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Restitution of Jewish Property in the Czech Republic

JAN KUKLÍK

Restitution of the property confiscated during the communist regime was debated in Czechoslovakia almost immediately after the so-called Velvet Revolution of 1989. The period of transition from the authoritarian communist regime into a democratic system started with discussions about adequate policies to be implemented as not many patterns to follow were available at that time in order to carry out political, economic and social changes.¹ The first changes concentrated mainly on the political system and economy. The political and economic leaders of the new democratic Czechoslovak government decided to launch an economic reform with rapid and large-scale privatization in order to create a free market economy built upon private ownership of the previously state-owned enterprises.² The privatization process began in 1990 with the privatization of small-sized enterprises.³

As early as 1990, the discussions regarding privatization were combined with the discussion on the restitution of property, i.e., returning property to its former owners.⁴ Restitution was regarded as a just solution that would mitigate injustices and harm caused by the communist regime (within the framework of so-called retrospective justice);⁵ it was considered a measure needed for the re-establishment of private

1. See SHARON WOLCHIK, *CZECHOSLOVAKIA IN TRANSITION: POLITICS, ECONOMICS AND SOCIETY* 116-19 (1991).

2. See Hans Aage, *The Marketization of Planned Economies*, in *INTERNATIONAL PRIVATIZATION: STRATEGIES AND PRACTICES* 163, 165 (Thomas Clarke ed., 1994).

3. For the legal framework for small-scale privatization, see Mahulena Hoškova, *The Evolving Regime of the New Property law in the Czech and Slovak Federal Republic*, 7 *AM. U. INT'L L. REV.* 605, 610 (1992).

4. See ANDERS FOGELKLOU & FREDRIK STERZEL, *CONSOLIDATING LEGAL REFORM IN CENTRAL AND EASTERN EUROPE: AN ANTHOLOGY* 54-56 (2003).

5. See JIRI PŘIBÁŇ, *LEGAL SYMBOLISM: ON LAW, TIME AND EUROPEAN IDENTITY* 172-74 (2007).

ownership,⁶ as well as another manner of privatization.⁷ Initially, it was decided to return only property that was nationalized or confiscated after the communist coup, i.e., the property forfeited after February 25, 1948. The first of the restitutions laws, Act No. 403/1990 Sb., as amended by Act No. 458/1990 Sb., dealt with remedies for “certain proprietary injustices,” especially when property had been nationalized without compensation, or when privately owned apartment houses were expropriated by so-called National Committees.⁸ The property was returned upon the written request of persons eligible to do so (usually, former owners or their successors). If the claim was rejected, it was necessary to take court action. According to this Act, citizens, but also so-called “foreign residents” could claim restitution or compensation provided that (a) their claims had not been previously settled by bilateral one-off agreements concluded by Czechoslovakia before 1989, and (b) they were not citizens of enemy states from World War II (“WWII”).⁹

Restitution was limited mostly to individuals (natural persons); associations and business corporations were excluded from the first wave of restitution laws and their property was subject to special laws and compensation procedures in the course of privatization. There was also limited restitution of church property, with a major portion to be decided later, including the expropriated property of Jewish religious communities.

In 1991, the most important of the restitutions laws, Act No. 87/1991 Sb. on Extra Judicial Rehabilitation, was enacted.¹⁰ It brought about some important changes to the original concept of restitution and its preamble added new arguments for restitution. The law was enacted “in an effort to mitigate the effects of certain proprietary and other injustices which occurred during the period from 1948 to 1989, and being aware that these injustices, and even more so the injustices from the

6. At the same time, the Constitutional Act No. 100/1990 Sb. repealed the constitutional hierarchy of ownership types, where so-called socialist ownership and suppression of private ownership (which was typical for socialist law). For more details, see JAN KUKLIK, *CZECH LAW IN HISTORICAL CONTEXTS* 218 (2015).

7. See Vojtech Cepl, *Restitution of Property in Post-Communist Czechoslovakia* (University of Liverpool, Centre for Central and East European Studies Working Paper Group, Paper No. 3).

8. See *Zákon o zmírnění následků některých majetkových křivd* [Law on the Mitigation of the Consequences of Some Property Injustices], *Zákon č. 403/1990 Sb.* (Czech)

9. See Jan Kuklik, *Interference with proprietary rights between 1945 and 1948 and their reflection in so-called “indemnity agreements and in privatization “restitution” legislation after 1989*, in *CZECH LAW BETWEEN EUROPEANIZATION AND GLOBALIZATION* 29-39 (Michal Tomášek ed., 2010).

10. See *Zákon o mimosoudních rehabilitacích* [Law on Extrajudicial Rehabilitation], *Zákon č. 87/1991 Sb.* (Czech).

preceding period, including injustices to citizens of German and Hungarian nationality, can never be fully remedied, but wanting to confirm its intent that no similar injustices ever occur again”¹¹ It dealt with the effects of certain proprietary and other wrongs arising from civil transactions or administrative acts carried out during the period from February 25, 1948 to January 1, 1990 (the so-called “relevant period”) in violation of the principles of a democratic society.

Only Czechoslovak citizens with permanent residency in the country, who lost their property during the relevant period (or their legal successors)—all referred to as “eligible persons”—were entitled to get their property back. According to the provisions of Article 5, the restitution was not applicable in cases where the property had been acquired during the German occupation by persons later considered unreliable by the state or as a result of racial persecution of certain groups of citizens.¹² The category of eligible persons (claimants) was, however, narrower than the category of heirs according to the Civil Code. The law also permitted the claimant to choose between restitution in rem and compensation, especially where the property had significantly increased in value.¹³ If the claimant elected restitution in rem, they were obliged to pay the current owner the difference between the original and current value of property.

The Act favoured out-of-court settlement of the claims and a special agreement regarding the return of property was envisaged. If a state body entrusted with the administration of property at issue rejected the claim, it was possible to initiate a court action. If the court rejected the restitution in rem, it was still possible to ask for financial compensation within one year. There were no filing fees for both restitution and compensation applications; claimants had free access to archives and cadastral documents, and administrative agencies were obliged to provide information on restitution matters. State archives provided assistance with searching for records.¹⁴

Special Act No. 229/1991 Sb., concerning the ownership of land and other agricultural property, was enacted for the restitution of land.¹⁵ It laid

11. See Helena Hofmannová, *Restitution Law and the Constitutional Review of the Restitutions in the Czech Republic (Principles of the Decisions of the Constitutional Court Regarding the Restitution of Jewish Property)*, 2 LAW. Q. 2 16, 18 (2012).

