

# OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – BELARUS (AS OF 13 DECEMBER 2016)

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### A. OVERVIEW

On 22 June 1941, Germany invaded the western territory of the Soviet Union in violation of the August 1939 Molotov-Ribbentrop Pact, a non-aggression pact between the two countries. As one of the first Soviet Socialist Republics (SSR) to be invaded, Belarus sustained substantial property damage and human losses. Belarus was at the heart of what had been called the “Pale of Settlement” – a major center of Jewish life in Eastern Europe, the largest part of which stretched from areas now within Poland, Lithuania, and Ukraine. During the War, the western part of Belarus came under civilian administration (subordinate to the Reichskommissariat Ostland) and the eastern part came under military occupation.

According to the national census, the Jewish population of Belarus in 1939 was **375,092**. Following the annexation of western Belarus after the Molotov-Ribbentrop Pact, the Jewish population of Belarus nearly tripled. By June 1941 when the Nazis invaded **670,000** Jews lived in western Belarus and **405,000** in eastern Belarus. No less than 800,000 died at the hands of the Nazis in occupied Belarus, which was among the highest percentage in Europe (80-90 percent of Jews in Belarus died during the war). (Per Anders Rudling, “The Invisible Genocide: The Holocaust in Belarus” in Postcommunist Ukraine” in *Bringing the Dark Past into Light: The Reception of the Holocaust in Postcommunist Europe* (2013), p. 60 (“Rudling”); see also [Leonid Smilovitsky, “A Demographic Profile of the Jews in Belorussia, 1939-1959”, \*Journal of Genocide Research\* 2003, 5\(1\), 117-129.](#)) In addition to the civilian Jewish population, researchers estimate at least **110,000** Belarusian Jews were drafted or volunteered into the Red Army, of whom **48,000** died in combat.

Most Belorussian Jews were killed during the Nazi occupation between 1941 and in 1943.

Jews from Germany and other European countries were taken mainly to the Minsk Ghetto, one of the largest in Europe. A small number of Jews from Warsaw were also brought to the SS supply camp (so-called Waldlager Forest Camp in Bobyrusk).

Jewish homes and apartments vacated after the their owners were forcibly driven out – to the extent they were not wildly seized by non-Jewish neighbors beforehand – were supposed to be registered by local auxiliary administrative offices and were given or sold to the needy. Money and valuables went to the War Booty Office of the Reich’s Main Treasury at the Reichsbank (Reichshauptkasse Beutestelle). Clothes belonging to Jews were distributed to the local population.

The Minsk Ghetto, was liquidated in October 1943. Most Belarusian Jews were killed by Einsatzgruppen and other security forces such as order police battalions, Waffen SS and Wehrmacht units. The Soviet Extraordinary State Commission – which investigated war crimes in the Soviet Union – found that mass graves around the Trastianets camp contained ashes of between 206,500 and 546,000 victims from the camp. (*Rudling*, at p. 62.)

The 1939 census recorded **3,632** Roma in Soviet Belarus. The figure is speculative due to the nomadic life style of the Soviet Roma. Some researchers estimate **3,000** Roma victims of the Nazi genocide in Belarus. (See [Andrei Kotljarchuk, “World War II Memory Politics: Jewish, Polish and Roma Minorities of Belarus”, The Journal of Belarusian Studies, Volume 7, November 1, 2013, p 18.](#))

It was not just the Jews, Roma and other targeted groups in Belarus that suffered during the war. Out of 9.2 million inhabitants in the territory at the beginning of World War II, only 6.3 million were left at the end of 1945. (*Rudling*, at p. 61.)

As the Byelorussian Soviet Socialist Republic, Belarus was a party to the Paris Peace Treaties of 10 February 1947 ([Treaty of Peace with Bulgaria](#), [Treaty of Peace with Hungary](#), [Treaty of Peace with Finland](#), [Treaty of Peace with Italy](#), [Treaty of Peace with Romania](#)).

Belarus is not a member of the Council of Europe and has not ratified the European Convention on Human Rights.

Belarus endorsed the Terezin Declaration in 2009 but did not endorse the 2010 Guidelines and Best Practices.

