirka dokumenata. I tom, 1914–1943.* Beograd: Prosveta.

Ристовић, Милан. 2008. „Прогоњени и њихови саучесници: солидарност и помоћ Јеврејима у Србији 1941–1944." In *Израелско-српска размена у проучавању Холокауста: Зборник са научног скупа, Јерусалим-Јад Вашем, 15–20. јун 2006,* Edited by Јован Мирковић, 169–250. Београд: Музеј жртава геноцида.

Šuica, Nikola, 2014. „Preuzeta i izmenjena zdanja jevrejskog vlasništva u Beogradu. " *Limes plus* XI (2): 123–137.

Veselinović, Jovanka. 1992. „Spisak Jevreja i supružnika Jevreja koji su prema naredbi Vojnog zapovednika u Srbiji od 30 maja 1941. podneli Opštini grada Beograda prijave o imovini." *Jewish Studies/Jevrejski zbornik* 6:372–406.

Rezime:
Prodaja oduzete jevrejske nepokretne imovine u Srbiji u Drugom svetskom ratu za finansiranje isplate ratne štete Nemcima

Sistematsko otimanje i prodaja nepokretne jevrejske imovine u Srbiji u Drugom svetskom ratu može se podeliti u dve faze. Prva, kada je odmah posle preuzimanja, u prvim mesecima okupacije do kraja leta 1942. godine, jevrejska imovina bila neposredno u nadležnosti nemačke okupacionih vlasti. U tom periodu oduzetim jevrejskim nekretninama raspolagao je Komesarijat za jevrejsku imovinu, pri Štabu Generalnog opunomoćenika za privredu u Srbiji. Za to vreme organi nemačke privredne uprave direktno su rukovodili prodajom

najvrednijih oduzetih jevrejskih imanja i stanova. U drugoj fazi, od septembra 1942. do decembra 1943. godine, Nemci su raspolaganje jevrejskom imovinom nametnuli srpskim vlastima, a obavezu prodaje poverili Državnoj hipotekarnoj banci, najvećem državnom novčanom zavodu u Srbiji. Banka je bila dužna da jevrejsku imovinu rasproda i da od dobijenog novca isplati ratnu štetu Nemcima iz Rajha i državljanima Kraljevine Jugoslavije, pretrpljenu od 27. marta 1941. godine do završetka Aprilskog rata. Srpske vlasti se u ovom periodu pojavljuju kao posrednici u raspolaganju jevrejskom imovinom, a State Mortgage Bank (Državna hipotekarna banka) samo kao izvršilac prodaje i čuvar novca, s obzirom na to da ovu operaciju nije sprovodila s ciljem da ostvari profit već kao organ državne uprave. Prodajom jevrejske imovine prikupljeno je mnogo manje sredstava nego što se to očekivalo. Prvo, zato što je odziv kupaca na javnim oglašavanjima za prodaje bio slab, i drugo, što je nemačko privredno vođstvo u Srbiji nastojalo da od prodate jevrejske imovine, u prvom redu sebi obezbedi materijalnu dobit.

Ključne reči: Državna hipotekarna banka, jevrejska imovina, jevrejska zajednica, ratna šteta, Komesarska uprava za jevrejska nepokretna imanja, licitacija

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WIEDERGUTMACHUNG AND ITS DISCONTENTS

Short Scientific Article
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This paper presents and analyses critiques of the post-war West German discourse of Wiedergutmachung from an intellectual history perspective. Focused closely on suggestive remarks of Theodor Adorno and Hannah Arendt, these critiques are mostly concerned with the insufficient care in intentionality, psychological inadequacies and improper self-serving or nature of the process as it emerged in Cold War West Germany. This essay then charts whether any elements of these critiques from the 1960s are echoed in the most recent wave of scholarly literature on reparations. Current critiques view Wiedergutmachung as a foundation for a "communicative history" that forges shared narratives between perpetrator and victim or as the starting point for a culture of victim competition. Contemporary discourse and historiography remains incomplete with the historical acknowledgment of these early intellectual critiques of the process of reparation. The primary elements taken from these earlier critiques include the importance of intentionality, intersubjective care and reconciliation through memory, especially in cultural discourses and institutions.

Key words: Wiedergutmachung, Jews, Holocaust, intersubjectivity, Anti-Semitism, Philo-Semitism

Financial restitution for the Holocaust is long recognized as belated and inadequate most of all, for European regions under post-war Soviet domination. Though observers recognized a welcome shift in the nineties in the discourse of *Wiedergutmachung* from the state interests of Germany to individual victims, new blind spots seem to recurringly emerge (Eckel and Moisel 2009, 151). Most notably, the realm of restoration of cultural and ar-

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tistic capital has proved especially vexed with additional improbably discovery of disputed holdings in just the last years. Arguably this realm is both so wearily approached and so easily inflamed as it most closely impinges on deep notions of national self-worth and personal identity. Perhaps even more insidious are the long-lasting effects of Nazi propaganda and a certain fascination with fascism extending worldwide through globalized media. In what follows here, I will explore critiques of *Wiedergutmachung* based precisely in such areas of culture, subjectivity and psychology. Centered around the Central European context from which the Holocaust and its aftermath ensued, I argue that the reflections and speculations of thinkers such as Theodor Adorno and Hannah Arendt suggestively imagine an alternate version of *Wiedergutmachung* reformed as a quasi-utopian practice. Rather than focused upon an evaluation of the *de jure* practice of reparations, these critical remarks are drawn to the spirit behind *Wiedergutmachung* or what one might term as the question of intentionality.

The narrative that once claimed post-war German reparations as a unique historical achievement that successfully met and matched both the rights of the victims with the concessions possible for the perpetrators has long been cast askance (Pross 1998, x). Earlier and more virulent critiques from the right and left have reduced the entire process to a cynical ploy in a Realpolitik of financial manipulation (Frei, Brunner and Groschler 2009, 18).[1] Linked with the acclaimed Mitscherlich thesis regarding the "inability to mourn" in post-war West Germany, this perspective holds that reparations were a process parallel to and even united to that of the new consumerist ethic of a mass culture which formed the only unifying element that could bring Western society out of the morass of post-genocidal and post-colonial melancholia. As with consumerism generally, state-based reparations depoliticized populations producing apathy and indifference in their wake (Levy and Sznaider 2006, 81).

Alternatively if reparations allowed for any reinforcement of identity or enhancement of subjectivity it was to shore up the self-worth of the perpetrators while, wittingly or not, perpetuating the humiliation of their victims, as trenchantly argued by Christian Pross. *Wiedergutmachung* was an act of the German state, not of German culture, and it served, and was in fact administratively coupled with West German rearmament. Coincident with amnesty for Wehrmacht

1 It is interesting to note that the notion of post-war Germany voluntarily moved by a sense of moral obligation is most clearly enunciated in: (Sagi 1980, 3).

generals and former Nazi bureaucrats (who as a rule received better pensions than their victims) reparations were a necessary expedient for Germany to serve as a beneficiary of the Marshall Plan. The reparations payment outlined in the Luxembourg Agreement of 1951 gave rise to a personnel and administrative apparatus into which more was invested by the German government than the actual payouts to victims themselves (Pross 1998, 176). Such personnel took the role of plaintiff with the persecuted as that of defendant, often subjected to a damaging process of traumatic reexperiencing of their suffering to satisfy bureaucratic demands (Pross 1998, 177). The psychological beneficiaries of this set-up were the former persecutors themselves who could morally self-redeem by rigidly adhering to a benevolent complex of redress of which they themselves were author.[2]

For some critics the very narrative of "reconciliation" by monetary payment encompassed by the term *Wiedergutmachung* was arrived at not through an act of ethical imagination but rather as the only option that carried no threat of internal inconvenience. After all if Nazi remained loyal to their ideal to the very end (if not after) and if the German business and bureaucratic elite could be reconstituted with next to no purging, only a "reconciliation narrative" under the guise of financial reparation remained as a viable option for addressing past crimes. Though obvious, it is important to emphasize that simple cash payments were the preferred method because the restoration of business capital (whether of factories, capital or merchandise) were ruled out before the process ever began.

As a basis for post-war German national identity *Wiedergutmachung* provided for the continuity of an heroic narrative of self-interest which create a mental monopoly of the protagonist disinterested in the integration of the Other. Indeed, one of the most striking features of popular discourse and even scholarly narratives about the reparations is the lack of any central figure or protagonist from the victim side. In short, the Anne Frank of reparations, if there is ever to be one, has yet to be found. Without such a figure for general cultural identification, the emotional and psychological confrontation with loss and damage in the process of seeking redress by the victims remains murky for the outsider.

Though anecdotal and suggestive, a rare radio interview with Theodor Adorno provides a glimpse into what I will attempt to constitute as an alternative model

2 For this argument and the idea that *Wiedergutmachung* actually constituted a continuation of persecution by other means, see: (Giordano 2005).

for the *Wiedergutmachung* process addressed thus far.[3] A viable metaphor in spirit for the method as it historically involved would have the persecuted as supplicants begging favors. In a symbolically resonant narrative that encapsulates two brief stories that evoke both childhood and elements of traditional fairy tales, Adorno reimagines it as the care for a famished, if intrepid traveler seeking refuge in the night. For Adorno, what was paramount in the confrontation with the past for the part of the aggrieved was to conjure up or at least approximate the physical feeling of coming home. (There is of course an overriding caveat with any invocation of Adorno as, unlike the vast majority of refugees – especially those from East Europe who had little choice in the matter – he actually decided to return to Europe after the war.)

Tellingly, in both anecdotes in which he himself constitutes the protagonist, involve gastronomy and hospitality. In the first, as a traveler upon a winter's night, he stumbles upon an inn as if out of a world gone by. The workers fall over him with kindness and politesse including a *Küchenjunge* whose translation "scullion," denotes the lowest rank of servant who performs the most menial of tasks. Adorno is most taken by the presence of such a character, perhaps because it denotes a certain hope for the younger generation as leaders in matters reparation, but also because the fairy tale quality of this character emphasizes the irreality of the scene as a whole. He then relates another anecdote that supports much of the same momentum as the first. Invited to a *Rhebraten* (venison roast) by a colleague, Adorno experiences a Proustian moment of *Rausch* (a conceptual term in German for which there is little direct equivalent in English)[4] which takes him back to the sights and scents of childhood. Evocative of the Madeleine, a combination of food and memory that has come to stand in for a sense of universal lost childhood or even transcendental homeless of modernity, as once termed by Georg Lukacs. The idea of the inviting and the invitation also unites both anecdotes. Adorno feels not

3 All the citations to follow derive from a transcript made by the author of an audio track entitled "Titel 16: Erika Mann und Theodor W. Adorno Im Gespräch mit Adolf Frisé" from CD *Rückkehr in die Fremde? Remigranten und Rundfunk in Deutschland (1945-1955)*, DRA Akademie der Kunste.

4 July 25 1949, "Ansprache im Goethe-Jahr in der Paulskirche": Der Rausch was für ein zwei deutig Deutsches Wort. Wie mischen sich darin Begeisterung und Entgeistung, das höchste mit dem niedrigsten, das Glück der Enthemmung, Das elend der vernunftlosigkeit. Andere sprachen haben dieses Zauberwort gar nicht. Sie setzen dafür ein sehr sachliches und nüchternes, sie sagen intoxication, vergiftung..."

only that his presence is wanted but that the others around him, clearly understood as coming from the other side, as non-exile Germans, seek and are poised to fulfill his happiness. Taken together, the incidents do directly conjure up a utopian idea (*"...als wenn man in der Utopie wäre")* where all inhabitants of a society with whom comes into contact with are actually interested in producing happiness.

Adorno was clearly overwhelmed here not by the actual re-finding or restoration of home but rather of its analogue in spiritual feeling. Having experienced only hospitality and gastronomy taken together, he expresses gratitude for what he feels to be *"der Wiederherstellung eines verlorenen Lebens."* The summary sentence that continues from this phrase then provides that these anecdotes are meant as a serious critique of *Wiedergutmachung* and possibly also the suggestion of an alternative: *"...die viel mehr Wiedergutmachung in Wahrheit ist als alles was unter diesem Titel jemals geschiet."*

I do not wish to infer that Adorno intends to offer a logistical or practical alternative to the system of monetary payments, but rather that he seizes upon an important blind spot. Invitation to dinner parties or tours of former hometowns (practices employed by several German municipalities) should not be construed in any way as sufficient in themselves. Rather it is important to emphasize that *Wiedergutmachung* had not been accompanied by an intentionality that seeks the happiness of the other and that rather than helping to recall a lost home it further severs the distance from the life once known by the victims before deportation, exile and despoliation. The central paradox, or one what could also term psychological truth Adorno attempts to recover, is that the closer one is brought in touch with what has been lost, i.e. the absence of the lost, the greater one can feel its absence, i.e. the direct confrontation with the presence of the lost actually deliver a release if not also a strange sort of happiness. Adorno reimagines the encounter of former perpetrators with former victims, not with the latter as supplicants begging favors, but rather as tired and weary travelers in need of and most worthy of care. Framed as such, some of the honor and dignity is restored to the victims entirely missing if they must approach with hands open in a subordinate pose.

Other important features in Adorno's alternative *Wiedergutmachung* is the importance of the individual encounter so that the process is not made up exclusively of institutions representing a collectivity.[5] Also, despite the fact that Adorno

5 One may imagine how different a process of reparation would appear if made up of millions of individual lawsuits.

himself may be perceived as an elite, the popular cultural character of the settings and encounters make clear that he in no way privileges the predominance of elites and their preferences. This implicit critique of *Wiedergutmachung* as dominated if not manipulated by elites who care for only for institutions representing collectives has been echoed throughout the years (Torpey 2001, 333–358).

Adorno's implicit and negative critique of *Wiedergutmachung* is part of a more generalized understanding of the deleterious effects of mass culture as references at the start of this essay. In fact, in the midst of the anecdotes related here, he does, somewhat unhelpfully refer that such positive experiences may hardly be possible in a fully "*versachlicht*" or objectified society. Writing around the same period, the psychoanalyst Alexander Mitscherlich who famously diagnosed the "inability to mourn," for post-war West Germans, also wrote a text on the "*Unwirtlichkeit unsere Städte.*" Bemoaning precisely the lack of hospitality and joyous shared gastronomy Adorno so cherished, Mitscherlich raised the negative spectre posed by inhospitable, restrictive and monotonous cities.

Hannah Arendt's rather disparate comments on matters of restitution and *Wiedergutmachung,* which I in no way intend to account for in their entirety, suggest a position with even loftier goals while reflecting an awareness of the inherent limitations of any post-war reckoning. After all, there is probably no greater expression of the unbridgeable cleft between Jews and Germans than that which she uttered during her well-known West German television interview with Günter Gauss in 1963.[6] Referring specifically to the industrialized mass murder of Auschwitz-Birkenau, "Das war wirklich, als ob der Abgrund sich öffnete...dies hätte nie geschehen dürfen."[7] The world after the genocide must confront the reality that this abyss can never be overcome and that any kind of reparation must invariably remain partial and incomplete. For the murdered themselves can never be reached and the survivors remain forever scared. As she succinctly maintained, "here is no political method for dealing with German mass crimes" (Arendt 2003, 126).

Despite such a stark proclamation, Arendt has improbably entered popular consciousness as a figure possibly tainted by her own attempts or even embrace of reconciliation. Still debated allegations of whitewashing or seduction by Heidegger

6 A video clip of precisely this excerpt runs on continuous loop at the Jüdisches Museum Berlin.

7 For a full English language transcript of the interview, see: (Baehr 2000, 3–24).

and Eichmann aside, this should not detract from the conceptuality centrality played by the notion of reconciliation in her thought.

As ever, important but subtle distinctions separate what Arendt actually wrote and thought when compared with distortions of her thought in popular rendition. Reconciliation is a master category in her thought, but not between perpetrator and victim but rather reconciliation with reality for each on their own. Derived from the Aristotelian notion of "catharsis," reconciliation with reality, deemed the essence of tragedy by Aristotle and the ultimate purpose of history for Hegel comes about through "the tears of remembrance" (Baehr 2000, 281). Here we have presented in philosophical terms for what Adorno used Proustian literary notions, but the effect is the same recall of what came before allows for reconciliation with the tragic reality of the present. For without any pursuit of reconciliation, Arendt sees in modernity a downward spiral of increasing alienation (Villa 1996, 203).

Consonant with this idea of internal reconciliation based on memory from the past, Arendt suggests a critique of a *Wiedergutmachung* used to shore up the self-worth of the perpetrators. Such self-congratulatory pursuit would not aid what she termed the "sadly confused inner condition" of post-war Germany (Arendt 2006, 233). Rather "if there were more stories to tell" of German resistance, this would provide the catharsis she prized and even aid German prestige abroad. There was only one great account of such resistance which came up throughout the entirety of the Eichmann trial. Self-worth should derive not from any self-congratulatory behavior toward victims after the cessation of crimes but rather through the memory of incidents of intervention and obstruction while the crimes were being committed. Indeed, *Wiedergutmachung* derived from and was characterized by an overt focus on the victims that resembled a mere transformation of former anti-Semitic convictions. The anti-Semitism of "Jewish world conspiracy," became the philo-Semitism of "Jewish diplomatic reach," in both cases exaggerating any link between Jews and worldly power (Barkan 2001, 18). In any case the focus on the other allowed for a distraction or even avoidance for those Germans who resisted the regime and its crimes and remained marked as traitors. Indeed the lack of any internal accounting or change in cultural values is a wide field of which there are many examples. Numerous institutions and cultural figures have been investigated and reevaluated only quite recently and after decades of reluctance. Perhaps the greatest instance of the lack of cultural reconstruction is the continuity of the

Wagner-cult at Bayreuth once an incubator of racial anti-Semitism and platform for Nazi pageantry which continues to play host to the nation's elite every year, including the present Chancellor.

Some recent optimistic accounts see in post-war German *Wiedergutmachung* a new ethic of transitional justice and a new narrative of a "communicative history", that allows victims and perpetrators to share in the creation of a new shared story (Barkan 2001, 18). And a current negative critique holds *Wiedergutmachung* responsible for contemporary "culture of mourning" and the "competition of victimhood", and signals a surrender utopian possibility for progressive change. In confronting the question whether a different reparative program may have led to greater justice, it is worth revisiting critiques of post-war confrontation with the past as deliver by Adorno, Arendt and others (Goschler 2005, 477). The normative notion that reparation entails the transformation of guilt into debt and that the restoration of property invariably strengthens memory should not be seen as the entirety of this process (Goschler 2005, 487; Diner 2003, 36–44). It could well be that the any such discourse of reparation makes it nearly impossible to actually express the injustice (Frei, Brunner and Goschler 2009, 28). A worthy echo to the notes of critique sounded by Arendt and Adorno may be found in the calls for reparation to be ad hoc justic, accounting for local particularities accommodating the lowest common denominator (Levy and Sznaider 2006, 205). The work of later German critical theory, heirs to Adorno's Frankfurt School, especially that of Axel Honneth on intersubjecivity may be most suited to carry this much needed critique forward into the 21st century. In summary, the shared elements of this alternative *Wiedergutmachung* may be termed as the provision of recognition and empathy, which does not occur as the result of coercion or self-interested obligation. A simpler heading under which this all may be grouped is as an ethic of healing that seeks a reduction of pain. Any process of reparation that forces any victim to endure a traumatic reexperiencing of the process of persecution threatens to continue the process of harm. Paradoxically, a small portion of dignity may be restored when the former live that once was known before persecution is made palpable and intimate through a caring path of memory.

References:

Arendt, Hannah. 2003. *Responsibility and Judgment.* New York: Schocken.

Arendt, Hannah. 2006. *Eichmann in Jerusalem.* A report on the Banality of Evil. London: Penguin Classics.

Baehr, Peter. ed. 2000. *The Portable Hannah Arendt.* New York: Penguin Books.

Barkan, Elazar. 2001. *The Guilt of Nations.* JHU Press.

Eckel, Jan and Claudia Moisel. eds. 2009. *Universalisierung des holocausts?* Göttingen: Wallstein Verlag.

Frei, Norbert, Brunner, José and Constantin Goschler eds. 2009. *Praxis der Wiedergutmachung.* Göttingen: Wallstein Verlag.

Giordano, Ralph. 2005. *Die zweite Schuld.* Berlin: Kiepenhauer & Witsch.

Goschler, Constantin. 2005. *Schuld und Schulden.* Göttingen: Wallstein Verlag.

Diner, Dan. 2003. "Restitution and Memory: The Holocaust in European Political Cultures." *New German Critique* 90: 36–44.

Levy, Daniel and Natan Sznaider. 2006. *Holocaust and Memory in a Global Age.* Philadelphia: Temple University Press.

Pross, Christian. 1998. *Paying for the Past.* JHU Press.

Sagi, Nana. 1980. *German Reparations.* Jerusalem: The Hebrew University.

Torpey, John. 2001. "Making whole what has been smashed: Reflections on reparations". *Journal of Modern History* 73: 333–358.

Villa, Dana R. 1996. *Arendt and Heidegger: The Fate of the Political.* Princeton: Princeton University Press.

Rezime:
Nezadovoljstvo kompenzacijom (Wiedergutmachung)

Ovaj rad je analiza kritike u Zapadnoj Nemačkoj diskursa 'Wiedergutmachung' iz perspektive istorije ideja. Oslanjajući se na radove Teodora Adorna i Hane Arent, kritika u radu je upućena na nedovoljnu pažnju u intencionalnosti, psihološke neadekvatnosti i neprikladan egocentrični karakter ovog procesa u Hladnom ratu u Zapadnoj Nemačkoj. Kritike iz 60s godina prošlog veka su postale ponovo aktuelne u sadašnjem pogledu na kompenzaciju koja se bavi zajedničkim narativom žrtve i dželata. Savremena nauka i istorigrafija ostaje nepotpuna ako se uzmu u obzir ove rane kritike procesa kompenzacije. Naj-

važniji elementi kritike koji su iskorišćeni u ovom radu se odnose na važnost namernog, subjektivnog odnosa prema procesu pomirenja preko sećanja.

Ključne reči: kompenzacija, Jevreji, Holokaust, intersubjektivnost, antisemitizam, filosemitizam

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HOLOCAUST AND RESTITUTION

Part II

The Political Roles in the Restitution

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Original Scientific Article

THE POLITICAL ROLE OF FINANCIAL INSTITUTION: Bankverein AG and Aryanization of Jewish property in Serbia*

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The article analyses the way in which one of the largest Yugoslav banks, in the wake of WWII, gained exceptional political importance, becoming the property of Deutsche Bank and turning, right after the Nazi occupation of Serbia, into a channel for the systematic aryanization of Jewish movable property in Serbia. At the same time, the article deals with the ways in which the Germans came to accurate data on the ownership of movable property of Jews as well as the role of the Serbian Quisling government of Milan Nedić in this process.

Key words: Jewish financial capital, jewish property, aryanization, Bankverein AG, Deutsche Bank, Serbia, Second World War

THE DOMINATION OF BIG INTERNATIONAL FInancial capital in the Yugoslav economy was replaced over the years by German capital, penetrating all pores of economic life of the Kingdom of Yugoslavia. As of 1936, Germany had been trying to intensify its investments in Yugoslavia, through the establishment of its first bank, i.e., its affiliate, in the region. However, the dominant role of Czech, French and Swiss, i.e., West European financial capital in

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Yugoslav banking caused serious disruption to these German efforts.[1] The complete turnaround occurred two to three years later whit the German annexation of Austria and the dismemberment of Czechoslovakia. As of March 1938, Deutsche Bank, one of the biggest privately owned banks in Germany, had designs on the Creditanstalt-Bankverein, the biggest Austrian bank of that time.[2] For the leaders of the German Reich such designs were in complete accord with their policy of swift absorption of the Austrian economy and the investment of German capital in South-East European countries, where the aforementioned Austrian bank controlled numerous affiliations, three in Yugoslavia alone: Yugoslav United Bank, Zemaljska banka za Bosnu i Hercegovinu (Landesbank für Bosnien und Herzegovina) and Opšte jugoslovensko bankarsko društvo (Allgemeiner Jugoslawischer Bankverein) (Czichon 1995, 155–156). Furthermore, according to German plans, Vienna, due to its geographic position, its network of institutions, experts and resources, as well as its traditional relations, fulfilled all conditions of the center through which South-East European countries were to be bound to the Reich as economically subordinate regions, and the city itself would represent the hub of such a network (Mitrović 1970, 709–733).

For German financial circles, it was of great importance that the share of foreign capital in the privately owned banks of the Kingdom of Yugoslavia was so high (62%) and was able to control state credit policy (Dimitrijević 1952, 16). Together with other German and Austrian business people assembled in the special Mitteleuropaische Wirtschaftstag (MWT) (Middle European Business Council), the center of German economic and political power up to 1941, they set up the Yugoslav-German Commercial Chamber as early as 1936. That year saw the start

1 The agreements preceding the establishment of the first German bank in Yugoslavia commenced at the second session of the German-Yugoslav mixed economic committee in Zagreb on April 1, 1936 when the possibility that the Deutsche Bank or the Dresdener Bank might open their affiliations was hinted at; this however never occurred, see: (Kolar-Dimitrijević 1990, 169).

2 Since 1919, the Wiener Bank-Verein was run by an international consortium, led by one of Europe's oldest banks, Socete Generale de Belgique, from Brussels, founded in 1822. Other members of this powerful consortium were: Banque Belge pour l'Etranger, a subsidiary of Socete Generale de Belgique, with headquarters in Paris due to the volume of its own operations, under a different name, and another two Swiss banks: Banque Commerciale de Bale from Zurich, and Basler Hndelsbank, from Basel. In March 1930, Deutsche Bank und Disconto Gesellschaft joined the consortium, as did a little later the Czech Bank Union from Prague. See: (Bussiere, Griset, Bouneau and Willot 1997, 111–113; Gall et al. 1995, 378–379).

of the "four-year plan" headed by Herman Goering, followed by Hitler's order to prepare the German economy for warfare within a period of four years. Therefore, the main objective of the Commercial Chamber was the intensification of the German economic breakthrough in Yugoslavia, with simultaneous organization of a strong economic intelligence service (Ristović 1991, 116). In the same year (1936), Goering's special envoy to South-East Europe, Franz Neuhausen, visited Belgrade for the reasons stated above, while Georg Saal, also an Austrian, was appointed President of the Chamber. Along with one of the leaders of the organization MWT and the Deutsche Bank, Hermann Josef Abs, these people would play key roles in the transition of the Allgemeiner Jugoslawischer Bankverein as it came under the control of German capital.[3]

With the conquest of West European countries during 1940, the Belgian credit and monetary system fell under German influence, and the Societe Generale de Belgique was forced to sell its share in the Allgemainer Jugoslawischer Bankverein to the Creditanstalt-Bankverein, i.e., Deutsche Bank. According to the agreement reached, the share of the Belgian bank in the Creditanstalt was bought off as well as that in the Allgemainer Jugoslawischer Bankverein, whereby 93% of share capital of the Yugoslav bank fell under control of the Deutsche Bank.[4] From that moment on, it became the main financing channel of almost all German ventures, even those without any economic goals, but with political and intelligence goals in Yugoslavia.

