

LIMES
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ČASOPIS ZA DRUŠTVENE I HUMANISTIČKE NAUKE

**NACIONALIZACIJA
KONFISKACIJA
RESTITUCIJA**

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ČASOPIS ZA DRUŠTVENE I HUMANISTIČKE NAUKE

**NACIONALIZACIJA
KONFISKACIJA
RESTITUCIJA**

Deo II

Vladavina prava i TRANZICIJA

RESTITUTION IN SERBIA, FEBRUARY 2014

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Pregledni naučni članak*

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This World Jewish Restitution Organization (WJRO) position paper reviews the current state of restitution in Serbia. It covers private property, Jewish communal property, heirless formerly-Jewish owned property, and Jewish cultural property that was confiscated or sold under duress during the Holocaust and/or subsequently nationalized under the communist regime in the area of the former Yugoslavia that is now Serbia. There is now an international consensus on the restitution of Holocaust era-property. Serbia and 46 other countries endorsed the Terezin Declaration on Holocaust Era Assets and Related Issues, establishing principles for property restitution. In 2010, 43 countries endorsed guidelines and based practices for restitution of immovable property. Serbia participated with 38 other countries in November 2012 in the immovable property review conference, reaffirming its commitment to the 'Terezin Declaration' and the 'Guidelines and Best Practices'. In this paper, WJRO urges the government of Serbia to take steps to make further progress toward meeting the international consensus on restitution. WJRO urges the Government of Serbia to address the following important issues Communal property, Private property, Heirless property, and Art, Judaica, and other cultural property.

Key words: restitution, Serbia, Jewish property, Holocaust, Terezin Declaration, WJRO, The Law on Restitution of Property and Compensation in Republic of Serbia/Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije

<http://www.wjro.org.il/Items/00602/RestitutionInSerbia.pdf>

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IT HAS BEEN SEVEN DECADES SINCE THE DEVASTATION of Serbian Jewish communities during the Holocaust, the murder of most Serbian Jews, and the expropriation of Jewish communal and private property. A strong and democratic Serbia has begun to take important steps to restore property to the Jewish communities and to victims and their heirs.

This World Jewish Restitution Organization (WJRO) position paper reviews the current state of restitution in Serbia. It covers private property, Jewish communal property, heirless formerly-Jewish owned property, and Jewish cultural property that was confiscated or sold under duress during the Holocaust and/or subsequently nationalized under the communist regime in the area of the former Yugoslavia that is now Serbia.

There is now an international consensus on the restitution of Holocaust era-property. Serbia and 46 other countries endorsed the *Terezin Declaration on Holocaust Era Assets and Related Issues*, establishing principles for property restitution. In 2010, 43 countries endorsed guidelines and based practices for restitution of immovable property. Serbia participated with 38 other countries in November 2012 in the immovable property review conference, reaffirming its commitment to the *Terezin Declaration* and the *Guidelines and Best practices*.

In this paper, WJRO urges the government of Serbia to take steps to make further progress toward meeting the international consensus on restitution. WJRO urges the Government of Serbia to address the following important issues:

1. Communal property:

- Addressing problems with the communal property restitution law that have resulted in few properties being returned to the Jewish communities.
- Resolve the technicality causing the rejection of claims for properties belonging to pre-war Jewish foundations.
- Protect and preserve Jewish heritage sites.

2. Private property:

- Amend the 2011 restitution law to make clear its application to Holocaust-era confiscations.
- Extend the filing deadline for private property claims.
- Amend the 2011 restitution law to expand restitution in kind.
- Amend the 2011 restitution law to provide prompt and “genuinely fair and adequate compensation.”

- Ensure that restitution is provided to immigrants to Israel victimized by Tito's Law.
 - Ensure effective implementation of the 2011 restitution law.
 - Continue to ensure that restitution is not awarded for property obtained as a result of the Holocaust.
3. Heirless property:
- Fulfill its commitment, as provided in The Law on Restitution of Property and Compensation in Republic of Serbia (in Serbian: *Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije*),¹ to enact legislation providing restitution and/or compensation to the Jewish community for heirless Jewish property confiscated during the Holocaust.
4. Art, Judaica, and other cultural property:
- Provide restitution of communal cultural property.
 - Conduct historical research on the expropriation of Jewish cultural property.
 - Make information on communal and private art, Judaica, and other cultural property publicly accessible and establish a non-bureaucratic process for filing claims.
 - WJRO is prepared to offer the assistance of internationally recognized experts in this area.

