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Summary

In April 1994, three years after the adoption of restitution laws in the former Czechoslovak Republic, the Czech parliament passed legislation which made possible the return of confiscated property to Jews or their heirs who were citizens of the Czech Republic and had permanent residence there. Ten weeks later, a ruling by the Constitutional Court made it possible for persons with Czech citizenship who had so far not met the condition of permanent residence in the Czech Republic to raise restitution claims.

From a Jewish perspective, the point at issue over the three years preceding April 1994 was the principle that restitution applied exclusively to natural persons whose property had been confiscated after 25 February 1948, i.e. the Communist seizure of power. This legal barrier made the recovery of practically any originally Jewish property, private or public, impossible. Most originally Jewish property had been "aryanized" by the Germans after September 1938 and had not been returned to its rightful owners or their heirs before the Communist takeover. After 25 February 1948 any "aryanized" property which had not been repossessed by then was confiscated by the state.

In the two years following the adoption of the 1991 restitution laws little headway was made towards framing legislation which would satisfy Jewish aspirations. A breakthrough occurred in the autumn of 1993 when a separate restitution bill was tabled by a group of deputies. The bill dealt with the issue of redressing property injuries committed by the Nazis against both individual Jews as well as Jewish communities and organizations and not rectified after the Communist putsch of February 1948. However, parliament failed to pass the bill—the main reason being that, as far as restitution of Jewish communal property was concerned, it was seen as setting a precedent for the far more controversial issue of restitution of property to the Catholic Church.

As a result of the inability of the governing coalition and parliament to agree on legislation regarding Jewish communal property, the 29 April 1994 amendment to the 1991 restitution law on Extra-judicial Rehabilitation addresses the issue of restitution of Jewish individual property only. A further development regarding individuals who had Czechoslovak citizenship but resided abroad on 1 January 1993 is a ruling of the Czech Constitutional Court which on 12 July 1994 decided to rescind both the provision of the 1991 law which made the right to restitution of a Czech citizen dependent on his or her having permanent residence in the Czech Republic and the provision which set a six-month deadline (1 April-1 October 1991) for raising restitution claims. The ruling is effective as from 1 November 1994.

Restitution of Jewish Property in the Czech Republic: New Developments

On 29 April 1994, almost five years after the 'Velvet Revolution' and more than three years after the enactment of restitution laws in the former Czechoslovak Republic,¹ a bill was passed by the Czech parliament which will enable the return of confiscated property to Jewish natural persons or their heirs who are citizens of and have permanent residence in the Czech Republic. They may recover their property if it was lost as a result of racial persecution during the period of 'liberty restriction' (between October 1938 and 1945). The new law amends the original federal restitution Law no. 87/1991 on Extra-judicial Rehabilitation² which, in the form in which it was passed by the Czechoslovak Federal Assembly, in fact discriminated against Jews.

Background

The point at issue was the principle on which restitution in Czechoslovakia was based, namely that it should apply exclusively to natural persons whose property was confiscated after 25 February 1948 (the Communist seizure of power). The main political purpose in setting this legal barrier was to confirm the legitimacy of the expropriations carried out before the Communist takeover of power in order to prevent claims by the Sudeten Germans, who had been expelled and whose assets had been confiscated as 'enemy property' under the post-war decrees of President Edvard Benes, as well as by the Catholic Church, which, as a big landowner, was the Czechoslovak church most affected by the Benes land reform. However, this legal barrier also made the recovery of practically any originally Jewish property, be it private or public, impossible.

The issue of confiscated Jewish property simply does not fit into this standard model of restitution. The bulk of the originally Jewish, private and public, property 'aryanized' by the Germans after September 1938 had not, for a variety of reasons, been returned to its rightful owners or their heirs under the Benes restitution decrees before the Communist putsch. After 25 February 1948 the restitution process was interrupted and any 'aryanized' property that had not been repossessed by then was confiscated by the state as German property under norms introduced by the Communists to these restitution decrees and new legal measures. As regards the small proportion of properties that were transferred to the Jewish communities after 1945, in most cases it was not the ownership but administration over the property that was actually transferred, and these properties were later nationalized by the Communist regime. The Jewish communities were left with a few devastated cemeteries and synagogues and the seat of the Council of Jewish Communities in Prague, while most synagogues, rabbinate buildings and Jewish communal buildings were turned into warehouses, cinemas, police stations and health centres, and most cemeteries into parks or other use made of them.

1 See 'Jewish Restitution and Compensation Claims in Eastern Europe and the Former USSR', *IJA Research Reports*, no. 2, May 1993.