The fact that all large industrial companies in Yugoslavia were part of banking concerns with predominant international capital set big German banks the difficult task of choosing the appropriate "domestic" bank through which they would take hold of such companies, simultaneously weakening and eliminating the overwhelming share of capital in the Yugoslav economy owned by Jews. The choice of Allgemainer Jugoslawischer Bankverein for the fulfillment of these plans

3 See: Minutes and reports the session of Menagment Board for the fiscal 1938 and 1939, AJ-151-3-1; Državni sekretarijat za unutrašnje poslove FNRJ 1955, 32, 159–160.

4 OMGUS – Office of Military Goverment for Germany, Ermittlungen gegen die Deutsche Bank – 1946/1947, Ubersetz und bearbeitet von der Dokumentations-stelle zur NS-Politik Hamburg, Noerdlingen 1985, 235. The Yugoslav Goverment lodged a complaint regarding the change of ownership in the bank but without any resalts, see: (12th Sherholder's Meeting October 9th 1940 and the Extraoedinery Meeting, Dcember 2nd 1940; Arhiv Jugoslavije (Archive of Yugoslavia) (AJ) – Fond: Opšte juguoslovensko bankarsko društvo A.D. (Allgemainer Jugoslawischer Bankverein AG) (151)–3–1).

irrespective of their aggressiveness demonstrates especially in the war years the preciseness of the German plan and its skillful tactics. Up to 1939 the bank was a main financing channel for domestic and foreign Jewish owned industrial and commercial companies and with its new owners it was supposed to gain a clear political definition in German war and economic plans, increasing its historical significance (Aleksić 2002, 73-92).

The successful accomplishment of national-socialist racist categorization of the employees resulted in the dismissal of all employees of Jewish origin and their being replaced by representatives of German minorities in Yugoslavia, creating almost ideal condition to turn the Allgemainer Jugoslawischer Bankverein into main German economic and financial instrument for providing the Third Reich first with economic and then with political positions in Yugoslavia (Aleksić 1997, 49-63). At the same time key interests of leading German banks overlapped in the Bank as "masters of the financial blood circulation of the German economy" which endeavored to divide South East Europe into zones of influence by financing important projects for the war economy, affecting monetary trends and creating exclusively the German war industry.

Following the 1941 April War and the breakup of Yugoslavia, the Allgemainer Jugoslawischer Bankverein was divided into two "sister banks" (Bankverein-Beograd, Bankverein fur Kroatien – May 1941). However, its role and its management largely remained unchanged. What made the status of the Bankverein somewhat special was that, although officially a Serbian bank, controlled by the newly founded Serbian Ministry of National Economy, it was, in fact, a German Bank, given that its operations and business policy were controlled exclusively by the German member of the management, which ensured its autonomy. Therefore, Hermann Josef Abs, Josef Joham, Nikola Berković and Ludwig Fritscher were at ones members of the management of both societies, in Zagreb and Belgrade. At the session of the Managing Board of the Bankverein in Belgrade, held on October 21, 1941, F. Neuhausen was nominated chairman of the Belgrade division, while another member of the management, Jakob Soengen, was appointed head of the military administration for Southeast at the Serbian National Bank.[5]

The list of documents issued by the military commander of Serbia, under number 7 of May 31, 1941, contains the Decree on the Provisional Regime of

5 AJ, 151, see material of the Directorate Office of the Bankverein (BV), 1941-1944.

Banking Operations and Transfer of Money, banning the Serbian nationals from disposing of their deposit and savings accounts opened before April 18, 1941, as well as opening their personal safe deposit boxes in the absence of German foreign-currency deposit supervisors. In addition, Jews were required to declare their entire property, and Jewish-owned stores and companies were placed under the authority of special commissariat.[6] Jewish property was now managed by the Jewish Property Protectorate at GBW, supervise by Franz Neuhausen. After some hesitation, their personal belongings and jewelry were transferred under the control of the German operative group Sipo-SD (Browning 1992, 408). During the first month and a half, 3,498 Jews had their property registered (Veselinović 1992, 375–406). By a new decree of July 22, 1941, their entire property was confiscated and they could no longer dispose of their real estate, savings and credit accounts and personal deposit boxes.[7] Next, Jewish stores and companies were put up for sale, mostly to German trade and military officials in Serbia. The money from these sales, as well as the outstanding amounts collected from Jewish debtors, went to Banking Society, to the frozen "*Unterdepot*" accounts with the distinctive three-letter mark "GBW" (SJO 1952, 46).[8]

Given that during the first war year in Serbia it was unrealistic to make plans for economic development, the Bankverein used the confiscated Jewish property to "increase the volume of operations and savings". The 1941 annual report shows a 140.3 percent increase in balance compared to the previous year. Most of the funds came from the liquidation, i.e. sale of a large number of Jewish companies and other real estate owned by Jews which the German authorities had seized from their rightful owners (Aleksić 2002, 132–150).

All the confiscated Jewish property was registered on special accounts belonging to the General Trade Representatives for Serbia at the Bankverein, where they were deposited by the SD (*Sicherheitsdienst – Gestapo*), the Devisenpolizei, various other German institutions, commissariats for Jewish property and local banks. Sales of goods, businesses and real estate were stated as the sources of

6 According to a special order of April 19, 1941, the Belgrade Jews were required to register with the German military authorities. Out of 12,000 Jews living in Belgrade until April 1941; 9,145 persons registered by June 12, 1941. See: (SJO 1952).

7 In the meantime, the Decree of May 31, 1941 no longer applied non-Jews in Serbia. See also: (Romano and Kadelburg 1977, 674).

8 AJ, 151 – Archived records of expropriated Jewish property in BD, 1942–1944.

these funds. All the financial transactions were taken care of for each company by special commissaries and trough separate accounts at the Bankverein. After the sale, i.e. the "Aryanization" of property (one of accounts was marked "Arisierung-selöse") the funds were deposited onto the collective account of the general trade representative for Serbia, marked "GBW" (Aleksić 2002, 132-150).

According to the 1942 business report, the annual balance of payments account recorded a surplus of 701.538,867 dinars (from 972.679,423 in 1941, to 1.674,218,290 dinars in 1942) (Aleksić 2002, 132-150). In the meantime, as finding buyers for Jewish property became increasingly difficult, the representatives of the Reich gave it to the state of Serbia as a "gift" in exchange for higher war-damage payable by Nedić's (Serbian prime minister) government (Romano and Kadelburg 1977, 674).[9] On August 26, 1942, Serbian Finance Ministry transferred the control of Jewish property to the "Jewish Property Administration Board – Real Estate". Reparations to Germany were paid from this account (Romano and Kadelburg 1977, 674; SJO 1952, 49). Even the Bankverein transferred several of its accounts receivable from Jews in the State Hypotecary Bank, demanding their settlement against the sale of Jewish property. For example, in July 1944, State Hypotecary Bank sold a house in 6, Skenderbegova Street, property of Hajim Baranon, one of the Bankverein debtors. However, despite its obligation to do so, it failed to inform the Bankverein about this transaction, prompting the Germen branch to intervene requesting to be paid the amount of exactly 531,249 dinars, with 9.5 percent interest.[10] Based on the research of historian Nikola Živković, one billion dinars had been collected through the sale of Jewish real estate by December 14, 1943, of which 600 million went to the Department of Military Administration for the payment of war damages to the ethnic Germans from Banat region, while the rest was spent on the reconstruction of the Bor mining complex, etc. (Živković 1975, 446).

However, the constant lack of money compelled the German occupational authorities to, by the end of 1942, move the entire Jewish property – savings accounts, stock, insurance policies, jewelry, gold and other valuables kept in Serbian banks and branches of former Yugoslav banks to the vaults of the Bankverein in

9 The Commissariat for Jewish real estate managed to sell 133 pieces of land until September 1942, totaling 147 milion dinars, despite the fact that their real value was estimated to have exceeded 10 milion. See: (SJO 1952, 9).

10 AJ, 151- File "Prijava jevrejskih dugova – Državna hipotekarna banka, 1942, 1944".

Belgrade, and that upon special order by the General trade and commerce representative in Serbia on the sale of Jewish banking debts and depositions at credit banks (Aleksić 2002, 132–150).[11] With Jewish companies now seized and sold, it was time to appropriate the shares they had in Serbian companies and financial institutions. According to Milorad Ugričić (a senior adviser at the National Bank of Kingdom of Yugoslavia, then under the process of liquidation), the Serbian National Bank played an active role in this undertaking. They authorized and supervised the transfer of amounts corresponding to "old" and new outstanding Jewish debts made during the occupation, from the Bankverein to the account of the General trade and commerce representative for Serbia. This transfer was carried out gradually, from December 1942 till 1944, according to the category of debt and the time needed to establish the amounts, i.e. to "liquidate" them. That this was an extensive effort is clear from the fact that the Bankverein now even controlled the payments from the prisoners' camps – if the recipients or senders were Jewish. The National Bank alone transferred more than 18 million (18.487,868, to be exact) dinars to the accounts at the Bankverein (Ugričić 2000, 114–117).

These special accounts of the General trade and commerce representative in Serbia open for purpose at the Bankverein had different names. "*Sperrkonto*" was a temporary account containing expropriated Jewish property; "*Sicherheiten*" a temporary one-off account for completed expropriations; "Liquidationserlöse" and "*Arisierungserlöse*" contained money from other accounts and collective sums from other one-off accounts, transferred by the special representative. It was also possible to make direct payments to these accounts. As of December 1942, jewelry, golden coins and other valuables seized from Serbian Jews were also deposited in the vaults of the Bankverein. This is clear from the records of expropriated Jewish property kept by the Bankverein's clerks.[12]

Following the completion of these transfers, it turned out that until 1940 Jewish capital participated in almost all private banks in Serbia, totaling 18.281,745 dinars, or 4.1 percent. Jews had a 50% or bigger share in Beogradska trgovačka štedionica (99.94%), Metropol banka (66.33%), Kolonijalna banka (64.10%) and

11 BD vault, in which Jewish property was kept, was at a branch office in 2, Terazije Street in Belgrade.

12 AJ, 151 – Archive material about the expropriation of Jewish property in Bankverein, 1942–1944.

Merkur banka (50%), all in Belgrade.[13] This figure did not include the share capital invested into the Privileged Agricultural Bank, totaling 5.285,500 dinars, nor the value of shares of the National Bank of the Kingdom of Yugoslavia owned by Jews, amounting to 1.734,000 dinars.[14] Unfortunately, the staff of the Bankverein failed to calculate the value of Jewish shares in manufacturing and trade companies. Jewish shares found in Neuhausen's storeroom and the records of expropriated Jewish property made on the basis of reports from other banks[15], put the value of Jewish shares in Serbia's industry, trade and mining at around 17.090,053 dinars (Ugričić 2000, 114-117).

Aleksander Ungar, a Beočin steel plant share-holder, believes these figures to be far too conservative:

"After we'd learned that the Jews in Belgrade were being decimated, we went into hiding... and through an intermediary made contact with Dr. Hansel of the Gestapo. He told us that the Gestapo would give us passes to leave Novi Sad if we agreed to sell our shares, now deposited in vault in Beočin, belonging to myself and Julius John and worth around 5 million dinars in those days. We were left with no choice: to die with the others or give away whatever property we'd had. So, in the presence of witnesses, we signed a contract with a Gestapo agent for the sale of our shares to the Wiener Bankverein, for the price of 5,000 dinars, or 500 per share. In addition, we had to agree to have that money paid to inaccessible account at the Bankverein – you can still find proof of this in the official records. Nevertheless, the Gestapo refused to give us the passes, advising us instead to disappear from Belgrade."[16]

13 AJ, 151 – correspondence between the Banks Supervisory Office and Bankverein, May 12-18, 1943.

14 AJ, 151 – correspondence between the Banks Supervisory Office and Bankverein, May 12-18, 1943. We came to an approximate value of the Jewish share capital in both banks by consulting the listing of "various shares expropriated from Jews" found in the "storeroom of the military commander for Balkan operations-head of the military authority G.B.V", in 1945. The total value of the expropriate Jewish shares in banks, according to these documents, amounted to 15.189,710 dinars, i.e. 3.092,044 less than in Bankverein's report to the Bank Supervisory Office. This difference is probably a consequence of withdrawals from the "storeroom" between 1943 and 1945.

15 AJ, 151 – correspondence between the Banks Supervisory Office and Bankverein, May 12-18, 1943.

16 Minutes of testemony of Aleksandar Ungar given on October 9, 1945. (SJO 1952, 47)

We found confirmation of this statement in the storeroom, where under "Beočin Steel Plant" it reads that the shares were transferred to there from a so-called Allgemeine Depot account. The name of their real owner was not therefore known, unlike of shares nor does their value match the figures mentioned in the statement. The storeroom contains 205 shares with a normal value of 1.500 dinars, meaning that their total value was a mere 307,500 dinars. Only the shares of another two companies, the First Bosnian Asphalt Industry, from Sarajevo (100 shares at 750mdinars each) and "Kroatija", the manufacutrer of portland cement, from Zagreb (320 shares at 200 dinars each) were transferred from the same "Allgemeine Depot" account o the storeroom. In some cases the figures from these two sources are identical. For instance, the dossier of one Josif Amodaj (of 29, Jevremova Street, Belgrade) contains a letter from Franco-Serbian Bank on Decembar 14, 1942, confirming that the Jew in question possessed 338 shares in the bank, worth 1,000 dinars each. The figure mentioned in the storeroom is exactly the same. The letter also states that "for the safekeeping of the above-mentioned bills until the end of this year, as well as for the costs of breaking the safe, which have not been covered by the individual in question, we hereby charge with a debt of..."[17].

While comparative analysis of these two sources shows that the numbers of recorded Jewish shares and their nominal value were occasionally incompatible, it was presumed that some of the expropriated bills were simply missing from the storeroom, and their total value came at 77.010,322 dinars. The value of 90 savings accounts (and this is not their full number) amounted to 5.793,476 dinars and the totals of valuable life insurance policies, which were more numerous than the bills and saving accounts combined is unknown. Some of the high level of German "business pedantry" displayed during the expropriation of Jewish property is particularly evident in the handling of savings accounts, some of which contained less than 100 dinars (23 or just 13).[18]

Interestingly, the storeroom did not contain any jewelry, golden coins or other valuables seized from Serbian Jews that were repeatedly mentioned in the records of expropriated Jewish property. In the region of Banat, a special procedure was developed for the expropriation of valuables from Jewish safes (usually opened by force in the presence of a special German commission). The items of

17 AJ, 151 – Archived records of expropriated Jewish property in BD, 1942–1944.
18 AJ, 151 – Archived records of expropriated Jewish property in BD, 1942–1944.

value were submitted to the Pančevo People's Bank (Pančevačka pučka banka) for evaluation, which then forwarded them to the Bankverein, while the less valuable items were sold to the members of the Reich, at GBW's premises (SJO 1952, 51). A segment of the seized Jewish property, especially gold and other valuables, which were deposited in the bank since 1943, were taken to Berlin in June that year by the newly appointed commissary for Jewish property in Belgrade, Adolf Mostbek.[19]

With this in mind, one will read the 1943 annual report of the bank's management with more "understanding". The report shows a raise in balance by 333,000 dinars, i.e. from 1.674,000, in 1942, to 2.007,300, in 1943. This trend was even more noticeable in the accounts receivable, which went up by 158.60% (1942,.i.e. by another 37.77% in 1943) – i.e. from 398.336,909 to 1.030,108.159 in 1942, and by additional 389 million in 1943.[20] While in 1942 the savings dropped from 39.131,145 to 20.030,214 dinars, in 1943 they increased by 352%., i.e. to 108.6 million dinars. "The increase in volume of operations is evident from the turnout figures: from 22.404,000 to 47.065,000 dinars, or by 110%".[21] In 1943, the bank's profits were at their highest since the bank's founding: 11.207,701 dinars.[22]

Yugoslav analysts put the numeral equivalent of the damage from the expropriation of Jewish property in the occupied Serbia, facilitated by the Bankverein, at roughly 885.883,000 Serbian dinars or, according to the exchange rate from those days, 17.717,660 dollars. The bulk of it, mainly gold and other valuables was sent to Germany in 1943. The rest was gradually transferred there in 1944, paid to business people and private individuals, or divided among the German military and political representatives in Serbia (Ugričić 2000, 114–117; Aleksić 2002, 132–150). A purely financial institution successfully contributed to the establishment of interrelation between military and economic occupation of Serbia by the Third Reich, by facilitating the application of measures of economic exhaustion of

19 AJ, Reparaciona komisija FNRJ (54) – 531, evidence of the theft of Jewish property from the Bankverein in Belgrade, No.15640, April 22, 1948.

20 AJ, 151 – report from the session of the managing board of the Bankverein about the business policy in the fiscal year 1943, held on April 27, 1944. Comparisons with the 1942 annual report are needed primarily because one part of the expropriated Jewish property was reflected in the balance for 1942 and another in 1943.

21 AJ, 151 – report from the session of the managing board of the Bankverein about the business policy in the fiscal year 1943, held on April 27, 1944.

22 AJ, 151 – report from the session of the managing board of the Bankverein about the business policy in the fiscal year 1943, held on April 27, 1944.

the country. At the same time, it helped a systematic expropriation of the entire Jewish capital. Its case sets an example of successful racist experiment in the banking system in the occupied Serbia.

References:

Aleksić, V. 1997. „Otpuštanje Jevreja službenika Opšteg jugoslovenskog bankarskog društva A. D. 1940. godine." *Godišnjak za društvenu istoriju* 4 (1): 49–63.

Aleksić, V. 2002. Banka i moć, Socijalno-finansijska istorija Opšteg jugoslovesnkog bankarskog društva 1918–1945. Beograd: Stubovi kulture.

Browning, C., R. 1992. „Konačno rešenje u Srbiji – Judenlager na Sajmištu – Studija slučaja." *Zbornik Jevrejskog istorijskog muzeja* 6: 407–427.

Bussiere, E., Griset, P., Bouneau, C. and J. P. Willot. 1997. *Industrialisation at societes en Europe occidentale 1880–1970.* Paris: A. Collin.

Czichon, E. 1995. Die Bank und die Macht, Herman Josef Abs, die Deutsche Bank und die Politik. Koln: PapyRossa.

Dimitrijević, S. 1952. Strani kapital u privredi bivše Jugoslavije. Beograd: Nolit.

Državni sekretarijat za unutrašnje poslove FNRJ, Uprava državne bezbednosti. 1955. *Nemačka obaveštajna služba u staroj Jugoslaviji.* Beograd: Državni sekretarijat za unutrašnje poslove.

Gall, L. et al. 1995. *Die Deutsche Bank 1870–1995.* Munchen: Weidenfeld & Nicolson.

Kolar-Dimitrijević, M. 1990. „Strani kapital i Banovina Hrvatska 1939–1941." *Povjesni prilozi, Zbornik radova PP* 9 (1): 165–194.

Mitrović, A. 1970. „Nacistička ideja velikog privrednog prostora i jugoistočna Evropa (1940)." In *Zbornik Filozofskog fakulteta* 11 (1): 709–733. Beograd: Filozofski fakultet.

OMGUS – Office of Military Government for Germany, Ermittlungen gegen die Deutsche Bank – 1946/1947, Ubersetz und bearbeitet von der Dokumentations-stelle zur NS-Politik Hamburg, Noerdlingen, 1985.

Ristović, M. 1991. Nemački „Novi poredak" i Jugoistočna Evropa 1941/42 – 1944/45, Planovi o budućnosti i praksa. Beograd: Vojnoizdavački i novinski centar.

Romano, J. and L. Kadelburg. 1977. „The Third Reich: initiator, organizer and executant of anti – Jewish measures and genocide in Yugoslavia." In *The Third Reich and Yugoslavia 1933–1945*, edited by Života Antić et al., 670–690. Beograd: Institut za savremenu istoriju.

SJO/Savez Jevrejskih opština FNRJ. 1952. *Zločini fašističkih okupatora i njihovih pomagača protiv Jevreja u Jugoslaviji.* Beograd: Savez Jevrejskih opština FNR Jugoslavije.

Ugričić, M. 2000. Novac u Jugoslaviji za vreme Drugog svetskog rata, s naročitim osvrtom na metode finansiranja okupacije. Beograd: Jugoslovenski pregled.

Veselinović, J. 1992. „Spisak Jevreja i supružnika Jevreja koji su prema naredbi Vojnog zapovednika u Srbiji od 30. maja 1941. podneli Opštini grada Beograda prijave o imovini." *Zbornik jevrejskog Istorijskog muzeja* 6: 375–406.

Živković, N. 1975. *Ratna šteta koju je Nemačka učinila Jugoslaviji u Drugom svetskom ratu.* Beograd: Institut za savremenu istoriju.

Sources:

Arhiv Jugoslavije (Archive of Yugoslavia – AJ), Opšte jugoslovensko bankarsko društvo A.D. (Allgemainer Jugoslawischer Bankverein AG) (151)-3-1 (1941–1944).

Arhiv Jugoslavije (Archive of Yugoslavia – AJ), Reparaciona komisija FNRJ (Reparation Commission of FNRY) (54) – 531, evidence of the theft of Jewish property from the Bankverein in Belgrade, No.15640, April 22, 1948.

Rezime:
Politička uloga finansijskih institucija: Bankverein AG i arijanizacija jevrejske svojine u Srbiji

Bankverein je bila bankarska organizacija koja je svojim radom, pored ekonomskog iscrpljivanje ovog prostora, omogućila i organizovano oduzimanje jevrejskog kapitala, čime je doprinela uspešnom udruživanju vojne i ekonomske okupacije Trećeg rajha. Nasuprot deklarativnom zagovaranju „modernizacije" industrije i bankarstva zemalja jugoistočne Evrope, nemačka ratna praksa svela se, zapravo, na politiku brutalne „deindustrijalizacije", koja se može jasno videti na primeru rada ove banke.

Slanje zaposlenih na prinudni rad, opskurna lična i poslovna politika, sukobi u menadžmentu i predstavništvu i pojedini „nesporazumi" između nemačke vojne i ekonomske uprave u Srbiji, ne samo da su potcrtali ogromne razlike u istorijskom značaju banke u ratu u odnosu na prethodnih dvanaest godina rada, već su ukazali i na stvarne posledice nemačke ratne ekonomske politike u Jugoslaviji, kao i zavisnost takve politike od pojedinih ljudi zaduženih za njeno sprovođenje. Konačno, u radu ove bankarske institucije jasno se videlo i određeno neslaganje između političkih i ekonomskih predstavnika Rajha. Međutim, od ključnog značaja bila je specifična tranzicija iz ekonomske u političku istoriju upravo sa pojavom ovih novih nemačkih vlasnika finansijskog kapitala. U periodu između 1940. i 1944. godine, pod punu kontrolu je stavljena banka sa tada najvećom koncentracijom međunarodnog jevrejskog kapitala u Jugoslaviji, osoblje je „arijanizovano", jevrejski fiansijski kapital u svim bankama sa teritorije nemačke okupacione uprave u Srbiji do detalja popisan i preusmeren na ovu nemačku bankarsku afilaciju u Beogradu, da bi konačno bilo prenet u trezore „Deutsche Bank" u Nemačkoj.

Ključne reči: jevrejski finansijski kapital, jevrejska imovina, arijanizacija, „Deutche Bank", „Bankverein AG", Srbija, Drugi svetski rat

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RESTITUTION OF JEWISH PROPERTY IN CROATIA

Original Scientific Article
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This paper discusses the restitution of Jewish property in Croatia from 1990 on, having in mind that the question has not yet been resolved and that progress towards this has been very slow due to sketchy laws which are being implemented only partially. This issue usually receives more attention only when a Croatian government figure meets someone from Israel or the US Administration. Current legislature enables restitution only of Jewish property seized after 1945, while property seized during the NDH (Independent state of Croatia) remained intact, "protected" by laws passed at the time of Yugoslavia. Current restitution of seized property is performed according to the Law on Restitution/Compensation of Property Taken during the Time of the Yugoslav Communist Government, which came into effect in 1997, so the right to restitution or compensation applies only to Croatian citizens of the first order of succession. That property seized between 1941 and 1945 is not restituted is still an accepted practice, despite the fact that it is in this period when the majority of Jewish property was seized. The right to restitution is still limited to the first order of succession, while the deadline for applications remains too short. Towards the end of mandate of the Jadranka Kosor government there were some attempts to change that and enact a new law, but the proposal for that law got stuck somewhere in parliamentary procedure so it is not yet clear when it will be passed. Until now, judging by unofficial data, less than 30 percent of Jewish families of those who perished in the NDH have achieved the return of immobile property, so the government of Prime Minister Zoran Milanović donated a building in the centre of Zagreb to the Jewish municipality, as a kind of compensation for property seized during Ustasha regime.

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Key words: Jews, property, Law on Restitution/Compensation of Property Taken during the Time of the Yugoslav Communist Government

Although there have lately been significant advances in the partial return of property to the Jewish Municipality of Zagreb and successors of Jewish survivors,[1] the issue of restitution of Jewish property in Croatia has not been fully resolved. Restitution is very slow, mostly due to ambiguous laws, but also due to slowness of Croatian judiciary. The subject of Jewish property restitution is discussed at all levels, but usually receives more attention only when a Croatian government figure meets someone from Israel or the U.S. administration (Židovska općina Zagreb, *Ha kol* 51, January-February 2012, 51–52; Židovska općina Zagreb, *Ha kol* 124, March-April 2012, 47–48; Židovska općina Zagreb, *Ha kol* 129, March-April 2013, 4–6). In June 2006 representatives of the European Jewish Congress (EJC) made an official visit to the Jewish Municipality of Zagreb and met high-ranking Croatian officials on that occasion. One of the topics of their discussion was the issue of returning property to the Jewish community as well as the possibility of signing an agreement between the Republic of Croatia and the Jewish community. Not then, and not ever since has any agreement been made between government of Croatia and the Jewish community, because they could not agree upon crucial issues regarding restitution of Jewish property (Židovska općina Zagreb, *Ha kol* 94, May-June 2006, 25). In addition, the government of Croatia has yet to make an agreement with the Coordination of Jewish Municipalities of Croatia as it did with all other religious communities (Židovska općina Zagreb, *Ha kol* 121, July-September 2011, 4–5).[2]

1 According to the 2011 census, only 317 Jews live in Zagreb, making up 0.04% of the population; 31 Jews live in Osijek; only three Jews in Slavonski Brod; 2 in Vinkovci; and 3 in Varaždin. According to the same census, there are 509 Jews by nationality, i.e. 536 Jews by religion in Croatia. http://www.dzs.hr/Hrv/censuses/census2011/censuslogo.htm

2 The Croatian government signed agreements in accordance with concordats with the Catholic Church and the following fifteen religious communities: Serbian Orthodox Church, Islamic Community in Croatia, Evangelistic Church, Reformed Christian Church, Pentecostal Church, Union of Christ's Pentecostal Churches, Christian Adventist Church, Union of Baptist Churches, Church of God, Church of Christ, Seventh Day Adventist Reform Movement, Bulgarian Orthodox Church, Macedonian Orthodox Church, Croatian Old Catholic Church, and the Jewish Community "Bet Israel". The coordination of Jewish Municipalities tried to conclude such an agreement

From one year to another, repeated criticism was addressed to the Croatian government that it was insufficiently engaged in property restitution to Jews (Židovska općina Zagreb, *Ha kol* 109, March-April 2009, 14–15),[3] some of it coming even from Washington and the U.S. State Department (Židovska općina Zagreb, *Ha kol* 51, January-February 2012, 51–52). The president of the Jewish Municipality of Zagreb and *Coordination* of Jewish Municipalities in Croatia acknowledged in the spring of 2013 that something is finally being done regarding restitution, and that Croatian authorities have begun a better cooperation with Jewish institutions in order to resolve that issue (Židovska općina Zagreb, *Ha kol* 129, March-April 2013, 4–6).

