

OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – CZECH REPUBLIC (AS OF 13 DECEMBER 2016)

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A. EXECUTIVE SUMMARY

During World War II, Nazi Germany occupied the territory comprising the modern day Czech Republic (previously part of the independent country of Czechoslovakia), creating the Protectorate of Moravia and Bohemia. All Jews in the Protectorate became subject to German jurisdiction and anti-Jewish laws, including German laws on expropriation of Jewish property. Immediately after World War II, Czechoslovakia (restored following German surrender) enacted **Decree No. 5/1945** and **Act No. 128/1946**, which provided that all property transfers occurring under pressure of Nazi occupation between 1939 and 1945 were invalid. In 1948, Czechoslovakia fell under the influence of Soviet Communism and restitution efforts stopped for the next forty years. Czechoslovakia peacefully dissolved in 1989 in the so-called “Velvet Revolution”. In its place two independent states emerged: the Czech Republic and the Republic of Slovakia.

In the post-Communist period, the Czech Republic has legislated in the area of private and communal property restitution, albeit with some key limitations that have impacted both the amount of property that has been returned and who may claim property. While not explicitly enacting special laws for heirless property (which reverts to the state), the Czech Republic has set up an Endowment Fund whose mission includes care for Holocaust survivors.

Prior to May 1945, up to 80,000 Jews and up to 68,000 other Czechoslovak citizens (including executed members of the Czech intelligentsia, Roma, non-Jewish and non-Roma concentration camp inmates, forced laborers, participants in the May uprising, etc.) were killed in the area known today as the Czech Republic. Today, approximately 3,900 Jews live in the Czech Republic. According to the 2011 census, the Roma population in the Czech Republic numbers approximately 13,000, but others estimate the number to be upwards of 250,000 (most of which immigrated to Czech lands after the war from Slovakia, Hungary and the Balkans).

Private Property. Claims by some foreign citizens relating to war damages and nationalization were settled during the Communist period through at least three-dozen bilateral or lump-sum settlement agreements between Czechoslovakia and various countries. The next round of private property restitution laws for Czech citizens was not enacted until after the Velvet Revolution in 1989. **Act No. 87/1991** (and amendments), **Act No. 229/1991** (and amendments) and **Act No. 234/1992** related to restitution of property (buildings, land, agricultural property) occurring during various time periods between the beginning of the Nazi occupation (1939) and the Velvet Revolution (1989). For these laws, both compensation and restitution were available. However, claimants electing restitution where the property had appreciated in value were obligated to pay the current owner the difference between the original and the current value. Up until 1994, all successful claimants had to be both Czech citizens and Czech residents. In 1994, the Constitutional Court abolished the Czech residency requirement, but the citizenship requirement remained. Many would-be claimants were excluded on citizenship grounds because they had been forced to give up Czech citizenship by the Czechoslovak Communist regime when emigrating from Czechoslovakia or the Czech Republic to certain foreign countries (e.g., United States, Israel).

In 2001, the Czech government set up the **Endowment Fund for Holocaust Victims (“Endowment Fund”)**. One-third of the Fund’s initial CZK 300 million went to providing symbolic compensation for people who had been unable to make claims under **Act No. 234/1992** (because of the restrictive citizenship requirement) and did not otherwise fall within other restitution legislation or lump-sum agreements. In 2003, the CZK 100 million was divided between 516 successful applicants.

Communal Property. Restitution of Czech communal property has occurred in a number of phases. Initially, after the Velvet Revolution, religious organizations relied upon general restitution laws to seek return of their property. A second wave of state-owned communal property was returned between the mid-to-late 1990s pursuant to executive transfers (i.e., the gift or donation by the state or municipalities). By 1997, less than one-half of the properties sought by the Jewish community had been returned. In the late 1990s, there was growing public belief that executive transfers were insufficient and that communal property legislation needed to be enacted. A **Joint Commission for Mitigating Some of the Injustice Caused to Holocaust Victims**, composed of government officials and members of Jewish organizations, helped enact **Act No. 212/2000**. This was the Czech Republic’s first Holocaust-era confiscated communal property law. The law only obligated the return of state-owned property. Municipalities were asked to voluntarily return property – without great effect. The only law to have been passed since the Czech Republic’s signing of the Terezin Declaration in 2009 is **Act No. 428/2012**, which chiefly relates to compensation to church and religious organizations for communal assets expropriated *after* 1948, but also included property which was not restituted between 1945 and 1948, pursuant to **Act No. 5/1945**.