I. Background on the World Jewish Restitution Organization

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

WJRO is the legal and moral representative of world Jewry in pursuing claims for the recovery of Jewish properties in Europe (with the exception of Germany and Austria). Working together with local Jewish communities, WJRO consults and negotiates with national and local governments for the return of Jewish communal property and heirless private property and the payment of full compensa-

¹ This Serbian Law was published in: (*Službeni glasnik RS* 72/2011)

tion in cases where restitution is impossible. WJRO also works for the restitution of private property and for compensation to Holocaust survivors. In partnership with local Jewish communities, WJRO establishes local foundations to file restitution claims and use the proceeds to support survivors and local Jewish life.

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

II. An International Consensus

A. Terezin Declaration

Forty-seven countries approved the *Terezin Declaration on Holocaust Era Assets and Related Issues* (WJRO 2009) at the conclusion of the Prague Holocaust Era Assets Conference on June 30, 2009.

Serbia participated as an observer to the Holocaust Era Assets Conference in Prague, June 2009, in which the *Terezin Declaration* was issued. Serbia later endorsed the *Terezin Declaration*.

The *Declaration* recognized the importance of returning or providing compensation for property taken from Holocaust victims. The Declaration “[noted] the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution.” (WJRO 2009) Further, the Declaration “[noted] that the protection of property rights is an essential component of a democratic society and the rule of law, [acknowledged] the immeasurable damage sustained by individuals and Jewish communities as a result of wrongful property seizures during the Holocaust (Shoah), [and recognized] the importance of restituting or compensating Holocaust-related confiscations made during the Holocaust era between 1933–45 and as its immediate consequence.” (WJRO 2009)

The *Declaration* emphasized the importance of addressing private property claims of former owners, heirs, or successors through either restitution or compensation “in a fair, comprehensive and nondiscriminatory manner.” (WJRO 2009) The participating countries called for restitution and compensation processes that were “expeditious, simple, accessible, transparent, and neither burdensome nor costly to the individual claimant.” (WJRO 2009)

The *Declaration* also recognized the “urgent need to identify ways to achieve a just and fair solution to the issue of Judaica and Jewish cultural property” (WJRO 2009) and called for efforts to identify and catalogue items and return them to their rightful owners or to other appropriate individuals or institutions.

B. Guidelines and Best Practices

On June 9, 2010, 43 countries endorsed the Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II (WJRO 2010). The Guidelines and Best Practices reaffirm the Terezin Declaration, identify principles, and provide detailed rules for countries to apply in their property restitution legislation and claims processes.

The *Guidelines and Best Practices* acknowledge the immeasurable damage to individuals and communities from the confiscation of their properties and notes that the protection of property rights is “an essential component of democratic society and the rule of law.” (WJRO 2010)

The *Guidelines and Best Practices* call for *in rem* restitution as the “preferred outcome.” When *in rem* restitution is not possible, the Guidelines and Best Practices urge other solutions including “substituting property of equal value or paying genuinely fair and adequate compensation.” (WJRO 2010)

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

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

Additionally, “[d]ecisions should be prompt and include a clear explanation of the ruling.” *The Guidelines and Best Practices* also call for swift final resolution of settled claims: “Transfer of property title or payment of compensation should be effected promptly.” (WJRO 2010)

C. Immovable Property Review Conference

In November 2012, 39 countries, the European Commission, and non-governmental organizations, including WJRO, participated in the *Immovable Property Review Conference in Prague* (WJRO 2012).