A significant act of restitution was done by the government of Zoran Milanović when in May 2014 it decided to donate a building of some 3,000 square meters in the centre of Zagreb, in Dežmanova street, together with the plot (until recently the site of the Ministry of Justice, formerly of Croatian Radio-Television) as a kind of compensation for property seized from Jewish Municipality in Zagreb during the Ustasha regime.[4] During the donation ceremony, Prime Minister Zoran Milanović explained that is not a matter of compensation, but of "a debt of honor and a culture of the heart" and that the current Croatian government does not take responsibility for the actions of the former fascist regime. Even though this was a nice gesture by the Croatian government, it did have a more practical background. Namely, after receiving the building, the Jewish Municipality[5] was supposed to relinquish its claims on all other immovable property, not only in Zagreb, but in the whole of Croatia.[6] Of course, the Municipality refused these terms, so that the building was eventually handed over only in late 2014, though this time without any conditions or demands to relinquish claims.

with the state, but in May 2008 the government offered a joint agreement to the Coordination of Jewish Municipalities and the Jewish Community "Bet Israel". Bet Israel signed the agreement on 24 November 2008, while the Coordination of Jewish Municipalities refused the government's offer, insisting on an independent agreement. http://www.state.gov/documents/organization/132820.pdf

3 In mid-March Croatian B'nai B'rith of the Lodge Gavro Schwartz and the CEDEK association organized a round table discussion on the restitution of seized Jewish property. It established that no progress has been made regarding the issue.

4 http://www.forum.tm/vijesti/vracanje-zidovske-imovine-s-figom-u-dzepu-1797

5 http://www.zoz.hr/home.php?subkat=novosti&content=novosti&arhiva=&id_novost=2703&year=2014&vijest=1179&PHPSESSID=5c0a56e12280205f0df371727378fce9.

6 http://www.forum.tm/vijesti/vracanje-zidovske-imovine-s-figom-u-dzepu-1797

To clarify things, we should go back to the very beginning of restitution process of Jewish property in Croatia. In accordance with current regulative in Republic of Croatia, the only property that belonged to Jews (and all others) that can be restituted is that seized after 1945, while property seized during the Independent State of Croatia (NDH) is not restituted, especially if it's heirless or currently owned by cities, municipalities, counties, or the state (state property), or even individuals.

What property is at stake? Specific data and figures are difficult to come by.[7] Namely, there were more than 40 Jewish municipalities in Croatia before the Second World War, and Zagreb itself had approximately seven percent of Jewish citizens, who owned sizeable property. Having in mind the law does not cover property seized during the NDH, here we discuss only a portion of Jewish property, mainly the property of Jewish societies confiscated according to the laws of 1946 and 1947, which banned operations of foundations, and a part of property seized in 1958 (this included building sites owned by the Jewish Municipality as well offices in Zagreb, Osijek, and Split) (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2).[8] Of course, this does not encompass all the Jewish property, since there are certain differences compared to the Jewish property in the Croatian Littoral and Dalmatia, which for the most part remained in the hands of the Jewish municipalities during the Second World War and later in Yugoslavia. In addition, the mentioned property doesn't encompass that which was sold by the Union of Jewish Municipalities of Yugoslavia after the end of the Second World War, or the property i. e. land parcels on which Jewish institutions or synagogues were once situated, but demolished during

7 According to data published by newspaper *Slobodna Dalmacija* on May 25, 2014 on the basis of data from State Restitution Fund, around 1.8 billion kunas were paid as compensation to owners of nationalized property in Croatia. After the Law on Compensation came into force in January 1997, some 50,000 claims for restitution of nationalized property have been laid at the county and city office of Zagreb. Data were never compiled on how many of these claims were sorted "in kind" and how many refused. What is known is the number of claims passed on for execution to the Compensation Fund. In monetary terms, some 311 million kunas of compensation were paid for just under 10,000 owners of nationalized property by May 2014, while 22,000 claims were paid in bonds, in total value of 191 million €. How many Jewish families are among these claimants is unknown. http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/246053/Default.aspx

8 In Zagreb there were two commercial buildings and the building of former Chief Rabbinate, which was located at the corner of Petrinjska and Amruševa streets and nationalized in 1958. See also: Brandl 2015, 167–194.

the NDH or later and replaced by residential or commercial buildings (Židovska općina Zagreb, *Ha kol* 129, March-April 2013, 4-6).

The largest portion of property was seized from Jews during the NDH, when Jewish families not only perished but also had all their property seized (Kisić Kolanović 1998, 429-453; Živaković Kerže 2007, 97-116). It was no better after the Second World War finished. Even during the war, namely in its final phase and the immediate aftermath, the new authorities started revising ownership issues (Maticka 1992, 123-148).[9] Part of legislature concerning ownership was passed in the period between the Second Session of the AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia) in November 1943 and Third Session of the Plenum in August 1945. Laws passed by the AVNOJ, its Presidency, the Interim People's Assembly and its Presidency were confirmed at the session of the Constituent Assembly on December 1, 1945. Towards the end of 1946, these laws were attuned with the Constitution of the Federal People's Republic of Yugoslavia, i.e. some expired, the majority had their validity renewed in unchanged form, and some were modified. The same happened to regulations of the ZAVNOH (Land Anti-Fascist Council of the National Liberation of Croatia), its Presidency i.e. the Parliament of the NRH (People's Republic of Croatia) that were confirmed at the session of Constituent Parliament on November 30, 1946 (Maticka 1992, 125-126). Besides the laws regulating ownership legislature, a series of laws that defined property confiscation for various reasons, for instance due to collaboration with the occupiers, was adopted (Maticka 1992, 125-126).[10]

9 A volume on ownership was also published, titled Confiscation, Nationalization, War Booty, Agrarian Reform, Colonization and other Forms of Forced Ceasure of Ownership; Law on Transformation of the Social Enterprise, edited by Jadranko Crnić with assistance of Ana-Marija Končić, Zagreb, 1991. (Anić 2007, 25-62)

10 The presidency of AVNOJ passed on November 21, 1944 a Decree on Transferring Enemy Property into State Property, on State Control over Property of Absent Persons and on Sequester of Property Seized by Occupying Authorities. The Decree defined that all property of the German Reich and its citizens in the territory of Yugoslavia is to be transferred into state property, and the same applied to property of individuals of German nationality. Excluded was only the property of Germans who fought in National Liberation Army and Partisan units, and of those who were citizens of neutral states and did not show hostility towards the liberation war. All property of war criminals also became state property, irrespective of their citizenship, and the same applied to all persons who were sentenced to have their property seized by military or civilian courts. The state also took the property of absent persons, i.e. those who were forcedly taken away by the enemy or emigrated on their own.

Anyway, a majority of the laws regarding ownership was passed after December 1, 1945.[11]

11 Legislature on ownership in Yugoslavia comprised:

1. The Law on Property Confiscation and its Execution (Službeni list DFJ 40/45 and 70/45);
2. The Law on Confirmation, Changes and Annexes to the Law on Property Confiscation and its Execution (Službeni list FNRJ 61/46);
3. The Law on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators (Službeni list DFJ 36/45);
4. The Law on Confirmation and Changes to the Law on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators (Službeni list FNRJ 64/46, 105/46, 88/47 i 99/48);
5. The Law on Suppression of Illegal Trade, Illegal Speculations and Economic Sabotage (Službeni list FNRJ 56/46);
6. The Law on Seizing Profits Obtained during Enemy Occupation (Službeni list DFJ 36/45);
7. The Law on Confirmation, Changes and Annexes to the Law on Seizing Profits Obtained during Enemy Occupation (Službeni list FNRJ 52/46);
8. The Law on Nationalization of Private Commercial Enterprises (Službeni list FNRJ 98/46 and 35/48);
9. The Law on Transferring Enemy Property into State Property and Sequestration of Absent Persons' Property (Službeni list FNRJ 63/46);
10. The Fundamental Law on Expropriation (Službeni list FNRJ 28/47);
11. The Law on Nationalization of Buildings for Hire and Building Sites (Službeni list FNRJ 52/58);
12. The Law on Arranging and Use of Building Sites (Narodne novine 6/63);
13. The Law on Allocation of Building Sites in Cities and Urban Settlements (Službeni list SFRJ 5/68, 20/69; Narodne novine 30/68);
14. The Law on Arranging and Hiring Building Sites (Narodne novine 20/69);
15. The Law on Construction Land (Narodne novine. 54/80, 42/86, 61/88, 48/88 – revised text, 16/90, 53/90);
16. The Law on Sales of Land and Buildings (Službeni list SFRJ 43/65, 57/65, 17/67; Narodne novine 52/71, 52/73);
17. The Law on Joint Labor (Službeni list SFRJ 53/76, 57/83, 85/87, 6/88, 38/88);
18. The Decision on Arranging Relations in Agriculture and the Annulment of Auctions at the Territory of District People's Committee of Istria (Službeni list FNRJ 191/46);
19. The Decree on Changes and Implementation of the Decision on Arranging Relations in Agriculture and Annulment of Auctions on the Territory of the District People's Committee of Istria since December 21, 1946 (Službeni list 191/46);
20. The Law on Proclaiming the Property of Land and Similar Communities and Border Cadastre Communities State Property (Narodne novine 36/47, 51/58, 13/87);
21. The Law on the Execution of Sanctions, Security Measures and Educational Correction Measures (Službeni list FNRJ 47/51);
22. The Law on Agricultural Land Reform and Colonization (Službeni list DFJ 64/45; Službeni list FNRJ 24/46, 101/47, 105/48, 21/56, 55/57; Službeni list SFRJ 10/65);

Restitution of seized property in the Republic of Croatia

In the Republic of Croatia, restitution is going on in accordance with the Law on Restitution/Compensation of Property Taken during the Time of the Yugoslav Communist Government (further: Law on Compensation) that came into effect on January 1, 1997.[12] The Law specifies the conditions and procedure for compensating former owners for property seized by the Yugoslav communist authorities. The property in question is seized property that became people's (public), state, social or cooperative property through confiscation, nationalization, agricultural land reform, and other acts and manners specified by the Law.[13] The compensation for property according to the Law on Compensation is generally payment in money or stocks (dividends, shares or bonds), and exceptionally in kind (Art. 1).[14] The Law specifies the date from which owners have the right to compensation for seized property, and that is May 15, 1945 (Art. 3). Property restitution includes property

23. The Law on the Implementation of Agricultural Land Reform and Colonization on the Territory of the People's Republic of Croatia (Narodne novine 111/47, 25/58, 58/57, 62/57, 32/62);
24. The Fundamental Law on Handling Expropriated and Confiscated Forest Estates (Službeni list FNRJ 61/46);
25. The Law on Agricultural Land which is Part of the People's Property and the Distribution of Land to Agricultural Enterprises (Službeni list FNRJ 22/53, 27/53, 4/57, 46/62; Službeni list SFRJ 10/65);
26. The Law on Agricultural Land (Narodne novine 26/84);
27. The Law on Checking the Origin of Property and Seizing Unlawfully Acquired Property (Narodne novine 14/84);
28. The Law on Unions, Meetings and other Public Gatherings (Službeni list FNRJ 51/46. 29/47);
29. The Law on Citizenship of the People's Republic of Croatia (Narodne novine 18/50);
30. The Law on Citizenship (Službeni list DFRJ 64/45, 105/48)
31. The Fundamental Law on Use of Agricultural Land (Službeni list SFRJ 25/65, 12/67, 14/70; Narodne novine 52/71, 52/73);
32. The Law on Implementation of Certain Provisions of the Law on Use of Agricultural Land (Narodne novine 25/60). http://www.zakon.hr/z/130/Zakon-o-naknadi-za-imovinu-oduzetu-za-vrijeme-jugoslavenske-komunisti%C4%8Dke-vladavine ; http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html

12 http://narodne-novine.nn.hr/clanci/sluzbeni/1996_10_92_1600.html; http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html

13 http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html

14 If certain person has a right to compensation in kind, for reasons of defense or national security of the state, ownership of another adequate property or other compensation can be given. http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html

that, applying the Law on Local Management and Self-Management, was taken over by municipalities, cities and counties (*Narodne novine* 90/92, 94/93, 117/93), but not property that became social property on the basis of the Law on Expropriation (*Narodne novine* 10/78, 5/80, 30/82, 46/82 – revised text, 28/87, 39/88) (Art. 5 and 6).[15] Compensation in kind is given by an individual or corporate body that possesses that property; compensation in dividends or shares is given by the Croatian Privatization Fund,[16] compensation in money and Croatian state bonds by the Fund for Restitution of Seized Property[17] (Art. 13). Compensation rights are valid for the following property: undeveloped construction land, agricultural land, forests and forestry land, residential and office buildings, apartments and

15 Exceptions to restitution of nationalized, confiscated, or in other ways seized property are discussed in detail in articles 52, 53, 54, 55, 56 (*Narodne novine* 10/78, 5/80, 30/82, 46/82 – revised text 28/87, 39/88).

16 The Croatian Privatization Fund was founded in 1992. As an institution it ceased to exist in 2011, being replaced by the Agency for State Property Management (AUDIO). Two years later, in 2014, the Agency for State Property Management ended its activities. Its duties concerning management and disposal of state property are taken over by the State Office for State Property Management (DUUDI), while AUDIO was redirected to the Centre for Restructuring and Sales (CERP). The State Office for State Property Management (DUUDI) was founded on the basis of the Law on the Organization and Duties of Ministries and Other Central Institutions of State Administration (NN, No. 150/11 and 22/12, article 3) and the Law on the Composition of the State Administration (NN 150/11) in December 2011. http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html
See: (http://www.cerp.hr/default.aspx?id=6; http://www.duudi.hr/)

17 Activities of the Fund for Restitution of Seized Property are defined by the Law on the Fund and Law on Compensation (*Narodne novine* 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 65/01, 118/01, 80/02, 81/02). Among other things, the Fund carries out: payments of compensation in money and Republic of Croatia bonds to authorized persons on the basis of valid decisions on compensation for seized property issued by competent offices of state administration, when previous owner was awarded compensation in this form according to the Law on Restitution/Compensation of Property Taken during the Time of the Yugoslav Communist Government; sales of nationalized and confiscated flats to holders of occupancy rights i.e. protected lessees under conditions and in the manner specified by the Law on Restitution/Compensation of Property Taken during the Time of the Yugoslav Communist Government; gathering funds through sales of flats, keeping record of sold flats and payments, keeping evidence on mortgage debtors and issuing release statements; taking part in administrative processes where, according to the Law on Compensation, the Fund is either a party or side obliged to pay compensation; taking part in processes where the Fund is either plaintiff or defendant in litigations regarding sales of nationalized or confiscated flats; issuing the Global Bond of the Republic of Croatia for compensation of property seized during Yugoslav communist rule. (http://www.fnoi.hr/)

business premises, ships and boats, enterprises, movable property (Art. 15). The compensation procedure for seized property is executed by the Law on General Administrative Procedure (N.N., No. 53/91), if not otherwise specified by the Law on Compensation.[18]

According to the Law on Compensation of 1997, only Croatian citizens in the first order of succession had the right to compensation (Art 9), and the deadline for claims submission was six months (Art 65).[19] Changes and annexes of the Law on Compensation of 2002 give restitution rights to foreign citizens, (Art. 7),[20] but only in cases where there is no bilateral agreement with their country (Croatia hasn't signed any such agreement), which made the practice of solving claims of foreign citizens problematic.[21] That was most apparent in 2008, when a

18 http://narodne-novine.nn.hr/clanci/sluzbeni/1996_10_92_1600.html; http://narodne-novine.nn.hr/clanci/sluzbeni/1991_10_53_1299.html

19 Article 9 of the Law on Compensation „Rights from this law are given to an individual – previous owner or his legal successors in the first order of succession (further on: previous owner). Regarding succession rights, provisions of the Law on Inheritance apply, if not otherwise stipulated by this law. Successors of the previous owner obtain ownership over property, given regardless of how ownership shares were stipulated by former valid decisions on the succeeding predecessor, if not agreed upon otherwise (later found property). According to Article 10 of the Law on Inheritance (N.N., No. 52/71, 47/78, 56/00 – further on: ZN) the first order of succession are the spouse of the testator (original owner) and his children, persons legally equal to children and their descendants in order of introduction – Art. 11 of ZN, when inherited in equal parts. Anyway, literal application of regulations on introduction would produce inequality in property compensation, for certain descendants would have the right to compensation (if the legal successor in first order of succession died before testator of original owner), while others would not have that right (if successor died after original owner). Therefore, regulations on introduction should be applied in such a manner that successors of the authorized claimant have the right to compensation regardless of the order the successor and testator died. Such legal interpretation was confirmed by Constitutional Court in its decision No. U-I-673/96 of April 21, 1999 (*Narodne novine* 39/99). http://www.zakon.hr/z/130/Zakon-o-naknadi-za-imovinu-oduzetu-za-vrijeme-jugoslavenske-komunisti%C4%8Dke-vladavine; http://novi-informator.net/zakon-o-naknadi-za-imovinu-oduzetu-za-vrijeme-jugoslavenske-komunisti%C4%8Dke-vladavine-%E2%80%93-pravo-unuka-na

20 http://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_80_1292.html; http://narodne-novine.nn.hr/default.aspx; http://narodne-novine.nn.hr/clanci/sluzbeni/2000_04_43_1010.html

21 Article 11 states "Procedures started in accordance with the Law on Compensation that have not become legally effective before the day this Law comes into effect, will be finished according to provisions of this Law". http://www.forum.tm/vijesti/vracanje-zidovske-imovine-s-figom-u-dzepu-1797; http://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_80_1292.html

precedent was set regarding property restitution to a foreign citizen. The Administrative Court of Croatia (Us-7912/2003. of February 14, 2008) and afterwards, in 2010, the Supreme Court of Croatia (Uzz 20/08-2 of May 26, 2010)[22] confirmed property restitution to successors of Brazilian citizen Zlata Ebenspanger,[23] who in 1997 submitted a claim for restitution of the building in Radićeva street in Zagreb. The claim was submitted when the law in power stipulated property is not to be restituted to foreign citizens, and there was no bilateral agreement between Croatia and Brazil. As the Law was changed and amended in the meantime, property restitution was endorsed to her successors, even though they were foreign citizens (Židovska općina Zagreb, *Ha kol* 121, September-October 2011, 4–5).[24] This precedent enabled property restitution to other foreign citizens.[25] Since there

22 http://www.iusinfo.hr/DailyContent/Topical.aspx?id=8140 ; Decision of Supreme Court of Croatia, No. Uzz 20/08-2 of May 26, 2010.

23 The decision of Supreme Court does not mean the successors of Zlata Ebenspanger had their property returned, or compensation paid. According to family lawyer Albin Hotić, the case has been returned to the first instance, to the Office of State Administration in Zagreb. Anyway, until this ruling, citizenship was an eliminatory obstacle for property restitution. This Supreme Court decision for the first time confirmed that citizenship is no condition for realization of that right.

24 http://www.novilist.hr/Vijesti/Hrvatska/Josipovic-Strance-se-ne-bi-smjelo-izuzeti-iz-povrata-imovine; http://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_80_1292.html; Changes and annexes to the Law on Compensation state: Article 7. Article 1 is changed to: "Previous owner has no right to compensation for seized property in case the compensation issue is solved by bilateral agreements. As an exception to provision of paragraph 1 of this Article, the rights specified by this Law can acquire foreign individuals and corporate bodies if so specified by international agreements." Also important is Article 7, which reads: Claims for restitution of seized property can be submitted by previous owners within six months of the day this Law comes into effect, whose right for restitution or compensation for seized property had been acquired according to this Law, and who did not submit claim so far or had their claim legally refused or denied, namely: a previous owner who is currently a citizen of the Republic of Croatia but who at the day of coming into effect of Law on Compensation did not have Croatian citizenship (Article 1of this Law), former owners referred to in the Article 2 of this Law, former owners who, according to the Census of 1991 had residence on occupied territories of Republic of Croatia, i.e. the territory under control of UNTAES. Claims submitted after expiry of the deadline from paragraph 1 of this Article will be denied.

25 The Ministry of Justice confirms that the state of affairs – for example, what property is claimed – was not established at all for claims rejected on the basis of foreign citizenship in previous years. Therefore, foreigners whose claims were rejected for having no Croatian citizenship have to repeat the whole procedure after this ruling by the Supreme Court. According to ruling of Supreme Court, institutions of state administration, including the Ministry, officially act since 2008. Until then, the simple

are no official data, we can read in the press that claims for property restitution were submitted by 4,211 foreign citizens according to news reports published in 2012. Anyway, the state of Croatia has no accurate data on number of claims submitted since 2008 that have been accepted.[26]

With the exception of restitution to foreign citizens, the Law on Compensation kept the right of restitution limited to only the first order of succession, children and grandchildren. That issue remains unresolved in the Law, and the second order of succession (brothers, sisters, nephews) is not included in the Law amendments. The highest amount that can be claimed for compensation of inherited property, 500,000€, has also remained a subject of debate. This provision was not changed (it used to be 1 million German marks, the rough equivalent of 500,000€). The deadline for document submission has also remained a matter of debate (Židovska općina Zagreb, *Ha kol* 75/76, November 2002, 39–40).[27]

As is visible from practice, implementation of the Law on Compensation brought about many problems, especially concerning property restitution to foreign citizens, so in 2012 the government of Croatia started thinking about constitutional changes to specify the state of Croatia is obliged to restitute property only to Croatian citizens, but the Constitution has not been changed until now,[28] nor has the Law on Compensation been changed or amended.

fact somebody is foreigner was grounds for automatic refusal of the claim. http://www.novilist.hr/Vijesti/Hrvatska/Josipovic-Strance-se-ne-bi-smjelo-izuzeti-iz-povrata-imovine

26 http://www.novilist.hr/Vijesti/Hrvatska/Josipovic-Strance-se-ne-bi-smjelo-izuzeti-iz-povrata-imovine

27 http://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_80_1292.html; http://narodne-novine.nn.hr/default.aspx; http://narodne-novine.nn.hr/clanci/sluzbeni/2000_04_43_1010.html

28 Two opposed solutions for property restitution were considered in the Croatian government – either the mentioned constitutional change, or a change of the Law on Compensation that would make foreign citizens equal with Croatian ones regarding the right to restitution. The first solution is to completely deny foreign citizens the right to restitution, i.e. compensation for seized property, which is possible only by changing the Constitution. A provision would be included in the Constitution that would give that right solely to Croatian citizens. During the 1990s, restitution was arranged exactly like that, but by law, not by Constitution. That is why the Constitutional Court abolished that controversial provision from the law in 1999, since it was discriminatory. That is also the reason why any exclusion of foreigners cannot be applied solely by changes to the existing law. The Ministry of Justice is working on changes in the Law on Compensation that would make foreign citizens equal to Croatian ones. http://www.novilist.hr/Vijesti/Hrvatska/Vlada-bi-Ustavom-sprijecila-povrat-imovine-strancima

How did the restitution of Jewish property go, anyway?

When discussing restitution of Jewish property, there are two types of property. One is the property of Jewish municipalities in Croatia, or Jewish organizations like, for instance, Chevra Kadisha (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2),[29] women's societies and vacation foundations (Židovska općina Zagreb, *Bilten* 36, October, November, 1994, 2),[30] while the other one is the private property of individuals (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2). When discussing private property of individuals, a difference should be made between private property like flats, houses, premises, building sites, forests and, for instance, enterprises, shops and such.

Before the Law on Compensation was enacted in 1997, the Council of the Jewish Municipality in Zagreb founded the *Fund for Jewish Heritage in Croatia (Fond za židovsku baštinu u Hrvatskoj)* (statute accepted on January 16, 1992) whose scope of activities covered the enumeration of immobile and mobile property and the cultural property of the Jewish community in Croatia (Židovska općina Zagreb, *Bilten* 23, February, March, 1992, 10-11).[31] Nowadays the Fund does not exist and little is known of its activities. Around the same time (in 1994), the Municipality founded a Subcommittee for Restitution within the *Committee for Finances and Administration of Jewish Community of Zagreb* (ŽOZ). In that subcommittee, two groups of experts delegated for communal and private property were active (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2).[32] The Subcommittee no longer exists.[33]

29 The Chevra Kadisha owned a building in Amruševa 8 (formerly Sudnička 12).

30 The Vacation Foundation possessed a mountain hut in Ravna Gora and a small hotel in Crikvenica, while financial support came from renting flats in Zagreb.

31 The goal of the fund is: sustainment of renovation and maintenance of Jewish cultural monuments on the territory of Croatia; helping in founding and maintaining institutions involved in research, protection and maintenance of cultural monuments in Croatia and research of Jewish history and science; putting up and maintaining signs for important objects, persons and events from Jewish history in Croatia; organizing research and enumeration of immovable and movable Jewish cultural monuments in Croatia; improving and popularizing the protection of Jewish cultural monuments in Croatia and studying Jewish history and science; acquainting the public with Jewish cultural monuments in Croatia, Jewish history and science; other activities to achieve the goals of this fund.

32 Members of the subcommittee were then: president Dragan Ekštajn, Iva Divjak, Zlatko Zdunić, Maja Taussig, and Sead Tabaković as a consultant and lawyer.