Heirless Property. The often wholesale extermination of families in Czechoslovakia during the Holocaust had the effect of leaving substantial property without heirs to claim it. Principles enshrined in international covenants such as the 2009 Terezin Declaration,

2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property from victims of the Holocaust should not revert to the state but instead should be primarily used to provide for the material needs of Holocaust survivors most in need of assistance. Instead of using heirless property to create a rehabilitation fund for victims of racial persecution, in 1947 the Czechoslovak government used the heirless property to fund its **Currency Liquidation Fund**. The fund facilitated currency reform and reimbursed those whose accounts were blocked after Czechoslovakia was liberated. This meant that all property without heirs and owners passed to the state and Czechoslovak Jews were not promised access to any money from the fund.

While there are no special laws addressing **heirless property** of Holocaust victims in the Czech Republic, according to the previous Czech Special Envoy for Holocaust issues, over the last 20 years, the Czech state has acknowledged and acted upon a duty to provide care for its survivors, the effect of which is similar to principles underpinning the use of heirless property funds for the benefit of Holocaust survivors. The 2001 **Endowment Fund** is perhaps the best example of the Czech Republic's continued efforts to care for survivors. Two-thirds of the **Endowment Fund's** CZK 300 million (as well as an additional CZK 100 million added in 2015) was meant as a symbolic monetary acknowledgement for property that could not otherwise be physically returned. It has been used to mitigate property injustices suffered by Holocaust victims, for social and health care, for renovation and preservation of Jewish monuments, and for other special projects.

The Czech Republic endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

The Czech Republic is one of a handful of countries with a government office dedicated to Jewish Diaspora or Post-Holocaust issues. As of 2015, Ambassador Antonín Hradílek is the Czech Republic's Special Envoy for Holocaust Issues and Combat of Antisemitism. His predecessor was Ambassador Jiri Šitler.

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. Ambassador Jiri Šitler, the former Czech Republic Special Envoy for Holocaust Issues and Combat of Antisemitism, reviewed earlier drafts of this report and provided valuable comments.

B. POST-WAR ARMISTICES, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY

At the outbreak of WWII, the modern day Czech Republic was part of the country of Czechoslovakia. In 1938, the border regions of the Czechoslovak Republic were annexed by Germany in an exchange for peace in the Munich Pact between the leaders of Britain,

France, Italy and Germany. In violation of the Munich Pact, the rest of the territory comprising the current Czech Republic was later invaded and made into the Protectorate of Bohemia and Moravia of Nazi Germany. This occupation would last until 1945. The remainder of the then Czechoslovak territory became the autonomous state of Slovakia, an ally of Nazi Germany.

Prior to May 1945, at least **73,000** Jews were killed, as well as **6,000** Roma, and **45,000** others (including executed members of the Czech intelligentsia, non-Jewish and non-Roma concentration camp inmates, forced laborers, participants in the May uprising, etc.) Today, approximately **3,900 Jews** live in the Czech Republic. According to the 2011 census, approximately **13,000** Roma live in the Czech Republic, but other estimates put the population at over 250,000 (most of which immigrated to Czech lands after the war from Slovakia, Hungary and the Balkans).