2 CTK news agency, Prague, 29 April 1994, BBC, *Summary of World Broadcasts (SWB)*, EE/1986, 2 May 1994.

When the restitution legislation was under preparation Jewish leaders drew the attention of legislators to the fact that, unless historical antecedents were taken into account and a special provision on Jewish property included in the proposed laws, property wrongs committed against the Jews would not be corrected. Jewish appeals were, however, ignored. A blind eye was turned to an injustice that could have been remedied at that time had there been the political will to do so. Thus, while the cut-off date implicitly reaffirmed the validity of the confiscation provisions of the Benes decrees, no allowance was made in the 1991 restitution laws for the fact that, as far as Jewish property was concerned, the restitution provisions of the Benes decrees which declared all 'aryanization' acts invalid were not fully implemented. In order not to deviate from the 25 February 1948 cut-off date for fear that any tampering with it would open the floodgates to claims by those whose property was confiscated under the post-war Benes decrees, the Jews were denied the right to restitution in violation of the Benes restitution decrees and, ironically, found themselves in the same situation as the Sudeten Germans.

The 1991 restitution laws also failed to take into account confiscations carried out under the norms added to the Benes decrees by the Communists. Consequently, these norms, though introduced after 25 February 1948, remained valid, thus contradicting government declarations on the immutability of the said decrees.³

Moreover, while an attempt to amend the 1991 restitution laws to include Jewish property was rejected by the then federal parliament in September 1991, an amendment (Law no. 133) of 21 April 1993 to the original federal restitution Law on Extra-judicial Rehabilitation, which explicitly allows the Public Prosecutor to revise administrative decisions made after 1948 but not court rulings, in effect legitimized and justified confiscations of Jewish assets carried out under court rulings based on Communist amendments of the Benes decrees.⁴

As a result, while thousands of other Czech citizens have already regained their property, Jews living in the Czech Republic whose property was confiscated by the Nazis and never returned by the Czechoslovak authorities have remained the only group of Czech citizens unable to benefit from the restitution law. Their number is estimated at some 200-500 and they are mainly heirs of the original owners. A small number of Jewish individuals expropriated after the Communist seizure of power were able to reclaim their property under the restitution law provided they met the eligibility requirements of Czech citizenship and permanent residence in the Czech Republic. These requirements, which were laid down in the restitution law for the obvious purpose of reducing the number of claims by Czech émigrés, precluded Jewish emigrants

3 Law no. 79 of 7 April 1948 allowed restitution to be denied if denial was in the public interest. It was an amendment to Law no. 128/1946 which invalidated any transfers of property, whether movable or immovable, public or private, if they were implemented after 29 October 1938 under the pressure of the occupation of Czechoslovakia or as a result of national, racial or political persecution. Law no. 128/1946 also provided that only property of claimants considered untrustworthy under Czechoslovak law belonged to the state as a confiscate in accordance with presidential decree (Law no. 108) of 25 October 1945. Most dismissals of Jewish restitution claims by Czechoslovak courts were based on the 7 April 1948 amendment and the reasoning that persecution of claimants was not proof of their trustworthiness. See 'The debatable validity of the Benes decrees', an appeal by Michal Klepetar to the President of the Republic Vaclav Havel, Prime Minister Vaclav Klaus, Minister of Foreign Affairs Josef Zieleniec and Chairman of Parliament Milan Uhde, June 1993.

4 Appeal by Michal Klepetar.

who no longer met either or both of these eligibility criteria from reclaiming the property they had left behind in Czechoslovakia.

In accordance with one of the two key principles governing restitution in Czechoslovakia—i.e. that only property confiscated from individuals, but not institutions, should be returned—the 1991 law does not apply to Jewish communal and organizational property. Were such property to be covered by a general law dealing with church demands, the second principle—the 25 February 1948 cut-off date—would have made it impossible for the Federation of Jewish Communities in the Czech Republic (FJCCR) to claim property confiscated by the Nazis and never returned, and only a few properties used for religious purposes and confiscated by the Communists would have been recovered. However, when in 1993 a draft law dealing specifically with Jewish communal and individual property overcame this legal barrier by invoking President Benes's restitution decrees, the draft law became the casualty of the long-running differences between the government coalition parties on the extent of church—particularly Catholic—property restitution. The prospect that the government and parliament will agree on a formula which would make a blanket return of Jewish communal and organizational property possible through legislation seems remote at present and the FJCCR is likely to regain only those former communal assets that are still in state hands (see below).

The struggle for a Jewish property bill

In spite of Jewish efforts and appeals, little headway was made in 1991 or 1992, the year of parliamentary elections and preparations for the division of the country. An attempt to amend the restitution laws to include Jewish property was rejected in September 1991. And a special bill on Jewish communal property prepared and approved in March 1992 by the then Czech government of Premier Petr Pithard, which provided for the return of specified properties needed by the Jewish communities to ensure their religious and cultural survival, did not come up for debate in parliament either before or after the elections.⁵ The new coalition government dominated by Premier Vaclav Klaus's Civic Democratic Party (ODS) simply ignored it until the debate on the highly controversial and divisive issue of church property restitution in general resurfaced in early 1993 and a separate Jewish property restitution bill was introduced by deputies of the Civic Democratic Alliance (ODA), one of the other three partners in the coalition government, in March 1993.⁶

Under this bill, 120 properties (synagogues, cemeteries, the Prague Jewish Museum, secular buildings and land) on a list drawn up by the FJCCR and a parliamentary committee were to be returned to Czech Jewry as an act of justice and reconciliation. However, the bill, which for the first time questioned the official cut-off date by envisaging the return of property confiscated from Jewish religious communities before 25 February 1948, became the subject of heated debate. It divided politicians and political parties in the country, with Premier Klaus and his ODS and some other

⁵ *Jewish Telegraphic Agency (JTA) Daily News Bulletin*, no. 171, 10 September 1993; *Jewish Chronicle*, 17 September 1993.