Ambassador Sladjana Prica delivered a statement on behalf of Serbia reaffirming its commitment to the *Terezin Declaration* and the *Guidelines and Best Practices* and detailing steps taken in accordance with the *Guidelines and Best Practices*. In her statement, Ambassador Prica said:

“Let me remind us all that the Republic of Serbia is one [of] among 47 countries which acceded to the *Terezin Declaration* in 2009. Today in 2012 we would like to stress [] that we are doing [our] utmost, despite different difficulties, in order to change existing, to adopt new necessary legislation and especially to create all necessary conditions for as quick as possible and as just as possible implementation of the laws in full accordance with the *Terezin Declaration* and relevant guidelines deriving from it.”

Ambassador Prica stated that Serbia recognized restitution as “crucial in the difficult process of democratization during even [the most] difficult period of economic transformation and transition.” (WJRO 2012)

Ambassador Prica repeatedly acknowledged Serbia’s responsibility to pass legislation addressing heirless property: “But be sure that we are fully aware of our obligation and of the importance to as soon as possible adopt[] separate ‘special’ law which will regulate the heirless property of the holocaust and other victims of Nazi Fascism” (WJRO 2012) She repeatedly promised that the special law would create a process that is “efficient, feasible and will provide quick, rightful and durable solution in accordance with, by Serbia endorsed the *Terezin Declaration and the Guidelines* [and *Best Practices*].” (WJRO 2012)

III. Restitution in Serbia

While Serbia has taken important steps to advance restitution in the past few years, there is a need for significant progress in order to meet the principles of the *Terezin Declaration* and the *Guidelines and Best Practices*.

WJRO asks the government to address problems with the communal property restitution law that have resulted in few properties being returned to the Jewish communities and take action to protect and preserve Jewish heritage sites.

Serbia is to be commended for its passage in 2011 of a restitution law addressing private property. However, WJRO calls for the Government to make clear that the law applies to Holocaust seizures, extend the filing deadline, and resolve other problematic aspects of the law.

WJRO also urges the Government to fulfill its commitment in the law to pass special legislation providing restitution and/or compensation for heirless Jewish property taken during the Holocaust.

Finally, WJRO asks the Government to take steps to research and return communal and private art, Judaica, and other cultural property and is prepared to offer the assistance of internationally recognized experts in this area.

A. Communal Property

Restitution of communal property is essential to overturn wrongful confiscations and enable the Serbian Jewish communities to survive and flourish. Restitution is also crucial to preserve heritage sites of immeasurable value to the Jewish communities and to Serbia.

1. Addressing problems with the communal property restitution law that have resulted in few properties being returned to the Jewish communities

The *Law on the Restitution of Property to Churches and Religious Communities* (In Serbian: *Zakon o vraćanju imovine crkvama i verskim zajednicama*), enacted in 2006, regulates the return of confiscated communal property for certain “traditional” churches and religious communities, including the Jewish community (See *Službeni glasnik RS* 46/2006). The property covered by the law includes “agricultural lands, woods and woodland, construction sites, residential and business buildings, apartments and business premises and movables of cultural, historical or

artistic significance" (*Službeni glasnik RS* 46/2006). A government-established restitution board – the Directorate for Restitution of Communal and Religious Property – was responsible for adjudicating the communal property claims, providing that the value of the contested property is appraised, and awarding the property or compensation (through cash or government bonds) to be paid. The responsibilities of the Directorate for Restitution of Communal and Religious Property were transferred to the Agency for Restitution by Article 63 of the *Law on Property Restitution and Compensation* enacted in 2011 (*Službeni glasnik RS* 72/2011). Substitute property or (market value) compensation is to be provided when *in rem* restitution is not possible. Only property seized from 1945 is covered.

The provision of the law which only includes property confiscated beginning March 1945 – in effect, excluding communal property seized during the Holocaust – caught the attention of the European Commission against Racism and Intolerance ("ECRI"). The ECRI expressed its concern, stating that it "recommends that the Serbian authorities amend the Law on the Restitution of Property to Churches and Religious Communities to ensure that property confiscated before 1945 is restituted. Furthermore, ECRI strongly urged the Serbian authorities to ensure that the restitution of property is conducted satisfactorily and without discrimination." (European Commission 2011, 13) The ECRI noted that excluding restitution for communal property taken during the Holocaust continues to pose a problem for the Jewish community, which had its property seized before 1945 (13).