12. Zákon č. 87/1991 Sb. Art. 5.

13. See European Shoah Legacy Inst., *Czech Republic*, in IMMOVABLE PROPERTY RESTITUTION STUDY (2014).

14. See *id.*

15. See Zákon o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku [Act on Ownership of Land and Other Agricultural Property], Zákon č. 229/1991 Sb. (Czech).

down similar conditions for claimants as Act No. 87/1991 Sb.¹⁶ However, it was necessary to reflect specific aspects of the Czechoslovak land reforms of 1947 and 1948. Claims were filed with the Land Office in the region where the property was located. District courts were entrusted with the judicial review of decisions of Land Offices. It was possible to ask for a similar piece of land administered by the State Land Office or, alternatively, for financial compensation for land in case the land could not be returned because it was already privatized. Article 29 of this Act blocked transfers of land previously owned by churches, religious communities or congregations until a special act was enacted.¹⁷ A year later, Act No. 243/1992 Sb. was enacted on the regulation of certain questions associated with Act No. 229/1991 Sb.¹⁸ It rendered eligible Czechoslovak citizens of German or Hungarian origin who (a) had lost property according to Decrees of the President of the Republic No. 12 or 108/1945 Sb., (b) had committed no crimes against the Czechoslovak state, (c) regained their citizenship between 1948 and 1953, and (d) had their property transferred to the state, all to claim their property back.¹⁹

Certain aspects of restitutions were also regulated by Act No. 119/1990 Sb., regarding Court Rehabilitation; the judicial findings of the courts, according to this Act, were used as proof of political persecution.²⁰ The Act laid down provisions for the invalidity of administrative decisions on confiscation and rulings of the courts.

As suggested above, limited financial compensation was paid when it was impossible to return the property to the original owners or their heirs (restitution in rem). The rest of the state property was privatized in a way called “the great privatization,” organized mainly as a so-called “coupon” privatization.²¹ This was combined with the direct sale of property to foreign investors. The collision between restitution laws and privatization was dealt with by Act No. 92/1991 Sb., regulating the

16. Zákon č. 87/1991 Sb.

17. Zákon č. 87/1991 Sb. art. 29.

18. *See* Zákon České národní rady, kterým se upravují některé otázky související se zákonem č. 229/1991 Sb., o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku, ve znění zákona č. 93/1992 Sb. [Act of the Czech National Council Regulating Some Issues Related to Act No. 229/1991 Sb., on the Regulation of Ownership Relations with Land and Other Agricultural Property, as amended by Act No. 93/1992 Sb.], Zákon č. 243/1992 Sb. (Czech); Zákon č. 229/1991 Sb.

19. *See* Dekret presidenta republiky o konfiskaci nepřátelského majetku a Fondech národní obnovy [Decree of the President of the Republic on Confiscation of Enemy Assets and National Recovery Funds] Dekret č. 108/1945 Sb. (Czech).

20. *See* Zákon o soudní rehabilitaci [Act on Judicial Rehabilitation], Zákon č. 119/1990 Sb. (Czech).

21. *See* Anna Gelpert, *The Laws and Politics of Reprivatization in East-Central Europe: A Comparison*, 14 U. PA. J. INT'L BUS. L. 315, 344 (1993); Hoškova, *supra* note 3, at 611-12.

conditions of transfer of state property to other persons.²² It was possible to transfer state property into private hands only if the restitution claims were not filed or if they were rejected.

In 1991, “restitution” of previously autonomous (“historical”) property of local self-government followed; the procedure was laid down by Act No.172/1991 Sb., providing for the transfer of some property from the ownership of the Czech Republic to municipal ownership.²³ The term “restitution” in this case is used to describe the transfer from the state to municipal ownership. Municipalities became legal owners of the property covered by the Act. However, the definition of property was quite vague. It laid down that the property in question was owned by the municipalities as of the day of previous expropriation, i.e., December 31, 1949, and the Czech Republic still owned it on the date the Act came into force, i.e., May 24, 1991. The Act specified property excluded from the transfer from the state to municipal ownership including the above mentioned “blockage” of Church property.²⁴ The municipalities were obliged, within a period of one year, to register their claims within the Land Register Office. If the municipalities acquired the property under the restitution laws (including their future amendments), they were in a position of “responsible persons” and were required to return the property to the previous owners or other “eligible” persons instead of state bodies. This was confirmed several times by the Czech Constitutional Court (most recently in 2010 in its decision No. 9/07).²⁵ However, it caused many problems in practice especially regarding the Jewish communal property acquired by municipalities before December 31, 1949.

After the negotiated split of the Czechoslovak Federation in 1992,²⁶ the independent Czech Republic and the Slovak Republic came into existence on January 1, 1993. The principle of legal continuity was applied; most Czechoslovak laws applicable to the territory of the Czech Republic and not connected with the federal structure were accepted as laws of the Czech Republic. This principle also applied to the restitution laws.

22. See *Zákon o podmínkách převodu majetku státu na jiné osoby* [Act on Conditions of Transfer of State Property to Other Persons], *Zákon č. 92/1991 Sb.* (Czech).

23. See *Zákon České národní rady o přechodu některých věcí z majetku České republiky do vlastnictví obcí* [The Act of the Czech National Council on the Transition of Some Property from the Property of the Czech Republic to the Ownership of Municipalities], *Zákon č. 172/1991 Sb.* (Czech).

24. See *Zákon č. 172/1991 Sb.*

25. See *Nález Ústavního soudu ze dne 1.7.2010 (ÚS)* [Decision of the Constitutional Court of July 1, 2010], sp.zn. Pl. ÚS 9/07 (Czech).

26. For more details, see ERIC STEIN, *CZECHO/SLOVAKIA: ETHNIC CONFLICT, CONSTITUTIONAL FISSURE, NEGOTIATED BREAKUP* 273 (1997).

The scope and provisions of the first Czechoslovak ("Czech") restitution laws had quite a limited effect for Jewish claimants regarding both Jewish individual and communal property. This fact was often (and wrongly to a certain extent) associated with the Czechoslovak refusal to return or compensate the expropriated property of the so-called Sudeten Germans, the majority of whom were expelled from Czechoslovakia after WWII, or with the so-called Beneš's Decrees (decrees of the President of the Republic) from 1945.²⁷ Most problems were in fact associated with the requirements of Czech state citizenship and permanent residency. However, the problems were also caused by the special position of Jewish property during the years 1938 to 1948. It is therefore necessary to make a short historical excursion.

On March 16, 1939, the German Protectorate of Bohemia and Moravia was established, at which point the state of Czechoslovakia de facto ceased to exist.²⁸ Two days earlier, Slovak representatives had formally proclaimed an independent Slovak state under the direct influence of Nazi Germany. For that reason, the question of Jewish property (including the post-war restitutions) was resolved differently in Slovakia. Although an insignificant measure of autonomy was granted, the Protectorate was incorporated de facto into the German Reich. The Reich Protector was vested with the power to issue special legislation for the Protectorate. Citizens of the Protectorate were divided into three subcategories, each with a separate legal status: (a) Citizens of the German Reich had a privileged position, (b) Citizens of the Protectorate of Czech nationality had a lesser position of second-class citizens, and (c) "Jews" and "Gypsies," who were subject to a whole range of discriminatory measures and legislation.²⁹

Although the government of the Protectorate was directly responsible for instituting the discrimination against Jews in the areas of public service and public life, the laws pertaining to the definition of Jewish natural and juridical persons, as well as everything relating to their property rights, was under the jurisdiction of the Reich Protector and German laws. The repressive measures affecting Jewish property were instituted by German authorities in the Protectorate from the very outset of the German occupation. The first measures were introduced by decrees issued by the heads of civil administration of the German Army in March

27. See Robert Hochstein, *Jewish Property Restitution in the Czech Republic*, 9 B.C. INT'L & COMP. L. REV. 423 (1996).

28. See KUKLIK, *supra* note 6, at 115-16.

29. See *id.*

1939, which instituted a ban on the disposal of Jewish property of all types.