⁶ See Jan Obrman and Pavel Mates, 'Czech Republic debates return of church property', *Radio Free Europe/Radio Liberty (RFE/RL) Research Reports*, vol. 2, no. 19, 7 May 1993.

politicians, fearing that this would open the Pandora's Box of the German Sudeten issue, lining up against it, and President Havel backing it. The bill was debated by the cabinet in May 1993 and rejected in that summer. The view, particularly strongly represented by Klaus's ODS, prevailed that Jewish property should not be the subject of a separate law but should be included in a comprehensive law on easing some property wrongdoings against all churches, which would wind up the restitution process in the Czech Republic. At the same time President Havel continued to throw his full weight behind a separate law to regulate the return of property confiscated from Jewish communities by the Nazis and never returned to them.⁷ The opposition Social Democrats, in an attempt to avoid breaking the official cut-off date, even proposed that the state should sell the properties to the FJCCR for a symbolic prize of one Crown. This idea, that 'something which had been stolen twice, once by the Nazis and the second time by the Communists, should be sold by the democratic state to those from whom it had been stolen', was found unacceptable by President Havel and rejected out of hand by FJCCR General Secretary, Tomas Kraus.⁸

On 27 October 1993 a redrafted text of the bill on the 'Regulation of Some Property Relations of the Federation of Jewish Communities in the Czech Republic and in Mitigation of Some Property Injuries Committed Against Jewish Individuals', signed by ODA deputy Viktor Dobal and twenty-eight other deputies mostly from the ODA, was tabled before parliament. The bill aimed at redressing property wrongs which had been committed against both Jewish natural and legal persons during the Second World War but not redressed before the Communist putsch of February 1948. The bill provided for the return to the FJCCR of 202 properties and the buildings and collections of the State Jewish Museum, and for the mitigation of some property injuries committed against Jewish individuals as a result of 'racial and political persecution in the years 1938-1945'. The 202 properties, listed in an appendix to the bill, are a compromise on the extent of restitution and represent a balanced minimum: 75 per cent of them are synagogues and cemeteries in a poor state of repair (excluding real estate or synagogue buildings currently owned by churches, non-governmental organizations or private persons), the value of which lies more in the documentation of the Jewish past in the Czech Lands, and some 20 per cent are residential buildings—seats of former and present Jewish communities, their social and cultural institutions and a few commercially useful buildings needed to provide the main financial support for the Jewish communities. The bill envisaged compensation for those who had invested in the property (e.g. municipalities which reportedly did so to the tune of some 10 million Crowns).⁹

Consideration of the bill by parliamentary committees began in late November 1993, with the budgetary committee examining its implications for the state budget and the compensation issue, and was resumed after the deputies received the government's standpoint on the bill. The bill, in a form substantially changed by amendments proposed by the government, gained the cabinet's approval on 13 January 1994 only

7 *RFE/RL News Briefs*, 13-17 September 1993; *CTK Daily News and Press Survey*, 1 December 1993.

8 *CTK* in English, 9 March 1993, BBC, *SWB*, EE/1634, 11 March 1993; *Süddeutsche Zeitung*, 11 March 1993; *Frankfurter Allgemeine Zeitung*, 24 June 1993; Czech Radio, *Radiozurnal*, Prague, 12 September, BBC, *SWB*, EE/1794, 15 September 1993.

9 *CTK* news agency, Prague, 1 November 1993, BBC, *SWB*, EE/1834, 1 November 1993.

when Interior Minister Ruml broke ODS party discipline and voted for its endorsement. While proposing only formal amendments to the parts of the draft relating to private property, the government-proposed amendments relating to property to be returned to the FJCCR rendered the bill meaningless. Under the government amendments only originally Jewish properties now owned by the state were to be returned to the Jewish communities, while of the properties currently owned by local authorities, restitution through expropriation was to apply only to functioning synagogues, prayer houses and cemeteries. Since some 80 per cent of the 202 properties were transferred by the state to local authorities in April 1991, this amendment would have made the return of properties now owned by local authorities dependent on their good will and reduced the number of recovered properties to eighteen synagogues and cemeteries currently in use.¹⁰

The bill was put to the vote in the Chamber of Deputies on 18 February as parliamentary bill no. 826 in the wording proposed by the 'Joint Report of the Parliamentary Committees on the Proposal of Deputy V. Dobal and Others . . .'. The government proposal was, however, reintroduced by an ODS deputy and passed with the support of deputies of the opposition Left Bloc¹¹ and the Czech Social Democrats. Under the amended bill, Jews would have received financial compensation from the state for confiscated property not returned by local authorities but not the property itself. The deputies of the three remaining governing coalition parties and the opposition Liberal National Social Party (LSNS) refused to vote on the bill as amended on the grounds that it had lost its original purpose of a blanket restitution and was ethically wrong, and left the chamber in protest. Though parliament proceeded to vote on the amended bill, the walk-out made it impossible for the legislation to be approved, as the number of deputies present fell short of the required quorum.¹²