SAVEZ, the Federation of Jewish Communities in Serbia, identified 609 pre-war properties as having belonged to Jewish communities in the country, including synagogues, schools, *mikvehs*, orphanages, old age homes and 120 cemeteries. SAVEZ submitted over 500 communal property claims by the expiration of the claims filing deadline in 2008.

SAVEZ has recovered only a handful of properties – including properties that had been committed to the Jewish communities prior to restitution proceedings under the law.

There is clearly a need to address the process for reviewing claims and providing restitution or compensation for communal property.

2. Resolve the technicality causing the rejection of claims for properties belonging to pre-war Jewish foundations.

Approximately 60 of the claims submitted by SAVEZ for Jewish communal property have been rejected based on the same legal technicality. These immovable and movable properties were owned by various Jewish institutions and foundations and philanthropic legacies serving the Jewish community and the wider public prior to the Holocaust. Examples of these entities are Jewish women's organizations, Hevra Kadisha (burial society), and Bikkur Cholim (caring for the ill). The founding documents and by-laws of these organizations, which were legally registered, provided that the Jewish communities would inherit the property if the organizations ceased to exist. These organizations were decimated by the Holocaust and were closed by the Communist regime based on their Jewish affiliation, and their activities were continued by the Jewish communities. The government has refused to recognize SAVEZ's inheritance of these properties and rejected SAVEZ's restitution claims because the foundations and legacies were disbanded by the Communist regime and their properties were confiscated. This legalistic interpretation turns the restitution law on its head – it relies upon the unjust Communist confiscations to deny restitution for the confiscations during the Holocaust and the Communist regime. WJRO urges the government to resolve this technicality and reprocess these claims.

3. Protecting and preserving Jewish heritage sites

Unfortunately, with a few exceptions, the condition of Jewish heritage sites is very precarious. Many synagogues and buildings that had been used before the Second World War for the Jewish communities' cultural, educational, humanitarian, and administrative needs are in a state of serious disrepair or are being used as residences or for industry. Many Jewish cemeteries have not been protected or preserved. Numerous cemeteries have been leveled for new construction or have had gravestones removed. The fate of these cemeteries carries profound religious implications and threatens the memory of centuries of Jewish life in Serbia.

Only a small number of Jewish buildings and sites of historic significance are legally protected. WJRO recommends that Serbia create a provisional list of Jewish national monuments in order to provide immediate temporary protection to these heritage sites. Such temporary protection would provide the opportunity

for an assessment of Jewish monuments that should be granted permanent legal protection.

B. Private Property

While Serbia did not have a private property restitution law until 2011, certain former property owners from what was the Socialist Republic of Yugoslavia were able to obtain some compensation under two settlement agreements involving the United States. Yugoslavia paid a total of \$20.5 million to a number of persons who were United States citizens at the time their property in Serbia was taken; a 1948 agreement covered property seized 1939–1948, while a 1965 agreement covered property nationalized 1948–1964.

In October 2011, Serbia enacted *The Law on Restitution of Property and Compensation* (“Restitution and Compensation Law”) to address private property restitution.²

1. Summary of relevant provisions of the restitution and compensation law

Scope: According to Article 1 of the *Restitution and Compensation Law* (*Službeni glasnik RS 72/2011*), the law applies to property confiscated after March 9, 1945. Article 1 also provides that the law applies to property confiscated as a consequence of the Holocaust. However, Article 6 states that the law applies to property confiscated after March 9, 1945, thus leaving unclear whether the law also applies to property confiscated during the Holocaust.

Who Can File Claims: The law provides the right to restitution or compensation, among others, both to domestic individuals and their heirs and foreign individuals and their heirs where Serbia has reciprocity with the other country. Reciprocity is assumed when Serbian citizens may acquire and inherit property in that country. Foreign citizens and their heirs are not entitled to restitution or compensation if they are the citizen of a country that assumed the responsibil-

² Several years before passage of the Restitution and Compensation Law, Serbia initiated a program under the *Law on Reporting and Recording a Claim of Nationalized Property*, which required former property owners or heirs of former owners to register their potential restitution claims as a prerequisite to being able to bring a claim for restitution, once Serbia enacted a private property restitution law. As it turned out, Article 41 of the Restitution and Compensation Law, passed in 2011, allows property restitution claims to be made “regardless whether [an individual] submitted a claim in accordance with the Law on Reporting and Recording Seized Property.” (*Službeni glasnik RS 72/2011*)

ity for paying compensation under an international agreement or if they received compensation by their country. A person, who was a member of the forces that occupied the territory of Serbia during the Second World War, and his or her heirs, is not permitted to receive restitution or compensation (Article 5).