The definition of Jews and Jewish institutions (incorporated businesses as well as associations) was first introduced on June 21, 1939, when the Reich Protector enacted the first decree pertaining to Jewish owned property. The direct implementation of the decree in the Protectorate was pursuant to Nazi Germany's Nuremberg Race Laws of 1935; it declared that the ownership rights of all Jewish natural persons and Jewish entities were to be significantly curtailed. For a corporation or association to be defined as "Jewish," nothing more was required than it be deemed to be under a "Jewish influence." According to Article 1 of the Decree on Jewish Property, a special written authorization was required for Jews and Jewish institutions to dispose of immovable property, commercial enterprises and shares in them, securities of any kind, the leasing of property, and the transfer of a lease to another person. Further, Jews were subject to a complete ban on transferring ownership or pawning objects of gold, platinum, silver, gems, and pearls, as well as any other valuables and art objects of certain value.

According to Article 3 of the Decree on Jewish Property, Jews and Jewish legal persons were required to declare, by July 31, 1939, all agricultural and forest property that they owned or leased. In accordance with Article 5, they were required to declare by the same deadline that they owned objects of gold, silver, and platinum, as well as gems. The confiscation of Jewish property was allowable even at this time only if someone acted at variance with "this decree or counter to the provisions issued for its execution." It was an offense merely to attempt to circumvent the decree. Confiscation was most often conducted by the Gestapo and only authorities of the German Reich could administer confiscated property.

The Decree on Jewish Property was gradually implemented in the form of orders of the Reich Protector. The first implementation order was issued on June 21, 1939. The Jewish enterprises were subjected to compulsory administration. After these repressive measures, an inventory of property was mandated, and after that a compulsory sale of the property, Aryanization and confiscation followed. Jews had to declare all equities and ownership shares of any kind. The same requirement applied to Jewish enterprises with respect to all domestic and foreign operational assets. Jewish associations and institutions were required to keep their financial resources in restricted accounts.

Adherence to these repressive measures was overseen by the Gestapo, who in cooperation with other German occupation authorities

organized searches of Jewish associations, business establishments and homes, often on the basis of a prior tip. Instrumental in the process of implementing the anti-Jewish measures was the Central Office for Jewish Emigration (Zentralstelle für jüdische Auswanderung), established by order of the Reich Protector in July 1939. On August 12, 1942, the Central Office was renamed the “Central Office for the Settlement of the Jewish Question” (Zentralamt für die Regelung der Judenfrage in Böhmen und Mähren), which was subordinate to the commander of the security services and the security police in Prague. To administer the confiscated property, the Central Office created the Emigration Fund for Bohemia and Moravia (Auswanderungsfond für Böhmen und Mähren), which was a public fund established according to German law. Administratively, it was subordinate to the Central Office. Many Jewish associations and foundations were banned and the property of the dissolved associations was transferred to the Emigration Fund. The Fund was also responsible for administering the property of the individual Jewish religious communities. The Fund had opened a special account at Böhmisches-Escompte Bank. From the autumn of 1941 the flows became more massive. The liquidation of property of Jewish organizations, such as B’nai Brith, including all relevant organizational units, was overseen by the Gestapo. Germans delegated some administrative authority to the Jewish communities in emigration matters, which in the autumn of 1941 meant taking part in the deportation of Jews to the Terezín Ghetto and later to the extermination camps. The Jewish religious communities were under the supervision of the Central Office and had to obey its orders or the directives of the Office of the Reich Protector.

After mass deportations began, the Central Office’s Emigration Fund “processed” the remaining property of those being deported. This was done on the basis of a special authorization for the settlement of property questions (known as the Vermögenserklärung) signed in the presence of the Central Office officials. The property measures were adopted on the basis of the central instructions coming from Eichmann’s Department of the RSHA in Berlin. Both the movable and immovable property of persons who were being deported to Terezín and the extermination camps were transferred into the Emigration Fund. The legally sanctioned confiscation of the property of deportees was modified by the Central Office with the second Reich Protector Order on the Care of Jews and Jewish Organizations issued on October 12, 1941.

Afterward, an order on the Forfeiture of Protectorate Citizenship issued by the Reich Ministry of the Interior on November 2, 1942, which was a modification of the Eleventh Implementation Order to the Law on

Reich Citizenship from November 25, 1941, came into effect in the Protectorate and deprived those deported of Protectorate citizenship.³⁰ All property of those deported was then forfeited to the benefit of the Reich by operation of law. Its liquidation continued to be executed by the Central Office in cooperation with the Emigration Fund, as the given property was to “serve to support all objectives associated with resolving the Jewish question.”³¹

By order of the German security police (*SD*), all Jewish religious communities were abolished on February 8, 1943 (many had already been entirely depleted of members by deportation).³² Their administrative agendas were transferred to a newly established Jewish Council of Elders (*Ältestenrat der Juden*) as the single organization responsible for all Jews in the Protectorate. It kept records on all Jews in Bohemia and Moravia and, as per the orders of the Central Office, it took an active part in the deportation and forced labour process, as well as the seizure of property. The Gestapo was also involved in property confiscation, chiefly as part of their activity in conducting searches and investigations, while property issues fell to the Central Office and the Emigration Fund. On October 13, 1941, the Central Office for Jewish Emigration created a special institution called the “*Treuhandstelle*.”³³ With this measure, the Nazi regime forced the Jewish religious communities to participate in the securing of apartments of those persons who had been deported, inventorying their property, and managing warehouses to which the property of persons deported was transferred.

After deportations began and after synagogues were closed, there was another important development related to the issue of the fate of Jewish property. Jewish cultural property comprised of objects from the abolished synagogues and religious communities had been amassed, and therefore these objects could be saved in the Central Jewish Museum. This property was thus joined with the collection of the pre-war Prague Jewish Museum, which was originally comprised of several hundred liturgical objects and books. The Central Office for Jewish Emigration had already decided by the autumn of 1939 that the collection of the Prague Jewish Museum would not be sold off and would continue to be exhibited to the public.

30. See Reich Ministry of the Interior, *Order on the Forfeiture of Protectorate*, November 2, 1942.

31. See *id.*

32. See Order of the German Security Police (*SD*), *Abolishing all Jewish Communities*, Feb. 8, 1943.

33. See Reich Comm’r of the East-land, *Order for Settlement of Jewish Property*, Oct. 13, 1941.

In the autumn of 1941, when the buildings of Prague synagogues were cleared out, books, as well as ritual objects, were deposited at the Prague Jewish Museum at the end of that year. In May 1942, the Jewish Religious Community in Prague was charged by the Central Office for Jewish Emigration with amassing all historical and historically valuable objects in Prague confiscated from the property of Jewish communities in the Protectorate.

In conclusion, it can be claimed that the intricate system of legal decrees addressing Jewish matters, issued virtually exclusively by the German occupational authorities during the period of the Nazi occupied Protectorate, resulted first in the adoption of restrictive measures and later in the confiscation of the property of natural persons and also of all institutions, which included Jewish religious communities. These were entirely liquidated and their property, together with property of those deported to Terezín (and later to extermination camps) passed into the ownership of the German Reich, or to the institutions set up by the Reich, such as the Emigration Fund, or was stored at the Central Jewish Museum. The entire process was directed and supervised by German authorities, chiefly by the Central Office for Jewish Emigration, with the Gestapo playing a significant role. The situation in the Protectorate was overseen by the Reich Main Security Office in Berlin (“RSHA”), headed by Adolf Eichmann. This was an integral part of the overall realization of the Nazi plan for the “Final Solution of the Jewish Question.”