The FJCCR protested bitterly against parliament's failure to pass the legislation, appraising it as 'proof of what in practice drives most of its members—narrow political and party interests'—and blamed primarily the deputies of Prime Minister Klaus's ODS, who had introduced the unacceptable amendments and 'arrogantly prevented the dignified closure of one sad chapter in our history', for wrecking the bill.¹³

Indeed, the showdown in parliament between the governing coalition parties concerned the Jewish property restitution bill only to the extent that it was seen as a test case for the far more controversial issue of property restitution to the Catholic Church. The Catholic Church lays claim to far more property, including huge tracts of land and hundreds of buildings, than other religious communities. The governing coalition parties have long been locked in a dispute over the extent of that restitution. The ODS of Premier Klaus, which does not wish to allow the Catholic Church to become a big landowner in Bohemia and Moravia and is strengthened in its stand by the anti-clerical currents of the population, wishes to give back as little as possible—in fact, only what it believes the church needs to fulfil its religious functions—and sees restitution as

10 Czech TV1, 13 January 1994, BBC, *SWB*, EE/1897, 17 January 1994.

11 Left Bloc, a coalition of the Communist Party of Bohemia and Moravia and the Democratic Left.

12 Czech Radio-Radiozurnal, Prague, 18 February 1994, BBC, *SWB*, EE/1927, 21 February 1994.

13 Czech Radio-Radiozurnal, Prague, 21 February 1994, BBC, *SWB*, EE/1930, 24 February 1994; *The Prague Post*, 23 February-1 March 1994.

possible only with the agreement of municipalities to which the state transferred all former church assets in 1991.

Thus, in proposing the amendment to exclude local authorities from the obligation of returning Jewish property, the ODS sought to prevent creating a precedent for other legal persons to claim full restitution. The other three coalition parties, particularly the Christian Democratic Party (KDS) and the Christian Democratic Union—Czechoslovak People's Party (KDU-CSL), which support the return of all property that was taken from the church, and the ODA, whose position is close to that of the Christian-oriented parties, staged the walk-out to prevent setting a precedent for adopting a law that would have a negative impact on church property restitution claims.

The search for a solution

President Havel, a strong supporter of Jewish property restitution, spoke of his outrage at what had happened in parliament and, in a broadside at the Klaus government, described what he saw as the dragging out of the return of Jewish property as 'undignified and starting to be insulting'. He found the legal and economic arguments, as well as those based on fear of creating precedents, insufficient reasons for postponing the resolution of the matter once again, doubted whether these arguments would be seen as legitimate by the international community and expressed alarm at the harm done to the reputation of the Czech Republic abroad.¹⁴

In his efforts to find a solution, on 2 March 1994 President Havel held talks with deputies from the four coalition parties and two opposition deputies. A consensus was reached that Jewish property restitution should be resolved through legislation and not through goodwill or an administrative act—as promised by Premier Klaus at a meeting with Jewish leaders on 22 February 1994 (see below)—and that the issue should be resolved in two laws. One law would deal with restitution of the property of natural persons, by passing amendments to the existing Law no. 87 on Extra-judicial Rehabilitation and Law no. 229/1991 on the Regulation of Ownership Relations to Land and Other Agricultural Property. The second law would address the more complicated issue of restitution of property of Jewish communities.¹⁵

In his regular weekly radio interview, 'Conversations from Lany', of 6 March 1994, which was unusual in that the Archbishop of Prague and Primate of Bohemia, Miroslav Vlk, participated in it and presented the position of the Catholic Church on the Jewish property restitution issue, Havel reiterated his negative view of the exemption of local authorities from the obligation to return Jewish property and suggested that this property should be bought by the state compulsorily and returned to the Jewish community.¹⁶ Archbishop Vlk gave the backing of the Catholic Church to demands for the return of pre-war Jewish property and pledged that the church would not ask for the return of property confiscated before the official cut-off date (i.e. property which fell victim to Benes's land reform), but was not explicit on the issue of church property held by municipalities:

14 BBC, *SWB*, EE/1928, 22 February 1994.

15 Czech TV1, Prague, 2 March 1994, BBC, *SWB*, EE/1938, 5 March 1994.

16 Czech Radio-Radiozurnal, Prague, 6 March 1994, BBC, *SWB*, EE/1941, 9 March 1994.

Our views are very close to those of the president, if not simply identical. Right from the beginning, even before the decision to discuss Jewish property separately was passed, we were backing the Jewish community on the issue of returning the property to them. I can recall a meeting in the archbishop's palace, where we clearly stated that we would not derive any consequences from the fact that the cut-off date [for restitution in general], 25 February 1948, should be ignored and that we would not understand it as a precedent and would not ask for the return of the property by going beyond this date. . . . Afterwards, the debate on Jewish property became separated from other restitutions and I think this was correct, because at issue here is not only a religious community, but also an ethnic group. Thus from the legal point of view this entire problem is slightly different, for it has more dimensions. Our feelings are focused above all on the issue of law and justice and on a moral duty stemming from the fact that huge numbers of Jews were sent to the gas chambers while we in effect did nothing or could do nothing to prevent it. I therefore think that the ethical and moral viewpoint is important, so that this injustice and the suffering that took place can be put right.