33 Statement of lawyer S. T. in Zagreb, April 20, 2015.

Since in the 1990s the existing Jewish municipalities did not possess numerical data on Jewish movable and immovable property, talks on that subject started inside Community of Zagreb and attempts were made to find out how many of those existed. In 1994, the Association of Societies for Protection and Development of Property and Owners' Rights in the Republic of Croatia (SUVLAH), whose member was the Jewish Municipality of Zagreb, made a form i.e. questionnaire and distributed it to members of the Jewish Municipality (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2).[34]

The aim of the questionnaire was to acquire best possible insight and gather documentation on former property owners and their legal successors in Croatia and abroad. The situation with Jewish property was specific, since it was first confiscated in the NDH, then nationalized after 1945, and finally de facto seized from 1949 on, for all those who wanted to emigrate from Yugoslavia were stripped, under compulsion of Yugoslav law, of their citizenship and all the immovable property they owned. A unique problem appeared regarding those Jews born in Croatia who immigrated to Israel and some other countries, for a part of them had to enforcedly renounce their citizenship, so they became foreigners, which at the same time meant having no immovable property, even if part of it was not nationalized. The Jewish Municipality then proposed foreign Jews who were born in Croatia to apply for Croatian citizenship, something that a small part of them did (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2). Since the Jewish Municipality did not have complete data on property, the questionnaire was primarily intended to get answers on how many people are interested in restitution and how many persons expect assistance from the Municipality in resolving property claims. They agreed, in accordance with guidelines by the World Jewish Congress, that in all matters regarding denationalization and their claims, they will demand the same rights as other citizens of the Republic of Croatia, with no special privileges (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2).

Croatian institutions already in 1995 and 1996 started discussions on enacting the Law on Compensation, so in December 1996 the Ministry of Justice sent into parliamentary procedure the government's proposal of that law. The Law on Compensation received harsh criticism and reactions straight away, and the Jewish Municipality then requested the law proposal be taken off the parliament's agenda.

34 Today the Association of Societies for the Protection and Improvement of Ownership and Owners' Rights in Croatia.

The Coordination of Jewish Municipalities in Croatia compiled objections to the Law and sent them to competent authorities in Croatia and abroad. The Coordination of Jewish Municipalities perceived the law proposal itself the as a third confiscation of Jewish property since the proposal discussed restitution of property since 1945, not 1941. That would leave a large proportion of Jews with Croatian citizenship without possibility for property restitution, most of which was taken by force in the 1941–1945 period, and later became either state or private property. Moreover, according to this Law on Compensation, it could happen that property would be returned to individuals who unlawfully obtained it in the period of the NDH, for the property confiscated after 1945 was in good measure the same property confiscated in 1941 whose ownership had been given to persons who belonged to the Ustaša regime. The Coordination of Jewish Municipalities then proposed that the restitution follows the principle of "natural restitution" to individuals, while the Law proposal (Art. 12) specifically excludes this principle. They protested on the manner of succession that, according to Law proposal, included only the first order of succession (Židovska općina Zagreb, *Bilten* 36, October, November 1994, 2; Židovska općina Zagreb, *Bilten* 44–45, June 1996, 11–12).

The Law on Compensation was enacted anyway and came into effect on January 1, 1997.[35] A protest letter against the Law on Compensation was sent by the president of the association Hitahud Oley ex Yugoslavia, Yitzak Kabiljo, and the Jewish Municipality of Zagreb to Franjo Tuđman, then president of Croatia. A request was made to the Constitutional Court to check its constitutionality (Židovska općina Zagreb, *Ha kol* 48, February-March 1997, 23–24).

The objection of the Jewish Municipality of Zagreb regarding the constitutionality of said law caused a reaction of the Constitutional Court in 1999. In the summer of 2002, two years after the verdict of said law, changes and amendments of the Law on Compensation enabled foreigners to claim return of their former property in Croatia (Židovska općina Zagreb, *Ha kol* 75/76, November 2002, 39–40).

At the same time, in 2004 members of Municipality founded the *Association for the Restitution of Jewish property CEDEK*.[36] This association was formed in

35 Published in N.N. No. 92 of October 30, 1996. http://narodne-novine.nn.hr/default.aspx

36 In addition to the already listed activities, CEDEK demands to annul all contracts made with third persons who acquired ownership over Jewish property through

order to change the unfavorable provisions of the revised *Law on Compensation.* It was founded by members of the Jewish Municipality of Zagreb and is mostly involved in property restitution of individuals. The president at the time was Dani Deutch, today it is Marko Ivanović. The Association still demands the change of the period the Law on Compensation refers to, i.e. for it to be applied to property seized from 1941 to 1990; that restitution applies to all owners and their descendants regardless of citizenship; for the Law to apply inheritance laws in all internationally recognized forms of inheritance; to have restitution in kind as the primary form of return, and, where not possible, to compensate in money its market value at the time of seizure; that compensation from the Real Estate Fund owned by the Republic of Croatia should be offered; and to have procedures delegated to courts with full jurisdiction rather than having them as administrative procedures. The Association puts emphasis on founding a *fund of humanitarian character* that would encompass all Jewish heirless property (property with no successors), to be done by the Coordination of Jewish Municipalities of Croatia (Židovska općina Zagreb, *Ha kol* 86, December 2004, 8; Židovska općina Zagreb, *Ha kol* 92, January-February 2006, 15).[37]

As a result of all that, there were demands to make a new Law on Compensation. Towards the end of mandate of Jadranka Kosor government in 2004, attempts were made do change that Law, but the proposal got stuck somewhere in parliamentary procedure,[38] and has not been passed.

What was, in the end, returned to Jewish municipalities in Croatia?

Despite disagreements with the Law, the Jewish Municipality of Zagreb submitted in 1997 a claim for restitution of community property, mostly endowments like the property of the Chevra Kadisha, the Vacation Colony, the Foundation

transformation and privatization since 1991 and in that manner became owners of Jewish property through buying flats and houses since 1991. http://www.cedek-croatia.hr/index-hrv.html

37 The CEDEK association cooperates with embassy of the State of Israel in Croatia, and with B'nai B'rith International and the World Jewish Restitution Organization.

38 http://www.forum.tm/vijesti/vracanje-zidovske-imovine-s-figom-u-dzepu-1797; http://www.vecernji.hr/hrvatska/povrat-zidovske-imovine-povijesna-je-i-moralna-odgovornost-380554

Hospital under construction, the Home of Lavoslav Švarc, or property formerly used in community activities, such as: community buildings, synagogues etc. (in Zagreb this amounts to 11 buildings in the city, two elsewhere, six construction sites and one forest plot). The Jewish Municipality then asked for the building of the Chevra Kadisha and the Chief Rabbinate (Petrinjska 7, Amruševa 4, Amruševa 8), more residential buildings which used to be Endowment property, the plot of the former synagogue in Praška 7 (returned in 2000) and the land of the Foundation Hospital at Ksaver. Outside of Zagreb, they lay claim to the remaining property of the vacation colonies in Crikvenica and Ravna Gora, the property of all those Jewish municipalities in central Croatia that remained without members and were extinguished: Varaždin, Krapina, Bjelovar, Koprivnica, Đurđevac, Ludbreg, Kutina, Pakrac, Lipik, Križevci and Nova Gradiška. There were 94 objects in total (42 buildings and 52 plots). Of that, the ŽOZ has 56 objects (23 buildings and 33 plots), while the Jewish municipalities of Split, Rijeka, Čakovec, Dubrovnik, Osijek, Daruvar, Slavonski Brod, and Virovitica inherited another 19 buildings and 19 plots. In addition, in procedure are claims for the return of 17 Jewish cemeteries that were owned by said Jewish municipalities (Židovska općina Zagreb, *Ha kol* 53-54, March-April 1998, 9-10). Those are the data only on immobile property that was owned by said Jewish municipalities and their institutions, while the number of claims for private property of individuals and companies is hard to establish (Židovska općina Zagreb, *Ha kol* 53-54, March-April 1998, 9-10).

Since the enactment of the Law on Compensation, the following items were returned to Jewish Municipality of Zagreb: part of one building in the Zagreb city centre (the building on the corner of Petrinjska and Amruševa – the former Chief Rabbinate), one construction site (Praška, formerly the location of Zagreb's synagogue) (Židovska općina Zagreb, *Ha kol* 63-64, December 1999-January 2000, 1), two unusable flats in the basements of seized buildings, part of the land (forest) at Cmrok. In 2013, negotiations started on the possibility of exchange of objects, i.e. finding an appropriate replacement for the former Chevra Kadisha building in Amruševa (No. 8) (Židovska općina Zagreb, *Ha kol* 137, November-December 2014, 12).[39] On May 15, 2014 the question was resolved, so in exchange for the

39 The building at Amruševa 8, the building of the Chevra Kadisha, was seized by NDH authorities on June 24, 1941. After the war, when activity of the society was banned, it was declared state property and given to the Jewish Municipality of Zagreb to manage. On August 9, 1947 the building was seized again and declared state property, then

building at Amruševa, the Jewish municipality received the former building of Croatian Radiotelevision at Dežmanova 6 (Židovska općina Zagreb, *Ha kol* 137, November-December 2014, 12).[40] Afterwards, the resort close to Šibenik (Pirovac) was returned to the Jewish municipality, while former resorts at Crikvenica are still the subject of negotiation, which will likely result in an exchange of property (Židovska općina Zagreb, *Ha kol* 129, March-April 2013, 4–6.) In a same manner, by decision of Municipal Court in Osijek, a building at Ante Starčević Square was returned to the Jewish Municipality of Osijek. Although it has some 1,200 square meters, the Community is the owner of 900 square meters (Židovska općina Zagreb, *Ha kol* 112, November-December 2009, 13).[41] These are results of property restitution to Jewish institutions, unlike restitutions to the Catholic Church,[42] which already by 2009 had returned or received compensation in kind for some 80% of claimed properties, according to some even 99% (Židovska općina Zagreb, *Ha kol* 109, March-April 2009, 14–15).

As far as property restitution to Jewish families is concerned, according to unofficial data received from the official lawyer of the Jewish Municipality of Zagreb (S. T.), until now close to 50% of submitted claims have been resolved – i.e. half of the claimed property, while the Jewish Municipality of Zagreb has retrieved roughly 70 %. Regarding property restitution to individuals, by 2011 only one-third of submitted claims have been resolved, and around 300 are in process (some 200 claims came from Israel) (Židovska općina Zagreb, *Ha kol* 121, September-October 2011, 4–5; Židovska općina Zagreb, *Ha kol* 51, January-February 2012,

given to the Enterprise of State Residential Buildings in Zagreb to manage. In 1956 the Central Association of Agricultural Cooperatives of the People's Republic of Croatia and Zagreb was recorded the building's managing body. In 1962 the building was registered as a social property, managed by the Federal Republic of Croatia's Chamber of Commerce. In 1975 it was registered to the Cooperative Association of Croatia. In 1997, despite the claim made by the ŽOZ, it was registered as a property of the Croatian Agricultural Cooperative Association.

40 The building at Dežmanova 6 was built in 1927, and was the property of the Klein family from 1930. The Kleins were sent to Auschwitz by the NDH authorities, and killed there. The building was registered as social ownership since 1950.

41 On December 31, 1999 by decision of the government of Croatia, a plot in Pariška street in Zagreb where a synagogue used to be located, was returned to Jewish Municipality.

42 http://www.seebiz.eu/vlast-oporba-ali-i-zidovske-organizacije-odgovorne-sto-nema-povrata-opljackane-zidovske-imovine/ar-54635/

51–52). Those are data for the period until 2012, for there are no official data how many claims have been resolved since.

Many claims still remain unresolved, some of them for a full 18 years (Židovska općina Zagreb, *Ha kol* 137, November-December 2014, 37–38).[43] Compensations received are embarrassingly small, almost symbolic (for instance, two successors of the plot where the post office in Jurišićeva street is now located received compensation of 90,000 kunas for 1,300 square meters) (Židovska općina Zagreb, *Ha kol* 130, May-June, 2013, 20–21), since restitution in kind is either impossible or avoided. Certain families have been fighting a legal battle for the return of their inheritance for 18 years. As positive examples, we can mention these: in 2007 successors of Baron Victor Gutman succeeded in having 30,000 hectares of arable land and double that of forest land returned. Afterwards, the Jewish family Görög of Osijek had co-ownership of a hotel of their late father in Osijek restored (Židovska općina Zagreb, *Ha kol.* 99, March-April 2007, 11). In 2003, the Kraus family, i.e. their successor Dr Marko Ivanović had an aluminum factory that had been confiscated returned. It was the first aluminum factory in the Balkans when his father Ivan Rikard Kraus Ivanović built it in 1937. Since 1997, Marko Ivanović also has claims on the return of part of the property belonging to the Osijek refinery, nowadays a part of INA.[44] Also specific is the case of successors of the Mayer

43 The case of Paul Schreiner (Zagreb, 1928). His grandfather Armin Schreiner was the owner of the ceramics factory in Bedekovčina. Paul is the only member of his family who survived the Holocaust. His father was taken to a concentration camp in December 1941, while he was hidden by the Glojnarić family in the village of Mače. His mother Gretta and 10-years old sister Helga were killed in the camp of Stara Gradiška, father Ferdo in Auschwitz, and grandfather Armin in Jasenovac. When his father, the factory owner, was taken to camp, his property was taken by an Ustaša official. Paul is still trying to recover this property. Since 1992 he has opened the procedure for returning the family house at Deželićeva 30 in Zagreb, but to no avail so far. According to family lawyer, they managed to achieve the return of the property at first instance at the competent service of state administration and city, but the State Attorney appealed in the meantime, so the case is now with the Ministry of Justice.

44 The family of Marko Ivanović, namely his father Ivan Rikard Kraus Ivanović possessed in the centre of Osijek *IPOIL AD – Refinery of mineral oils* as well as sugar refineries, steam mills, and other industrial plants that were confiscated after the war and given to the enterprise "Jugopetrol". A significant part was destroyed in 1943 during the Allied bombing of Osijek. Still, there remained a manufacturing nucleus, a market, and 30,000 square meters of land in the centre of Osijek. Dr Ivanović does not want to speculate on the value of seized property and compensation the state should pay. The property lies on the site of the marshalling yard in Osijek, and its value in 1943 was estimated at 332,440 U.S. dollars. In the meantime, confiscated property became part of INA. The

family who have also claimed restitution for 18 years now. The Mayer (Marić) family once owned Iskra d.d. and Yugoslav Shell. The Ustaša regime seized all this property on the basis of racial laws, including refineries in Sisak and Bosanski Brod. Afterwards a part of the family perished, and everything was confiscated by Yugoslav authorities after the war. Restitution to the family is in large part contested, and for the time being only part of family property has been returned, i.e. one-third including the ruins in Sisak.[45]

Conclusion

Why is the restitution process of Jewish property progressing so slowly despite the fact that Croatia has enacted laws that allow the return of the property and that, in June 2009, it and another 46 countries signed the Terezin Declaration, by which they pledged to resolve the question of restitution?[46]

Some of the reasons include:

The necessity to enact a new Act on Restitution /Compensation by which all property would be returned to the original owners regardless of whether it was sold or privatized. This act would annul all sales of houses, apartments, hotels, and company shares that were acquired during the process of privatizing social property which took place in the 1990s.

state sold a half of the company to the Hungarian MOL without informing the family on whose land INA had emerged. The Osijek court decided in favor of the Ivanović family, but the State Attorney and INA management appealed, so the whole procedure to be considered again. Since the owners of the Osijek company were Kraus-Ivanović, Mayer and Sopianec, restitution should go to three sides, which additionally complicates the whole procedure. http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/267034/Default.aspx; http://slobodnadalmacija.hr/%C5%A0ibenik/tabid/74/articleType/ArticleView/articleId/157585/Default.aspx;

45 Mayer-Marić, A family that made INA, *Globus*, 21.11.2014, 60-68. http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/267034/Default.aspx

46 Upon invitation by the President of the Czech Republic, a conference was held in Terezin on June 26-30, 2009 with participation of 46 states, including Croatia. The conference produced the Terezin Declaration on Holocaust Era Assets and Related Issues. It contains all issues that were discussed at that and other conferences: from return and restitution, education and remembering, to research and presentation of the heritage – on international and national levels. http://www.cendo.hr/Novosti.aspx?id=473&title=terezinska-deklaracija ;http://www.wjro.org.il/Web/Default.aspx;

The six-month deadline for filing a claim is problematic.

a. The Law on Compensation from 1996 according to which it is possible to return the property seized after May 15, 1945 is still in force, which in practice means that prominent members of the Ustaša regime have the right to full restitution of their property in kind, while the Jews whose property was seized from 1941 till 1945 have no rights of this sort whatsoever. The stance of the Government of the Republic of Croatia is that Yugoslavia annulled all decisions of the NDH relating to the seizure of property immediately after the end of the Second World War, and that any such property was returned to its owners or their heirs and later seized again, thus making it subject to The Law on Compensation.
b. A specific problem is the status of former Yugoslav citizens who immigrated to Israel during the late 1940s and 1950s (those who did so were stripped of their citizenship and their property was confiscated by communist Yugoslavia) and who as foreign nationals did not have the right to restitution or compensation of their property till 2008. The restitution process was started in 2008, but it is moving slowly.
c. Another problem is the right of first order of succession, according to which only individuals from the first order of succession are allowed to inherit property, which means that only the property of parents and grandparents can be inherited, while the second order has no rights whatsoever. This means that the brothers and sisters of the former owner cannot file restitution claims.
d. The restitution process also tends to be overly long, since the procedure often lasts 20 to 25 years, meaning the claimant sometimes dies of old age before it is concluded, leading to the process being suspended or prolonged.
e. The fact that the highest sum for which one can seek compensation for former or inherited property is 500,000 € is also problematic.
f. There is also the question of the property of Jews who were killed in the Holocaust and left without heirs (escheat property). That property is currently in the hands of cities and municipalities.
g. The question of stolen movable property (works of art) is still not being discussed.

h. The question of the restitution of property concerns not only Jews, but also Serbs, Germans, Hungarians, Czechs, and others (Italians and Austrians are exempt).
i. One of the greatest problems regarding the restitution process is the unfavourable economic situation in Croatia, which has slowed the compensation process.

In the end, we can only conclude that the process of returning the property that was seized from the Jews is a slow one, and we cannot be certain when or if it will be concluded in a satisfying manner.

References:

Anić, T. 2007. „Normativni okvir podržavljenja imovine u Hrvatskoj/Jugoslaviji 1944–1946." *Časopis za suvremenu povijest* 3: 25–62.

Brandl, M., N. 2015. „Židovski identitet/i u Hrvatskoj nakon Drugog svjetskog rata: kratak pregled." *Nacionalne manjine u Hrvatskoj i Hrvati kao manjina – europski izazovi,* zbornik radova, ured. Ljiljana Dobrovšak, Ivana Žebec Šilj: 167–194. Zagreb: Institut društvenih znanosti „Ivo Pilar".

Kisić Kolanović N. 1998. „Podržavljenje imovine Židova u NDH" *Časopis za suvremenu povijest* 30 (3): 429–453.

Konfiskacija, nacionalizacija, ratna dobit, agrarna reforma, kolonizacija i drugi oblici prisilnoga prestanka vlasništva; Zakon o pretvorbi društvenog poduzeća, prir. Jadranko Crnić i Ane-Marija Končić. 1991. Zagreb: Narodne novine.

Maticka, M. 1992. „Zakonski propisi o vlasničkim odnosima u Jugoslaviji (1944–1948)", *Radovi Zavoda za hrvatsku povijest* 25: 123–148.

Židovska općine Zagreb. Bilten / Ha-kol.Glasilo židovske zajednice u Hrvatskoj. Zagreb.

Živaković Kerže, Z. 2007. „Podržavljenje imovine Židova u Osijeku u NDH", *Časopis za suvremenu povijest* 39 (1): 97–116.

Sources:

http://www.cedek-croatia.hr/index-hrv.html

http://www.cendo.hr/Novosti.aspx?id=473&title=terezinskadeklaracijahttp://www.cerp.hr/default.aspx?id=6

http://www.duudi.hr/

http://www.dzs.hr/Hrv/censuses/census2011/censuslogo.htm.

http://www.fnoi.hr/

http://www.forum.tm/vijesti/vracanje-zidovske-imovine-s-figom-u-dzepu-1797. Accessed on March 24, 2015.

http://www.iusinfo.hr/DailyContent/Topical.aspx?id=8140

http://www.novilist.hr/Vijesti/Hrvatska/Josipovic-Strance-se-ne-bi-smjelo-izuzeti-iz-povrata-imovine

http://narodne-novine.nn.hr/clanci/sluzbeni/1991_10_53_1299.html

http://narodne-novine.nn.hr/clanci/sluzbeni/1996_10_92_1600.html;

http://narodne-novine.nn.hr/clanci/sluzbeni/265289.html.

http://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_80_1292.html;

http://narodne-novine.nn.hr/default.aspx

http://narodne-novine.nn.hr/clanci/sluzbeni/2000_04_43_1010.htmlhttp://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/246053/Default.aspx.

http://novi-informator.net/zakon-o-naknadi-za-imovinu-oduzetu-za-vrijeme-jugoslavenske-komunisti%C4%8Dke-vladavine-%E2%80%93-pravo-unuka-na

http://www.seebiz.eu/vlast-oporba-ali-i-zidovske-organizacije-odgovorne-sto-nema-povrata-opljackane-zidovske-imovine/ar-54635/

http://slobodnadalmacija.hr/%C5%A0ibenik/tabid/74/articleType/ArticleView/articleId/157585/Default.aspx

http://www.state.gov/documents/organization/132820.pdf.

http://www.vecernji.hr/hrvatska/povrat-zidovske-imovine-povijesna-je-i-moralna-odgovornost-380554

http://www.wjro.org.il/Web/Default.aspx

http://www.zakon.hr/z/130/Zakon-o-naknadi-za-imovinu-oduzetu-za-vrijeme-jugoslavenske-komunisti%C4%8Dke-vladavine;

http://www.zoz.hr/home.php?subkat=novosti&content=novosti&arhiva=&id_novost=2703&year=2014&vijest=1179&PHPSESSID=5c0a56e12280205f0df371727378fce9.

Legal acts:

Odluka o uređenju agrarnih odnosa i poništenju dražbi na području oblasnog Narodnog odbora za Istru. 1946. *Službeni list FNRJ*, br. 191/46.

Osnovni zakon o eksproprijaciji. 1947. *Službeni list FNRJ*, br. 28/47.

Osnovni zakon o iskorištavanju poljoprivrednog zemljišta. 1965, 1967, 1970, 1971, 1973. *Službeni list SFRJ*, br. 25/65, 12/67, 14/70; *Narodne novine*, br. 52/71, 52/73.

Osnovni zakon o postupanju sa ekspropriranim i konfisciranim šumskim posjedima. 1946. *Službeni list FNRJ*, br. 61/46.

Zakon o agrarnoj reformi i kolonizaciji. *Službeni list DFJ*, br. 64/45; *Službeni list FNRJ*, br. 24/46, 101/47, 105/48, 21/56, 55/57; *Službeni list SFRJ*, br. 10/65.

Zakon o državljanstvu. 1945, 1948. *Službeni list DFRJ*, br. 64/45, 105/48.

Zakon o državljanstvu Narodne Republike Hrvatske. 1950. *Narodne novine*, br. 18/50.

Zakon o fondu, Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine. *Narodne novine*, br. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 65/01, 118/01, 80/02, 81/02.

Zakon o građevinskom zemljištu. *Narodne novine*, br. 54/80, 42/86, 61/88, 48/88. – prečišćeni tekst, 16/90, 53/90. Zakon o konfiskaciji imovine i izvršenju konfiskacije. 1945. *Službeni list DFJ*, br. 40/45, 70/45.

Naredba o izmjeni te o sprovađanju u život Odluke Oblasnog Narodnog Odbora za Istru o uređenju agrarnih odnosa i poništenju dražbi na području Oblasnog Narodnog Odbora za Istru od 21. XII. 1946. *Službeni list*, br. 191/46.

Zakon o izvršenju kazni, mjera sigurnosti i odgojno-popravnih mjera. 1951. *Službeni list FNRJ*, br. 47/51.

Zakon o ispitivanju porijekla imovine i o oduzimanju nezakonito stečene imovine. 1984. *Narodne novine*, br. 14/84

Zakon o nacionalizaciji najamnih zgrada i građevinskog zemljišta. 1958. *Službeni list FNRJ*, br. 52/58.

Zakon o nacionalizaciji privatnih privrednih poduzeća. 1946, 1948. *Službeni list FNRJ*, br. 98/46, 35/48.

Zakon o nasljeđivanju. 1971, 1978, 2000. *Narodne novine*, br. 52/71, 47/78, 56/00.

Zakon o određivanju građevinskog zemljišta u gradovima i naseljima gradskog karaktera. 1968, 1969. *Službeni list SFRJ*, br. 5/68, 20/69; *Narodne novine*, br. 30/68.

Zakon o oduzimanju ratne dobiti, stečene za vrijeme neprijateljske okupacije. 1945. *Službeni list DFJ*, br. 36/45.

Zakon o poljoprivrednom zemljišnom fondu općenarodne imovine i dodjeljivanju zemlje poljoprivrednim organizacijama. 1953, 1957, 1962, 1965. *Službeni list FNRJ*, br. 22/53, 27/53, 4/57, 46/62; *Službeni list SFRJ*, br. 10/65.

Zakon o poljoprivrednom zemljištu. 1984. *Narodne novine*, br. 26/84.

Zakon o potvrdi i izmjenama i dopunama Zakona o konfiskaciji imovine i izvršenju konfiskacije. 1946. *Službeni list FNRJ*, br. 61/46.

Zakon o potvrdi i izmjenama i dopunama Zakona o oduzimanju ratne dobiti, stečene za vrijeme neprijateljske okupacije. 1946. *Službeni list FNRJ*, br. 52/46.

Zakon o postupanju sa imovinom, koju su vlasnici morali napustiti u toku okupacije i imovinom, koja im je oduzeta od strane okupatora i njegovih pomagača. 1945. *Službeni list DFJ*, br. 36/45.

Zakon o potvrdi i izmjenama Zakona o postupanju sa imovinom koju su vlasnici morali napustiti u toku okupacije i imovinom koja im je oduzeta od strane okupatora i njegovih pomagača. 1946, 1947, 1948. *Službeni list FNRJ*, br. 64/46, 105/46, 88/47, 99/48.

Zakon o prelazu u državno vlasništvo neprijateljske imovine i sekvestraciji nad imovinom odsutnih osoba. 1946. *Službeni list FNRJ*, br. 63/46.

Zakon o proglašenju imovine zemljišnih i njima sličnih zajednica te krajiških imovnih općina općenarodnom imovinom. 1947, 1958, 1987. *Narodne novine*, br. 36/47, 51/58, 13/87.

Zakon o prometu zemljišta i zgrada. 1965, 1967. *Službeni list SFRJ*, br. 43/65, 57/65, 17/67; *Narodne novine*, br. 52/71, 52/73.

Zakon o provođenju agrarne reforme i kolonizacije na području Narodne Republike Hrvatske. 1947, 1957, 1958, 1962. *Narodne novine*, br. 111/47, 25/58, 58/57, 62/57, 32/62.

Zakon o provođenju pojedinih odredaba zakona o iskorištavanju poljoprivrednog zemljišta. 1960. *Narodne novine*, br. 25/60.

Zakon o suzbijanju nedopuštene trgovine, nedopuštene špekulacije i privredne sabotaže. 1946. *Službeni list FNRJ*, br. 56/46.

Zakon o udruženom radu. 1976, 1983, 1987, 1988. *Službeni list SFRJ*, br. 53/76, 57/83, 85/87, 6/88, 38/88.

