

OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – HUNGARY (AS OF 8 MARCH 2017)

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A. EXECUTIVE SUMMARY

Hungary was an ally of Germany for most the war. By the terms of the 1947 **Treaty of Peace with Hungary**, Hungary committed to returning or providing compensation for private, communal and heirless property confiscated from Jews and other victims during the war. Little was done to act on these commitments during the Communist era. Instead, widespread nationalization resulted in a second wave of confiscation.

Private Property. Claims by some foreign citizens relating to war damage and nationalization were settled before the fall of the Soviet Union through bilateral agreements with at least 16 foreign governments. With the exception of those Hungarian citizens who were able to rely on restitution measures enacted in the immediate post-war period before Hungary fell under Soviet influence, the remaining Hungarian citizens had to wait until 1991 and 1992 when domestic legislation was enacted to settle their property claims (**Act XXV of 1991** and **Act XXIV of 1992**). These two laws were broad in scope but narrow in their remedy. They covered both lawfully and unlawfully taken property both during World War II and the Communist period. The laws provided limited compensation (not *in rem* restitution). In 1993, the Constitutional Court confirmed that the partial compensation scheme offered was in compliance with the **Treaty of Peace with Hungary** requirement that compensation be “fair”, and determined that full compensation for members of the Jewish community would constitute unjustified positive discrimination. Critics of the laws point to such problems as narrow definitions of Hungarian citizenship and heirs, no *in rem* restitution, difficulty in obtaining necessary documentation, poor international notification, and lengthy claims processes. All of these have negatively impacted the efficacy of restitution. Moreover, the compensation scheme approved by the Constitutional Court has been, in practice, more of a symbolic compensation measure (because, for example, compensation under the laws has been capped at approximately USD 21,000). As of 2015, the Hungarian government reports that HUF 10,982,370,000 has been paid in compensation notes and HUF 663,041,000 has

been paid in vouchers supporting agricultural enterprises under the laws. (Government of Hungary Response to ESLI Immovable Property Questionnaire, 20 October 2015, p. 41.)

Communal Property. In 1991, at the same time Hungary was establishing a private property compensation regime, it also passed **Act XXXII of 1991**, offering either restitution *in rem* or compensation for communal property nationalized *after* 1 January 1946. A **1997 Amendment** permitted religious groups to apply for government-funded annuities in the amount of non-restituted property. This regime was completed in 2011. Acting on behalf of the Jewish community, the **Federation of Jewish Communities (MAZSIHISZ)** successfully obtained the use of a number of buildings in the country and also made a deal with the government where in exchange for a USD 75 million annuity bond, the organization would forego claims for over 150 pieces of formerly Jewish-owned communal property.

Heirless Property. Less than a quarter of Hungary's 1941 Jewish population of approximately 800,000¹ survived the war. Today, the Jewish population is between 80,000 and 150,000², the sixth largest Jewish community in Europe. The virtual wholesale extermination of families during the Holocaust had the effect of leaving substantial property in Hungary without heirs to claim it. While **Act XXV of 1946** named a legal heir for property of the Jewish Community in Hungary, the Constitutional Court found in 1993 that the heirless property provision contained in the **Treaty of Peace with Hungary** (requiring the state to give **heirless property** to communities to assist with their welfare) had not been complied with. In response, Hungary created the **Hungarian Jewish Heritage Fund (MAZSOK)** in 1997. The fund is charged with assisting Holocaust survivors and enhancing Jewish cultural heritage. Since its creation, the government has funded **MAZSOK** with over USD 40 million in property, cash and bonds. This amount has been viewed by the Jewish community as a down payment for the estimated hundreds of millions of dollars of heirless property left in Hungary.

Hungary endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

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. Hungary submitted a response in October 2015.

¹ This figure includes Jews who were living in regions of neighboring countries that were occupied by Hungary in 1941. On the eve of the German occupation in 1944 – on account of a number of factors including labor service, deportations, massacres by Hungarian authorities, and emigration – the number of Jews had fallen to between 760,000 and 780,000. After the war, Hungary's territory was redefined according to the pre-1938 borders and it remains in this form today.

² These figures are based upon research from 2011 that defined "Jewish" as a person who had at least one Jewish parent. By contrast, in the 2001 census, only 12,781 people self-identified as Jewish.

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

Beginning in the 1930s, Hungary's governing party drifted to the right as the country's alliance with Germany grew stronger. The party was chauvinistic, ethnocentric, anti-Semitic, and had increasing dictatorial tendencies. Hungary joined Nazi Germany in the Axis alliance in late 1940.