We do not view this issue only as a useful precedent and we are not backing it as a precedent we could make use of for possible restitutions of church property. Our approach to this issue is based first and foremost on the moral viewpoint.¹⁷

As for Premier Klaus and the ODS he leads, they are obviously not prepared to do anything which might be seen by the electorate as yielding on the issue of the extent of church property restitution (elections are not too far off).¹⁸ On the other hand, the republic's and the premier's own reputations abroad cannot be ignored, so gestures of good will are being made. On 22 February Premier Klaus met with the Chief Rabbi of Prague, Karol Sidon, and the FJCCR Secretary-General and Chairman, Thomas Klaus and Jiri Danicek respectively, to explain the ODS's stance. While not budging an inch from his position on the municipalities issue and saying the government would not submit a new law, he promised that state-held Jewish property would be returned by a government order or some other act and that he would plead with municipalities to return the Jewish property that had been transferred to them. A further meeting with Jewish leaders to resolve any remaining problems not satisfactorily concluded by then was scheduled for 29 March.¹⁹

In the meantime, on 23 March, the government rejected a draft law on Jewish property restitution prepared on Premier Klaus's instructions by Justice Minister Jiri Novak. The draft, which would have pushed back the cut-off date for restitution claims, was described by Premier Klaus as 'very dangerous, unexpected and badly thought out' as it 'implied a complete change in the approach to restitution thus far based on the immutable limit of 1948' and he questioned whether 'this problem can be defined and resolved legally'. Frustrated and disillusioned, the FJCCR reacted bitterly and accused the government of doing everything possible to prevent the return of Jewish property.²⁰

17 Ibid.

18 A public opinion survey carried out in November 1993 by the Institute for Public Opinion Polls on a sample of 800 people showed that almost two-thirds, or 64 per cent, of Czech citizens opposed and only 29 per cent favoured further restitution of property to the Catholic Church. The November survey confirmed similar earlier surveys carried out in 1993. The survey also showed that 50 per cent were against and 34 per cent for restitution of property to religious societies. Restitution of Jewish property had relatively the least opponents—47 per cent against and 37 per cent for, *Mlada fronta Dnes*, 27 November 1993.

19 *RFE/RL News Briefs*, 21-25 February 1994; Czech Radio-Radiozurnal, Prague, 22 February 1994, BBC, *SWB*, EE/1930, 24 February 1994; *JTA*, no. 39, 1 March 1994; *Jewish Chronicle*, 4 March 1994.

20 *Reuter*, 24 March 1994; CTK news agency, Prague, 23 March 1994, BBC, *SWB*, EE/1958, 29 March 1994.

At the pre-scheduled 29 March meeting between Premier Klaus and Jewish leaders, the gradual return of former property of Jewish communities was agreed. According to FJCCR Chairman Jiri Danicek, roughly half the municipalities currently owning Jewish property had by then expressed willingness to return it, while in one case (in Prague) such property had already been returned. Agreement was also reached on the return in the near future of the holdings and buildings of the State Jewish Museum in Prague. A final decision regarding transfer of state-held Jewish property to the FJCCR was approved by the Czech cabinet on 25 May 1994.²¹

As regards restitution of property to Jewish natural persons, at the 29 March meeting Klaus promised that such restitution would probably be resolved by law, though it was not yet clear whether at its April session parliament would discuss a deputies' draft amendment of the restitution law aimed at solving this problem or a government variant of the relevant law.²²

The FJCCR regarded the deputies' proposal (resubmitting the sections on property of natural persons which formed part of the wider bill that parliament had failed to pass on 18 February 1994) as 'essentially good'. However, Premier Klaus found it unsatisfactory and the government prepared its own bill, which Premier Klaus signed and sent to the Chamber of Deputies on 13 April. The government bill proposed to amend only the Law on Extra-judicial Rehabilitation but not the linked law on land restitution. Under the bill, Jews were to get back only property currently owned by the state but not property currently owned by local authorities or already privatized. The state was to give financial compensation for property that would not be returned. For Premier Klaus this was a reasonable compromise solution that would not be detrimental to ownership relations.

In reaction to the government's bill, a petition was organized by a pro-Jewish group in Prague's Wenceslas Square on 27 April in support of the return of Jewish property. The petition expressed disagreement with the state's being the only organ obliged to hand over property to Jewish communities or individuals, rejected the amended government-proposed version of the bill and called for the original deputies' bill to be passed.²³

The Law on Extra-judicial Rehabilitation as amended

On 29 April 1994 parliament passed the deputies' bill submitted by ODA deputy Viktor Dobal, which amended the 1991 restitution Law on Extra-judicial Rehabilitation. An amendment to the land restitution law (agricultural land and forests), also submitted by Dobal, was debated but not then put to the vote. It was put to the vote on 9 July 1994 but not passed.