Heirless Property: Article 5 expressly provides that a special law will be passed to provide for property confiscated during the Holocaust from victims who have no living heirs.

Natural Restitution: Article 8 establishes the principle of prioritization of return of confiscated property (natural restitution). Compensation will only be provided where natural restitution is not possible. However, Article 18 provides a long list of situations when property will not be subject to natural restitution, including many categories of properties used by government and public institutions and “[i]n other cases determined by the Law.” Article 18 also states, “Nationalised enterprises shall not be returned.” (*Službeni glasnik RS* 72/2011)

Deferment of Transfer of Possession: Articles 8, 19, and 20 allow for deferral of restitution under a lease agreement for up to three years in certain situations. Agricultural lands with perennial plants and vineyards are subject to 20 and 40 year leases respectively.

Compensation: Compensation is paid in government bonds over a 15 year period (except for shorter term bonds paid to senior citizens under Article 35). Overall compensation is limited to two billion Euros (plus 2% annual interest from January 1, 2015), Article 30. Individual compensation claims are determined by a complicated formula and are capped at 500,000 Euros, no matter the size of the confiscated property Article 31). The law provides for advance cash payments of 10% of compensation, not to exceed 10,000 Euros (Article 37).

Taxes and Fees: Article 38 states that claimants are not responsible for payment of taxes, administrative, and court fees, but are subject to costs of proceedings.

Claim Deadline: The law establishes a two-year deadline for filing claims (Article 42).

Submission of Claims: Article 42 provides a list of the required documentation for submitting claims. Incomplete claims are to be rejected and claimants may only submit a new claim until the claim deadline (Article 43).

Agency for Restitution: The law establishes the Agency for Restitution to manage proceedings, decide claims, assist claimants, keep records, and report to

the Government. The Agency for Restitution replaces the Directorate for Restitution, and also implements the law governing restitution of church and religious community property (Articles 51, 55, and 63).

Claims Review Process: The Agency for Restitution must make a determination on a claim within six months, or one year for complex cases (Article 46). Article 47 governs the Agency's process for reviewing a claim, and Article 48 establishes the right to appeal.

Government Response to Document Requests: Article 13 requires that all levels of government must respond within 30 days to requests for documentation and/or data needed to file claims.

2. Amend the 2011 law to make clear its application to Holocaust-era confiscations

While the law states that it "shall apply on the restitution of the property whose confiscation was the consequence of the Holocaust on the territory which now forms the territory of the Republic of Serbia" (Article 1), in fact, the law only covers property seized after March 1945 (Article 6). Paragraph (a) of the *Guidelines and Best Practices* urges governments to develop legislation which addresses the compensation and restitution of confiscated immovable property seized during the Holocaust period, in the years 1933–1945. Serbia, however, notwithstanding strong concerns expressed by local and international Jewish groups, among others, does not clearly include property wrongfully taken prior to March 1945 in the ambit of its law. The law should be amended to resolve this ambiguity and make clear that the law applies to property confiscated during the Holocaust.³

3. Extend the filing deadline for private property claims

The Restitution and Compensation Law established a two-year deadline for filing private property claims ending in the beginning of March 2014. The two-year period to file claims was insufficient and should be extended. A failure to extend the deadline will result in injustices for many victims. The two-year period did not sufficiently take into account the difficulties for elderly Holocaust victims or their descendents, both in Serbia and throughout the world, to become aware of the claims deadline, obtain all required documents, and secure needed assist-

³ Ambassador Prica did expressly state in her statement at the November 2012 *Immovable Property Review Conference* (WJRO 2012) that the law applies to property confiscated during the Holocaust, but the text of the law remains ambiguous.

ance for submitting claims. As Ambassador Prica noted in her November 2012 statement on behalf of Serbia, “The fact that Archives and Land registers are not up-to-date or even being completely lacking in some part of the territory is fully recognized as a problem posing serious obstacles for claimants trying to prove property ownership.”