1. Claims Settlement with other Countries

According to the previous Czech Special Envoy for Holocaust issues and Combat of Antisemitism, Jiri Šitler (“Czech Special Envoy”), during the period between the late 1940s and 1980s, Czechoslovakia entered into roughly three-dozen claims settlement agreements. Each agreement had unique terms. Some agreements determined compensation based upon the citizenship of the claimant at the time of the *taking* and others considered the claimant’s citizenship at the time of the *signing* of the agreement. These settlement agreements are, as best as we are aware, claims settlements reached with:

- **United Kingdom** on 1 November 1945, 28 September 1949, 22 October 1956 and 29 January 1982
- **Switzerland** on 18 December 1946, 29 December 1947, 25 August 1948, 22 December 1949 and 29 January 1982
- **Italy** on 27 July 1966
- **Germany** on 27 August 1947
- **France** on 2 June 1950
- **Belgium and Luxembourg** on 30 September 1952
- **Norway** on 9 June 1954
- **Yugoslavia** on 11 February 1956
- **Sweden** on 22 December 1956
- **Poland** on 29 March 1958
- **Soviet Union** on 30 June 1958
- **Denmark** on 23 December 1958
- **Netherlands** on 11 June 1964
- **Canada** on 18 April 1973
- **Austria** on 19 December 1974
- **United States** on 29 January 1982

(See also Richard B. Lillich and Burns H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (1975); Richard B. Lillich and Burns H Weston, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995* (1999).)

2. Specific Claims Settlements Between Czechoslovakia and Other Countries

a. Claims Settlement with the United States

Following the war, in 1954 the United States enacted the **International Claims Settlement Act of 1949**. This authorized the **Foreign Claims Settlement Commission (“FCSC”)** to consider claims of nationals of the United States against the government of Czechoslovakia for property nationalized after the Communist revolution.

In 1962, the **First Czechoslovakia Claims Program** was completed with awards totaling approximately USD 113 million for 2,630 claims. USD 8.5 million in blocked Czechoslovakian assets was initially used in partial payment for the awards.

It was not until the **Czechoslovakia Claims Settlement Act of 1981** that Czechoslovakia paid the United States an additional USD 81.5 million. USD 74.5 million was designated for payment on previous claims, an additional USD 5.4 million was designated for previously denied claims due to the claimant not being a U.S. national at the time of property loss, and a final USD 1.5 million was designated for claims where the property loss occurred after 8 August 1958. The **Second Czechoslovakia Claims Program** was completed on 24 February 1985. In the end, by 1985 successful claimants from the **First Czechoslovakia Claims Program** were paid approximately 73% of the principal of the awards.

For more information on the **First and Second Czechoslovakia Claims Program**, the **FCSC** maintains statistics and primary documents on its [Czechoslovakia: Program Overview](#) webpage (last accessed 13 December 2016).

We do not have more detailed information for the lump-sum agreements with other countries relating to the restitution/compensation of immovable property taken during the Holocaust (Shoah) era.

C. RESTITUTION OF PRIVATE PROPERTY

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.)

Once the Czechoslovakian Provinces of Bohemia and Moravia became a protectorate of Nazi Germany in 1939, Jews in the region became subject to property confiscations. (See [Robert Hochstein, Jewish Property Restitution in the Czech Republic, 19 B.C. Int'l & Comp. L. Rev. 2, 423, 427 \(1996\) \(“Hochstein”\).](#))

However, determining what precise combination of laws applied to property confiscation differed by region. In the border regions ceded to Germany in the Munich Pact, German laws were applied directly (German inhabitants were expelled to Germany after the war) and in the Protectorate, a combination of German and Czech laws applied.

In the immediate aftermath of the war, some property was returned (*see e.g.*, **Decree No. 5/1945**) some property was *not* returned to its original owner (*see e.g.*, **Decree No. 12/1945**), and some property was nationalized (*see e.g.*, **Decree Nos. 100-103/1945**).