Zakon o udruživanjima, zborovima i drugim javnim skupovima. 1946, 1947. *Službeni list FNRJ*, br. 51/46, 29/47.

Zakon o uređenju i davanju na korištenje građevinskog zemljišta. 1969. *Narodne novine*, br. 20/69.

Zakon o uređivanju i korištenju gradskog zemljišta. 1963. *Narodne novine*, br. 6/63.

Rezime:
Povrat židovske imovine u Hrvatskoj

U radu je reč o povratu židovske imovine u Hrvatskoj od devedesetih godina 20. stoljeća na ovamo, budući da još uvijek u Hrvatskoj nije riješeno pitanje povrata židovske imovine i ono ide jako sporo, zbog nedorečenih zakona koji se provode parcijalno. Uglavnom se ovo pitanje aktualizira kada se netko od hrvatskih vlasti sastaje s nekim iz Izraela ili američke administracije. Prema sadašnjim aktualnim propisima jedina imovina Židova koju je moguće vratiti je ona oduzeta nakon 1945. godine, dok je imovina koja je oduzeta u vrijeme NDH ostala nedirnuta, „zaštićena" zakonima koji doneseni još za vrijeme Jugoslavije. Sadašnji povrat oduzete imovine provodi se prema Zakonu o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine koji je stupio na snagu 1997. godine te su tada pravo povrata ili naknade imali samo hrvatski državljani u prvom nasljednom redu. Zakon je dopunjen 2002. godine, kada je uvedeno da i djelomično stranci mogu imati pravo povrata. I dalje je na snazi praksa, da se ne vraća imovina oduzeta u vremenu od 1941. do 1945. godine, kada je oduzeto najviše židovske imovine. I dalje pravo povrata ima samo prvi nasljedni red te je i dalje prekratak rok za podnašanje zahtjeva oko povrata. Potkraj mandata vlade Jadranke Kosor 2004., pokušalo se za izmjenom i donošenjem novog zakona, međutim on je kao prijedlog zaostao negdje u saborskoj proceduri te se još uvijek ne zna kada će biti donesen. Do sada povrat svojih nekretnina prema neslužbenim podacima uspjelo je riješiti manje od 30 posto obitelji Židova stradalih u NDH te je Vlada Zorana Milanovića darovala Židovskoj općini Zagreb zgradu u središtu Zagreba kao svojevrsnu kompenzaciju za imovinu koja joj je oduzeta za vrijeme ustaškog režima.

Ključne riječi: Židovi, imovina, Zakonu o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine

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FURTHER OBSERVATIONS ON THE RESTITUTION OF ART, JUDAICA, AND OTHER CULTURAL PROPERTY PLUNDERED IN SERBIA

Review Scientific Article

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Following on the overview presented at the first annual Holocaust and Restitution Conference concerning what is known about the expropriation of cultural property in Serbia during World War II and where that cultural property is presently located, ways in which restitution of art, Judaica, and other cultural property might best be implemented are discussed. Serbia is encouraged to do historical research on the history of cultural plunder during World War II and on what was restituted to Serbia and within Serbia after the War, and to create a listing or database on the internet of what was taken in Serbia, noting what was subsequently returned and what is still missing. An entity should be responsible for provenance research in the country, either one that actually does the research as in Austria or one that oversees the research carried out by museums, libraries, and archives as in the Netherlands. Information should be made public over the internet of the results of such provenance research. A separate entity, as neutral and independent as possible, should be responsible for restitution decisions based on the provenance research. Serbia should pass legislation covering the return of private movable cultural property that is applicable to both Serbian and foreign citizens. Preferably there should be no deadline for claims for cultural property, whether individual or communal, since such cultural property is often not immediately identifiable. A non-bureaucratic process for filing claims should be established. Cultural property for which original owners and heirs are not identified (heirless property) should be listed

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on an internet site so that potential claimants can come forward. Such items should not necessarily move from their current location, but their provenance history should be publicly noted.

Key words: restitution, artworks, Yugoslavia, Serbia, Jewish, cultural property, Nazis, plunder

At the first annual Holocaust and Restitution Conference, an overview was provided of what is known concerning the expropriation of cultural property from Jews and non-Jews in Serbia during World War II, where the cultural property plundered from Serbia is presently located, and what cultural property known or suspected of having been plundered is currently in Serbia (Fisher 2014).

In that overview it was noted that there is information from German and other archives on artworks, books and Judaica plundered, and information from restitution records after World War II. While the fate of some cultural property looted from Jews in Serbia remains unknown, the fate of many archives, books, and other cultural property is known. Thus while the whereabouts of the artworks by the symbolist painter Leon Koen remain largely a mystery,[1] it is known that there are Serbian Jewish archives in Moscow, Serbian Jewish book collections in Minsk, and books from the Geca Kon Publishing House in Austria and Germany.[2] And it is known that in addition to cultural property that is in Serbia that was looted from Serbian Jews, there are artworks that were brought into Serbia after World War II that were looted from Jews in other countries (Fisher 2014).

Building on that, this article discusses how restitution of art, Judaica, and other cultural property might best be implemented in Serbia with reference to the experience of other countries.

In regard to information on the comparative experience of other countries, in the fall of 2014 the Claims Conference and World Jewish Restitution Organization presented at an International Council of Museums (ICOM) Conference in St. Petersburg "Holocaust-Era Looted Art: A Current Worldwide Overview" that ex-

1 Further details on this artist see: (Adić 2009, Šuica 2001).

2 See: (Köstner 2005).

amines the implementation of the Terezin Declaration in 50 countries. That paper is available on the internet.[3] We have been heavily involved in the "Schwabing Art Trove" Task Force dealing with the Cornelius Gurlitt Collection recently discovered in Munich and Salzburg, as well as the creation of the new German Center for Cultural Property Losses and the Provenance Research Training Program of the European Shoah Legacy Institute (ESLI), among many other activities. [4]

Reaching closure in regard to the huge numbers of cultural items taken during the Holocaust is not easy for any country. Serbia needs to deal with the problem not only on general historical and moral grounds, but also as a member of the International Council of Museums (ICOM) and therefore in accordance with the Code of Ethics of ICOM; as an endorser of the Terezin Declaration, which incorporates the Washington Conference Principles on Nazi-Confiscated Art; and as a country bound by the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The following are recommended steps that ideally Serbia should take in regard to historical research, provenance research, legal matters, and heirless cultural property:

Historical Research

Very little attention has been paid to date to the history of the expropriation of cultural property in Serbia, both from Jews and from non-Jews. There has been some work on the main Nazi looting agency, the Einsatzstab Reichsleiter Rosenberg (ERR), which set up its office originally in the offices of the Chief Rabbi of Belgrade. The ERR was preceded, however, by the Kunstschutz ("Art Protection Unit") of the Wehrmacht, as well as by the Gestapo, so most of the art in Serbia had been taken by the Kunstschutz by the time the ERR became operative in the area. Little work has been done on the history of this aspect of World War II in Serbia.

Similarly there has been little or no research on what was restituted to Serbia and within Serbia. So far as is known, there has not been examination of the claims forms filed in Serbia after the War or of the activities of local collecting points.

3 http://art.claimscon.org/our-work/looted-art-report/

4 For information on the Claims Conference-WJRO Looted Art and Cultural Property Initiative, see http://art.claimscon.org/

To the extent possible, a listing or database should be created on the internet of what was taken in Serbia, noting what was subsequently returned and what is still missing. Unlike other countries, Serbia does not appear to maintain a list of its losses, whether removed from the country or otherwise, including Jewish losses but not only Jewish losses. Such a database would be helpful in understanding what is still missing.

Provenance Research

A distinction should be made between provenance research (the history of the ownership of an object from its creation to the present) and processes for claims and restitution. As in Austria and the Netherlands, the two countries that perhaps are the best examples, it is preferable for Serbia to have an entity that is responsible for provenance research and a separate entity that is responsible for restitution matters.

The provenance research entity should be as neutral and independent as possible, whatever its relation to the Ministry of Culture or other parts of the government may be. Its composition should include not only experts in art, but also in general history, libraries, and archives, and there should be inclusion of experts from the Jewish community.

Following the Austrian model, the provenance commission/office/board would itself carry out the research and have full access to the records and other holdings of the state museums, libraries, and archives. Given the relative lack of trained provenance researchers in Serbia and the political disagreements in the country, the Austrian model would probably be a good one for the country.

Following the Netherlands model, the provenance commission/office/board would review work that would be done by the museums, libraries and archives themselves. The various cultural institutions of Serbia will presumably prefer this Netherlands model.

In many countries – including Germany and the United States – museums, libraries, and archives carry out provenance research on their collections without such research being subjected to review. However, in those countries the museums and other professional associations, as well as often the governments, try to establish standards and guidelines for provenance research. And there are attempts through ICOM and otherwise to establish international standards for the

field. While these are helpful, they nonetheless do not fully overcome the problem that museum curators and others working for cultural institutions have generally been taught to protect their institution's collections no matter what – i.e., without reference to where those collections may come from – and experience conflicts of interest when carrying out provenance research. Some sort of independent review of such work is therefore desirable.

Although it can be argued that knowing where items in a collection come from should be simply a part of good collections management, as a practical matter museums, libraries, and archives are likely to see the task of provenance research as something that requires additional personnel and funding.

Note that because cultural property is movable, provenance research very often must be done in cooperation with experts in other countries.

Information should be made public over the internet of the results of provenance research on art and other cultural property.

Legal Matters

Serbia should pass legislation covering the return of private movable cultural property that is applicable to both Serbian and foreign citizens.

Either in that legislation or separately, provision should be made for the restitution of communal cultural property above and beyond Article 15 of the 2006 Serbian restitution law that established a deadline of September 30, 2008, which effectively was too short a period for the implementation of such restitution. Unlike immovable property, movable cultural property is often not immediately identifiable, and it is therefore preferable not to establish a deadline for claims – or at least allow for a relatively long period for such claims to be made.

Serbia should establish a non-bureaucratic process for filing claims, preferably outside the courts. Claims should be handled by a separate restitution entity that will take into account the findings of the provenance commission/office/board. The restitution entity should also be as neutral and independent as possible and should consist of respected experts, including representation of the Jewish community. The claims process should take into account the "unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era" (Principle 4 of the Washington Conference Principles).

There should preferably be no obstacle to the export of restituted cultural property. If a distinction is to be made for "national treasures", the identification of such works should not be left until after a restitution decision has been made or is in process. In any event, since there are known artworks that were plundered by the Nazis in other countries and subsequently illegally brought to Serbia, such works cannot reasonably be labeled as "national treasures."

Heirless Cultural Property

In regard to cultural property for which original owners and heirs are not identified (heirless property), such property should be clearly listed, preferably on an internet site (an example is the database of the National fonds in Austria[5]) so that potential claimants can come forward. Such items should not necessarily move from their current locations, but their provenance history should be publicly noted by the museum or other cultural institution.

As regards heirless communal property, the principle stated in Article 15 of the 2006 Serbian restitution law could well apply: "...movable items of cultural, historical or artistic significance shall be returned to the ownership of the church or religious community and if they are a constituent part of the collection of a public museum, gallery or similar institutions, agreement regarding their continued use between the church or religious community and the holder of the item are defined by contract."

While the sale of heirless cultural property may eventually be desirable, it should only be done with great care, since experience has shown that these are unique items of great emotional importance to families and communities, and very few such items are in fact actually heirless.

Some Closing Political Observations

It is reasonable for Serbia to identify and possibly ask for the return of items that were plundered from Serbia that are now in other countries.

Handling of the reputation of Ante Topic Mimara should be straightforward, that while he did many good things for Serbia, there were certain actions that he took that need to be corrected.

5 See: Art Database of the National Fund, http://www.kunstrestitution.at/

Since some of the provenance research issues are common to a number of the countries of the former Yugoslavia, consideration should be given to possible cooperation with those other countries.

References:

Adić,Vesna. 2009. "The Tragic Story of Leon Koen, the First Sephardi Painter from Belgrade: A Symbolist and Admirer of Nietzsche." *Ars Judaica* 5: 1–18.

Fisher, Wesley A. 2014. "Restitution of Art, Judaica, and Other Cultural Property Plundered in Serbia During World War II". *Limes plus. Journal for Social Sciences and Humanities* 2: 57–66. Available online at http://art.claimscon.org/wp-content/uploads/2015/03/Wesley-Fisher-Restitution-Godina-XI-2014.pdf

Fishman, David E., Kupovetsky, Mark, and Vladimir Kuzelenkov eds. 2010. *Nazi-Looted Jewish Archives in Moscow: A Guide to Jewish Historical and Cultural Collections in the Russian State Military Archive.* Scranton and London: University of Scranton Press.

Friedrich Ebert Stiftung. 2012. *Serbian-German Relations: The Real and the Possible.* Belgrade.

Kennedy Grimsted, Patricia. 2010. "The Postwar Fate of ERR Archival and Library Plunder." *Journal of Art Crime* 4: 23–47.

Köstner, Christina. 2005. "Das Schicksal des Belgrader Verlegers Geca Kon." *Mitteilungen der Gesellschaft für Buchforschung in Österreich* 1: 7–19.

National fund of the Republic of Austria for Victims of National Socialism. Art Database of the National Fund, http://www.kunstrestitution.at/

Perry, Victor. 2000. *Stolen Art.* Jerusalem: Gefen Publishing House.

Šuica, Nikola. 2001. *Leon Koen: 1859–1934, Catalogue.* Belgrade: Jugoslovenska galerija umetničkih dela.

Weinberger, Ruth. 2013. *The Looting of Jewish and Cultural Objects in Former Yugoslavia The HAG Südosten & The Einsatzstab Reichsleiter Rosenberg in Belgrade, Agram (Zagreb) and Ragusa (Dubrovnik).* Jerusalem: Claims Against Germany and the World Jewish Restitution Organization. http://forms.claimscon.org/art/ERR-Looting-Yugoslavia-Oct2013.pdf

WJRO/World Jewish Restitution Organization. 2009. Terezin Declaration. http://www.wjro.org.il/Web/intl/PragueConference/100.aspx WJRO. Undated. Records of the Einsatzstab Rechtsleiter Rosenberg (ERR). http://art.claimscon.org/policy/records-of-the-einsatzstab-reichsleiter-rosenberg-err/

Rezime:
Dalja zapažanja o restituciji umetničkih dela, judaike i drugih kulturnih dobara opljačkanih u Srbiji

Ovaj rad odnosi se na izazove u vezi sa oduzimanjem pokretne imovine u Srbiji. U pitanju je nastavak rada predstavljenog na prvoj stalnoj konferenciji u Beogradu koja se bavila restitucijom jevrejske imovine. Umetnine, judaika i druga kulturna dobra koja su oteta tokom Holokausta i nalaze se u Srbiji predmet su istraživanja koji je do sada bio zanemaren. Postoji potreba za istorijskim istraživanjem ne samo pokretne imovine oduzete tokom Drugog svetskog rata, već imovine koja je nakon 1945. završila u Srbiji iz drugih delova Evrope. Istraživanje je neophodno upotpuniti listom imovine sa posebnom naznakom šta je vraćeno prethodnim vlasnicima, šta nije i gde se predmeti trenutno nalaze. U okviru istraživanja porekla imovine moguće je slediti primer Austrije u kojoj se institucije muzeja i biblioteka time bave ili primer Holandije u kojoj to rade arhivi. Važno je da rezultati budu javno, elektronski dostupni. Posebno nezavisno telo bi trebalo da preuzme odgovornost u vezi sa prihvatanjem zahteva za restituciju pokretne imovine.

Još uvek nije donet jedinstven zakon u Srbiji koji bi omogućio i državljanima Srbije i stranim državljanima da podnose zahteve za restituciju pokretne imovine. U slučaju donošenja zakona koji bi se bavio povraćajem pokretne umetnine bilo bi važno izbeći vremensko ograničenje za podnosioce obzirom na veoma zahtevan i dug posao u vezi sa istraživanjem porekla umetnina. Nemoguće je očekivati da se svaki slučaj pronađene pokretne imovine za koje se utvrdi poreklo vrati prethodnom vlasniku, ali je važno da rezultati budu javno dostupni.

Ključne reči: restitucija, umetnička dela, Jugoslavija, Srbija, jevrejsko, kulturna dobra, nacisti, pljačka

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Part III

THE LEGAL ASPECTS: Rehabilitation and Restitution

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AN IMMOVABLE PROPERTY RESTITUTION LEGISLATION DATABASE: ESLI'S Initiative to Bring Present and Future Meaning to the Terezin Declaration Commitments*

Published Professional Conference Paper

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The 2009 Terezin Declaration reflects the will of 47 nations to continue to enhance their efforts to right the wrongs committed against groups persecuted during World War II. These commitments are not only important with respect to bringing justice to those affected by persecution during the Holocaust, but also are important from the standpoint of transitional justice as now understood, including as a way of reducing the likelihood of future genocides or mass atrocities. The European Shoah Legacy Institute (ESLI) was established to monitor progress and advocate for the principles enshrined in the Terezin Declaration, in particular that of immovable (real) property restitution. ESLI's latest project – the immovable property database initiative – will provide a much needed and long overdue dynamic tool for claimants, heirs, scholars, governments, NGOs – any stakeholder – to help navigate current property restitution issues by confronting the path through the past which brought us to current state of affairs.. When completed, the online database will be a user-friendly, public-access comparative repository of legislation and

* This paper is based on presentations made by Kristen Nelson and Rajika Shah at the "Holocaust and Restitution" conference organized by the New Balkans Institute, the Belgrade Research Center for Humanities and Arts, the Agency for Restitution of Republic of Serbia, and the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia and held in Belgrade, Serbia on 10–11 May 2015.

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international and domestic case law (both past and present) from every country that has endorsed the Terezin Declaration. Using the online database to examine the often thorny and emotionally charged issue of heirless property, in particular, is emblematic of how the content can be used to drive the conversation for solutions forward and possibly give rise to intertwined policy-related questions.

Key words: immovable (real) property, ESLI, private property, communal property, heirless property, database, Holocaust (Shoah), restitution, compensation

By endorsing the 2009 Terezin Declaration, 47 nations agreed to continue and enhance their efforts to right the wrongs committed against groups persecuted during World War II. These commitments are not only important with respect to bringing justice to those affected by persecution during the Holocaust, but also are important from the standpoint of transitional justice as now understood, including as a way of reducing the likelihood of future genocides or mass atrocities.

The European Shoah Legacy Institute (ESLI) was established in 2010 to monitor progress and advocate for the principles enshrined in the Terezin Declaration.

One of the areas highlighted by the Terezin Declaration – and one that continues to garner considerable attention – is that of immovable (real) property restitution, including private, communal and heirless property.

ESLI's latest project – the immovable property database initiative – will provide a much needed and long overdue dynamic tool for claimants, heirs, scholars, governments, NGOs – any stakeholder – to help navigate current property restitution issues by confronting the path through the past which brought us to where we are today. Using the database to examine the often thorny and emotionally charged issue of heirless property, in particular, is emblematic of how the content can be used to drive the conversation for solutions forward and possibly give rise to intertwined policy-related questions.

ESLI's Immovable Property Database Initiative

In 2015, as part of its international monitoring and advocacy mandate, ESLI commissioned the creation of an online database relating to immovable property confiscated or otherwise misappropriated during the Holocaust era, 1939–1945. The database initiative is headed by Professor Michael J. Bazyler (1939 Scholar in Holocaust and Human Rights Studies, Chapman University Fowler School of Law) and Lee Crawford Boyd (Shareholder, Brownstein Hyatt Farber & Schreck, LLP). When completed, the online database will be a user-friendly, public-access comparative repository of legislation and international and domestic case law (both past and present) from every country that has endorsed the Terezin Declaration. The database will be the first and only compilation of this type of information. It will also be dynamic, meaning that it can be updated and modified to reflect legal changes relating to the ongoing restitution and compensation efforts in each of the 47 Terezin Declaration countries.

Core components of a country's entry in the database will include restitution and/or compensation-related information falling into four broad categories: commitments made in post-war armistices and agreements, private property restitution, communal property restitution, and heirless property restitution.

For each country's restitution regime (historical and current), the goal is to: catalogue the scope of restitution and/or compensation legislation and its associated regulations; identify the time period covered by the legislation and what kind of property (private, communal, heirless) is covered; ascertain whether eligibility is contingent upon citizenship in the legislating country; clearly list claim filing deadlines; describe how the claims process works (including who decides the claims, standard of proof, necessary documentation, associated costs, appeals procedures); and describe notable judicial decisions interpreting the legislation (including national court decisions and decisions of the European Court of Human Rights in Strasbourg). Where available, statistical information concerning the status of claims, value of restituted property, length of claims process, etc. will be included.

Another important component to the database will be to place a country's legislation and restitution regime into its proper historical context. A casual user of the database may, for example, have limited awareness that property confiscated from Jews and other targeted groups during World War II in central and eastern

Europe was confiscated for a second time during widespread nationalization efforts by emerging post-war Communist regimes (confiscations which this time affected the entire population). Including information about these so-called double confiscations helps to explain why restitution efforts faltered or failed to come to fruition for decades following the end of World War II. In addition, such context explains why restitution in these countries is often not merely a question of returning property confiscated during the Holocaust but is also a matter of unwinding subsequent Communist nationalizations of that same property. Of course, historical explanations do not absolve countries from legal or moral obligations vis-à-vis immovable property restitution.

In order to help hold countries accountable for their Terezin Declaration commitments in the area of immovable property restitution, database country reports are framed around whether a country is meeting the restitution standards established in the Terezin Declaration and the 2010 Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933–1945, Including the Period of World War II (Terezin Guidelines and Best Practices), which was approved by 43 of the Terezin Declaration governments in 2010. Adopting countries are encouraged to use the Terezin Guidelines and Best Practices when developing their national restitution programs. Notable provisions include that the restitution process should be accessible, transparent, simple, expeditious and non-discriminatory (para. d); claimants should have unfettered and free access to archives (para. e); and restitution *in rem* is the preferred outcome (para. h).

Database Preparation Process

The corpus of the database content is the product of multi-layer research efforts. Pro bono lawyers from three major U.S.-based international law firms conducted initial independent country research. Many of the participating lawyers were physically located in the country they researched and/or licensed to practice there. These attorneys gathered primary restitution legislation and caselaw.

The next major step has been to involve the Terezin Declaration governments directly. Government consultation is one of the unique features of the ESLI immovable property database that will set its content apart from reports on immovable

property prepared by other organizations. During summer 2015, Questionnaires and preliminary research findings were sent to all Terezin Declaration countries. The goal is to have each member government return completed Questionnaires so that complete information can be published in the online database. As of the end of November 2015, final responses from 16 governments (via Questionnaire or otherwise) have been received. More are expected by the end of the year.

Research and Questionnaire responses are then converted into a comprehensive country report, which will appear on the online database. The final step is for independent scholars, local and international organizations, and domestic lawyers with restitution practices, to review and check the reports for accuracy.

Database Goals and Objectives

The publication of a database of this type of comprehensive immovable property legislation is in and of itself a major step that fulfills a remedial function. The database will enable users of all types to access current information in one central repository that is word searchable across countries and by type of property (i.e., private, immovable or heirless). Standard categories will appear in each country's database entry, which will facilitate comparative studies of restitution regimes. The database will also provide fair and even transparency across countries on the issue of immovable property restitution by reporting on legislative successes, and also exposing gaps in a country's current system.

This leads to another hallmark feature of the online database – that there will be regular updates and progress reports for countries that refer back the Terezin Guidelines and Best Practices. The database will be a living and breathing document and not simply a confined snapshot of restitution at a given time.

Database Outcomes

ESLI's mandate as advocate for the Terezin Declaration places the organization in a position where it can and should propel policy change in the area of immovable property restitution. The information contained in the database can facilitate ESLI's policy efforts.

From the outset, there is the sincere hope that the database will show the absence of any negative impact on the economies of countries that have success-

fully passed and implemented restitution/compensation legislation for immovable property.

Using information gathered about restitution regimes across countries, ESLI can also spearhead the preparation of uniform model codes (for example, that would cover heirless property). While uniform codes may not be the "one size fits all" solution for countries who have not passed certain types of immovable property legislation, in the case of heirless property, they could be a rubric for how to equitably balance the opportunity for redress for Holocaust victims who have no heirs, with certainty in the marketplace and repose to current occupants and title-holders (i.e., so that property may be purchased without fear of future litigation).

The database is also a step towards preserving future memory. Sadly, it is a fact that immovable property restitution is a fading hope for survivors. Within the next approximately 12 years, all remaining Holocaust survivors will be gone. What must remain are their memory, their experience, and documentation about what it took for them to get back what was stolen.

The database is not merely an historical record, but hopefully also a deterrent against future atrocities – a chronicle showing that, more than 70 years on, countries are still grappling with how to provide redress for confiscations that occurred during the Holocaust. For example, in countries where ordinary civil laws must be used to seek return of property (as is the case in Poland), the existing paradigms have resulted in continued impunity. Ordinary property laws are written for the ordinary, not for the extraordinary (such as the Holocaust).

Using the Database to Drive the Conversation on Heirless Property Solutions

One of the ways the database content can be used is to help promote conversation and development of intertwined policy-related questions on heirless property. This is particularly relevant for those countries still searching for effective solutions.

By way of background, the too-often wholesale extermination of families during the Holocaust had the effect of leaving most expropriated property without heirs to claim it. Before the Nazi takeover of power in 1933, Europe had a vibrant and mature Jewish culture. By 1945, most European Jews – two out of every three – had been killed. Principles enshrined in documents as early as the Treaties of

Peace in 1947 and as recently as the Terezin Declaration, Terezin Guidelines and Best Practices, and 2015 Concluding Statement of the Co-Chairmen of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property from victims of the Shoah should not revert to the state but instead should be primarily used to provide for the material needs of Holocaust survivors most in need of assistance.

When looking at data spanning the 47 Terezin Declaration countries, solutions for heirless property issues often stand out as the most intractable hurdle in the field of immovable property restitution. Moreover, owing to the nature of the property – that there are no heirs to claim it – it is also the type of property that may be most at risk of being forgotten, because it has no natural champions. The database will reflect the somewhat unfortunate, yet sadly unremarkable, fact that there is still much to be done in many Terezin Declaration countries when it comes to finding heirless property solutions. A vast amount of heirless property continues to be unaddressed, unclaimed and unrecompensed.

The fact that this online database is a dynamic repository of information means that it has the capability to effectively capture changes in law and political will over time, and can be used as a comparative tool to better dissect the heirless property issue and see if what worked in one country might work in another. It enables policy-makers like ESLI to endeavor to propose heirless property solutions, which can be crafted from the best portions of various previously successful domestic heirless property efforts.

Heirless property solutions appear in many stages across Terezin Declaration countries – anywhere from effectively complete or in-progress, to nascent or non-existent. There is the example of Germany, where the issue of heirless property was initially addressed in the years immediately after World War II in the case of West Germany – with the creation of the so-called Jewish successor organizations in the American, British and French zones, and again following the fall of the Berlin Wall in 1989 – with the Conference on Material Claims Against Germany (Claims Conference),which became the legal successor to heirless property in the former German Democratic Republic (GDR).