4. Amend the law to expand restitution in kind

The Guidelines and Best Practices provide that restitution *in rem* is the preferred method of restitution: “Restitution *in rem* is a preferred outcome, especially for publicly held property.” Paragraph (h). “Other acceptable solutions” such as “substituting property of equal value or paying genuinely fair and adequate compensation” should only be applied when *in rem* restitution “is not feasible or not possible without expropriating third persons’ property.” (WJRO 2010)

The Restitution and Compensation Law has an extensive list of exceptions to the property that can be returned in kind. Among property exempted from *in rem* restitution are the following: property used by every level of government or by foreign government officials; property used for health care, educational, cultural or scientific purposes; property already sold in the privatization process or held by state-owned enterprises; and (in an unclear catch-all provision) property “[i]n other cases determined by the Law”, Article 18 (*Službeni glasnik RS* 72/2011). The law turns the *Guidelines and Best Practices* provision on its head, exempting publicly held property – the type of property that the *Guidelines and Best Practices* singles out when providing that *in rem* restitution is the preferred outcome. Indeed, with so many legal exemptions, it is not clear whether there will be any significant restitution *in rem*.

5. Amend the law to provide prompt and “genuinely fair and adequate compensation”

The Guidelines and Best Practices states that compensation should be “genuinely fair and adequate.” Paragraph (h). Compensation under the Restitution and Compensation Law does not meet that standard. Compensation for confiscated property, in the end, is likely to be little more than a token payment. Mr. Djurdje Ninkovic, a former Serbian Minister of Justice, analyzes the Restitution and Compensation Law and concludes that compensation will be “virtually worthless.” (Ninkovic 2012)

Additionally, the opaque methods for calculating compensation raise concerns about whether compensation will be determined transparently and provided promptly, as called for by paragraph (h) of the Guidelines and Best Practices. The amount of individual compensation that will be paid is obtained by following a formula which makes any individual payment dependent on the total amount to be paid for private property restitution and the total number of eligible claimants that will be paid (over an extended time period). An indication of the convoluted nature of the compensation formula is offered in Article 31 of the *Restitution and Compensation Law*: “The amount of compensation shall be determined in Euros by multiplying the compensation basis with the coefficient equal to the ratio between the amount of two billion Euros and the total sum of individual compensation basis determined by decisions on the compensation right increased by the estimated undetermined bases referred to in paragraph 5 of the Article. The coefficient shall be expressed with two decimal places.” (See in: *Službeni glasnik RS 72/2011*)

6. Ensure that restitution is provided to immigrants to Israel victimized by Tito’s Law

Jews who sought to immigrate to Israel from Yugoslavia, beginning in 1948, were forced to renounce their Yugoslavian citizenship and title to any property in the country as a condition for being allowed to obtain an exit visa. These victims of “Tito’s Law” were deprived of movable, as well as immovable, property. Jews immigrating to Israel were severely restricted in the movable property that they were authorized to bring with them. Immigrants were required to abandon, for example, industrial and agricultural machines, medical instruments, cars, bicycles, boats, typing machines and calculators, stamp collections, weapons, jewelry, and securities, stocks, and bonds. Items with artistic or archaeological value could only be exported with special authorization, which was rarely given.

These former Yugoslav citizens were excluded from the two settlement agreements between the Socialist Republic of Yugoslavia and the United States, as well as from any other relief, including the Restitution and Compensation Law.

Following passage of the Restitution and Compensation Law, the Serbian and Israeli governments worked to remove any formal obstacles preventing Israeli citizens from applying for restitution and compensation under the law. See Statement of Ambassador Sladjana Prica at the November 2012 Prague conference.

The Serbian government should ensure that Israeli citizens continue to be considered within the ambit of the Restitution and Compensation Law and that claims filed by Israeli citizens are processed appropriately.