As part of the European Shoah Legacy Institute’s Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. As of 13 December 2016, no response from Belarus has been received.

### **Private Property Restitution**

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II (“Terezin Best Practices”) for the purpose of restitution, is:

property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

To date, there are no laws in Belarus providing for restitution or compensation for immovable private property confiscated during World War II and the Holocaust on its territory.

In the aftermath of World War II, Belarus had been decimated. 1,200,000 buildings had been burned down (500,000 public buildings and 420,996 farmhouses), and as many as 70,000 public apartments and 391,000 private homes were destroyed, with remaining properties scarcely safe to live in. (See [Leonid Smilovitsky, “Struggle of Belorussian Jews for the Restitution of Possessions and Housing in the First Postwar Decade” \(first published in East European Jewish Affairs 2000, Vol. 30\(2\) and republished in JewishGen Belarus SIG Online Newsletter No. 8/2002\) \(“Smilovitsky”\).](#))

One historian described the dire Jewish situation in the Belarus Soviet Socialist Republic (BSSR) after the war in the following way:

The Jews did not regard themselves as different from the rest of the population. They took part in restoration work together with Belorussians and Russians. Yet, in actuality, their situation was different in many aspects. In most cases, they were lonely survivors: widows, children, elderly people, those whose relatives had been gunned down in ghettos, died under evacuation or killed in battle. Jews had nothing, not even the simplest things for housekeeping. They could not prove title to their former homes, as documents had been lost during the war. Shortage of housing, acute as it was before, had assumed terrifying proportions. Houses and apartments formerly owned by Jews had been either destroyed, burnt down or pillaged. Those remaining were occupied without proper authorization. In August 1944, Samuil Meltser, a Soviet Army officer, wrote to [famous Russian Jewish novelist and journalist] Ilya Ehrenburg that he had been to some town in Belarus’ Brest, Baranovichi and Bialystok [sic] regions immediately after liberation from the Nazis and had seen “very few” Jews there. What around his indignation was that even Jews who identified their possessions could not get them back from non-Jews.

(*Id.*) Academic research has revealed only a few cases in which real property owners or their legal successors who lost land under or as consequence of Nazi rule were able to reclaim immovable property in the immediate postwar period. (*See Id.*)

Nevertheless, real property then located in the western regions of the BSSR became subject to the **Resolution of the Council of People's Commissars of the BSSR No. 672 dated 10 May 1940 “On Municipalization and Nationalization of Constructions on the Territory of the West Regions of the BSSR” (“CPC Resolution No. 672”)**. **CPC Resolution No. 672** envisaged, *inter alia*, that all residential buildings with the aggregate usable space of 113 sq. m. and more as well as unpossessed housings and premises used for merchant purposes were subject to nationalization (municipalization). **CPC Resolution No. 672** did not provide for any compensation to the owners of municipalized real property.

In the post-Soviet Republic of Belarus, reclaiming real property confiscated under the **CPC Resolution No. 672** appears to be virtually impossible. According to **Paragraph 7 of Resolution of the Plenum of the Supreme Court of the Republic of Belarus No. 5 dated 4 June 1993 “On Practice of Adjudication of Disputes Related to the Private Property on Residential Buildings”** disputes resulting from nationalization and municipalization of real

property under **CPC Resolution No. 672** do not fall under the jurisdiction of the civil courts. The only exception relates to claims challenging the decisions of the local authorities, if such authorities refused to provide restitution of immovable property under the **Regulation on Restoration of Rights** (described below) and motivated their refusal by reference to **CPC Resolution No. 672**. Carving-out of disputes under **CPC Resolution No. 672** from the competence of the civil courts was also emphasized by the **Judicial Panel on Civil Matters of the Supreme Court of the Republic of Belarus** in its **Resolution dated 9 June 1994**, in which the Supreme Court considered the legality of municipalization by the local authorities in 1947 of a house whose owner was killed by the Nazis in 1944 (the house was officially registered as unpossessed notwithstanding that the relatives of the owner openly resided in it and *de facto* inherited the house) and validity of the court rulings upholding the relevant decision on municipalization.