After the liberation of Czechoslovakia in 1945, German property (both of natural persons of German nationality and of German state and public entities) was at first put under the so-called national administration, i.e., custody, in accordance with the decree of President Edvard Beneš (prepared and executed by the Czechoslovak Government) No. 5/1945 Sb.³⁴ The same decree also stated that every transfer of property was invalid if it was made under duress during the Nazi occupation or as a result of political, national, and racial persecution between 1938 and 1945.³⁵ It is necessary to stress that the Czechoslovak Government-in-Exile already published a declaration cancelling all the transfers of property made under duress in 1941 and took an active part

34. See Dekret presidenta republiky o neplatnosti některých majetkově-právních jednání z doby nesvobody a o národní správě majetkových hodnot Němců, Maďarů, zrádců a kolaborantů a některých organizací a ústavů [Decree of the President of the Republic on the Invalidity of Certain Property-Legal acts of Non-Freedom and on the National Administration of the Property Values of Germans, Hungarians, Traitors and Collaborators and Certain Organizations and Institutes], Dekret č. 5/1945 Sb. (Czech).

35. Dekret č. 5/1945 Sb.

in the Inter-Allied negotiations on reparations and restitution of looted property.³⁶

However, it was necessary to claim the property back under special administrative or court procedures. Yet the Beneš's Decrees contained other requirements and restrictions that frequently had repercussions for Jewish claimants including the so-called state and national reliability (i.e., the restitution was not permissible for Germans and collaborators with Germans sentenced by special courts for war criminals and traitors).³⁷ There was also a group of German speaking Jews, who in 1930 claimed German nationality during the last pre-war census, who lost Czechoslovak citizenship and were not eligible for restitution. Moreover, they were in some cases even expelled from the country together with Sudeten Germans during the years 1945 and 1946.³⁸ This was only slowly redressed by the Czechoslovak Ministry of Interior in September 1946. There were also political arguments against the restitution of Jewish property, voiced especially by the Communists in Slovakia connected with anti-Semitism. The restitution was slowed and complicated by many practical and legal obstacles.³⁹

On the other hand, it is necessary to point out that according to the Presidential Decree No. 5/45 Sb., the German Emigration Fund was put under the national administration and—especially in cases of easily identified movables—it was possible to start the restitution at the beginning of 1946.⁴⁰ If the German property was not returned back to its original owners, it was confiscated according to the so-called Beneš's decrees on the confiscation of German (enemy) property (Decrees No. 12/ 1945 Sb. in case of agricultural property and No. 108/1945 Sb.).⁴¹ The

36. See Jan Kuklik & Pavel Sturma, "Restitution" and Other Indemnifying Instruments of International Law and Politics from the Second World War to the 1990s, in HOW TO COMPENSATE THE HOLOCAUST?: THE ISSUE OF THE EXPROPRIATION OF JEWISH PROPERTY, ITS RESTITUTION AND COMPENSATION 24, 25-26 (Jan Kuklik et al eds., 2015).

37. See *id.*

38. Jan Lániček, Czechs, Slovaks and the Jews 1938-48: Beyond Idealisation and Condemnation 148-49 (2013).

39. See Edward Kubů & Jan Kuklik, *Reluctant Restitution: The Restitution of Jewish Property in the Bohemian Lands after the Second World War*, in ROBBERY AND RESTITUTION: THE CONFLICT OVER JEWISH PROPERTY IN EUROPE 224 (Martin Dean, Constantin Goschler & Philipp Ther eds., 2007).

40. Dekret č. 5/1945 Sb.

41. Dekret presidenta republiky o konfiskaci a urychleném rozdělení zemědělského majetku Němců, Maďarů, jakož i zrádců a nepřátel českého a slovenského národa [Decree of the President of the Republic on Confiscation and Accelerated Division of Agricultural Property of Germans, Hungarians, as well as Traitors and Enemies of the Czech and Slovak Nations] Dekret č. 12/1945 Sb. (Czech).

confiscation of German property was accompanied by other large-scale proprietary changes, namely the extensive nationalization of key industrial sectors. Large properties, like businesses with more than 500 employees, were not restituted at all, but the original Jewish owners were eligible for compensation proposed in the form of Governmental Bonds.

The final legal base for the post-war restitution was established in 1946 by special Act No. 128/1946 Sb., which regulated the invalidity of certain property-related legal acts taken in the period of loss of freedom, as well as claims arising from such invalidity.⁴² It dealt with the restitution of private (individual) property with the exception of nationalized assets and set rules especially for court proceedings. Claims were allowed for the restitution of properties confiscated after September 29, 1938 under duress of the Nazi occupation, or national, racial, or political persecution. If restitution in rem was not possible, it was possible to claim financial compensation.

There was also limited restitution of Jewish communal property after 1945. The representation of the Jewish religious communities was headed by Arnošt Frischer, who already represented Jewish claims during WWII while exiled in London.⁴³ Restitution was seen as an integral part of the “rehabilitation” of the Jewish communities in the Czech lands, including the repatriation and social care for those victims of racial persecutions who were returning from concentration camps, emigration, or foreign armies.⁴⁴ The Council of Jewish Religious Communities published its bulletin, which gave legal advice to claimants and published a list of property items eligible for restitution. Jewish religious communities received most of their pre-war ritual objects and part of bonds. In 1946, the Ministry of Culture decided to wind up 131 Jewish communities in Bohemia and thirty-one in Moravia because they lost the majority of their members during the Holocaust. Only thirty-two communities remained in Bohemia and thirteen in Moravia. However, the restitution rights were transferred to the remaining communities. The restitution of synagogues, burial grounds, or schools was quite satisfactory, although in some places the municipalities refused to cooperate. By the end of 1947, 657 pieces of real property out of 1119

42. Zákon o neplatnosti některých majetkově-právních jednání z doby nesvobody a o nárocích z této neplatnosti a z jiných zásahů do majetku vzcházejících [Law on the Invalidity of Certain Property-Law Acts from the Time of Non-Existence and the Claims of Such Invalidity and Other Interventions in the Assets Arising From], Zákon č. 128/1946 Sb. (Czech).