1. **Decree No. 5/1945 and Act No. 128/1946**

Immediately following the end of World War II, the Czechoslovak government passed **Decree No. 5/1945 (concerning the Invalidity of Transactions involving Property Rights from the Time of the Oppression and Concerning the National Administration of Property Assets of Germans, Magyars, Traitors and Collaborationists and of Certain Organizations and Associations)**. It was the first post-war property restitution law in Czechoslovakia. The Decree stipulated “every transfer of property and every transaction in respect of property rights, whether concerning movable or immovable property is invalid insofar as it was executed under pressure from the occupying forces or as a result of persecution on grounds of nationality, race or political affiliation.”

The Decree applied, but not exclusively, to property taken from Jews. The law also reserved the government’s right to limit the amount of restitution on a case-by-case basis. (Eduard Kubů and Jan Kuklík, “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* (Martin Dean, Constantin Goschler and Philipp Ther, eds. 2007) (“*Kubů & Kuklík*”), p. 224.)

The Provisional National Assembly of the Czechoslovak Republic also passed [Act No. 128/1946 \(on the invalidity of certain property-related legal acts taken in the period of non-freedom and on claims arising from such invalidity and other interference with property\)](#) in 1946. The law declared null and void all property transfers made after 29 September 1938 “under occupation or national, racial and political persecution” (**Section 1**). It established a process for restitution of property with a three (3)-year

statute of limitations. If restitution *in rem* was not possible, compensation would be paid for the property.

In February 1948, in a move towards Communism supported by the Soviet Union, Czechoslovakia became a people's democracy. The elimination of private property was an important part of the new Czechoslovak regime. A second round of large-scale property confiscations took place, this time by the Czechoslovak government. For the next 40 years, many of the property-related injustices remained unresolved until the post-Communist legislation of the 1990s.

2. Act No. 87/1991 - The Rehabilitation Law

After the Velvet Revolution in 1989 that brought about an end to Communist rule in Czechoslovakia and the reemergence of a multiparty democracy, the Czechoslovak government enacted the private property law, **Act No. 87/ 1991** (amended by **Act No. 116/1994**) (the "**Rehabilitation Law**"). Czechoslovakia was among the first countries in Central and Eastern Europe to pass private property restitution legislation in the early 1990s, which addressed both Holocaust era and Communist era private property confiscations.

The law and its amendment applied to (1) property taken by force by the Nazis between 1939 and 1945 if on the date of transition, the property owner previously had a claim under **Decree No. 5/1945** and **Act No. 128/1946**, which had not been satisfied because of political persecution or practice in violation of generally recognized human rights and liberties, and (2) property nationalized between 25 February 1948 and 1 January 1990. Property confiscated from Sudeten Germans was not eligible for restitution under the **Rehabilitation Law**.

The **Rehabilitation Law** permitted compensation in lieu of restitution if the property had been devalued from its former condition. (*See Hochstein*, p. 441.) Compensation was determined on the basis of expert opinions prepared by court experts.

The law also permitted the claimant to choose between restitution and compensation where the property had significantly increased in value. However, if the claimant elected restitution, he was then obliged to pay the current owner the difference between the original and current value of property. (*Id.*, p. 441.)

According to the original version of the law, the deadline for processing applications for financial compensation was six (6) months. However, later amendments to the law, permitted applications to be lodged within three (3) years of the law coming into effect.

In instances of incomplete applications or need of additional information, the time limits for submitting an application were suspended according to the provisions of **§ 9 of the Czech National Council Law No. 231/1991** (on the competence of the Czech Republic in restitution).

Initially, only Czech citizens who were Czech residents could successfully lodge a claim. (See [George E. Glos, “Restitution of Confiscated Property in the Czech Republic”, SVU: Czechoslovak Society of Arts and Sciences, June 2002](#) (“Glos”).)

Moreover, special time limits for filing applications for financial compensation applied in the following instances: (1) for citizens of Czechoslovakian Federative Republic with permanent residence on its territory: 1 April 1991 – 1 April 1992 (according to the original version of the **Rehabilitation Law**); (2) for citizens of the Czech Republic (Holocaust victims), the condition of permanent residence was cancelled as of 1 November 1994: 1 July 1994 – 1 July 1995 (according to the amendment of the **Act No. 166/1994**); (3) for citizens of the Czech Republic with permanent residence outside of its territory: 8 July 1998 – 8 July 1999 (according to **Constitutional Law No. 153/1998**); and (4) where the court rejected restitution of the property, within one (1) year of the date of the coming into force of the court’s decision.