7. Ensure effective implementation of the law

While it is too early to determine the efficacy of the restitution and compensation claims process, certain concerns have been identified that warrant monitoring. The European Parliament has noted that archives and land registries were “either not up to date or completely lacking in some parts of the territory,” which pose serious obstacles for claimants trying to prove property ownership (European Parliament 2010, 124). Further, before passage of the law, the European Commission was concerned that “weaknesses in the rule of law and prevalent corruption [in Serbia] continued to limit legal predictability and undermined trust in the legal system among economic operators, in particular as regards effective enforcement of property rights.” (European Commission 2010, 26–27) The European Commission has indicated that it is troubled with the state of the Restitution and Compensation Law, noting that “[t]ransparent and non discriminatory implementation ... has to be ensured and further measures taken to fully establish legal clarity over property rights.” (European Commission 2011) These concerns raise questions about whether the Restitution and Compensation Law will be implemented in an effective way that will meet the Guidelines and Best Practices’ goal of transparency and uniformity in decision-making. Paragraph (d).

8. Continue to ensure that restitution is not awarded for property obtained as a result of the Holocaust.

The Agency for Restitution should continue to work carefully to avoid providing restitution to claimants who obtained Jewish property seized during the Holocaust. In guidelines issued on 4 June 2012, the Director of the Agency for Restitution instructed all agency employees reviewing restitution claims to pay special attention to cases where there are indications that the claimant or the claimant’s legal predecessors may have obtained the property as a result of the persecution of Jews during the Holocaust.

C. Heirless Property: Fulfilling Serbia's commitment to pass legislation

Article 5 of the Restitution and Compensation Law explicitly provides that Serbia will pass a special law that will address heirless Jewish property. As noted above, Ambassador Prica restated at the November 2012 Immovable Property Review Conference Serbia's commitment to pass such a special law. However, to date, the Government has not drafted this legislation. Until such a law is enacted, Serbia remains without legislation providing for the restitution of confiscated Jewish heirless property, including heirless Jewish property in the government's possession.

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

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

D. Art, Judaica, and Other Cultural Property

1. Provide restitution of communal cultural property.

Serbia has passed legislation requiring the restitution of communal cultural property, but it is unclear what the current situation is under the legislation. Article 15 of the 2006 restitution law provided that "moveable 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 institution, agreement regarding their continued used

between the church or religious community and the holder of the item are defined by contract.” (*Službeni glasnik RS* 46/2006) The law established a September 30, 2008, deadline for claims, but because such a deadline for movable objects is problematic, the Federation of Jewish Communities in Serbia was permitted to file a blanket claim for all Jewish communal cultural property by the deadline that was to be valid in regard to items that may be identified in future, but the existence and/or status of this blanket claim is unclear.

2. Conduct historical research on the expropriation of Jewish cultural property.

So far as is known, there has not been detailed historical research on the expropriation of Jewish cultural property in Serbia – research that is also relevant to the fate of non-Jewish cultural property.⁴ Serbian museums, libraries, and archives have generally not done provenance research on their collections, even though, for example, as a member of the International Council of Museums (ICOM), Serbia is expected to do so in accordance with the Code of Ethics of ICOM. Concerning art, such provenance research is particularly important for the collections of the National Museum and the Royal Compound and in regard to the Šlomovič and Mimara collections, the latter of which is known to contain art objects plundered by the Nazis from Jews in other countries and improperly brought to Serbia. Given the number of synagogues in Serbia prior to World War II, while taking into account destruction and removal from the country, it seems clear that there must be Torah scrolls, religious books, and manuscripts in libraries and archives beyond the very few that are in the possession of the Federation of Jewish Communities.

3. Make information on communal and private art, Judaica, and other cultural property publicly accessible and establish a non-bureaucratic process for filing claims.

In accordance with the *Terezin Declaration*, information on art, Judaica, and other cultural property should be made public and accessible, and a non-bureaucratic process for making claims should be established. Efforts should be made to learn where such cultural property that was removed from Serbia is now located, and where appropriate the government should hold negotiations for the return of

⁴ In this regard, the WJRO and Conference on Jewish Material Claims Against Germany have compiled the archival records of looting by the Einsatzstab Reichsleiter Rosenberg in Serbia (). See <http://forms.claimscon.org/art/ERR-Looting-Yugoslavia-Oct2013.pdf>

such property (e.g., the Serbian archives, including Serbian Jewish archives that are in the Russian State Military Archive). WJRO is prepared to offer the assistance of internationally recognized experts in this area.