One potentially applicable restitution law is the **Resolution of the Supreme Soviet of the Republic of Belarus No. 479-XII dated 21 December 1990 “On Enactment of the Regulation on the Procedure for Restoration of Rights of Citizens Affected by the Repressions in 1920s – 1980s”** (the “**Regulation on Restoration of Rights**”). However, **Paragraph 6** of the law provides that residential buildings and other constructions, which were nationalized (municipalized) or were subject to nationalization (municipalization) under legislation then in force as well as buildings and other property destroyed during the Great Patriotic War (World War II), are not subject to restitution (compensation). In other situations, not related to nationalization (municipalization) or destruction during the war period, the affected real property can be restituted *in rem*, unless the buildings and other constructions in question have been reconstructed or occupied by other persons (i.e., not the state), in which case compensation is limited to the value of the property lost. This applies only to persons persecuted on political, social, national, religious and other grounds during the period of Soviet repressions, and does *not* cover losses due to Nazi persecution during World War II.

This result is that court cases involving restitution of real property are very limited. Moreover, although competent authorities are cooperative in granting access to the local, regional and national archives, the research often only may be performed through examining hard copies of the documents on-site, and is further hampered by confidentiality measures relating to personal information.

In the absence of restitution legislation we do not have figures on the number of properties that may have been restituted outside a structured legal restitution regime for Holocaust Era confiscated property.

Since endorsing the Terezin Declaration in 2009, Belarus has not passed any laws dealing with restitution of private property.

## **Communal Property Restitution**

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution is:

property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

Belarus has no legislative regime for restitution of communal property.

The **Law of the Republic of Belarus No. 2054-XII dated 17 December 1992 “On Freedom of Conscience and Religious Organizations”** permits religious organizations to own property. **Article 30** of the law states that “[r]eligious organizations are entitled to have ownership rights on the property acquired or created by them for their own funds, donated by individuals or legal entities or transferred into ownership of the religious organizations by the state or acquired through other means not inconsistent with the legislation of the Republic of Belarus.” Transfer of property to religious organizations for religious purposes “is effectuated in accordance with the legislation of the Republic of Belarus.” (**Article 30.**)

Notwithstanding a religious community’s right to own property, the only potentially relevant legislation on restitution of communal real property, are laws which give the state the right to gratuitously transfer property to Jewish religious communities. This legislation is non-mandatory, meaning that the state is under no obligation to return religious immovable property to communities.

By way of example, on 10 April 2009, President Lukashenko issued a decree granting the title and possession of a local water pumping station to the Jewish Autonomous Religious Community of Mogilev City for the purposes of its reconstruction into a synagogue and a Jewish community centre. The complex itself used to serve as a community centre for the local Jewry before the revolution of 1917 and its subsequent nationalization.

A few other nationalized buildings, including nine (9) synagogues, have been returned, but the progress remains slow. As of 2014, approximately 96 formerly nationalized synagogues remain property of the state. In other cases, the former synagogues have lost their cultural monument status and have been demolished despite protests by the Jewish community. According to the **World Jewish Restitution Organization (WJRO)**, most of the synagogues and the Volozhin yeshiva that have been returned to the Jewish community are in a state of disrepair and are in need of restoration. (World Jewish Restitution Organization, “Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe”, June 2009, p. 6 (Belarus).)

There are 43 official Jewish community organizations in Belarus and 37 religious congregations. The umbrella organization is the [Union of Belarussian Jewish Organizations and Communities \(ABJOC\)](#). The community educational and religious activities are largely decentralized, and religious services are provided throughout Belarus by several independent organizations, such as Chabad Lubavitch, Aish HaTorah, the World Union for Progressive Judaism, and the Union of Religious Jewish Congregations (URJC).

Since endorsing the Terezin Declaration in 2009, Belarus has not passed any laws dealing with restitution of communal property.

### **Heirless Property Restitution**

The Terezin Declaration states “that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.” (Terezin Declaration, Immovable (Real) Property, para. 3). The Terezin Best Practices also “encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators.” Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

Where there are no heirs to property as defined by law, the property is deemed heirless, and its ownership passes to the state.

Since endorsing the Terezin Declaration in 2009, Belarus has not passed any laws dealing with restitution of heirless property.

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