43. See LÁNIČEK, *supra* note 38, at 116-18.

44. See Kurt Wehle, *The Jews of Bohemia and Moravia 1945-1948*, in 3 THE JEWS OF CZECHOSLOVAKIA 499 (Avigdor Dagan & Lewis Weiner eds., 1984).

claims were successfully transferred to the Jewish communities.⁴⁵ However, the war damages related to the returned property were estimated at 200 million CZK.⁴⁶

The problems were caused, in particular, by the following problems: what to do with the property of those Holocaust victims who had not survived the war and had no close relatives, as well as the impossibility to identify certain categories of property according to the criteria of that time, and last, but not least, consistently applying the citizenship principle. The Holocaust had the effect of leaving substantial property without heirs to claim it. According to the Czechoslovak law, restitution in rem for money was not possible and this principle applied also vis-à-vis to the above-mentioned special account of the Emigration Fund at Böhmisches Escompte Bank, where the money paid for the confiscated Jewish property was concentrated. Another problem was that the Nazi administration ordered the documentation for most of the property transfers to be destroyed.⁴⁷ This led to the proposals to set up a special fund for the victims of WWII, including the Holocaust survivors.⁴⁸ For example, the Minister of Social Welfare intended to use the heirless property including the Jewish property left behind in Terezín, amounting to one billion Czech crowns, for general rehabilitation purposes.⁴⁹ The majority of the Czechoslovak Government considered the assets as belonging to the state and wanted to use them for the reconstruction of the Republic. In 1947, the Czechoslovak Government decided that the heirless property would serve for funding of the Currency Liquidation Fund. The fund assisted the currency reform and partly compensated those whose accounts were blocked after Czechoslovakia was liberated.⁵⁰

It was also discovered during recent historical research that the Soviet Union regarded part of the originally Jewish property as spoils of war (“trophy property”). A good deal of the property had been subject to expropriation (and not only Jewish property from during the war), especially bank accounts and safe deposits, which at the end of the war

45. See Šarka Nepalová, *Židovská menšina v Čechách a na Moravě v letech 1945–1948*, in TEREZÍNSKÉ STUDIE A DOKUMENTY 324 (1999).

46. *See id.*

47. National Archives, Prague, Fund National Administration of (Jewish) Property Foundations, Box No. 118.

48. *See, e.g.*, European Shoah Legacy Inst. *supra*, note 13.

49. *See id.*

50. *See id.*

formally “appeared” German to the Soviet authorities, and the safe deposits were plundered by the Red army in 1945.⁵¹

To conclude, most of the restitution claims regarding Jewish private property dealt with by the Czechoslovak courts were not resolved before the Communist Coup of February 1948. From 16,000 claims regarding real property, only 3,000 were settled.⁵² Communist Czechoslovakia also witnessed the re-emigration of a considerable proportion of its Jewish population who survived the war, notably after the establishment of Israel. There was even a short period between 1948 and 1950 when almost 26,000 Czechoslovak Jews legally emigrated, mostly on the condition that they waive their restitution or hereditary claims in favor of the Czechoslovak state.⁵³ Moreover, the amendment to the restitution Act No. 128/1946 Sb., enacted as Act No. 79/1948 Sb., further restricted the in rem restitution in cases of “public interests.”⁵⁴ The Jewish communal property was “nationalized,” i.e., became state property together with property of all other Churches and religious communities in 1950.⁵⁵

The specific position of Jewish property and especially the problems regarding the 1945 to 1948 restitution of both private and communal property were claimed by representatives of Czech Jewish communities after 1990. However, they were not taken into account by the original restitution laws.⁵⁶ The restitution or compensation for Jewish communal property was intertwined with the far more sensitive issue of restitution of the property of the Catholic Church.⁵⁷ In the years 1992 and 1993, there were even proposals for a special act on the Jewish religious communities, for example, the proposal by Pithart’s Czech Government in March 1992. The proposal dealt with the property that was still in the state’s hands and served religious or cultural activities.⁵⁸ After the elections in June 1992, the new Government headed by Václav Klaus (Civic Democratic Party) put the proposal into cool storage until March

51. See DRAHOMÍR JANČÍK, EDUARD KUBŮ & JAN KUKLÍK, JEWISH GOLD AND OTHER PRECIOUS METALS, PRECIOUS STONES, AND OBJECTS MADE OF SUCH MATERIALS - SITUATION IN THE CZECH LANDS IN THE YEARS 1939 TO 1945 (2001).

52. Kuklik & Sturma, *supra* note 36, at 24.

53. LÁNIČEK, *supra* note 38, at 186.

54. Zákon, kterým se mění a doplňuje zákon ze dne 16. května 1946, č. 128 Sb., o neplatnosti některých majetkově-právních jednání z doby nesvobody a o nárocích z této neplatnosti a z jiných zásahů do majetku vzházejících [Act Amending and Supplementing the Act of May 16, 1946 on the Invalidity of Certain Property Rights Acts of the Time of Non-Existence and on the Claims of Such Invalidity and on Other Interventions in Assets Arising From], Zákon č. 79/1948 Sb. (Czech).

55. Zákon č. 79/1948 Sb.

56. KRÝSTYNA SIERADZKA, RESTITUTION OF JEWISH PROPERTY IN THE CZECH REPUBLIC: NEW DEVELOPMENTS 2-3 (1994).

57. *See id.*

58. *See id.* at 4.

1993, when it was addressed by the coalition partner Civic Democratic Alliance (“CDA”). CDA proposed to return at least 120 pieces of property back to the Jewish religious communities, including synagogues, burial places, the Jewish museum, and certain real estate.

In October 1993, Viktor Dobal, MP and twenty-eight other deputies proposed a bill known as the “Act on Adjustment of Certain Property Relations of the Federation of Jewish Communities in the Czech Republic and on the Mitigation of the Effects of Certain Property Corruption,” which combined the restitution of Jewish communal property (202 pieces of property including the property of former Jewish associations and the Jewish Museum in Prague) with the more favourable restitution of private property of Jewish natural persons.⁵⁹ The Bill mentioned the conditions previously set by the restitution law of 1946, in case restitution was not successfully completed.⁶⁰ For the communal property, which was not possible to return in rem, the compensation of 10 million CZK was proposed. By the end of November 1993, President Václav Havel and Prime Minister Klaus met with Israel Singer, Secretary General of World Jewish Congress, and the Government subsequently approved the proposal with certain changes at the beginning of 1994.⁶¹ The Parliament dealt with the proposal in January 1994.⁶² Despite the sensitivity of the matter for international relations, the Czech Parliament rejected the proposal, especially because of fears of other Church restitutions, the pressure from municipalities still using the Jewish property, and the restitution deadline of February 1948.

On March 2, 1994, Václav Havel, at a special meeting with the representatives of both the Czech coalition and opposition parties, proposed a compromise, namely to separate the restitution of communal and private property.⁶³ The Government decided to return Jewish communal property not on the basis of law, but through administrative decisions if the property was still in the state’s hands. Only a quarter of the 202 pieces of property were actually returned, mostly synagogues and

59. *Zákona o úpravě některých majetkových vztahů Federace židovských obcí v České republice a o zmírnění následků některých majetkových křivd* [Act on Adjustment of Certain Property Relations of the Federation of Jewish Communities in the Czech Republic and on the Mitigation of the Effects of Certain Property Corruption], *Zákon č. 700/1993 Sb. (Czech)*.

60. *See Zákon č. 700/1993 Sb.*

61. *See AVI BEKER, THE PLUNDER OF JEWISH PROPERTY DURING THE HOLOCAUST: CONFRONTING EUROPEAN HISTORY* 95 (2001).