The law as amended (see Appendix) enables property to be returned to Jewish natural persons or their heirs who are Czech citizens permanently residing in the country. It preserves the principle of Czech restitution laws and takes into account the process of privatization by providing for financial compensation of owners whose property was privatized after 1991. The law specifies more precisely those eligible for

21 Czech Radio-Radiozurnal, Prague, 25 May 1994, BBC, SWB, EE/2007, 27 May 1994.

22 CTK news agency, Prague, 29 March 1994, BBC, SWB, EE/1960, 31 March 1994.

23 CTK news agency, Prague, 27 April, BBC, SWB, EE/1984, 29 April 1994.

restitution or compensation primarily by reference to two laws from the post-war democratic government of President Benes (1945-48). The first is Presidential Decree no. 4/1945 Coll. of 19 May 1945 which declares that 'any property transfers or dealings which were concluded after 29 September 1938 under the pressure of occupation or national, racial or political persecution, are hereby invalid'.²⁴ The second law is Government Act no. 128/1946 which places a moratorium on claims for restitution for a period of three years. As a result of the Communist putsch of 1948 the government's initial intention of returning such property to former owners or their heirs could not be realized. The new amendment stipulates that persons who would have been entitled to make claims under these laws, as well as their heirs, are now entitled to do so.

However, a number of other conditions must be met for a claim to be valid. In particular, the amendment states that all claims remain subject to Article 6 of the Law on Extra-judicial Rehabilitation, which details the circumstances under which property was transferred to the state between 25 February 1948 and 1 January 1990, and which are now deemed to justify the restitution of that property. Thus the property may have been abandoned because the owner emigrated or died intestate, appropriated without compensation or without compensation having been determined, or nationalized in contravention of the law then in force.

Most controversial is the condition which makes a valid claim dependent on the property having been transferred from the claimant's ownership for reasons of 'racial persecution'—a last-minute amendment introduced by an ODS deputy and passed with seventy deputies against. This change considerably narrows the conditions laid down in the post-war restitution laws, which provided for restitution of property that had been transferred under the pressure of national or political as well as racial persecution. Disagreement within the government coalition over this formulation was the main reason why the passage of the amendment was delayed for several months.²⁵

Return of the property is the primary form of restitution. If it is not possible for the original property to be returned to its rightful owner, financial compensation may be granted. Under the amended law all municipalities holding property originally belonging to Jewish individuals are compelled to return it. Properties acquired *bona fide* by a person other than the state after 1 October 1991 and properties included in an approved privatization project or earmarked by the government for privatization are not subject to restitution.

The period within which claims must be filed is six months from the date on which the amended law comes into effect, which is 1 July 1994. If a claim for restitution has not been met within thirty days from the date on which it was filed, an application may be made to pursue the claim in court, by 1 July 1995 at the latest.

The law, which was handed to the presidential office on 5 May, was signed by President Havel on 19 May 1994 after his meeting with the chairman and deputy chairmen of the Chamber of Deputies.²⁶

24 'Any property transfers or dealings' essentially meant all transfers imposed on Jewish owners by way of individual decrees during the occupation or transfers by the owners themselves to another person caused by fear that Jewish property would be seized by the Germans.

25 CTK news agency, Prague, 29 April 1994, BBC, SWB, EE/1986, 2 May 1994; RFE/RL Daily Report, no. 83, 2 May 1994; JTA Daily News Bulletin, no. 84, 6 May 1994; Jewish Chronicle, 20 May 1994.

26 CTK news agency, Prague, 20 May 1994, BBC, SWB, EE/2003, 21 May 1994.

Ruling of the Constitutional Court

Fifty-three deputies, mainly from the coalition government, who voted against the changed provision, which made restitution conditional on the ownership title having been transferred for reasons of 'racial persecution' only, found it unjust that only property taken by the German occupier from Jews because of racial persecution but not property taken from others for national or political reasons would be returned under the amended law. They lodged a complaint with the Czech Constitutional Court challenging the constitutionality of this provision, which, they said, contravened the Charter of Fundamental Human Rights and Freedoms (part of Czech constitutional law), as well as international human rights conventions to which the Czech Republic is a party.

The deputies also challenged the controversial provision of the federal law on Extra-judicial Rehabilitation, which made the right to restitution conditional on the claimant's having permanent residence in the Czech Republic.

A further reservation concerned the six-month deadline (April-October 1991) laid down in Article 5, paragraph 2 of the Law (see Appendix) for raising a restitution claim.

On 12 July 1994 the Constitutional Court, acting on the deputies' complaint, ruled that:

1) the eligibility condition of permanent residence in the country (laid down in Article 3, paragraphs 1 and 2 of the Law on Extra-judicial Rehabilitation) ignored the freedom of movement and residence embedded in the Charter of Fundamental Human Rights and Freedoms and granted by the Czech Constitution and thus contravened these documents;

2) the six-month deadline laid down in Article 5, paragraph 2 of the law for claimants to start action was "inappropriately short" and discriminated against citizens from abroad, mainly overseas,

and deleted the respective parts of these two articles.