According to the Czech government, with respect to the claims process: there were no filing fees for restitution/compensation applications; even before the Terezin Declaration was endorsed, restitution claimants in the Czech Republic had free access to archives and cadastral documents; administrative agencies provided information on ongoing restitution matters, how to make claims, and assistance with searching for records; courts deal with restitution matters without unnecessary formalities; there is extensive case law that covering the Czech restitution process; and where discrimination was found to exist in the restitution laws, they were amended.

The Czech government has also reported that as of 2015, the compensation process was not yet complete, particularly with regard to the pending court cases on property restitution. In addition, applications for financial compensation submitted within one (1) year from when a court issues a decision rejecting the restitution of the property, are still ongoing.

3. **Act No. 229/1991**

Act No. 229/1991 (amended by **Act No. 93/1992**, **Act 116/1994** and **Act No. 212/2000**) related to ownership rights of land and other agricultural property, and allowed for restitution of property confiscated between 1948-1989. **Act No. 229/1991** required that the claimant prove the state had originally obtained the property in breach of then-applicable laws or due to illegal preferential treatment. (See Glos).

This restitution regime was also initially only open Czech citizens who were also Czech residents. All claims had to be filed by **2001**. Administrative land offices handled the claims but their decisions could be appealed in Czech courts. The claims process under **Act No. 229/1991 is closed and new claims cannot be accepted.**

4. Act 243/1992

In 1992, **Act No. 243/1992** was passed. It permitted claimants to apply for restitution of both land and buildings. It pertained to property confiscated between 1938-1945.

Eligible property included: land that was part of agricultural or forest land; residential buildings, economic purpose buildings and other buildings that all belong to the original agricultural farmstead (including built-up land); and residential buildings and economic purpose buildings used for agricultural for forest production or relating to water-based production (including built-up land).

Immovable property could not be restituted if a privatization project had been approved with regard to the property as of the effective date of the Act, or a decision on the privatization of the property had been issued as of the effective date of the Act. In such a case, the claimants were entitled to either monetary compensation or comparable immovable property.

As with **Act No. 87/1991** and **229/1991**, only Czech citizens (and until 1995, Czech citizens who were also Czech residents) could make a claim. **Act No. 243/1992** claims had to be filed by **30 June 2001**.

Claims were filed with the land office. Judicial review of land office decisions could be made in the district court where the immovable property was located. Claimants had two (2) months from the date of the land office decision to file for judicial review.

The peaceful dissolution of Czechoslovakia occurred on 1 January 1993. Two new countries were created, the Czech Republic and the Republic of Slovakia.

5. Residency Requirement for Restitution Claims are Abolished in 1994

In 1994, the Czech Constitutional Court abolished residency requirements for property restitution claims, but maintained the citizenship requirement. Successful claimants still had to be Czech citizens.

While the removal of the residency requirement made it somewhat easier to bring restitution claims, the Czech citizenship requirement still prevented many Holocaust victims from receiving restitution. This is because in 1948 Czechoslovakia started requiring that Jews who wished to emigrate to Israel renounce their citizenship and surrender their property to the state. Further, a 1928 treaty between the United States and Czechoslovakia stated that a person's citizenship in Czechoslovakia or the United States terminated if he became a citizen of the other country (the treaty was terminated in 1997). This effectively meant that descendants of naturalized Israeli and U.S. citizens would not be Czech citizens and therefore would be unable to claim property under Czech laws.

6. The Endowment Fund for Holocaust Victims

To date, the Czech Republic has established one fund, the **Endowment Fund for Holocaust Victims** (“**Endowment Fund**”), which relates specifically to restitution and compensation for Holocaust victims. The **Endowment Fund** was created in 2001 in partial acknowledgement of the fact that many claimants had previously been unable to make a claim for property under **Act 243/1992** due to the restrictive Czech citizenship requirements. The Czech government initially allocated CZK 300 million (approx. USD 750,000 at the time) from the National Property Fund to the **Endowment Fund**.