62. *See Registration from the 19th Meeting of the Foreign Committee of the Chamber of Deputies of the Parliament of the Czech Republic, which took place on 26 and 27 January 1994, Parliament of the Czech Republic (1994).*

63. *See SIERADZKA, supra* note 56, at 7.

burial grounds.⁶⁴ On April 29, 1994, the Parliament enacted the amendment to Act No. 87/1991 Sb., whereas a similar amendment regarding the agricultural land was rejected.⁶⁵ Despite this, Act No. 116/1994 Sb. represents a breakthrough in the restitution of Jewish property. It stated that the transfers of ownership rights which were declared invalid according to the Czechoslovak laws from 1945 and 1946 and made as a result of racial persecution, were subject to restitution if the claim was not satisfied after February 25, 1948 due to political persecution or actions which violated generally acknowledged human rights.⁶⁶

After a heated parliamentary debate, fifty-three MPs mainly from right wing parties approached the Constitutional Court with their petition to deal with the allegation that the restitution be limited only to racial persecution based on permanent residency and time limits was in breach of the Czech Constitution, Bill of Fundamental Rights and Liberties of 1991, and international law.⁶⁷ The petition's drafters had also reacted to criticism from the UN Human Rights Committee, which heard the important case *Simunek, Hastings, Tuzilova, and Prochazka versus The Czech Republic* (Communication No. 516/1992) in 1992.⁶⁸ They claimed discrimination on the grounds that they could not benefit from the restitution law because they were not Czech citizens or had no residency in the Czech Republic.⁶⁹

The petition before the Czech Constitutional Court was only partially successful and the Court abolished the Czech residency requirement while the citizenship requirement remained.⁷⁰ The time periods were also prolonged accordingly. It also gave arguments for special treatment for victims of racial persecution based mainly on the above-mentioned historical arguments.⁷¹ The Constitutional Court reached a number of other decisions on restitution cases in general and several of them also dealt with special aspects of Jewish property. At the

64. See BEKER, *supra* note 62, at 95-96.

65. See Zákon, kterým se mění a doplňuje zákon 87/1991 Sb., o mimosoudních rehabilitacích, ve znění pozdějších předpisů [Act Amending and Supplementing Act 87/1991 Sb., on Extrajudicial Rehabilitation, as amended], Zákon č. 116/1994 Sb. (Czech).

66. See European Shoah Legacy Inst., *supra* note 13.

67. See Hochstein, *supra* note 27, at 443-47.

68. See Human Rights Comm., Fifty-Fourth Session, *Simunek, Hastings, Tuzilova and Prochazka v. The Czech Republic*, Communication No. 516/1992, U.N. Doc. CCPR/C/54/D/516/1992 (1995).

69. See *id.* ¶ 3.

70. See *id.* ¶ 10.

71. Nález Ústavního soudu ze dne 12.7.1994 (ÚS) [Decision of the Constitutional Court of July 12, 1994] sp.zn. Pl. ÚS 3/94 (Czech); SIERADZKA, *supra* note 56, at 11-12.

beginning, most of them dealt with the whole concept of “restitution” as “lessening certain proprietary wrongs.” The court discussed the principle of mitigation of wrongs and injustices versus the principle of legal certainty, as well as legal versus moral justifications for historical injustices.⁷² In its key ruling of November 1, 2005, the Constitutional Court said that the limit of the effort to mitigate certain proprietary wrongs is the requirement of the principle of legal certainty.⁷³ It is interesting to note that the Constitutional Court added that not even Article 1 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to renewed rights of ownership.⁷⁴

The Constitutional Court (after the Czech Supreme Court reached a similar stance) also dealt with the question of whether it was possible to use general civil statutes (such as civil suits for the determination of rights or for eviction) instead of specialized restitution laws when making restitution claims.⁷⁵ The Constitutional Court confirmed that such an approach was impossible, because it circumvents the meaning and purpose of restitution legislation. Other interesting rulings dealt with the conditions for validity of confiscations or nationalization (for example, when the scope of the original nationalization laws was encroached) and, most recently, even dealt with the differences between national, political, and racial persecution.⁷⁶

After the removal of the condition of permanent residency, the main criticism against the Czech restitution laws in the years 1995 through 2000 was based on the alleged discrimination on the grounds of Czech state citizenships. According to Michael Bazylar, many would-be claimants were excluded on citizenship grounds because they had been forced to give up their Czech citizenship by the Czechoslovak communist regime when emigrating from Czechoslovakia to certain foreign countries (especially the United States, Great Britain, Canada, and Israel).⁷⁷ An even more critical view was held by George E. Glos, who argued that “the post 1989 Czech regime misuses the 1928 Czechoslovak

72. Pl. ÚS 3/94 at 56.

73. Hofmannová, *supra* note 11, at 22.

74. *See id.*

75. *See id.* at 23.

76. Members of the noble family, Colloredo Mansfeld, at first proposed to repeal the difference between political, national, and racial persecutions in the restitution laws and after this proposal was rejected they claimed that they were subject also to racial persecution by the Nazis. Nález Ústavního soudu ze dne 18.3.2013 [Decision of the Constitutional Court of Mar. 18, 2013] sp.zn. I. ÚS 2430/13 (Czech).

77. *See* European Shoah Legacy Inst., *supra* note 13.

U.S. Naturalization Treaty to discriminate against Czech citizens, who acquired U.S. citizenship” (according to the Treaty they automatically lost the Czech citizenship).⁷⁸ In reality the situation was even more complicated, because there was a group of U.S. citizens who successfully claimed their property in the Czech Republic, when they proved that they were naturalized in the USA during the state of war, i.e., between 1938 and 1957, when the Treaty was automatically suspended.

In a key ruling of the Czech Constitutional Court reached in 1997 in the Jan Dlouhý restitution case, the court confirmed the position regarding the constitutionality of the requirement of Czech state citizenship.⁷⁹ It is also necessary to take into account that the criterion of state citizenship was very important for Czech restitution legislation for two reasons: (1) the Sudeten German question and refusal to open up the question of reparations and confiscations of so-called enemy property; and (2) the lump sum agreements, when a majority of claims against Czechoslovakia between 1948 through 1989 arose from confiscations or nationalization—including non-restituted property covered by bilateral agreements. Moreover, according to recent research, these confiscations and nationalizations also covered the Jewish claimants (mostly in the case of U.S.-Czechoslovak and British-Czechoslovak agreements and compensation schemes).⁸⁰

U.S. diplomacy in the 1990s strongly promoted compensation and restitution initiatives in Central Europe. Particularly effective was the pressure put on the Czech Republic before it became a NATO member. The Czech Republic was criticized for the criteria of state citizenship as well as for problems with restitution of communal property, especially when Stuart Eizenstat was appointed a Special Representative of the President and Secretary of State on Holocaust-Era Issues.⁸¹

In December 1997, the London conference of Nazi looted gold (London Nazi Gold conference) opened discussions about this particular aspect of Nazi persecutions in occupied Europe during WWII. The Czech Government set up a special commission to investigate, in the case of Czechoslovakia, incorrect allegations that states of the Soviet Block, including Poland and Czechoslovakia, secretly negotiated with the Swiss about the Swiss' use of the dormant accounts of Holocaust victims as

78. See GEORGE GLOS & SVU: CZECHOSLOVAK SOC'Y OF ARTS AND SCIENCES, RESTITUTION OF CONFISCATED PROPERTY IN THE CZECH REPUBLIC ¶ 6 (2002).

79. See *Nález Ústavního soudu ze dne 4.6.1997 (ÚS)* [Decision of the Constitutional Court of June 4, 1997] sp.zn. ÚS 185/1997 Sb. (Czech).