The Court's ruling regarding the first complaint is pending.

The decision of the Constitutional Court will take effect as of 1 November 1994. There is no appeal against its decisions.

The Constitutional Court's ruling makes it possible for people with Czech citizenship, who have so far not met the former condition of permanent residence in the Czech Republic, to raise restitution claims.²⁷

Under the 29 December 1992 Law on the Acquisition and Loss of [Czech] Citizenship²⁸ persons who held Czechoslovak citizenship on 31 December 1992 and who were born on the territory of Bohemia, Moravia and Silesia are citizens of the Czech

27 CTK news agency, Prague, 3 May 1994, BBC, *SWB*, EE/1989, 5 May 1994; CTK news agency, Prague, 20 May 1994, BBC, *SWB*, EE/2003, 21 May 1994; CTK news agency, Prague, 12 July 1994, BBC, *SWB*, EE/2047, 14 July 1994; CTK news agency, Prague, 13 July 1994, BBC, *SWB*, EE/2049, 16 July 1994.

28 *Zákon České národní rady ze dne 29. prosince 1992 o nabytí a pozbytí státního občanství České republiky, Sbírka zákonů*, c. 40/1993 (Act of the Czech National Council of 29 December 1992 on the Acquisition and Loss of Citizenship of the Czech Republic, published in Collection of Acts, no. 40/1993).

Republic. The law is based on the principle of single nationality and those who acquire the citizenship of another state lose Czech citizenship. The law does provide for exceptions when dual citizenship can be acquired: those who already possessed Czechoslovakian citizenship plus citizenship of one foreign state may retain the latter.

Foreigners who apply for citizenship of the Czech Republic have to meet several conditions, to prove *inter alia*, that they have been released from another state's citizenship, have been resident on the territory of the Czech Republic for at least five years and know the Czech language.²⁹

29 Czech Radio, Prague, 29 December 1992, BBC, *SWB*, EE/1575, 31 December 1992.

APPENDIX

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ACT of 29 April 1994³⁰

Amending Act no. 87/1991 Coll. on Extra-judicial Rehabilitation
with subsequent amendments

Parliament has adopted the following Act of the Czech Republic:

Part I

Act no. 87/1991 Coll. on Extra-judicial Rehabilitation, as amended by Act no. 264/1992 Coll., Act no. 267/1992 Coll., and Act no. 133/1993 Coll. shall be amended as follows:

1. In Article 3, new Paragraphs 2 and 3 shall be added after Paragraph 1 to read as follows:

“(2) The entitled person shall also be a natural person who complies with the conditions set forth in paragraph 1 and who on the day the property [vec] was conveyed to the state pursuant to Article 6 had a title to it according to the Decree of the President of the Republic no. 5/1945 Coll. on the Invalidity of Certain Ownership Proceedings during the Period of Liberty Restriction and on the National Administration of Assets of Germans, Hungarians, Traitors and Collaborators and Certain Organizations and Institutions, or according to Act no. 128/1946 Coll., on the Invalidity of Certain Ownership Proceedings during the Period of Liberty Restriction, and on claims arising from this invalidity or other actions taken against such assets, provided that the transfer or conveyance of the ownership title that was declared invalid under these special regulations, were made for reasons of racial persecution, and that the claim has not been satisfied since 25 February 1948 for reasons set forth in Article 2, Paragraph 1 (c) of the Act.

(3) If more than one entitled person as specified in Paragraph 2 had existed on the day of the transfer or conveyance of the property to the state, the entitled person to the entire object shall be any one of them.”

The present Paragraphs 2 and 3 shall be renumbered as Paragraphs 4 and 5 respectively.

2. In Article 3, Paragraph 2, the words “prior to the expiration of the term set forth in Article 5, Paragraph 2, or if [the person] had been declared dead before the expiration of the term”, shall be replaced by the following words “or a person that had the title as set forth in Paragraph 2 to the property as set forth in Paragraph 2, prior to the expiration of the term within which [the person] could assert the claim for the delivery of the property, or, if [the person] had been declared dead as of the date immediately preceding the expiration of such term.”

3. In Article 13, Paragraph 6, the words “or 2” shall be inserted after the words “Paragraph 1”, and the words “Paragraph 2” shall be replaced by the words “Paragraph 4”.

30 *Sbirka zakonu* (Collection of Acts), no. 116/1994, issue 37, unofficial translation courtesy of Squire, Sanders & Dempsey, Counsellors at Law, Prague.

4. In Article 19, Paragraph 1, the words "or Paragraph 2" shall be inserted after the words "Paragraph 1", and the words "Paragraph 2" shall be replaced by the words "Paragraph 4".

Part II

1. Claims constituted by this Act in Article I may be asserted by the entitled persons within six months from the effective date of this Act, provided that the thirty-day term specified in Article 5, Paragraph 3 shall commence as of the date of the proposal's assertion.

2. The property may not be delivered if it was acquired by a person other than the state after 1 October 1991 or if a privatization project was approved with regard to such object or a decision issued on the privatization thereof.