In Hungary, it was the late 1990s before the country enacted legislation – giving effect to the country's commitments under the 1947 Treaty of Peace, which stated that heirless property would be "transferred by the Hungarian Government to organizations in Hungary representative of (...) persons, organizations or com-

munities [who were the object of racial, religious or other Fascist measures of persecution] (...) for purposes of relief and rehabilitation of surviving members of such groups, organizations and communities in Hungary." Hungary passed Act X of 1997 on the implementation of provisions included in Article 27, Item No. 2, of Act XVIII of 1947, related to the Peace Treaty of Paris, and transferred funds of over USD 20 million(in the form of bonds, and real and immovable property) – and later beginning in 2007, an additional USD 21 million – to the Hungarian Jewish Heritage of Public Endowment (MAZSOK).

There are also countries like Serbia, who, in its 2011 Law on Property Restitution Compensation [Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije] (*Službeni glasnik RS* 72/2011), committed to pass future legislation on heirless property and are considering the passage of that law presently.

In the case of Poland, no heirless property legislation exists. In fact, according to the 8 March 1946 Decree Regarding Post-German and Deserted Properties, property not claimed by private owners within the 10-year statute of limitations period became property of the Polish state. Yet, the legal characterization of heirless property in Poland remains in a somewhat suspended position, currently benefitting neither the state nor the Jewish community. On the one hand, there is no Polish provision for transferring heirless property to the Jewish community for the benefit of needy survivors, and on the other hand, Polish succession law requirements generally do not permit the state Treasury to obtain ownership over Jewish heirless property (because, for example, the state cannot prove with adequate documentation the former owner of the property is dead and has no heirs).

Undoubtedly there are also countries whose heirless property regimes lie somewhere between the examples mentioned.

From a comparative standpoint, after examining all of the existing heirless property solutions, the result might be that what worked in one country, for example Germany or Hungary, is a solid rubric for other countries.

Moreover, the hope is that the completed database will encourage ESLI and other database users to pose and answer some of the difficult questions associated with heirless property. A few questions come to mind:

The very concept of restituting heirless property is a post-World War II construct for addressing the largely denuded European Jewish community. Typically, putting aside unnatural forces that lead to the expiration of an entire family line, it is generally understood in Europe that if a family line dies out, the state succeeds to

the property for the benefit of all. But the issue with Holocaust confiscated heirless property is not to unjustly enrich the state if the state itself was responsible for the family line dying out in the first place. Yet, even within this unique context of the Holocaust, arguably a state will contend that it cannot be expected to distribute property to people who never owned it. Or, the state may assert that it was occupied during the Holocaust and cannot be legally liable for situations that gave rise to heirless property. Where is the appropriate compromise? What has the compromise been in the past?

The search for a claimant to heirless property held by the state has inevitably led to disparate groups and entities claiming to represent the Jewish population as a whole. There is also an argument to be made that the heirless property should be returned to the local Jewish community. Considering Latvia as an example, there were very few Latvian Jews in the country after the war and a significant portion of the ones who were present under Soviet rule had little to no connection with Latvia before World War II. Should the heirless property be transferred to local Jewish communities who are composed mainly of people who arrived after World War II? Should it go to a large umbrella organization like the World Jewish Restitution Organization whose mission is to represent all Jewish people?

These are just a few of the important questions raised by the research in ESLI's online database of immovable property, and no doubt there will be many more.

Conclusion

In closing, the value of ESLI's living repository of data on immovable property cannot be overstated. The database's ability to capture historical trends and reflect current gaps in law, to inspire answers to intractable property issues where none seem yet to appear, and to promote thoughtful discourse on the rationale behind immovable property restitution as a whole and who should benefit, will continue to lead to progress on these outstanding issues in the area of immovable property restitution.

References:

Act X of 1997 on the implementation of provisions included in Article 27, Item No. 2, of Act XVIII of 1947, related to the Peace Treaty of Paris (the Jewish Heritage Fund Act).

Decree Regarding Post-German and Deserted Properties (Poland) from 8 March 1946.

European Shoah Legacy Institute. 2010. 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. http://shoahlegacy.org/wp-content/uploads/2014/06/TEREZIN_DECLARATION_FINAL-4.pdf

European Shoah Legacy Institute. 2015. 2015 Concluding Statement of the Co- Chairmen of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution. http://shoahlegacy.org/wp-content/uploads/2015/06/Co-Chair-Statement.pdf

European Shoah Legacy Institute. 2009. *Terezin Declaration.* http://shoahlegacy.org/tag/terezin-declaration/

European Shoah Legacy Institute. 2010. Guidelines and Best Practices for the Chairmen of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution. http://shoahlegacy.org/wp-content/uploads/2015/06/Co-Chair-Statement.pdf

Treaty of Peace with Hungary from 10 February 1947.

[Law on Property Restitution Compensation of the Republic of Serbia 2011]. Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije. 2011. *Službeni glasnik Republike Srbije*, br. 72/2011 od 28. 9. 2011. godine.

Rezime:
Baza nepokretne imovine: Inicijativa ESLI i budući značaj projekta za Terezinsku deklaraciju

Terezinsku deklaraciju iz 2009. potpisalo je 47 zemalja do 2015. godine i odnosi se na obavezivanje zemalja potpisnica da će se zalagati za ispravljanje nepravde koja je učinjena manjinskim grupama u toku Drugog svetskog rata. Ovakve obaveze nisu samo važne zbog donošenja pravde žrtvama Holokausta, već i zbog tranzicione pravde i obeshrabrivanja sličnih genocida i zločina u budućnosti. Evropski institut za Holokaust (ESLI) osnovan je radi praćenja pomenutog procesa, naročito u vezi sa restitucijom nepokretne imovine. Poslednji projekat ESLI, koji je odnosi na bazu nepokretne imovine, pružiće neprocenjivu pomoć budućim istraživačima, potražiocima imovine, državnim ustanovama, nevladinom sektoru za izazove u vezi sa restitucijom nepokretne imovine.

Kad jednom bude završen, projekat Baze nepokretne imovine pružaće uvid i u sve do tada donete zakone koji se odnose na restituciju nepokretne imovine država potpisnica Terezinske deklaracije.

Ključne reči: nepokretna imovina, ESLI, privatno vlasništvo, kolektivno vlasništvo, posed bez vlasnika, baza podataka, Holokaust (Šoa), restitucija, obeštećenje

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Review Scientific Article

AN OVERVIEW OF THE LAW ON REHABILITATION FROM THE POINT OF VIEW OF HOLOCAUST VICTIMS AND OTHER VICTIMS OF NAZI TERROR

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Law on Property Restitution and Compensation stipulates that its provisions apply to confiscated property provided that the owner of that property is rehabilitated. In this case, the request for the return of property must be accompanied by a court decision on the rehabilitation or proof that the application for rehabilitation was submitted. The first Serbian Rehabilitation Act was passed in 2006. According to the Law on Rehabilitation, from December 2011, persons who have been deprived of a right (to life, to freedom of movement, to property...) because of political activism, ideological or religious beliefs and national origin before the entry into force of this Act can be rehabilitated. However, the question is how the provisions of this law are applied to the victims of the Holocaust and other victims of Nazi terror. Does this law take into account the victims, does it provide any satisfaction to the victims of the Holocaust and other victims of the occupiers and various quisling formations? What consequences the implementation of the Rehabilitation Act may have on the property rights of persons who, in the course of World War II, acquired property that was previously forcibly taken away (factual and legal violence) from their rightful owners? What consequences the implementation of this law may have on the rights of the victims of the Holocaust and their heirs and what consequences the implementation of this law may have on the rights of the victims of the Holocaust who have no heirs?

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Key words: rehabilitation, restitution, victims, the Holocaust, rights, property, compensation, consequences

Introduction

After the period with socialist state structure with single party political system that favoured social property, the Republic of Serbia chose to introduce and build parliamentary democracy in West European fashion. In such a political system, private property has maximal legal protection. The mentioned decision of the state implied state obligation to return seized property, i.e. compensate the damage for the property seized from individuals and legal entities and converted into state, social or communal property through property confiscation or through application of regulations on agrarian reform, nationalization, sequestration, and other regulations on nationalization in the Republic of Serbia. That decision also meant annulment of, both legal and *de facto*, acts and actions that deprived many individuals, soon after the end of WWII, for political, religious, national or ideological reasons, of their lives, freedom or other rights. That brought about the Law on restitution and compensation of 2011 and the Law on rehabilitation of 2006, i.e. 2011. In such a situation, there certainly existed a need to legally regulate consequences of property seizing of victims of holocaust and other victims of Nazi terror on the territory of the Republic of Serbia with no surviving successors, therefore legislator, through the article 5 paragraph 4 of the Law on restitution and compensation established this issue will be regulated by a separate law. Anyway, such a special law was not dispensed yet.

According to the article 6 paragraph 1 of the Law on restitution and compensation, provisions of this law apply also to confiscated[1] property on condition

1 Confiscation of property took place during the WW II (1941–1945), and especially after the war. Through confiscation, all property or exactly specified portion of the property was enforcedly taken from an individual that was, as a perpetrator of certain criminal act was convicted to property confiscation. The peculiarity of property confiscation in the post-war Yugoslavia was that it was not imposed just as a collateral sanction (along with primary one), but was also imposed to certain categories of individuals via regulations that were general in character, without a criminal procedure, for instance in the case of certain members of German minority that did not play active role in the Partisan movemement on the basis of AVNOJ decision of November 21, 1944.

the owner was rehabilitated, and under article 42 paragraph 5 it is stipulated that in such a case it is obligatory to accompany request for property return with court ruling on rehabilitation, i.e. a proof that request for rehabilitation was submitted. This paragraph implies that a right for confiscated property return or compensation does not require owner of confiscated property to be rehabilitated, but was sufficient a request for his/her rehabilitation was submitted, although it contradicted article 6 paragraph 1 that requires former owner to be rehabilitated. This way it showed the condition for confiscated property return was owner rehabilitation, provable by rehabilitation request only. Of course, rehabilitation request can be declined, but the text of the Law implies such a request is proof enough that certain person was rehabilitated.

General conditions for rehabilitation, types and consequences of rehabilitation

The Law on rehabilitation was passed for the first time in 2006. In December 2011 a new Law on constitution was passed, the one still in power. According to that law, it is possible to rehabilitate „persons that due to political, religious, nationalist or ideological reasons were deprived of life, freedom or other rights until the date this law came into effect:

Decisions on confiscation were not delivered solely by courts, but could be dispensed by administrative bodies on the basis of several laws and regulations:

1. The Decree of conversion into state ownership of enemy property, on state management of property of absent persons, and on sequestration of property occupation administration seized after November 21, 1944, through which was *ex lege* confiscated all the property of the German Reich and its citizens in Yugoslavia, all the property of Volksdeutschers and property of war criminals and their accessories;
2. The Law on property confiscation and confiscation execution of June 9, 1945, later confirmed by the same law of July 27, 1946, with several authentic interpretations; The Law on converting enemy property into state property and on sequestration of property of absent persons of July 31, 1946, that specified application of the Decree of November 21, 1944;
3. The Law on seizing profits obtained during enemy occupation of July 24, 1946, that stipulated seizing of property individual and corporate bodies obtained through economic activities during the war;
4. The Law on suppression of ilegal trade, ilegal speculations and economy sabotage of July 11, 1946, that stipulated criminal accountability and property confiscation for such acts (*Службени листи ДФЈ* 56/46);
5. The Law on criminal acts against nation and state of July 16, 1946 and other regulations.

1. In the territory of Republic of Serbia without court or administrative ruling;
2. Outside the territory of the Republic of Serbia without court or administrative ruling of military and other Yugoslav authorities, if they had or have place of residence in the territory of Republic of Serbia or citizenship of Republic of Serbia;
3. by court or administrative ruling of the Republic of Serbia;
4. by court or administrative ruling of military and other Yugoslav authorities, if they had place of residence in the territory of Republic of Serbia or citizenship of Republic of Serbia."[2]

If there exists court or administrative ruling from options 3 and 4, the condition for rehabilitation is also that ruling was made against the principles of the rule of law and generally accepted standards of human rights and freedoms. The law there does not specify if those principles and standards are measured against the times when decision was made (in the middle of last century) or against the times when process for rehabilitation is conducted. It is obvious these standards are today, compared to those of the post-war period, far from being the same, for they were established by international documents that were passed after the period the Law on rehabilitation refer to. For instance, *Universal declaration of human rights* was adopted by the United Nations General Assembly on December 10, 1948[3]. *The Convention (of the United Nations) on punishment and prevention of the crime of genocide* was also adopted in 1948. *International covenant on civil and political rights* was adopted by UN General Assembly in 1966, and optional protocols to that document in 1976 and 1989. Anyway, both optional protocols are with us (Federal Republic of Yugoslavia, at the time) were ratified only on June 22, 2001. *The European Convention on human rights and elementary freedoms* is one of the most important documents of European Council. It was signed in Rome in 1950, and came into effect in 1953. Still, there is an impression our legal practice accepts principles of the rule of law and generally accepted standards of human rights and freedoms in the sense given by listed international documents that came into existence after regulations were adopted or concerning suggested

2 The Law on rehabilitation, (*Службени їласник РС* 92/11) in Official Gazette of the Republic of Serbia) No. 92 of December 7, 2011, article 1, paragraph 1

3 This date, as a date of acceptance of the Declaration, was internationally proclaimed Human Rights Day (UNGA 1948b).

actions towards annulment or invalidity requested by rehabilitation requests. With such a judgment of the rule of low principles and generally accepted standards of human rights in relation with court and administrative rulings just after the war, it is hard to expect those old rulings are supported, therefore rehabilitation requests are usually accepted.

Legal consequences of rehabilitation are measures of full elimination, or extenuation where elimination is not possible, of consequences of void and null or invalid documents and actions. That, among other things, means a right for restitution of seized property, and a right for restitution seized in accordance to regulations specifically listed in the article 2 of the Law on property restitution and compensation[4]. The law states the Republic of Serbia is not responsible for act of occupiers during WW II, so this law cannot be in any case foundation for property return to the victims of holocaust, or victims of occupiers, quisling formations and their collaborators.

The law envisages two types of rehabilitation: under compulsion of law (law rehabilitation) and by court order (court rehabilitation). So, under compulsion of law are rehabilitated persons whose rights and freedoms are infringed:

1. Without court or administrative order, i.e. by the action not based on any specific document;
2. Persons that were punished by court or administrative order:
3. for an act that at the time it was committed was not declared punishable by law, or if they were given punishment that at the time of commitment was not formal,
4. for a criminal act of enemy propaganda by malicious and untrue interpretation of social and political conditions in the country,
5. for a criminal act according to article 1, paragraph 3 and article 5, paragraph 1, in connection with paragraph 1 items 1–6 and 11–12 of the Law on suppression of illegal trade, illegal speculations and economy sabotage,
6. for an act according to the Law on suppression of illegal trade, illegal speculations and economy sabotage when presumption of innocence of enterprise (shop) owner, responsible management of a corporate body,

4 The Law on property restitution and compensation, article 2, Official Gazette of the Republic of Serbia 72/11 of September 28, 2011 (*Службени ῑласник РС* 72/11).

mandataries of a corporate body that managed an enterprise or an estate was infringed by application of the article 11[5].

7. for a criminal act as per article 2 of the Law on prohibition of inciting national, racial and religious hatred and discord, if done only by writing,
8. due to escape from a penal institution while serving punishment or other enforced measures by a person whose rights and freedoms were infringed without court or administrative ruling;
9. Persons that were arrested in accordance with court or administrative ruling and charged for their support of Cominform Resolution of June 28 1948 and kept in camps or prisons in the territory of Federative People's Republic of Yugoslavia from 1949 to 1955;
10. Persons declared on the principle of collective responsibility guilty for war crimes, or for taking part in war crimes, if they did not lose Yugoslav citizenship and did not commit or took part in war crimes[6] and
11. Persons that had their citizenship annulled and all the property confiscated by the Decree of the Presidency of Presidium of the National Assembly of Federative People's Republic of Yugoslavia.

Persons not complying with these, but complying previously mentioned general conditions for rehabilitation, can be rehabilitated by a court ruling.

5 „The owner of an enterprise (shop) who is an individual is responsible for the act as per this law, unless it is proven act was commited without his knowledge, or his subsequent approval or his negligence. With corporate bodies, besides executors responsible are body or mandataries that managed enterprize or estate in point, unless it is proven act was commited without their knowledge, or their subsequent approval or their negligence." The Law on suppression of ilegal trade, ilegal speculations and economy sabotage. (*Службени лисш ДФЈ* 56/46).

6 By the ruling of Commission for establishing crimes of occupiers and their collaborators in Vojvodina No. Стр. пов. 2/45 of January 22, 1945 all citizens of Hungarian and German nationality in the community of Čurug, county of Žabalj in Vojvodina were proclaimed war criminals. By the ruling of the same Commision of March 26, 1945, also collectively proclaimed war criminals were, according to their nationality, citizens of the community Mošorin, county of Titel in Vojvodina. Following request by the Association of Vojvodina Hungarians to annul these rulings of the Commission for establishing crimes of occupiers and their collaborators in Vojvodina, the government of the Republic of Serbia during session on October 30, 2014 annuled both rulings. This ruling was announced in: (*Службени īласник РС* 121/2014) on November 5, 2014.

Persons excluded from rehabilitation

Apart from discussed rehabilitation conditions, the law specified also certain limitations. Rehabilitation is not applicable to persons that lost their lives during WW II in armed conflicts as members of occupational armed forces and quisling formations[7]. Such limitation is really logical and hard to reproach. Anyway, other limitation stated in article 2 paragraph 1 is doubtable – namely, no rehabilitation is possible for members of occupational forces and quisling formations who committed a war crime or took part in war crime commitment. This limitation poses a problem, for there are two conditions for its application:

1. Person to be rehabilitated was a member of occupational or quisling forces;
2 Person to be rehabilitated committed a war crime or took part in war crime commitment.

The law itself does not specify if these conditions are cumulative or alternative. The item in article 2 paragraph 1 sounds as if both conditions should be met, so there are no obstacles for rehabilitation if a person was a member of occupational forces or quisling formations, if that person did not commit a war crime or took part in war crime commitment. Other possible situation would be there are no legal obstacles to rehabilitate a person that committed a war crime if that person was not a member of occupational forces or quisling formations, which is inexcusable. Therefore, item of paragraph 3 of the same article, the one specifying what persons are considered corresponding to article 1, should be interpreted that it applies to all persons from item 1, regardless if they were members of occupational forces or quisling formations, if they committed a war crime or took part in one.

Rehabilitation process

Rehabilitation process is conducted locally by a competent higher court applying procedure of nonlitiguos business, but there are significant differences legal rehabilitation process and court rehabilitation process. The court rehabilitation process is two-sided, with request opposing the Republic of Serbia, represented

7 The Rehabilitation law, article 1, paragraph 4. (*Службени ĩласник РС* 92/11, 33/06)

by senior public prosecutor. Senior public prosecutor participates also in a legal rehabilitation process that is one-sided, where court has obligation to secure his opinion, and in case that opinion contest the request, the process continue as two-sided (court rehabilitation). Participation of public prosecutor and its mandate are subject of high importance to public prosecution service because of sensitive matters involved, so it was given precedence to other processes that involve public prosecutor, so attorney general issued mandatory recommendations for rehabilitation process. These recommendations specifies obligation of competent higher public prosecutor to, after reviewing documents submitted, make a case study and submit it to appellate attorney general for confirmation. In that manner, appellate attorney general controls actions of higher public prosecutors in all procedures. If appellate attorney general does not support a case study, higher public prosecutor can accept his opinion, otherwise final saying has the attorney general.

Rehabilitation procedure, apart from person to be rehabilitated, can be initiated by its heirs (legal or by the testament) or a legal entity whose member of founder was that person, or, with their written consent, a legal entity aiming at protection of freedom and rights of people and citizens. The procedure can also be initiated by a public prosecutor in cases where rule of law and generally accepted standards on human freedom and rights were severely violated.

For this procedure legislator specified inquisitorial procedure, so the court ex officio secures proofs and data, and can independently research data not submitted by applicant.

Decision on rehabilitation request is made by higher court, by individual judge. The court can accept or reject request, and can reject it if not submitted by authorised persons. It is also possible court accept request partially, if valid only for some of punishable acts listed by ruling challenged by the request, or if valid only in respect of a type or extent of punishment.

Conclusion

Precedent text presents only some of solutions and characteristics of the Law on rehabilitation. Anyway, that implies this law not only offer any benefits or moral satisfaction to holocaust victims, except in cases where property belonged before WW II to victims of Nazi terror or their families, and was seized from surviving family members by post-war authorities, but these situations are extremely rare.

One possible conclusion is that strict application of the law could cause some kind of "secondary victimization", having in mind the law does not exclude from rehabilitation all participants of WW II on the losing side, or their collaborators, as previously explained. Under cited legal conditions, it allows even rehabilitation of persons whose property was seized even if before the war it belonged to holocaust victims, and they came into its possession after exile or killing of pre-war owners. Another conclusion could be the Law on rehabilitation does not protect at all rights of holocaust victims and other victims of Nazi terror in our country, even in those cases where there are no surviving legal heirs. Rectification of consequences for those holocaust victims and other victims of Nazi terror whose property was seized and who have no legal heirs should be regulated by separate law, and that proves to be not only justifiable, but necessary.

Sources:

European Court of Human Rights and Council of Europe. 2010. *The European Convention on human rights and elementary freedoms.* http://www.echr.coe.int/Documents/Convention_ENG.pdf

Krivični zakonik. *Службени лисш ФНРЈ*, br. 13/51, 30/59 – revised text, 11/62, 31/62, 37/62; *Службени лисш СФРЈ*, br. 15/65, 15/67, 20/69, 6/73.

UNGA / United Nations General Assembly. 1948a. *Convention on punishment and prevention of the crime of genocide.* https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf

United Nations General Assembly. 1948b. *Universal declaration of human rights.* http://www.un.org/Overview/rights.html

United Nations General Assembly. 1966. *International covenant on civil and political rights with optional protocols.* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

Zakon o rehabilitaciji. 2011. *Службени їласник РС*, br. 92/11, 33/06 od 7.12.2011.

Zakon o suzbijanju nedopuštene trgovine, nedopuštene špekulacije i privredne sabotaže. 1946. *Службени лисш ДФЈ*, br. 56/46.

Zakon o vraćanju oduzete imovine i obeštećenju. 2011. *Службени їласник РС*, br. 72/11 od 28.9.2011.

Zakon o zabrani izazivanja nacionalne, rasne i verske mržnje i razdora. 1945, 1946. *Службени лисш ДФЈ*, br. 36/45; *Службени лисш ФНРЈ*, br. 56/46.

Rulings of Commission for establishing crimes of occupiers and their collaborators in Vojvodina of January 22 and March 26, 1945 and decision of the government of the Republic of Serbia that annul them. *Службени їласник РС*, br. 121/14 od 5.11.2014.

Rezime:
Pregled Zakona o rehabilitaciji iz perspektive žrtava Holokausta i drugih žrtava nacističkog terora

Zakonom o vraćanju oduzete imovine i obeštećenju propisano je da se njegove odredbe primenjuju i na konfiskovanu imovinu pod uslovom da je vlasnik te imovine rehabilitovan. U tom slučaju se uz zahtev za vraćanje imovine obavezno prilaže i sudska odluka o rehabilitaciji ili dokaz da je podnet zahtev za rehabilitaciju. Prvi srpski Zakon o rehabilitaciji donet je 2006. godine. Prema važećem Zakonu o rehabilitaciji, iz decembra 2011. godine, mogu se rehabilitovati lica koja su lišena nekog prava (na život, na slobodu kretanja, na imovinu...) zbog političkog delovanja, ideološkog uverenja ili verske i nacionalne pripadnosti, do stupanja na snagu ovog zakona. Međutim, postavlja se pitanje kako se odredbe ovog zakona postavljaju prema pravima žrtava Holokausta i drugih žrtava nacističkog terora. Da li ovaj zakon ima u vidu žrtve, da li pruža bilo kakvu satisfakciju žrtvama Holokausta i drugim žrtvama okupatora i različitih kvislinških formacija? Kakve posledice primena Zakona o rehabilitaciji može imati na imovinska prava lica koja su u toku Drugog svetskog rata stekla imovinu koja je, prethodno, prinudno oduzeta (faktičkim i pravnim nasiljem) od svojih zakonitih vlasnika? Kakve posledice primena ovog zakona može imati na prava žrtava Holokausta i njihovih naslednika i kakve posledice primena ovog zakona može imati na prava žrtava Holokausta koja nemaju naslednike?

Ključne reči: rehabilitacija, restitucija, žrtva, Holokaust, prava, imovina, obeštećenje, posledice

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RESTITUTION AS THE LEGAL VACUUM IN THE SYSTEM OF LAW

Original scientific article
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One of the clear examples of the existence of legal gaps in the legislation of the Republic of Serbia is the problem of restitution of property of Holocaust victims, which is shown as a separate problem that remains unregulated. The academic community of experts deserves serious scientific criticism for tolerating legal gaps in the legal system. Criminological phenomena of hate crime and hate speech which in the past resulted in the adoption of racial laws, civil rights and confiscation of property and physical liquidation – Holocaust –are such unique instances of evil that they exceede the limits of one life span and affect generations to come, unprepared to deal with them due to the unwillingness of our generation to act preventively regulating social relations based on modern principles and standards in order to prevent recurrence of the past. This is considered to be the essential (symbolic) inadequacy of the security systems from the perspective of knowledge management and diplomacy. Wrong attitude of the academic community towards the problem of increasing the capacity within the security system to protect the public interest and towards the reform of the security system can be critically assessed through present profiling of the security community outside of executive power – in the judiciary, in the status of law enforcement agencies, although the nature of their work and the principle of secrecy is incompatible with the principle of transparency in the work of law enforcement agencies. Unfortunately, it is likely that all these problems will be crashing down on the future generations.

Key words: legal vacuum, self-limitation, constitutionality, relapse into authoritarian past

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Introduction

The concept of Legal Vacuum commonly includes "social relations that are not regulated by law, although they should be regulated because of social interest." (Lukić, Košutić and Mitrović 2001, 402) They exist when there is no legal norm which applies to a particular case, although there is a social need – a social interest and a goal to be achieved by the adequate regulation. Legal Vacuum occurs in absence of Legal Source with preset legal rules for the resolution of a legally relevant issue, although it should exist, because of the public interest. It is the lack of possibility to resolve a legal situation on the basis of existing legal norms.