80. See European Shoah Legacy Inst., *supra* note 13.

81. See Stuart Eizenstat, *Justice after Confiscation, Restitution of Communal and Private Property in Central and Eastern Europe*, 6 E. Eur. Const. Rev. 50 (1997).

compensation for nationalized Swiss assets after WWII.⁸² After the London Nazi gold conference, the Czech Government decided to also investigate other special categories of Jewish looted property, including real estate property, objects of art, or insurance policies in connection with preparations for the Washington Conference on Holocaust-Era Assets.⁸³ A seminar on Holocaust Insurance Issues, organized by the U.S. Department of State under the leadership of Secretary Stuart Eizenstat, took place on September 4, 1998 in Prague to start negotiations between insurance companies, Holocaust survivor organizations, insurance regulators, and government representatives from the United States, Poland, Hungary, the Czech Republic, Slovakia, and Germany. The seminar dealt with the historical research on wartime confiscation, post-war compensation programs, and nationalization of the insurance sector in the late 1940s and 1950s and with compensation programs introduced for Holocaust-era insurance claims immediately after the end of the Second World War.

The Department of State and the U.S. Holocaust Memorial Museum hosted the Washington Conference on Holocaust-Era Assets from November 30, 1998 through December 3, 1998. More than forty governments and numerous international non-governmental organizations were invited to send delegations to the conference, including the Czech Republic. Not only restitution, but other important issues were discussed, including the archival research, the role of historical commissions, remembrance, and education.⁸⁴

Since the Washington Conference on Holocaust-Era Assets in 1998, the international legal and political framework has been redefined by the principles agreed on at the Conference. Also, the Czech Republic decided to follow the agreed upon agenda in its legislation and practice. At first, it affected mainly the area of works of art. The Washington conference, as well as the Vilnius Forum, invited countries to undertake every reasonable effort to achieve the restitution of as many looted or confiscated works of art as possible to their original owners or their heirs, especially if they still were in possession of the state or other public galleries and collections.⁸⁵ The progress was overseen by specialized

82. See Kuklik & Sturma, *supra* note 36, at 244.

83. See *Washington Conference On Holocaust-Era Assets*, U.S. DEP'T OF STATE, https://1997-2001.state.gov/regions/eur/wash_conf_material.html (last visited Apr. 2, 2018).

84. See TASK FORCE FOR INT'L COOPERATION ON HOLOCAUST EDUCATION, REMEMBRANCE AND RESEARCH, DECLARATIONS.

85. See *Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEP'T OF STATE, <https://www.state.gov/p/eur/rt/hlcst/270431.htm> (last visited Apr. 2, 2018).

institutions like the Commission for Art Recovery established by the World Jewish Restitution Organization (“WJRO”).⁸⁶

On November 25, 1998, the Government of the Czech Republic created a special joint expert commission for the restitution of Jewish property headed by Vice Prime Minister Pavel Rychetský (later President of the Constitutional Court) and several working committees. The commission’s responsibilities included the restitution of looted gold, objects of arts, real property, insurance policies, and communal property.⁸⁷ As a result of their findings, as well as on the basis of the principles set by the Washington Conference, Act No. 212/2000 Sb. (enacted on June 23, 2000) was instituted to mitigate certain property-related injustices caused by the Holocaust.⁸⁸

The Act brought changes to Acts No 229/1991 Sb. and 243/1992 Sb., and enabled the restitution or compensation for former owners of agricultural land seized because of racial persecution.⁸⁹ Claimants with Czech citizenship were entitled to approach the respective current owner. If the owner was not willing to return the property, it was necessary to start the court action. It was not possible to restitute assets if they had already been restored under special legislation or if a privatization project or a decision on the privatization concerning such assets was approved as of the effective date of this Act. For such assets, compensation was paid. For approximately 2,500 claims, 700 million CZK was paid.⁹⁰

Act No. 212/2000 Sb. allowed for the return of real estate communal property previously owned by the Jewish communities, foundations, and associations of the Federation of Jewish communities or to individual Jewish religious communities.⁹¹ There were some exceptions regarding the agricultural and forest lands located within the borders of national parks or protected landscape areas, assets strictly necessary for the discharge of the functions of the Czech Republic, or land on which a

86. See European Shoah Legacy Inst., *supra* note 13.

87. See JANČÍK ET AL., *supra* note 51.

88. See *Restitution-Art*, RESTITUTION-ART, <http://www.restitution-art.cz/english/main.html> (last visited Apr. 2, 2018).

89. Zákon č. 229/1991 Sb.; Zákon č. 243/1992 Sb.

90. See Marta Malá, *The Case of the Czech Republic*, in WG IMMOVABLE PROPERTY (PRIVATE AND COMMUNAL): WORKS IN PROGRESS PART I (2013).

91. See Zákon o zmírnění některých majetkových křivd způsobených holocaustem a o změně zákona č. 243/1992 Sb., kterým se upravují některé otázky související se zákonem č. 229/1991 Sb., o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku, ve znění zákona č. 93/1992 Sb., ve znění pozdějších předpisů [Act on the Suppression of Certain Property Corruptions Caused by the Holocaust and on Amendments to Act No. 243/1992 Sb., Which Regulates Some Issues Related to the Act No. 229/1991 Sb., on the Adjustment of Ownership Relations with Land and Other Agricultural Property, as amended by Act No. 93/1992 Sb., as amended], Zákon č. 212/2000 Sb. (Czech).

building, not part of the assets seized from Jewish communities or associations, was located. For such assets, the state proposed adequate compensation. This part of Act No. 212 was implemented by a series of government directives, containing, in accordance with its provision, a list of items that were to be handed over free of charge by the way of donation contracts.⁹² The Jewish museum in Prague, established in 1994 as an independent institution (from the State Jewish Museum), received seventy-three works of art named in an appendix to the Act.

The law also enabled the return of works of art owned by state galleries and institutions. The condition of Czech citizenship of the claimant was removed in this respect. The restitution was possible for works of art seized from individual owners as a result of Nazi persecution between September 29, 1938 and May 4, 1945, when the transfers of ownership were annulled by Presidential Decree No. 5/1945 or Act No. 128/1946.⁹³ These works of art were transferred free of charge, but the claims were restricted to original owners, their spouses, or their descendants if the original owner had died in the meantime. The Ministry of Culture ordered a survey within the state museums and galleries and, in cooperation with the Moravian Museum, launched a database (accessible at www.restitution-art.cz) of the works of art that used to belong or might have belonged to Holocaust victims. The database mainly served the claimants to find the necessary information for the restitution of these works of art identified by the state institutions. The original time limit for claims was prolonged by Act No 227/2002 Sb. until the end of 2006. In 2006, the time limit was removed, so the claims regarding the works of arts are still admissible.⁹⁴ The Documentation Centre for Property Transfers of Cultural Assets of WWII Victims was founded by the Czech Government under the auspices of the Academy of Sciences on November 1, 2001, and, in 2012, the Centre was transformed into a charitable trust.⁹⁵ The Centre carried out research

92. See *Restitution of Property*, FED'N OF JEWISH CMTYS. IN CR, <http://www.fzo.cz/en/projects/restitution-of-property/> (last visited Apr. 2, 2018).