3. The term of one year for the assertion of claims in court, as set forth in Article 5, Paragraphs 4 and 5 of the Act for cases specified in Point 1, shall commence as of the effective date of this Act.

4. The term of one year according to Article 13, Paragraph 3 of the Act for the assertion of a claim for financial compensation by the person entitled, pursuant to Part I of this Act, shall commence as of the effective date of this Act. The term of one year to assert by the entitled person, pursuant to Part I of this Act, the claim for financial compensation, shall remain unaffected thereby and shall commence as of the effective date of the court judgement by which the proposal for the delivery of the property was denied.

Part III

This Act shall come into force as of 1 July 1994.

* * *

Relevant Excerpts from Act no. 87/1991 on Extra-judicial Rehabilitation³¹

Article 2

(1) The relieving of consequences of proprietary and other injuries caused by civil and administrative law operations or by other illegal procedures which occurred during the period in question shall consist in delivery of the property or in financial compensation or in annulment of some administrative law operations, e.g. for considerations in the sphere of social security.

(c) if they are the consequence of political persecution or infringement of generally acknowledged human rights and freedoms.

Article 3

Entitled persons

(1) The entitled person shall be any natural person whose property has been transferred into the proprietorship of the state in cases set forth in Article 6 hereof, provided [that person] is a citizen of the Czech and Slovak Federative Republic and has a permanent residence on its territory.

(2) Where the person whose property had been transferred into the proprietorship of the state in cases set forth in Article 6 hereof died prior to the expiration of the term set forth in Article 5,

³¹ *Sbirka zakonu Ceske a Slovenske Federativni Republiky* (Collection of Acts of the Czech and Slovak Federative Republik), issue no. 19, 21 March 1991.

Paragraph 2 or was declared dead prior to the expiration of this term, the entitled persons shall be, provided they are citizens of the Czech and Slovak Federative Republic and have permanent residence on its territory, natural persons in the following succession:

Article 5

Delivery of the property

(2) The entitled person shall, within six months from the effective date of this Act, request the liable person to deliver the property, contrariwise [that person's] claim shall lapse.

(3) The liable person shall conclude an agreement on the delivery of the property with the entitled person and shall deliver to [that person] the property not later than thirty days after the expiration of the term under Paragraph 2 hereof. In case of immovable property this agreement shall be subject to registration by public notary who shall proceed in a similar way as in the case of registration of a contract on transfer of immovable property.

(4) If the liable person does not comply with the request under Paragraph 2 hereof, the entitled person may assert his claim in court within one year of the effective date of this Act.

(5) If the property has been delivered, the persons whose claims made within the term set forth in Paragraph 2 hereof were not met, may assert their claims in court against the persons to whom the property has been delivered, within one year of the effective date of this Act.

Article 6

(1) The obligation to deliver the property shall apply to those cases where the property has been transferred to the state during the period in question.

a) under Article 453a of the Civil Code or Article 287a of Act no. 87/1950 Coll, as amended by Act no. 67/1952 Coll.

b) on the basis of a proclamation and a contract on the cession of financial claims in case of emigration (the so-called proclamation of renunciation).

c) in cases where the citizen staying abroad has left his property behind on the territory of the Republic.

d) under a deed of gift of an immovable property concluded by the donator under stress [*v tismí*].

e) in an auction conducted in a shortened form for the purpose of payment of a state financial claim.

f) on the basis of a court's decision proclaiming invalid a contract on transfer of property under which a citizen transferred the property prior to his going abroad to another person if [that person's] leaving the Republic was the reason of its invalidity. In such a case, however, the entitled person shall be the transferee in accordance with the contract in question even where the contract did not come into effect.

g) on the basis of a contract of purchase concluded under stress under obviously disadvantageous conditions.

- h) on the basis of the waiver of inheritance made under stress during inheritance proceedings.
- i) due to expropriation against compensation, provided the property exists and has never been used for the purpose for which it was expropriated.
- j) due to expropriation without compensation.
- k) due to nationalization effected in contradiction of the then valid legal rules.

(2) The obligation to deliver the property shall apply also to other cases not specified in Paragraph 1 hereof which fall under the provisions of Article 2, Paragraph 1, Letter c of this Act, as well as to any cases where the state has acquired the property without legal reasons.

Article 13

(3) The written application for a financial compensation shall be lodged with the appropriate central authority of the state administration of the Republic not later than one year of the effective date of this Act or one year of the date of the effective date of the court judgement by which the proposal for the delivery of the property had been rejected.

(6) If the entitled person under Article 6, Paragraph 1 hereof does not exist the financial compensation shall be paid to the entitled person under Article 3, Paragraph 2 hereof, but only in securities which do not have the character of state obligations.

Part III

Sphere of Criminal Law Relations

Article 19

(1) The entitled persons shall be persons rehabilitated in accordance with Act no. 119/1990 Coll, if they comply with the conditions under Article 3, Paragraph 1 of this Act and, where they died or were declared dead, persons under Article 3, Paragraph 2 of this Act.