In contrast to classic examples of legal vacuums – social relations that are not regulated by law and for which it's estimated that there's no social interest to regulate them – they represent classic empty space. One of the clear examples of the existence of Legal Vacuum in the National Legislation of the Republic of Serbia is the problem of:

a) Quality of actual regulation for the restitution of property in general, and in particular;
b) Restitution of property of the Holocaust victims, which remains unregulated as the specifically stated problem, despite the existence of clear public interest, primarily the interests of holders of the right of ownership and their successors. It is also represents a necessity for society that aspires to be considered legally regulated and stable.

Since the question of fair return of wrongfully seized property in the past is obviously not a social issue deserving to be regulated by standards, judging by the opinion of politicians and considering their inactivity regarding this problem, we have to look at the reasons why this important area remains insufficiently legally regulated.

It is methodologically logical (respecting normative hierarchical method) to start the analysis from the fundamental law of the state – the Constitution. Unfortunately, the regulation of the constitutional judiciary, as the only protection from legal gaps, is plagued by Legal Vacuums that we consider that are not random. Namely, the Constitutional Court is not competent to fill the legislative gaps. The Supreme Court of Cassation is even less so, because it was deprived of the abil-

ity to decide by precedent, in order to prevent application of some of the unjust legislative solutions. The Constitutional Court had this ability by the provisions of Articles 57 and 58 of the earlier Law on the Constitutional Court Proceedings and Legal Effect of Decisions (Službeni glasnik RS 32/91, 101/2005).[1] In recent years, this Court has sent a large number of letters to the National Assembly in which the existence of certain Legislative Vacuums and deficiencies was emphasized, along the need to enact certain laws or amendments to the laws and other by-laws passed by the National Assembly.

However, when the Constitutional Court, in the process of deliberating upon the constitutionality of a disputed law, noted the existence of certain gaps or Legislative Vacuums and determined the existence of problems in exercising constitutionality and legality in the Republic of Serbia, because of these legislative gaps and voids, the National Assembly was informed about it. This is the most common form of the activity of the Constitutional Court in the elimination of legislative omission or absence of any regulation, when the Constitutional Court pointed out the need for the adoption of laws or amendments to the law, or some other by-laws enacted by the National Assembly.

Therefore, the first case study of the Legal Vacuum is dedicated to the Constitutional Court, being the most responsible judicial authority. The issue of protection of human rights is inseparable from the right on private property. Tycoon privatization affected the changes in the regime of capital accumulation, which in turn resulted in an increase of unemployment, marginalization of social groups, discrimination of victims of the authoritarian past, stigmatization and ghettoization of socially deprived strata of the population, including majority of pensioners, unemployed, poor farmers etc. It can be concluded that the delay of restitution makes the services in the state more expensive, rather than cheaper in the consumption of social capital.

Self-limitation of constitutionality

The problem of the constitutional protection of citizens guaranteed by the Constitution may be addressed by the systematic removal of formal and substantive limitation of constituent authority. These restrictions can be explicit and implicit. In the first case, it is a logical consequence of a rigid constitution, and these

1 The Law on the Constitutional Court proceedings and legal effect of its decisions.

limits are designed to preserve the constitutional identity by forbidding the alteration of the constitution, which is in some cases done in such a drastic manner that causes the inability to implement constitutionality. In the second case, the restrictions follow the spirit of the constitutional regime, and they can be so numerous that they are practically unlimited, because it is not possible to exhaust this type of regulation in legal practice. Therefore, this aspect of limitation to the constitutionality is the phenomenon of current nature. An obvious example is exactly the constitutional and legal regulation as a basis for resolving the problem of restitution.

These implicit constraints absolutely prevent enforcement of constitutionality, as opposed to substantive limitations which cannot be absolute, because the change in state policy may lead to change of constitution or constitutional norms through several successive amendments. Therefore, in connection with these changes, the thesis of restrictive interpretation, and even the theory of double standards may be accepted, but only regarding the substantive constitutionality restrictions. However, mechanisms needed to implement the constitutionality and to protect the constitution are entrusted to the parliamentary majority. These mechanisms are the major controlling mechanisms of the constitutionality, whose control parameters are called Immutable Constitutional Clauses or Constitutional Inviolability.

We draw attention of the Constitutional Court to the implicit limitations of the constitutionality that are enforced by the Law on Property Restitution and Compensation. So, we turn to the Constitutional Court, which is the authority to control the implicit forms of restrictions of constitutionality and legality. Unfortunately, from the current practice of the Constitutional Court, we could see that the Court imposes this kind of self-limitation of constitutionality on itself in the form of oscillations in its legal opinions that are not related to changes in the political regime of the country. We are confident of that.

The self-limitation of the Constitutional Court regarding the rejection of examination of constitutionality of the Constitutional Law on the Constitution from 2006 are the example of implicit constitutional limits of power of the Constitution, which favored political decisions of the Government of the Republic of Serbia expressed in the constitutional regime changes which were not based on respect for the sovereignty of the constituent authority, but almost as if it were the manifestation of the constituent authority. What makes us even more dismayed is that the Constitutional Court, in its practice of the protection of social rights, fluc-

tuated in legal opinions while considering implicit constraints of implementation of constitutionality and legality. In particular case, the Court had refused requests for examination of implicit limitation of constituent power, particularly when parties complained that the Government had reduced the basic rights of citizens. In particular, considering the norm of decrees of the Government of the Republic of Serbia, it happened as if the citizens legitimately explicit and voluntarily denied rights to themselves, or rather did so by the will of their representatives – MPs i.e. parliamentary majority, as if the constitutional inviolability was protected, although there were no conditions for that, because both democratic articulation and constitutional deregulation were absent.

Therefore, the Constitutional Court of Serbia completely unfoundedly applies the dual view theory on the implicit violation of the constitutionality and legality (double standards for one group of citizens in relation to the other group of citizens), although it is clear that this theory can only be applied to material limitations of constituent authority, bearing in mind that they are not absolute in practice.

We strive, having stronger moral and theoretical legal argumentative force, to draw the attention the Constitutional Court to the fact that the policy of double standards cannot be allowed when it comes to implicit constraints, along with justifying the application of double view on the problem of achieving equality of citizens in the use of fund assets that arose from unfairly deprivation of private property and in the use of all other forms of social rights. Government of the Republic of Serbia has Constitutional right to have a dual view of social rights guaranteed by the Constitution only in the cases of the explicit restrictions to the constitutionality or restrictions of constitutional authority.

For further consideration of the cosequences, we note that we start from the hypothesis that the unequal treatment of citizens with regard to their Right to Restitution led to an increase in the price of services that the state provides to citizens in favor of tycoons, and therefore this must be prevented by deregulation and the abandonment of programs that apply to all citizens and to insist on the privatization of almost all public services. However, this should be done through the social capital which must be divided along the principle of equality, unlike similar broader concept of deregulation in the neoliberalism where the austerity measures are also applied. Otherwise, the application of the principle of double

standards belongs to the highest stage in the development of capitalism, to the stage that our society has not reached yet.

Return of property of Holocaust victims as a part of legal vacuum

During the preparation of legislative process and the adoption of the Law on Restitution of Property and Compensation, published in the "Official Gazette of RS" (*Službeni glasnik* RS 72/2011) on 28th September 2011, and coming into force on 6th October 2011, the President of the Federation of Jewish Communities of Serbia, Mr. Aleksandar Nećak, has placed the proposal for certain amendments to the current Law. We consider this proposal significant, considering it pointed at existence of significant and serious legal loopholes in our legal system. Also, the existence of legislative was pointed out in the Initiative to Review the Constitutionality of certain provisions of the Law on Restitution of Property and Compensation submitted to the Constitutional Court by the League for the Protection of Private Property and Human Rights in Belgrade and the Association for Reconstruction of the Merchant Fund from Belgrade.

In connection with the Law on Restitution of Property and Compensation, the question arises as to whether this decision is inconsistent with certain constitutionally guaranteed rights,[2] as well as with guaranteed minority rights of both individually and collectively aggrieved group of citizens under the international Conventions.[3] In particular, the question arises whether mentioned Law allows that discriminated persons, who were unjustly deprived of their property prior to an arbitrarily specified date, effectively challenge the provisions of the Law? We should start our analysis with Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – ECHR (Official Gazette of

2 Article 36 of the Constitution of the Republic of Serbia: "The right to the equal protection of rights and legal remedy shall be guaranteed equal protection of rights before courts and other state bodies exercising public powers and provincial or local governments. Everyone has the right to appeal or other legal remedy against any decision on his rights, obligations or lawful interests."

3 European Convention on Human Rights (*Službeni list Srbije i Crne Gore – Međunarodni ugovori* 9/2003, 5/2005, 7/2005 – correction; *Službeni glasnik RS – Međunarodni ugovori* 12/2010).

Serbia and Montenegro – International Treaties).[4] Here we point out a possible procedural violation of Human Rights, specifically the provisions of Article 13 of the Convention. Also, this does not pose any special request to the signatory states on the types of remedies that domestic law must provide, but it is a claim for respect of the rights to human dignity and equality.

The fundamental universally accepted principles of human rights, established by the UN Declaration on Human Rights, are clearly promulgated in the Constitution of the Republic of Serbia – paragraph 2 of Article 16. That means that they are under the Constitution, but above all other laws with which they might be in legislative collision. All subsequently established conventions, which are also adopted as laws of the Republic of Serbia, should be viewed as a logical link in the chain that elaborates the basic ideas in more detail. Bearing this in mind, we just want to point out the obvious procedural violation of human rights, because it is an obvious consequence of substantial violation of the provisions of the Protocol to the ratified European Convention for the Protection of Human Rights and Fundamental Freedoms, namely: the provision in Article 1 of the Protocol No. 1 (protection of property), Article 3 of the Protocol No. 7 (compensation for wrongful conviction), Article 1 of the Protocol No. 12 (general prohibition of discrimination) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 provides that the Law regulates the conditions, manner and procedure of restitution and compensation for expropriated property, which is taken from certain natural and legal persons on the territory of the Republic of Serbia and transferred to national, state, social or cooperative property after 9th March 1945, by applying regulations on agrarian reform, nationalization, sequestration, and other regulations, based on the Acts of nationalization. "It is unclear why 9th March 1945 was chosen as the start date, since no significant events happened in Serbia at that time. At the same time, there is a discrimination against persons who claimed that their property was taken prior to the said date. They indicate the fact that the property was forcibly taken away since the beginning of the dissolution

4 Article 13 of the ECHR regulating the right to an effective remedy: "Everyone whose rights and freedoms set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." (*Službeni list Srbije i Crne Gore – Međunarodni ugovori* 9/2003, 5/2005, 7/2005)

of previous socio-political system (the Kingdom of Yugoslavia) on 18th April 1941, after the capitulation of the Kingdom of Yugoslavia and occupation of parts of its territory by other invading armies, with all of the consequences for all former residents of the Kingdom of Yugoslavia." The only explanation for the selected date is the following: it is a recurrence of the past in a worse form than in the previous system, taking the form of pure recalcitrant bureaucracy that was not allowed to act in such way even during socialism (they choose and marked the important dates carefully then).

This criticism is based on an empirical analysis of the elements that are suitable for determining the existence of the type and scope of legal gaps in the legal system, which was established after the adoption of the Law on Restitution of Property and Compensation. Objections are briefly explained and reduced to the problem of the transition of whole society towards a stable democracy. Destabilizing factors for democracy and the Rule of Law in our society are the recurrences of the authoritarian past. When we say recurrences, we think on the phenomenon resulting from insufficient distancing from the past. Symbols of our authoritarian past are known and have been marked by, among other things, nationalization, forced collectivization, deprivation of citizenship, various restrictions of civil and human liberties, etc. Recidivism of such past exists today in the remains of the so-called corporative minded or dogmatic minded consciousness, which affects the current legislative solutions, without definite regulation (Thinking in a vicious circle – *circulus vitiosus*: "All this is 'ours', 'social' or 'common' and it should become 'theirs', 'private'; 'ours' was 'only ours' before, which means that now 'we' have to lose it and 'they' will get it". And so on, to the eternity).

Unfortunately, the Legislator is affected today by certain connections between individuals among the executive branch, organized crime and tycoons, who act as a network of power and influence, that borrows "knowledge" from various spin-doctors; they embed various errors in drafts of the laws, for example in the Law on Restitution of Property and Compensation. For removal of these errors amendments are needed, and that takes time. The absence of adequate norms of the statutory and obligation law creates a Legal Vacuum of huge proportions in the most important part of the legal system – property relations. We even suggest an enactment of a special Law on Restitution of Property of the Holocaust victims, as if it could not have been solved by a single Law.

Unresolved property relations are the main generating factor of crime in our society, and they are also a factor of destabilization of whole society, even the Security System Reform (SSR) factor of negligence and irresponsibility. Everything is done for the purpose of buying time. During that time this network (actors who suspiciously acquired political power, "controversial" private businessmen and actors of the civil society "made artificial by media") will sell property that does not belong to them, and will give a very "logical" explanation that the property now belongs to private persons and that it cannot be taken from a private person now. Therefore proposals of the new legislative solutions plead for abolition of clauses that allow restitution to be conducted in natural substitution. It is well known that if the state sold the property and if that is the reason why it cannot be returned, and if clause of natural restitution remains, the whole "business" is meaningless. It is meaningless because they are bound to return something, at least of approximately equivalent value, and which is owned by the state. It is undisputed that the whole process of tycoon privatization took into account the insufficiently controlled appropriation of state property, one way or another.

Other case studies

1. As an illustration of these games that can be easily seen through, we give the following case study: The Federation of Jewish Communities of Serbia (FJCS) had a dispute with one state and one natural person before the Municipal Court on the complaint of FJCS in determining the rights of ownership of the "Prčanj" resort, that has been built by the Jewish Women's Society. This Society was founded at the Jewish Community in Belgrade back in 1874. Immobility was stripped by the Decision No. 3553 of the National Liberation Committee of the Municipality from March 21st 1956. This decision was unlawful and contrary to the rules under which the nationalization was carried out in 1956 (Society was not declared the public enemy, the property wasn't donated nor taken away; the reasons given in the Decision were not provided even by revolutionary legislation). So, rather than to comply with a rule of the Roman law: "*Quod ab initio vitiosum est...*", Municipal Court has awarded the private property to natural person as the "last buyer." However, the Court hasn't previously confirmed whether the state did possess the right of ownership at all. That could be achieved only by the lawful way through tradition: by transfer of ownership from the Jewish Women's Society, or from its

legal successor – the Federation of Jewish Communities of Yugoslavia. Above all, the Court had failed to determine whether bankrupt state-owned company could acquire ownership from a non-owner and so on.

2. The study of the hypothetical case of sanctioning of the tolerance of application of the principle of impunity. Does anyone think that the Court of Justice in Strasbourg would hesitate to determine to whom the property rights will be awarded? When the judges see the year of establishment of the Jewish Women's Society (1874), they will believe that today it must be so rich to be an owner of a space station, let alone some modest one-story building in the resort. Unfortunately, this accumulated injustice will be corrected before international courts and at the expense of all taxpayers. All of this is happening according to the old rule defined by Karl Marx, which tells us that the character of production (state, cooperative or corporate asset) is always social, but the appropriation of capital is private and often illegal, especially by the fledgling capitalists. Non-sanctioning of the consequences of initial accumulation of capital in the unfair and unjust way by the Civil Sector of the System of Law is a Legal Vacuum that erodes the Law on Restitution of Property and Compensation and the whole Rule of Law.

In fact, despite the fact that the Law provided the return by natural restitution as a basic model, the adopted "primary" principle of natural restitution will not be applicable in many cases, due to the large number of exceptions to this principle (Articles 18, 22 and 25 of the Law). Also, the privatization of social and state enterprises unlawfully treated the property that originated from unilateral confiscation.

3. Case study which is related to deficiencies in institutional capacity for restitution of illegally sized property. Owing to the "controlled" media in our society, the neoliberal concept of the State Regulator and the Regulatory Agencies that are only capable to professionally solve the problems now faced by the Government of the Republic of Serbia was ridiculed. These Regulatory Agencies regulate social relations in advanced capitalism by applying different standards and knowledge. Regulation or deregulation through Regulatory Agencies (transfer of government functions to the actors of civil society) as a measure of controlling the influence of political voluntarism, authoritarianism and arbitrariness of the relevant ministries in the Serbian Government, is coupled with enormous difficulties. Above all, no one in the academic community has seriously dealt with this problem, fearing

those who act as Goering did in political public life, who "draw the gun whenever someone mentions the word 'culture', or in our case – the word 'civil society'".

4. The case study related to the obstruction within the bureaucracy. Let us consider, for example, attempts to prevent citizens and their civic organizations to acquire private ownership of agricultural land, as it happened in the case of decision of the Agency for Restitution regarding the return of agricultural land to Diocese of Bačka within the Serbian Orthodox Church. State Attorney's Office appealed against the decision to the Supreme Court. The Supreme Court of Cassation issued a historic ruling that upheld the decision of the Agency. Director of the Agency for Restitution gave an interview to TV Station B92 and replied to the question of what would happen if the Supreme Court had by any chance annulled the decision of the Agency: "Then there would be no restitution of agricultural land!" The part of the Legal Vacuum in this area is unregulated position of state bodies which do know that the state owns five times more land than all natural and legal persons claim (non-classified data from "controlled" media), and yet they delay the process of restitution by appealing on decisions, thus slowing the restitution.

5. Case study related to the strife between the Anti-Corruption Council of Serbia and Government of the Republic of Serbia or the case of failure of the Anti-Corruption Agency to coordinate the work of state organs, leading to the establishment of a Supreme Auditing Body to fight corruption. We believe that criminal privatization was not sanctioned enough in previous years by the competent authorities – Privatization Agency, Republic Directorate for Property of the Republic of Serbia, Anti-Corruption Agency, Anti-Corruption Council etc. – in order to help individuals and certain interest groups to obtain land and objects, whose market value far exceeds the purchase price. These facts are notorious and explain the reason why the law does not stipulate the obligation for buyers in the privatization, the natural restitution for property in possession of subjects of privatization at the time of privatization.

"Black holes" in the system of law

For those reasons these and other legal loopholes swallow every justice and human dignity like "black holes" does in natural sciences. In jurisprudence, the regulation seeks to arrange the society and oppose the general entropy of the

world, but in our legal system great chaos has been reigning because of the size and frequency of these Legal Vacuums, that shake the very foundations of regulation. The dignity and welfare of the common man are incorporated into the concept of Social Security, as it is confirmed by the Article 22 of the Universal Declaration of Human Rights that explicitly guarantees the enjoyment of "rights indispensable for dignity and the free development of personality". This legal theory of Constitutional Law gives the task to the judiciary in the sense that "justice requires that the survival of human dignity is ensured to every citizen" (Jovanović 1924, 448), i.e. "life without fear, uncertainty and deprivation." (Trninić 1977, 233)

The absence of the Fund of Confiscated Property of Holocaust Victims is such an enormous Legal Vacuum that it represents a monument – a memorial wound of our society. This wound reinforces our memory of the large number of people who would, have they remained alive, give that property to the future generations themselves. In their absence, we must take special care in relation to their behest, endowments and ownership over immovable and movable assets. We must posthumously allow a part of that social wealth to be designated as their legacy for the future.

Even the process of compensation represents a Legal Vacuum. According to the observation of Aleksandar Nećak, the Law effectively delays a solution of the restitution by unclear provisions on compensation. Solutions are designed as in a general sense without serious analysis and without parameters, resulting in practical insolvability of the issue of compensation. It creates the impression that the practical solution of restitution is delegated to the next Government, while, at the same time, domestic and international public was informed that the question of restitution in Serbia was resolved. Even in cases where natural restitution is immediately possible, no deadline was prescribed for restitution *in natura*, which only confirms the thesis that the Legislator has not precisely standardized "primary" principle of return – natural restitution.

A policy based on the provisions of the Constitution and laws, in its positive sense, represents a temporary prescription intended to compensate for the lack of rights in certain situations in which discrimination or restriction appear, which are applicable in cases of so-called factual inequalities. This policy must be based on standards designed in such way that they always promote the human dignity and enable the effective enjoyment of fundamental rights and freedoms.

The ultimate insecurity of property relations

The academic community deserves a serious scientific criticism for tolerating Legal Vacuums in the Legal System. Part of the data obtained in the empirical analysis or by analysis based on the unclassified literature may be incorrect (the size of state assets and the size of the property claimed by various victims of persecution caused by sectarian hatred and intolerance) because there's no public scrutiny and competition among researchers in the Academic Community to document errors in legal theory. At the same time, security systems continue to operate in unmodified fashion, perhaps concealing accurate information or even revealing them, but without sufficient scientific criticism. Social relations resulting from social conflicts in the past remain unregulated even in the present, so the lawmakers leave the solution to coming generations. Thus, the duration of Legal Uncertainty is prolonged, and consequently the instability of the state and society to which the state is supposed to serve. Criminological phenomena of hate crime and hate speech, which resulted in the enactment of racial laws in the past, along with deprivation of civil rights and property and even physical liquidation – the Holocaust – represent one of a kind appearance of evil that goes beyond human lifespan. It will affect coming generations, who are unable to cope with it because of the unwillingness of our generation to act preventively by regulating social relations based on modern principles and standards in order to prevent recurrence of the past.

This is considered as an essential (symbolic) capacity inadequacy of the security system from the perspective of knowledge management and knowledge diplomacy. If anything is certain, it is the truth that no one has the monopoly on knowledge, and not even the security agencies, and vice versa, the academic community. It is known that the ancient Venice began to lose power when it tried to achieve monopoly in science and crafts of their time. The same thing happens in 21st century with security system reforms, where information is used for exchange instead of storage. Those who keep secrets, for example the secrets of a certain political regime, in a historical sense are quickly becoming autistic and useless in security sense or even dangerous to others. Despite the huge number of books and articles in the literature, there is actually very little available analysis, much less a comparative analysis of the organization of intelligence services. It must be immediately said that there are limitations of capacity of security services to

prevent recurrence of the authoritarian past, especially the various deviations in their work, along with their role as the law enforcement agencies by the Criminal Proceedings Act. The academic community, among others, is extremely responsible for this. First of all, because it is itself a part of the intelligence community; second, because it kept silent due to fear; third, because of the fact that academic community indulged members of intelligence community by bestowing them with various academic degrees and ranks.

The property relations in any society are the most important concerns and therefore they must be based on anthropocentric legislation. Property rights and human rights are inextricably linked. States have no greater public interest then the interests of its citizens. But during drafting of a law, the academic community should take care that the public interest is articulated in such a way so that the citizens can effectively control the bureaucracy in terms of understanding what the public interest in each case is. Public interest is to ensure that private property is inviolable. Has the Criminal Justice System created a mechanism for the effective protection of private property?

As a striking example of such erroneous attitude of the academic community regarding the problem of capacity expansion within the security system in order to protect the public interest and security system reform, we can specify the current profiling of intelligence community outside the executive branch in the status of law enforcement agencies. Although the nature of their work is the principle of secrecy – intelligence agencies that conduct special covert operations, tactics, techniques and methods, including so-called splinter or dissuasive operations, propaganda and misinformation, which demand special control of the legislative, executive and judicial authorities – all of which are incompatible with the principle of transparency in the work of law enforcement agencies, such as FBI, Scotland Yard, Police specifically authorized for investigation in Germany, France, or Judicial Police (that we lack), Customs, the Anti-Corruption Agency, Directorate for prevention of money laundering etc.

After the Constitutional Law System, the Criminal Law System is the most important for any country. However, it does not have sufficient protective function for our society and state due to such erroneous reform of the Criminal Justice System, because there was an impermissible interference of the intelligence community with the judicial community (Criminal Justice System), which is not

tolerated in developed countries for a long time.[5] The investigative actions that would relate to the research of the network of tycoons, organized crime and certain public policy, by current System of Criminal Proceedings, would incorporate intelligence agencies. That has already created a sort of "reality show" before the judicial authorities, because of the inevitable discreditation of their resources in the court proceedings.

It is necessary to discover how this network influenced the design of the Constitution of 2006 (which does not guarantee equality of the executive, legislative and judicial branches) along with drafts of number of laws, including the Law on Restitution and Compensation. That law was used at the beginning of this century only as a means to "purchase time", while the lawmakers' dogmatic consciousness stayed in the 19th century. In fact, the problem has been transferred to the new Governments, along with a growing burden of mortgages of the past. Is

5 "This domestic focus followed naturally from the statutory responsibilities of the law enforcement agencies and the structure of U.S. criminal law. The intelligence agencies could not have been more different, in terms of both geographical responsibility and subject matter. Unlike the FBI, Department of Justice, and the other federal law enforcement agencies, the CIA was expressly prohibited by the National Security Act from exercising any "police, subpoena, or law enforcement powers or internal security functions" from the moment of its creation in 1947. 12 The primary reasons for that "law enforcement" proviso were twofold. First, the nation had recently witnessed in Hitler's Germany, and was continuing to observe in Stalin's Soviet Union, the abuses that can arise from the combination of intelligence collection activities and law enforcement authority. And second, the FBI was jealous of its own prerogatives: Although the Bureau did close its Latin American field offices in the late 1940s in deference to the nascent CIA, the FBI was not prepared to accept any challenge to its own core function of domestic law enforcement. The strict delineation between intelligence and law enforcement was facilitated by the fact that, simply stated, there was relatively little overlap between the two in 1947. Such overlap as there might be was addressed primarily by the FBI, which continued to exercise its counterespionage functions within the United States as it had done during the Second World War. Espionage within the United States and against the United States clearly was a criminal offense and, therefore, a matter for law enforcement, and so the Bureau (or, in appropriate instances, the military) would continue to address it. Events abroad, however, were another matter (To be sure, the FBI for decades has maintained Legal Attaches at selected U.S. diplomatic outposts, and in recent years the Drug Enforcement Administration has undertaken a largely transnational role, in some ways foreshadowing the issues that now arise with greater frequency), for there the primary U.S. concern normally was not crime, but Communism, against which American activities consisted primarily of military and intelligence operations (Section 103(d)(l) of the National Security Act of 1947, as amended, 50 U.S.C. § 403- 3(d)(l) (1994)." (Friedman 1998, 331, 335)

such investigation possible, if the use of special techniques, tactics and methods is entrusted to the intelligence agencies?

Unfortunately, the probability that these mortgages of the past will be crashing down on future generations is also increasing, and the judiciary will not be able to protect them by wisdom, since all judges are forced to retire at the age of 65 because of a discriminatory law in relation to the elderly. Was this Law passed in order to deprive the country of a chance to achieve the higher level of stability, which is characteristic of developed countries, where the development is the result of the conservative judiciary (amongst many other things)?

References:

Friedman, J., M, 1998. "Intelligence Agencies, Law Enforcement, and the Prosecution Team." *Yale Law and Policy Review* 16: 331, 335.

Jovanović, S. 1924. *Ustavno pravo S.H.S.* Beograd: Izdavačka knjižarnica G. Kona.

Lukić R., Košutić B. and Mitrović D. 2001. *Uvod u pravo*. Beograd: Službeni list SRJ.

Trninić, N. 1977. „Social Law and Social Security" *Godišnjak Pravnog fakulteta u Banjaluci* 1

Zakon o javnom redu i miru. *Službeni glasnik RS*, br. 32/91.