93. Dekret č. 5/1945 Sb.

94. See Zákon, kterým se mění zákon č. 212/2000 Sb., o zmírnění některých majetkových křivd způsobených holocaustem a o změně zákona č. 243/1992 Sb., kterým se upravují některé otázky související se zákonem č. 229/1991 Sb., o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku, ve znění zákona č. 93/1992 Sb., ve znění pozdějších předpisů [Act Amending Act No. 212/2000 Sb., on the Mitigation of Some Property Injustices Caused by the Holocaust and Amending Act No. 243/1992 Sb., Which Regulates some Issues Related to the Act No. 229/1991 Sb. Ownership Relations with Land and Other Agricultural Property, as Amended by Act No. 93/1992 Sb., as amended], Zákon č. 227/2002 Sb. (Czech).

95. See *About the Centre*, DOCUMENTATION CENTRE FOR PROPERTY TRANSFERS OF CULTURAL ASSETS OF WWII VICTIMS, <http://www.cdmp.cz/en/> (last visited Aug. 7, 2018).

related to property transfers in the Czech archives and helped the applicants search for further works of art that belonged to Holocaust victims.

Finally, in 2000, the Czech Government, upon the approval of the Parliament, established the Foundation for Holocaust Victims, which prepared a special scheme for compensation for those claims which were not eligible according to the Czech restitution laws in cases of real property.⁹⁶ In most cases, it dealt with the restrictive citizenship requirement or late filing of claims and, by the end of 2001, the Foundation received 1256 applications from twenty-seven individual states. The Foundation received 300 million CZK and announced a compensation scheme for the years 2001 through 2005. The Ministry of Foreign Affairs informed all Czech embassies and helped to disseminate information in countries where the largest number of applicants was expected. Embassies also gathered applications for compensation. The Czech Cadastre (Land Register) Office and Special Property and Restitution Department at the Ministry of Finance reviewed all claims to exclude those who were already compensated, such as those based on bilateral lump sums agreements. The claims represented mainly houses, blocks of flats, spa buildings, farms, factories, and other properties.⁹⁷

In 2003, the Czech Government issued its resolution No. 409/2003 Sb. to ease the procedure, especially in regards to documents needed to support the claim. For compensations, it used the amount of 100 million CZK and covered 516 cases, meeting the criteria defined by the Czech Government.⁹⁸ However, the money paid by the Foundation was not regarded as a full compensation but rather a symbolic gesture.⁹⁹

The rest of the money from the Government was used for various humanitarian and social programs for the Holocaust survivors, especially in cooperation with the Federation of Jewish Religious Communities. The Foundation still helps elderly Holocaust survivors in their old age, supports commemorative events remembering the Holocaust victims, provides education on Judaism and development of Jewish communities,

96. See generally *Foundation for Holocaust Victims*, FZO.CZ, <https://www.fzo.cz/en/institutions-founded-by-fjc/foundation-for-holocaust-victims/> (last visited Aug. 7, 2018).

97. See European Shoah Legacy Inst., *supra* note 13.

98. See Zákon o volbách do Evropského parlamentu a o změně některých zákonů [Act on Elections to the European Parliament and on Amendments to Certain Acts], Zákon č. 409/2003 Sb. (Czech); Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi [Act on Property Settlement with Churches and Religious Societies], Zákon č. 428/2012 Sb. (Czech).

99. See NADČNÍ FOND OBĚTEM HOLOCAUSTU [FOUND. FOR HOLOCAUST VICTIMS] VÝROČNÍ ZPRÁVA [ANNUAL REPORT] (2005).

and participates in restoration of Jewish monuments destroyed by Nazi and Communist totalitarian regimes. According to the stance of the Czech Government, this approach is connected with the fact that although there are no special laws addressing heirless property of Holocaust victims in the Czech Republic, the Czech state has acknowledged and acted upon a duty to provide care for Holocaust survivors. The effect of this approach is similar to the use of heirless property funds for the benefit of Holocaust survivors.¹⁰⁰ According to Tomáš Kraus from the Federation of Jewish Religious Communities, the money given to the Foundation covered the property which could not be returned to Jewish associations.¹⁰¹ In 2005, an additional 100 million Czech crowns were added and the Fund is still in operation.

Between the 26th and 30th of June 2009, the Czech Government organized an international conference on Holocaust Era Assets. It took place in Prague and Terezín, where thousands of European Jews and other victims of Nazi persecution died or were sent to extermination camps during WWII. Diplomats, experts, and non-governmental organizations discussed issues, such as welfare of Holocaust survivors, restitution of immovable property, looted objects of art, Judaica and Jewish cultural property, as well as a follow up on the Washington Conference guidelines on archival materials, education, remembrance, and research. At the end, the so-called Terezín Declaration was adopted,¹⁰² followed a year later by 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 and 1945. The Guidelines were prepared by European Shoah Legacy Institute (“ESLI”) and endorsed by forty-three countries including the Czech Republic.¹⁰³

It defined not only the terms of private and communal immovable property, but also the criteria for restitution or compensation schemes.¹⁰⁴ It also confirmed the rule that the heirless property from victims of the Holocaust should not revert to the state but instead should be primarily

100. See European Shoah Legacy Inst., *supra* note 13.

101. See Tomáš Kraus, *The Issue of Restitution in the Czech Republic*, in JEWISH STUDIES AT THE CENTRAL EUROPEAN UNIVERSITY 2002-2003 92 (2003).

102. See *id.*

103. See EUROPEAN SHOAH LEGACY INST., 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 (2010).

104. European Shoah Legacy Inst., *supra* note 13.

used to provide for the material needs of Holocaust survivors most in need of assistance.

The Czech Republic took an active part in the establishment of the ESLI in 2009 to carry out the decisions of the Terezín Declaration. Its task was also to monitor the restitution process, share best practices, support research and educational activities, and advocate for improvements in the provision of welfare services for Holocaust survivors and other victims of Nazi persecution. For example, it started the Immoveable Property Database and prepared a questionnaire covering past and present restitution regimes for private, communal, and heirless property. For these reasons, and because its seat was in Prague, ESLI influenced the environment in the Czech Republic.

The final legislation regarding the restitution of property of Jewish religious communities and associations was adopted as a part of so-called church restitutions, which were finally resolved only in 2012 by Act No. 428/2012 Sb. It is a combination of in rem restitution and compensation for property that was not possible to return. In twenty years, the amount of 76 billion Czech crowns was promised to be paid by the state with at least 272 million CZK for the Federation of Jewish Religious Communities.¹⁰⁵ It could be regarded as fair and satisfactory legislation for the expropriated Jewish communal property although it took almost twenty-five years to reach the final decision. Regarding private property, the restitution process in the Czech Republic was again slow, enacted under international pressure in several steps and, as shown above, quite complicated. It applied different criteria to different types of property, but with the exception of the criteria of state citizenship, it represents an interesting example that must also be seen from a comparative perspective. For instance, many countries in Central and Eastern Europe did not enact a special law relating to only victims of racial persecution, and if they did (as the Czech Republic in 2000), it happened only after the Washington Conference in 1998. Although it may seem that the issue of Jewish property restitution is a closed historical chapter, in the areas of research, education, and remembrance of the horrors of the Holocaust, it is still a very vivid and relevant matter that deserves our attention.

105. Zákon č. 428/2012 Sb.