One-third of the **Endowment Fund** went to compensation for those individuals who had been unable to make claims under **Act 243/1992** and did not otherwise fall within the foreign settlement agreements or other previous national legislation pertaining to restitution/compensation of property. The payment was meant to honor their suffering.

The other two-thirds of the **Endowment Fund** went towards social services and maintenance of communal property. Claimants had until **2001** to file a claim with the **Fund**.

Based on publicly available sources of information from the **Endowment Fund**, by the time the program concluded on 31 December 2001, the **Endowment Fund** received a total of 1,256 applications from 27 countries. In May 2003, CZK 100 million was divided amongst 516 successful applications in proportion to the values of the properties at the time of their taking. The minimum **Endowment Fund** payment was CZK 26,800 and the maximum payment was CZK 2,500,000. The **Endowment Fund** provided compensation for houses, villas, blocks of apartments, spa buildings, farms, factories and other properties. Recipients were not required to sign a waiver of rights and instead were free to pursue their claims in the future. The **Endowment Fund** and its one-time symbolic payment component was enacted with the consensus of the Jewish community, including the World Jewish Restitution Organization and B’nai B’rith.

7. Use of General Restitution Laws

Efforts were made to pursue claims for the return of immovable property using generally applicable civil laws (i.e., reliance upon civil code sections to request a determination of ownership of property). Prior to 2005, if restitution laws failed to provide a right to bring a claim for restitution or compensation for nationalized property, claimants could simply bring a suit under the Czech Civil Code. ([Zdeněk Kühn, “Prospective and Retrospective Overruling in the Czech Legal System”, 4 The Lawyer Quarterly 2 \(2014\), 139, 149.](#)) However, on 1 November 2005, the Czech Constitutional Court reversed this position. For example, it ruled in the *Kinsky* case, **Judgment No. Pl. ÚS-st. 21/05** (published as No. 477/2005 Official Gazette) that special restitution laws cannot be circumvented by initiating a legal action to determine ownership based upon general civil law provisions.

8. Laws Since the 2009 Terezin Declaration

No new laws relating to the restitution of private have been passed since the Czech Republic became a signatory to the Terezin Declaration in 2009.

According to the previous Czech Special Envoy, in 2009 the Czech Republic along with a few other European countries was seen as a model country in terms of how it addressed Holocaust and Communist era confiscated property. This strong track record was one of the main reasons the Czech Republic hosted the 2009 Prague Conference, which resulted in the signing of the Terezin Declaration. The Czech government continues to be a strong supporter of the European Shoah Legacy Institute (ESLI), the advocacy and monitoring mechanism for the Terezin Declaration.

In light of these achievements, the Czech Republic has not found it necessary to pass additional legislation.

D. RESTITUTION OF COMMUNAL PROPERTY

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.)

The restitution of communal property in the Czech Republic has been a long process.

1. Communal Property Restitution Efforts, 1989-1999

After the Velvet Revolution in 1989 and before the split of Czechoslovakia in the early 1990s, general restitution laws were enacted by which the Jewish community could claim previously confiscated property.

Beginning in 1992, the [Federation of Jewish Communities in the Czech Republic](#) (the umbrella organization for the Jewish community) compiled a comprehensive inventory of the approximately 1000 formerly Jewish-owned communal properties in the country. The **Federation** eventually narrowed the list to approximately 200 properties it wanted returned to the Jewish community. The shorter list reflected the Jewish community's recognition that it would be impossible to restore Jewish life to all of the country's over 150 pre-war communities. For the other 800 properties, the community determined in many instances that it would be better for other religious groups to continue services in the buildings and bear the costs of upkeep, rather than for the formerly Jewish buildings

to become warehouses. (See Dr. Thomas Kraus, “Restitution of Jewish Property”, Federation of Jewish Communities in the Czech Republic, June 2012 (“Kraus”).)