IV. Conclusion

Serbia has taken important steps toward meeting its commitment to providing restitution and a measure of justice to its Jewish communities and victims of the Holocaust. WJRO asks the government to act urgently – while the remnant of Holocaust victims is alive – to provide restitution and compensation in accordance with the principles of the *Terezin Declaration* and *Guidelines and Best Practices*.

References:

- The Looting of Jewish and Cultural Objects in Former Yugoslavia Einsatzstab Reichsleiter Rosenberg in Serbia.
<http://forms.claimscon.org/art/ERR-Looting-Yugoslavia-Oct2013.pdf>
- European Commission. 2010. European Commission Staff Working Document: Serbia 2010 Progress Report (Brussels November 2010), http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf.
- European Commission. 2011. European Commission against Racism and Intolerance Report on Serbia, March 23, 2011, p. 13, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Serbia/SRB-CbC-IV-2011-021-ENG.pdf>
- European Commission. 2011a. *European Commission Opinion on Serbia's Application for Membership in the European Union, October 12, 2011*, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_rapport_2011_en.pdf.
- European Parliament Study, "Private Property Issues Following the Change of Political Regimes in Former Socialist or Communist Countries," 2010, p. 124.
- Ninkovic, Djurdje. 2012. "The Law of Restitution of Property and Compensation in Serbia (2011) – Heir Beware!," April 27, 2012, <http://ebritic.com/?p+183744>
- Zakon o vraćanju imovine crkvama i verskim zajednicama. 2006. *Službeni glasnik RS*, br. 46/2006 od 2. juna 2006. godine.
- Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije. 2011. *Službeni glasnik Republike Srbije*, br. 72/2011 od 28.9.2011. godine.
- WJRO/World Jewish Restitution Organization. 2009. *Terezin Declaration on Holocaust Era Assets and Related Issues*. <http://www.wjro.org.il/Web/intl/PragueConference/100.aspx>
- WJRO. 2010. *Guidelines and Best Practices for Restitution*. <http://www.wjro.org.il/Web/intl/Guidelines/Default.aspx>
- WJRO. 2012 *Immovable Property Review Conference in Prague*. <http://www.wjro.org.il/Web/intl/November2012/Default.aspx>

Rezime:
O RESTITUCIJI U SRBIJI, FEBRUAR 2014

Ovo istraživanje se odnosi na process restitucije u Srbiji: privatnu imovinu Jevreja koja je oduzeta u periodu nakon Drugog svetskog rata, jevrejsku imovinu bez naslednika koja je oduzeta, brojnu imovinu koja je pripada jevrejskim zajednicama, kao i nepokretna imovina koja je bila oduzeta u toku Holokausta ili konfiskovana/nacionalizovana nakon Drugog svetskog rata. I pored posebnosti evropskih države u procesima podržavljanja jevrejske imovine napravljen je konsenzus među evropskim državama koji se odnosi na imovinu oduzetu kao posledica Holokausta i u godinama nakon Drugog svetskog rata. Terezinska deklaracija koju je potpisala Srbija sa još 46 drugih zemalja je osnova za povraćaj imovine oduzete za vreme Holokausta ali i druga pitanja koja su u vezi sa tim. Srbija je sa 38 drugih zemalja učestvovala na sastanku novembra 2012. Uvidom u sadašnje stanje Srbiji WJRO (Svetska Jevrejska Ogranizacija za Restituciju) se obraća Vladi Srbije i drugim važnim državnim institucijama da obezbede što skorije rešavanje ovih pitanja koja se odnose na komunalnu jevrejsku imovinu, privatnu imovinu, imovinu bez naslednika kao i drugu nepokretnu imovinu, umetnine, Judaiku i kulturno blago.

Ključne reči: Restitucija, Srbija, jevrejska imovina, Holokaust, terezinska deklaracija, WJRO, Zakon o vraćanju oduzete imovine i obeštećenju Republike Srbije

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