Zakon o potvrđivanju sporazuma između Republike Srbije i Republike Kipar o socijalnoj sigurnosti. 2010. *Službeni glasnik RS – Međunarodni ugovori*, br. 12/2010 od 15.7.2010. godine.

Zakon o bezbednosti i zdravlju na radu. 2005. *Službeni glasnik RS*, br. 101/2005 od 29.11.2005. godine.

Zakon o ratifikaciji Evropske konvencije za zaštitu ljudskih prava i ljudskih sloboda. 2003. *Službeni list Srbije i Crne Gore – Međunarodni ugovori*, br. 9/2003 od 26.12.2003. godine.

Zakon o ratifikaciji Protokola br. 14 uz Evropsku konvenciju za zaštitu ljudskih prava i osnovnih sloboda, kojim se menja kontrolni sistem Konvencije. 2005. *Službeni list Srbije i Crne Gore – Međunarodni ugovori*, br. 5/2005, 7/2005 od 1.7.2005. godine.

Zakon o vraćanju oduzete imovine i obeštećenju. 2011. *Službeni glasnik RS*, br. 72/11 od 28.9.2011. godine.

Rezime:
Pravna praznina u procesu restitucije

Jedan od jasnih primera postojanja pravne praznine unutar zakonodavstva Republike Srbije jeste problem povraćaja imovine žrtava Holokausta, koji je kao posebno iskazan problem ostao neregulisan. Akademska zajednica

stručnjaka zaslužuje ozbiljnu naučnu kritiku zbog tolerisanja pravnih praznina u pravnom sistemu. Kriminološki fenomeni kriminaliteta mržnje i govora mržnje koji su u prošlosti rezultirali donošenjem rasnih zakona, oduzimanjem građanskih prava i imovine i fizičke likvidacije – Holokausta –takvi su da predstavljaju jedinstvene slučajeve pojave takvog Zla da prevazlaze ljudski vek, pogađaju naraštaje koje dolaze, nespremne da se sa tim suoče zbog nespremnosti naše generacije da preventivno delujemo regulišući društvene odnose na temelju modernih principa i standarda radi sprečavanja recidiva prošlosti. Ovo se smatra suštinskom (simboličkom) nedovoljnošću kapaciteta sistema bezbednosti sa stanovišta upravljanja znanjem i diplomatije znanja. Pogrešan odnos akademske zajednice prema problemu proširenja kapaciteta sistema bezbednosti u sklopu zaštite javnog interesa i reforme sistema bezbednosti može se kritički oceniti kroz sadašnje profilisanje bezbednosne zajednice izvan izvršne vlasti – u pravosuđe, u statusu agencija za sprovođenje zakona iako je priroda njihovog rada i načelo tajnosti u radu nespojivo sa principom javnosti u radu agencija za sprovođenje zakona. Nažalost, raste i verovatnoća da se ova hipoteka prošlosti obruši na buduće generacije, ali koje pravosuđe neće moći da zaštiti mudrošću, pošto će sve sudije otići u penziju sa 65 godina starosti zbog jednog diskriminatorskog zakona u odnosu na stara lica. Da li je zakon donet da liši državu mogućnosti da dostigne nivo stabilnosti razvijenih zemalja koje svoj razvoj duguju, između svega ostalog, konzervativnom pravosuđu?

Ključne reči: pravna praznina, samoograničenje ustavnosti, recidiv autoritarne prošlosti

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THE MILITARY JUDICIARY IN POST-WAR YEARS*

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The organizationof military judiciary was subject of frequent changes in the period just after WWII. By-law on military courts and organization and competence of military courts of 1944 reinstated a new and uniform organization of military judiciary in the whole country. The by-law was replaced by the Law on organization and competence of military courts in Yugoslav army of August 24, 1945 that set up a system of military courts after the fashion of military judiciary in the USSR. New legal act on military courts was the Law on military courts, enacted towards the end of 1947. The Law on military courts introduced military courts system with two levels, consisting of first instance courts and the Supreme military court. Acts on military courts enacted just after WWII military courts gave them quite a wide competence regarding criminal law, primarily due to high degree of society militarization after WWII.

Key words: military judiciary, World War II, criminal law

Supreme headquarters of People's liberating army and Partisan detachments of Yugoslavia on May 24 1944 enacted the By-law on military courts and organization and competence of military courts (hereinafter the By-law) (*Зборник НОР*-а, 273–274) that legally regulated organization of military courts formed during the war in People's liberation army of Yugoslavia. The basis of military judiciary, according to the By-law, made corps mili-

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tary courts. Corps courts were operating as 3 persons panels,[1] deliberating crimes of military personnel – members of corps and crimes by other persons at the territory where corps were operating. The By-law envisaged also forming of military courts by corps military zones that would be competent for soldiers, NCOs and officers of that corps military zone. Courts of military zones were also empowered for prosecuting perpetrators of military crimes carried out at unliberated or temporarily abandoned territory.[2] Divisions that were not a part of the corps but territorially based, formed military courts covering same scope as military court of corps territory. Superior military court was organized under the auspices of Supreme Headquarters (later under auspices of Ministry of defense) and had permanent court panels at headquarters and certain corps. This court was first and last level for judging generals and high officers and it had competency over extreme cases of war crimes. Superior military court had so called superior competency, for it could take over any case from competence of military courts. Each panel of judges of a military court had a secretary, jurist by profession. Supreme Headquarters designated president and vice-president of corps military court upon proposal of principal headquarters. Members of panel of judges for each corps military court or corps region were designated by appropriate corps headquarters with obligation to inform the Superior military court. Panels of Superior military court were designated by Supreme Headquarters upon proposal by the Superior military court. The By-law did not envisage a right to appeal against sentences by a military court.

By Modification and amendment to the By-law on military courts of January 12 1945 introduced were changes to the system of penalty measures military courts sentenced. Supreme commander through the Decree of February 11 1945 formed courts under the auspices of divisions, and under the auspices of army headquarters a panel of Supreme military court, presided by commissioner of military legal department of the army. Through that decree, effectively was imposed new organization of military judiciary, without changing the By-law on military courts and organization and competence of military courts (Архив Војноисторијског

1 One of the panels was adjoined to corps headquarters, others to headquarters of division forming that corps.

2 Panel of military court of corps zone consisted of an officer and one NCO or soldier of corps military zone, with president or vice president of corps military court presiding the panel.

института, к 25 А, рег. број 14–5). The second By-law on modification and amendment of the By-law on military courts was enacted on April 27 1945. Those modifications and amendments overruled amendments of January 12 1945, more precisely military courts were returned a right to sentence to 20 years of prison or life sentences (Архив Војноисторијског института, к 119/4, рег. број 2–31/2).

The By-law introduced new military judicial system by forming corps military courts and courts of corps military regions, and by revoking of military courts of military zones, brigades and squads. It can be concluded significance of the By-law comes from the fact that same legal act apart from organizational standards also incorporated "provisions of substantive law and formal law for military judiciary" (Чулиновић 1946, 199), that set up new and uniform organization of military judiciary in the whole country. Procedure norms in the By-law and its amendments ruled out a right to appeal against decisions of military courts in the first instance. All sentences by the first instance courts were, ex officio, checked by higher instance military court where accused persons were sentenced to death, penal servitude or degradation. Rather, these sentences could be executed only after approval by higher military court.

This By-law was replaced by the Law on organization and competence of military courts in the Yugoslav army of August 24, 1945 (*Службени лист ДФЈ* 1946, 56).[3] The Law on organization and competence of military courts (hereinafter the Law) defined organization of military judiciary that consisted of military courts for each division, naval fleet and military zone, then military courts of the army, navy, independent corps and Military court for city of Belgrade. The supreme court for Yugoslav army and navy was Supreme court of Democratic Federative Yugoslavia, which indicated the Law followed the concept where military courts were a part of regular judicial system. Military judges possessed immunity over criminal prosecution, which meant they could not be investigated or put into custody without authorization by Temporary people's parliament of DFY. Competence of military courts covered crimes by servicemen or war prisoners. First instance military courts were courts of divisions or military zones, except when crimes were committed by officers, generals or admirals. Military courts of

3 The Law was later modified and ammended by the Law on confirmation and modifications and ammandements of the Law on organization and competence of military courts in the Yugoslav army of 17.7.1946. (See: *Службени лист ДФЈ* 1946, 58)

the armies were deliberating in the first instance crimes of officers, in the second instance „those cases that were in the first instance judged by military courts of divisions and military zones".[4] Therefore, one of the criteria to appoint competence of military courts was ratione personae of the perpetrator. Supreme court of DFJ in the first and last instance judged crimes of generals and admirals, in the second instance those cases that were in the first instance judged by military courts of armies. That solution, that supreme court of military judiciary was the supreme court in the state, was taken over from military judicial system of the USSR, where Military collegium of the Supreme court of USSR was an organizational unit of highest regular judicial institution in the USSR. Military collegium in USSR was in charge on decisions of military courts in the second instance and in the first instance when accused were officers of general or admiral rank, or persons performing duties of a general or admiral. Organization and formation of military courts was defined by the president of Military collegium of Supreme court of the USSR together with defense minister (Јовановић 1964, 61–62).It is interesting to note that military judiciary of FNRJ established by the Law of 1945 had similarities not only with Soviet, but also to other military judicial systems of the time. In the Uniform Code of Military Justice of USA enacted in 1950, envisaged were three levels of courts: common military court (judging servicemen for all military crimes), special military court (judging certain crimes of servicemen) and military court having shortened procedure (judging misdemeanors). Courts established by the Law of 1950 were judging in two instances except in cases where accused were generals or admirals and in cases that resulted in death penalty. Deliberation in the third instance was done by military court of appeal made of three judges appointed by the president of USA upon proposal or with consent of the Senate (Јовановић 1964, 34–39).

According to the Law, Superior military court, until then the highest institution of military judiciary, without any changes was supposed to continue its activities as Military committee of Supreme court of DFJ (Гојковић 1999, 133). Anyway, legal setting where highest court in the country is also the highest institution in military judiciary was never used in practice, for supreme commander through special decree established Supreme court of the Yugoslav army within reorganized Ministry of defense.

4 Competence of navy courts was organized in the same manner.

In 1946 enacted was the Law on forming and competence of court for marine prize of war (*Службени лист ФНРЈ* 1946, 28) that had competence over decisions concerning ships and their cargo that Yugoslav navy confiscated as a prize of war. Disputes over prize of war was judged in the second instance by Supreme court of FNRJ. The Court for prize of war was judicial institution with specialized competence. Specificity of this court was that panel of judges (consisted of a navy officer and two civilian specialists) and that regulations for operations and organization of this court were jointly determined by a minister of defense and minister of navy of FNRJ. That implied composite character of this judicial institution, but due to its competence characteristics of a military judicial institution prevailed.

In the same year enacted was the Law on confirmation and modifications and amendments of the Law on organization and competence of military courts in the Yugoslav army (*Службени лист ДФЈ* 1946, 58). Enacting of the Law on confirmation and modifications and amendments of the Law on organization and competence of military courts in the Yugoslav army brought about forming of Supreme court of Yugoslav army as the highest institution of military judiciary in the country, and organizational legislature was made compatible with real situation in military judiciary organization. Article 20 of the Law envisaged possibility of enlargement of competence of military courts to civilians under special circumstances, upon decision of federal government. That legal option, according to certain authors, implied that military courts could in wider sense be considered regular ones (Чулиновић 1946, 177). Much more acceptable explanation is that possibility of widening personal competence essentially confirmed superiority of military courts over general, regular courts. The Law on confirmation and modifications and amendments of the Law on organization and competence of military courts in the Yugoslav army stipulated that military courts consisted of military judges, adjudicators, secretaries and administrative staff. Military judges had to be both jurists and officers. Court secretary was also both officer and jurist by profession, and in deliberations had a right of consultative voting. Military courts of divisions, naval fleet and military zones were deliberating in panels consisting of a president or his deputy, and two adjudicators selected from military ranks. Military judges at all levels and judges of military panel at Supreme court were appointed and discharged by Presidency of Temporary People's parliament of DFJ, while adjudicators of military courts for the territory of federal units were appointed by presidencies of parliaments of respective federal units.

"Intermediate and final orders" stipulated competence of minister of defense to revoke or form military courts and determine real competence of military courts over servicemen for "crimes against fatherland", while for other persons who were not serving in the army, military courts were competent only for acts committed during the war, crimes that induced extremely severe consequences, or if such an act was specially dangerous for defense or military security of the state.

The Law on confirmation and modifications and amendments of the Law on organization and competence of military courts in the Yugoslav army (hereinafter: the Law of 1946) stipulated more precise competence of military courts[5] than articles of previous law. It also established new procedure for selecting judges where president, his deputy and other judges of supreme military judicial institution were appointed and discharged by People's parliament of FNRJ at a joint session of both houses of parliament, while all other judges were appointed by supreme commander. That reflected „narrowing" of selection principle for judges of military courts, in comparison to the one established by the Law of 1945 (Малобабић and Лукић 1970, 629). An important change is that the Law of 1946 stipulated existence of Supreme court of Yugoslav army as the highest judicial institution in the Army, and in that way "military judiciary was separated from a regular one" (Костић 1970, 448). Finally, the Law of 1946 linguistically modified text of the Law, so term judge applied to persons who are professionally and regularly performing role of military judge and "persons who serve as judges along with their regular service within the army, i.e. lay magistrates" (Љубановић 1989, 25).

New legal act on military courts, the Law on military courts (*Службени лисш ФНРЈ* 1947, 105), was enacted at the end of 1947. The Law on military courts introduced military court system comprising two instances, having courts of the first instance and Supreme military court. Courts were no longer organized by

5 In the period between enactment of the Law on organization and competence of military courts and enactment of the Law on confirmation and modifications and ammandements of the Law on organization and competence of military courts, member of parliament from Demokratska stranka Dr Dragić Joksimović delivered to the Presidency of Temporary people's parliament in September 1945 a proposed Law on citizen rights at military courts. Motive for this proposal was the fact that accused were in very difficult position at military courts, so proposed law was intended to improve their position through giving right to lawyers to read court acts, right to copy sentences, something that was not allowed by the Law on organization and competence of military courts, for legally binding finished cases were considered military secrets. (See: Керановић 1996, 161)

military units, but territorially (Службени лист ФНРЈ 1947, 105).[6] Supreme court of the Yugoslav army was both court of appeal and ultimate court of appeal (Art. 11). Significant competence over military court in comparison to previous laws was given to supreme commander, who stipulated number, seat, designation and competence of courts, upon proposal of minister of defense. Previous law had these issues exclusively in competence of minister of defense. Military courts were given certain competence over civil law, for they were deliberating wrongdoing by servicemen in the course of their service. Supreme military court performed as both court of appeal and ultimate court of appeal, only occasionally deliberating cases in the first instance. Court panels consisted of three persons, a judge and two jurors, servicemen of different rank depending on the defendant.[7] Panels of Supreme military court comprised only judges, and the Law specified that in cases involving reimbursement of damages one of jurors had to be officer of administrative military profession (Art. 15). Military courts in the first instance deliberated in panels of three members where two members were lay magistrates, selected among officers and NCOs who were performing other regular service besides court duty. Only in matters concerning request for protecting legality or issuing of instructions, Supreme court of Yugoslav army was making decisions at general sessions.

Despite the Law on military courts in Art. 1 proclaimed court independence, the Law did not obtain real guarantees for independence of military courts. There are lots of reasons for such statement. First of all, immunity from legal prosecution for military judges narrowed, since they were selected by supreme commander instead by parliament, as was stipulated by the Law of 1945. Supreme commander was appointing and discharging military judges, but neither conditions for appointment, nor reasons for discharge were specified. The Law on military courts stipulated minister of defense should supervise courts, but that act did not specify range of the supervision, leaving space for arbitrary interpretation.

The Law on modifications and amendments of the Law on military courts of January 23, 1950 (*Службени листи ФНРЈ* 1950, 11) enlarged competence of

6 Miloš Gojković considers that was essentially a combined system, where military courts were competent for certain territory, but also units positioned in that territory. (See: Гојковић 1999, 144)

7 When on trial was NCO, soldier or civilian, on juror was NCO, when officer was accused both jurors were officers, and when accused was a general, one of jurors had a rank of a general.

military courts in civil matters by transferring into competence of military courts deliberations of disputes over reimbursement of damages state incurred from civilians serving Yugoslav army.

For shaping military judiciary after WWII important regulation was the Law on military crimes of 1948 (*Службени лисш ФНРЈ* 1948, 107). The Law "systematized military crimes, defined who is consider to be a serviceman" and solved certain general issues regarding criminal accountability (Гојковић 1999, 145). Apart from substantive criminal norms, the Law on military crimes of 1948 also contained regulations on competence of military courts that supplemented the Law on military courts. The Law on military crimes became obsolete when the Penal code came into effect on March 2, 1951 (*Службени лисш ФНРЈ* 1951, 13), for it also covered military crimes. The Penal code widened competence of military crimes to litigations for damage imbursement when damage was inflicted by civilians working for military institutions and companies if deliberations at military court were considered important for public defense.

The organization and competence of military courts in FNRJ followed solutions from regulations specifying organization and competence of military courts in the USSR.[8] The military judiciary of USSR, according to the Law of 1938, formed military courts of the first instance (organized at level of army, flotilla, aggregated units), superior military courts that made military judiciary of second instance (deliberating officers with high rank or duties). Only in 1941, after battles with Germany started, the USSR enacted new regulation on military courts, the By-law on military courts, that implemented war military courts in war zones and zones of military operations (Јовановић 1964, 67).

Regulations on military courts enacted immediately after WWII defined very wide competence of military courts regarding criminal law, primarily due to high degree of militarization of society after WWII. The Law of 1945 gave two roles to military courts: a role in separate military judiciary and another one as a part of

8 Regulations on organization of functioning of military courts in the USSR were contained in the By-law on military courts and prosecution services of 1926. According to the By-law of 1926, military courts were general federal courts that apply general federal substantive and processign law, and appropriate laws of federal republics. The Law on organization courts of the USSR, federal and autonomous republics of 1938 stipulated both organization and competence of military courts. The Law on general conscription of 1st September 1939 revoked territorial system of forming armies, and that reflected in the manner lay magistrates were selected for military courts. (See: Гоце-Гучетић1964, 30)

regular judiciary of FNRJ. Legal alterations in 1946 made military courts specific courts, functionally separated from regular judiciary with general competence. Hierarchy principle was one of norms that made foundation of military courts and enabled control of military judicial activity. Superiority was implemented ex officio, through a system of legal redresses and through mandate higher courts had over lower ones. Military courts were also characterized by known specificities of judicial institutions. They were specialized institutions of the state, with very unreliable guarantees regarding their autonomy and independence, primarily because regulations enabled "commanding chain" to influence court decisions. Territorial principle, as a third norm military judiciary was set upon, was combined with functional principle, for courts were formed for military zones, but also for certain units. Principle of electiveness of judges, as already mentioned, first was limited, and later abolished by the Law on military courts of 1950, "replaced by administrative appointment, by its antipode" (Малобабић and Лукић 1970, 629). Despite organizationally detached from regular judiciary as per the Law of 1946, military judiciary remained a part of criminal law system of FNRJ. Such a conclusion comes from the fact that supreme court for both regular and military judicature was the Supreme court of FNRJ., and from the fact that military courts, with small exceptions, applied same regulations for criminal proceedings and substantive law as regular courts did (Костић 1970, 449).

In accordance with the By-law and acts enacted regarding its implementation a network was made that, as certain authors assume, consisted of hundred and seventy military courts that were deliberating just in the first instance, and eight courts having competence for both first and second instance. The supreme institution of military judiciary was, as was already mentioned, Superior military court, exceptionally having competence in the first instance for the cases allocated by supreme commander. Apart from that, this court through its decisions „directed practice of all military courts and de facto acted as the highest instance of military judiciary – supreme military court" (Гојковић 1999, 131–132). Other authors consider number of military courts in 1945 was less than that. For instance, Marko Kalodjera consider that in 1945 at entire territory of the state there were altogether 157 military courts, having competence just in the first instance of criminal law. This could be considered more reliable, for it comes from number of preserved entries of military courts of first instance from that period (Калођера 1986, 31–32). Out of that number it is certain that 31 first instance military courts were seated

in the territory of Serbia. Network of military courts in the territory of NP Serbia could be estimated by appointments of military adjudicators by presidency of People's parliament of Serbia. Namely, soon after enactment of the Law on organization and competence of military courts in the Yugoslav army started appointments of military adjudicators for military courts in the territory of Serbia (terms used in official communication were "Serbia" and "federal unit of Serbia"). Decisions of presidency of People's parliament of Serbia appointed to Military court under the auspices of National defense corps of Yugoslavia, Military court of III army and Military court of I army a total of 48 adjudicators (Службени гласник Републике Србије 1945, 30). From the Decision on appointment of adjudicators indirectly can be concluded that three more military courts (Military court of KNOJ headquarters and military courts of I and III army) had in 1945 their seat or executed competence at the territory of NP Serbia.

Revoking of divisions caused revoking of military courts of these divisions, and in January 1946 courts of military zones were also revoked. At the beginning of 1947 revoked were military courts of KNOJ. After reorganization in 1947 active were 19 military courts of divisions, military courts of naval fleet and Military court for city of Belgrade, all of them deliberating in the first instance, and Supreme court of Yugoslav army, as supreme military court in the country (Гојковић 1999, 138). Within territory of NR Serbia were seats of following military courts in the first instance: Military court for the city of Belgrade, Military court in Kragujevac, Valjevo, Novi Sad, Subotica, Niš and Priština. Legal zone of military courts often covered territory of several republics, so it can be assumed listed military courts only partly were competent within territory of NR Serbia.

Wide competence of military courts was reflected by the number of criminal cases deliberated by military courts. In 1945 first instance military courts solved 33,884 criminal cases. In those solved cases 12,844 servicemen and 28,558 civilians were accused. In the following year, 1946, 12,983 criminal cases were solved with 11,631 servicemen and 11,801 civilian accused. In 1947 military courts solved 7,606 cases, involving 5,303 servicemen and 5,821 civilian (Калођера 1986, 35). Despite wide competence of first instance military courts, number of criminal cases deliberated by these courts was diminishing due to exhaustion of certain elements of their competence, those related to criminal acts committed during WWII. In the same period, Supreme court of Yugoslav army deliberated in first and last instance relatively small number of cases. So in entire 1945 (as Superior

military court under the auspices of Supreme headquarters and Ministry of defense from August 31 1945) in the first instance decided on 33 cases with 209 accused persons, in 1946 just a single case (the case of JVUO commander), while in 1947 and following years it did not deliberate any cases in the first instance (Калођера 1986, 35).

Enactment of the Law on military courts in 1947 and reorganization of armed forces in 1948 reflected in organization of military judiciary. At the beginning of 1948, upon legal authorization and a proposal from ministry of defense to decide on number, seat, designation and territorial competence of first instance military courts, supreme commander signed the act declaring 14 first instance military courts. Essentially, this act reorganized former military courts of armies, navy and certain divisions into first instance military courts, while the rest of courts were revoked. Out of 14 military courts, five of them had their seat in the territory of NR Serbia, courts in Belgrade, Novi Sad, Niš, Kragujevac and Priština. In the following years the number of military courts decreased, so at the end of 1951 the network of first instance military courts included those in Belgrade, Novi Sad, Skopje, Sarajevo, Zagreb, Ljubljana, Split and Kragujevac from 1954 (Калођера 1986, 38–39). The seats of first instance military courts were, as can be seen, in the seats of largest military formations. Besides those military formations, first instance military courts were competent for other units and military institutions within their legal zone.

From 1948 to 1951 number of criminal cases at military courts again increased. In 1948 there were 4,822 cases solved, with 6,173 accused persons, in 1949 5,339 cases with 7,263 accused persons, in 1950 5,402 solved cases with 7,411 persons, and in 1951 5,932 cases involving 7,848 persons. Increased number of accused persons resulted from processing crimes related to disagreement with the USSR and IB, for they involved crimes and persons mostly within the competence of military courts. In the following years, with a decrease of this type of criminal cases, decreased also a number of persons accused at military courts. In 1952 solved were 4,267 cases, in 1953 3,771 cases, and in 1954 3,652 cases (Калођера 1986, 45).

Conclusion

Military courts after WWII were characterized by known specificities of judicial institutions. They were specialized institutions of the state, with very unreliable guarantees regarding their autonomy and independence, primarily because regulations enabled "commanding chain" to influence court decisions. Territorial principle, as a third norm military judiciary was set upon, was combined with functional principle, for courts were formed for military zones, but also for certain units. Principle of electiveness of judges, as already mentioned, first was limited, and later abolished by the Law on military courts of 1950, "replaced by administrative appointment, by its antipode". Organization and competence of military courts in FNRJ accepted regulation of organization and competence of military courts in the USSR. Since legal zones of military courts often spread to several republics, it is impossible to reliably identify specifics of military courts functioning in certain republics or AP Vojvodina. Besides, military courts were federal military judicial institutions, depriving republics influence over their activities. Having all these facts in mind, and scarcity of data on functioning of military courts, it is not possible to point out specifics of functioning of military courts in NR Serbia.

Sources

Архив Војноисторијског института к 25 А, рег. број 14–5, к 119/4, reg. No. 2–31/2.

Службени гласник Србије, бр. 30. од 22.9.1945.

Службени лист ДФЈ, бр. 56. од 31.8.1945, бр. 28. од 5.4.1946, бр. 58. од 19.7.1946.

Службени лист ФНРЈ, бр. 105. од 10.12.1947, бр.11. од 23.1.1950, бр. 107. од 11.12.1948, бр. 13 од 28.2.1951.

Зборник НОР-а, том II, Билтен ВШ НОВЈ, 1941–1945.

Literature

Чулиновић, Фердо. 1946. *Правосуђе у Југославији.* Загреб.

Гоце-Гучетић, Вуко. 1964. *Савремени војно правосудни, војно кривични и војно дисциплински системи.* Београд.

Гојковић, Милош. 1999. *Историја југословенског војног правосуђа.* Београд.

Јовановић, Светислав. 1964."Војно кривично правосуђе."Докторска дисертација одбрањена на Правном факултету Универзитета у Београду

Калођера, Марко. 1986. „Војни правосудни органи и органи правне службе ЈНА." У едицији *Развој оружаних снага СФРЈ 1945–1985*, XIV, Београд.

Керановић, Светко. 1996. *„Нормативни оквир вишестраначког политичког система и парламентарни живот политичких странака Југославије од 1945–1950."* Докторска дисертација одбрањена на Правном факултету Универзитета у Београду.

Костић, Илија. 1970. „Војно правосуђе". *Југословенска ревија за криминологију и кривично право* 4/70.

Љубановић, Владимир. 1989. *Демократизација кривичног правосуђа*. Осијек.

Малобабић, Петар, и Славко Лукић. 1970. „Реформа правосуђа и Закон о војним судовима." *Југословенска ревија за криминологију и кривично право* 4/70.

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