The **Federation’s** list of approximately 200 properties was submitted as part of draft legislation on property restitution. The Czech Parliament rejected the draft legislation in 1994. It did so because some of the property included on the **Federation’s** list had been previously transferred from the state to municipalities. The proposed re-transfer of that property to the Jewish community was therefore viewed as being similar to Communist era expropriation from municipalities. As a partial solution, then Prime Minister, Václav Klaus, stated that communal property in possession of the state (about 25% of the 200 properties) would be returned. The Prime Minister urged municipalities to return communal property in their possession even though there was no legal obligation to do so. The result was the executive transfer of many pieces of communal property to the Jewish community (i.e., the gift or donation of property by a city or municipality without reliance upon a particular law). Yet, by 1997, less than half of the properties on the 200+ item list had been returned. (See *id.*)

Towards the late 1990s, the issue of restitution again arose. The Czech public did not oppose return of communal property but criticized the executive transfer method as being illegal, as opposed to using or enacting actual legislation. This public dialogue coincided with the Jewish community’s growing desire to complete the process of restitution and/or compensation for the communal properties that still had not been returned. Many of the properties that had been returned to the community were in a state of disrepair. The restitution/compensation of the remaining properties was therefore seen as necessary to continue the community’s efforts in restoring and reviving Jewish life in the Czech Republic.

2. Act No. 212/2000

In 1999, the Czech government established the **Joint Commission for Mitigating Some of the Injustice Caused to Holocaust Victims**, composed of government officials, members of the **Federation**, and international Jewish organizations such as the **World Jewish Restitution Organization** and the **American Jewish Committee**.

The **Joint Commission** formed a number of sub-committees, including ones that would address individual restitution, Jewish communal properties, and the search for movable property (art, bank accounts, insurance, etc.). One of the outcomes of the **Joint Commission** was the passage of the first Czech law to specify restitution of communal property confiscated during the Holocaust era, **Act No. 212/2000** (on alleviating some injustices incurred by the Holocaust). The Act required the **Federation** to submit communal property claims to the Czech government on behalf of the Jewish community. **Act 212/2000** limited the property that could be restituted to what was currently owned by the state. Other public entities (i.e., municipalities) were not obligated to return property under the Act, but as before, were asked to voluntarily do so without great effect.

The deadline to file a claim was **30 June 2002** and the process **is closed**.

3. The Endowment Fund for Holocaust Victims

In 2001, two-thirds of the **Endowment Fund for Holocaust Victims** (“**Endowment Fund**”) CZK 200 million, was allocated for social services for Holocaust survivors, Jewish education programming, and the continuing maintenance of communal property (including cemeteries and monuments). The **Federation of Jewish Communities** believed CZK 200 million to be an acceptable form of partial compensation for properties previously belonging to the Jewish community that were in possession of the state, but which could not be returned *in rem*. (See *Kraus*.) The Czech government added an additional CZK 100 million to the **Endowment Fund** in 2015.

The only law to have been passed since the Czech Republic’s signing of the Terezin Declaration in 2009 is **Act No. 428/2012**, which chiefly relates to compensation to church and religious organizations for communal assets expropriated *after* 1948, but also included property which was not restituted between 1945 and 1948, pursuant to **Act. No. 5/1945**.

E. RESTITUTION OF HEIRLESS PROPERTY

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 “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.)

1. 1947 Currency Liquidation Fund Act

After World War II, the Czechoslovak government discussed using heirless property in the country to set up a rehabilitation fund for victims of racial persecution. Instead, in 1947, the government passed the **1947 Currency Liquidation Fund Act**. The law was enacted to facilitate currency reform and to reimburse owners of blocked accounts after

Czechoslovakia was liberated. The law also provided the legal framework for the majority of Jewish property to pass to state ownership. The Supreme Administrative Court ruled it was not possible to restitute property that could not be attributed to individual owners. Thus, all property without heirs and owners after the war passed to the state. (*See Kubů & Kuklík*, p. 233.) Scholars Eduard Kubů and Jan Kuklík have noted that this was “an obvious case of breach of promise on the part of the government, which had pledged to use such assets to support the victims of racially motivated persecution.” (*Id.*) However, in defense of the law, the Czechoslovak parliamentary committee for state budgets stated:

The establishment of a separate fund for Jewish survivors might create the impression that the Jewish part of the population received far reaching preferential treatment which could give rise to anti-Semitic feeling, and that the Council of Jewish Communities was neither legally nor morally entitled to claim this property.

(*Cichopek-Gajraj*, p. 110 (quoting language from parliamentary committee).)

Czechoslovak Jews were not promised access to any of the money from the **Currency Liquidation Fund Act**.

As a result, no Czech laws deal specifically with the restitution of Shoah era heirless property confiscated from “victims of national, racial and political persecution”. In the Czech Republic and in Czechoslovakia, legislation has never differentiated between different groups of victims of Nazism. Jews, Roma, homosexuals and others were all considered to have been equally “victims of national, racial and political persecution”. The effect of this uniform treatment is that there is no registry of the properties of different groups of people whose property after 1945 escheated to the state.

With respect to heirless property, the view of the previous Czech Special Envoy for Holocaust Issues is that when creating solutions for heirless property, it would be unfair to apply the same standards to both the situations in Axis (or perpetrator) countries and countries that were occupied by Axis forces during World War II. Thus, even though heirless property, as defined in the Terezin Best Practices, is inherited by the state in the Czech Republic, as a country formerly occupied by Axis forces, there are not really any legal or moral objections to this treatment of heirless property.

The Czech Republic has acknowledged and acted upon a duty to provide care to its survivors, the effect of which is similar to having “create[ed] solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators” from which funds would then be used for the benefit of needy Holocaust survivors. (*See Terezin Best Practices*, para. j.)

Over the last 20 years, the Czech Republic has acknowledged this duty to provide care to its survivors through various mechanisms, including the enactment of the following series of laws: **Act No. 217/1994** (concerning lump-sum payments to certain victims of Nazi persecution; **Act No. 39/2000** (concerning lump-sum payments to members of Czechoslovak armies formed abroad and of Allied armies in 1939-1945); **Act No.**

261/2001 (concerning lump-sum payments to participants in the national struggle for liberation, political prisoners and persons concentrated in military labor camps because of their race or religion, and amending **Act No. 39/2000**); and **Act No.**

357/2005 (concerning the recognition of participants in the national struggle for the establishment and liberation of Czechoslovakia and certain categories of their survivors, a special contribution to supplement pensions of certain persons, a lump-sum payment to certain participants in the 1939-1945 national struggle for liberation, and amending certain laws).

In addition, in 2001, the Czech Government paid CZK 300 million directly into the **Endowment Fund for Holocaust Victims (“Endowment Fund”)**, two-thirds of which was meant as a symbolic monetary acknowledgement for property that could not otherwise be physically returned. The Czech government added an additional CZK 100 million to the **Endowment Fund** in 2015. Two-thirds of the original amount as well as the 2015 addition to the **Endowment Fund** has been used:

(1) [. . .] to provide endowment benefits to mitigate some property injustices suffered by Holocaust victims. 2. To meet the purpose stated in Article III (1) hereof, funding from the Foundation shall be used as endowment contributions exclusively for: a) Individuals to mitigate some property injustices suffered by Holocaust victims; b) Social and health care with special reference to the needs of Holocaust survivors; c) Reconstruction, renovation and preservation of movable as well as immovable Jewish monuments located in the territory of the Czech Republic; d) Projects serving as a dignified reminder of Holocaust victims; e) Support of educational activities related to Judaism; and f) Support of the development of Jewish communities in the Czech Republic.
(Constitution of the Foundation for Holocaust Victims, Article III (1)-(2).)

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