Even before joining the Axis alliance, Hungary had passed a series of anti-Semitic or discriminatory laws between 1938 and 1941, which erased the equal treatment that Jews had received in the country since 1867 (forbidding Jews to work in the civil service, armed forces, and certain other professions, as well as prohibiting marriages between Jews and non-Jews). (See [United States Holocaust Memorial Museum - Holocaust Encyclopedia, "Hungary After the German Occupation"](#); see also [United States Holocaust Memorial Museum - Holocaust Encyclopedia, "Hungary Before the German Occupation"](#).) The plunder of Jewish property began even before Nazi Germany occupied Hungary in March 1944 – with the Hungarian parliament passing 22 anti-Semitic acts and the government issuing 267 anti-Jewish ministerial and governmental decrees.

Prior to the German occupation, Hungary deported nearly 20,000 Jews in 1941 to occupied former Soviet territories where they were murdered. Hungarian forces massacred hundreds of Jews in occupied former Yugoslav territories in 1942, and by 1944, tens of thousands of Jewish men had died while performing forced labor.

After Nazi Germany occupied Hungary in March 1944, Hungary's Jewish population was corralled in ghettos in large cities. During a two (2)-month period, within May and June 1944, approximately 440,000 Hungarian Jews were deported by train.

On 28 December 1944, Hungary broke off relations with and declared war on Germany. From the end of 1944 through the fall of Communism, Hungary was occupied by the Soviet Union. The last of the Soviet troops left Hungary in June 1991.

Hungary's Jewish population in 1941 numbered approximately **800,000**³ but less than one-fourth survived. The **current Jewish population** of Hungary is estimated to be between **80,000 and 150,000**.⁴ It is also estimated that the Hungarian Roma population was decimated in similar proportion to Hungarian Jews during the war.

³ This figure includes Jews who were living in regions of neighboring countries that were occupied by Hungary in 1941. On the eve of the German occupation in 1944 – on account of a number of factors including labor service, deportations, massacres by Hungarian authorities, and emigration – the number of Jews had fallen to between 760,000 and 780,000. After the war, Hungary's territory was redefined according to the pre-1938 borders and it remains in this form today.

⁴ These figures are based upon research from 2011 that defined "Jewish" as a person who had at least one Jewish parent. By contrast, in the 2001 census, only 12,781 people self-identified as Jewish.

1. 20 January 1945 Armistice Agreement

On 20 January 1945, Hungary concluded an **Armistice Agreement** with the Allied powers ([Agreement Concerning an Armistice Between the Union of Soviet Socialist Republics, The United Kingdom of Great Britain and Northern Ireland, and the United States of America on One Hand and Hungary on the Other](#)). **Article 13** of the of the **Armistice Agreement** required that “[t]he Government of Hungary undertake[] to restore all legal rights and interests of the United Nations and their nationals on Hungarian territory as they existed before the war and also to return their property in complete good order.”

2. 10 February 1947 Treaty of Peace with Hungary

Articles 26 and **27** from the [Treaty of Peace with Hungary](#), signed on 10 February 1947, addressed immovable property restitution and compensation. It also confirmed Hungary’s previous obligations as set out in the **Armistice Agreement**.

Article 26 related to the restoration of property in Hungary belonging to the United Nations and their nationals. If the property could not be returned to the owner, the Hungarian government would be obliged to pay the owner compensation equal to two-thirds of the amount necessary at the date of payment to purchase similar property.

Article 27 related to the restoration of immovable property confiscated “on account of the racial origin or religion of such persons” and where “restoration” (restitution *in rem*) was impossible, “fair compensation” was required. **Article 27** also addressed the treatment of heirless or unclaimed property and required the Hungarian government to transfer heirless property to organizations and communities “for purposes of relief and rehabilitation of surviving members of such groups [who were the object of racial, religious or other Fascist measures of persecution], organizations and communities in Hungary.”

3. Claims Settlement with Other Countries

Following the war, Hungary entered into at least 20 lump sum settlement agreements or bilateral indemnity agreements with 18 countries. (See Richard Lillich and Burns H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (1975), p. 177); Richard B. Lillich and Burns H Weston, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995* (1999), pp. 101-103; No. 8004/1991 (PK.16.) Joint Report of the Ministry of Finance and the Ministry of Foreign Affairs (In: Pénzügyi Közlöny, Budapest, September 1991).) These agreements pertained to property belonging to foreign nationals (natural and legal persons; and only those who were foreign citizens of the contracting state both at the time of the loss of the property and also at the time of the agreement) that had been seized during World War II or by the Hungarian state after WWII (i.e., through nationalization under the Communist regime). They included claims settlements reached with:

- **Turkey** on 12 May 1949
- **Romania** on 7 July 1953
- **France** on 12 June 1950 and 14 May 1965
- **Switzerland** on 19 July 1950 and 26 March 1973
- **Sweden** on 31 March 1951 and 12 September 1966
- **Belgium-Luxembourg** on 1 February 1955 and 25 September 1975
- **Yugoslavia** on 29 May 1956
- **United Kingdom** on 27 June 1956
- **Norway** on 22 February 1957
- **Soviet Union** on 14 March 1958
- **Greece** on 27 April 1963
- **Czechoslovakia** on 3 February 1964
- **Austria** on 31 October 1964
- **Netherlands** on 18 December 1964 and 2 July 1965
- **Denmark** on 18 June 1965 and 18 March 1971
- **Canada** on 1 June 1970
- **United States** on 6 March 1973
- **Italy** on 26 April 1973

(*Id.*)

4. Specific Claims Settlement Between Hungary and Other Countries

a. Claims Settlement with Canada

On 1 June 1970, Hungary and Canada entered into a bilateral agreement, [Agreement Between the Government of Canada and the Government of the Hungarian People's Republic Relating to the Settlement of Financial Matters](#) (“**Canada Bilateral Agreement**”). According to **Article I**, Hungary would pay Canada CAD 1,100,000 (in a series of annual installments). The sum would settle claims of Canadian citizens relating to property affected by “nationalization, expropriation, state administration or other similar measures arising out of structural changes in the Hungarian economy . . .” which had taken effect before the date the **Canada Bilateral Agreement** came into force, obligations arising out of **Articles 24** and **26** of the **Treaty of Peace with Hungary**, as well as other enumerated claims.

In December 1970, pursuant to the **Appropriation Act, No. 9 1966**, the [Regulations respecting the determination and payment out of the Foreign Claims Fund of certain claims against the Government of the Hungarian People's Republic and its citizens](#) were enacted in Canada. These **Regulations** permitted Canada's **Foreign Claims Commission** to adjudicate claims that fell under the **Canada Bilateral Agreement**. Where a Canadian citizen timely filed notice of his claim on or before 1 June 1970 but then died, the **Foreign Claims Commission** was permitted to pay an award to anyone legally entitled to the award, regardless of nationality (**Regulation, Section 4**).

As far as we are aware, the claims process under the **Canada Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful or whether Hungary paid Canada the full agreed-upon settlement amount.

b. **Claims Settlement with the United States**

As set forth in the **Treaty of Peace with Hungary** and the United States' International Claims Settlement Act of 1949, as amended, Hungary was responsible for claims of nationals of the United States for losses arising out of war damages, nationalization, compulsory liquidation, or other taking of property prior to 9 August 1955. The U.S. Treasury vested and liquidated Hungarian assets that had been blocked during the war in the amount of USD 2,235,750.65 and designated them for use in paying the claims. The **U.S. Foreign Claims Settlement Commission ("FCSC")** heard the claims and completed the **First Hungarian Claims Program** in 1959.

On 6 March 1973, Hungary concluded a **Bilateral Agreement** between it and the United States (**Agreement between the Government of the United States of America and the Government of the Hungarian People's Republic Regarding the Settlement of Claims**). In the **Bilateral Agreement**, Hungary agreed to pay a lump sum: USD 18,900,000 "in full and final settlement and in discharge of all claims of the Government and nationals of the United States against the Government and nationals of the Hungarian People's Republic" (*see* **Bilateral Agreement, Article 1**), which included claims for "obligations of the Hungarian People's Republic under Articles 26 and 27 of the Treaty of Peace" (*see* **Bilateral Agreement, Article 2(3)**). This **Second Hungarian Claims Program** was completed in 1977.

In total, the United States, through the **FCSC**, awarded nearly USD 62,000,000 to U.S. national claimants in the **First and Second Hungary Claims Programs**. However, only approximately USD 20,000,000 was available for payment based upon the terms of the **Treaty of Peace with Hungary** (and International Claims Settlement Act of 1949, as amended) and the **Bilateral Agreement**. Successful claimants therefore received only USD 1,000 plus 37% of the principal of their awards.

For more information on the **Hungary Claims Program**, the **FCSC** maintains statistics and primary documents on its [Hungary: Program Overview](#) webpage.

We do not have more detailed information for the remaining 16 lump sum settlement agreements.

Hungary became a member of the Council of Europe in 1990 and ratified the European Convention on Human Rights in 1992. As a result, suits against Hungary claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Hungary became a member of the European Union in 2004.

C. PRIVATE PROPERTY RESTITUTION

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices (“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.)

In the immediate aftermath of World War II, a portfolio of legislation was passed in an effort to give effect to **Article 13** of the [Armistice Agreement](#) and **Articles 26** and **27** of the [Treaty of Peace with Hungary](#).

According to the Hungarian government, the following laws were passed in order to give effect to **Article 13** of the **Armistice Agreement: Act V of 1945** (on the Ratification of the Armistice Agreement Concluded on 20 January 1945 in Moscow); **Decree 7590/1945 of the Prime Minister** (on Returning Shops, furnishings (Equipment), as well as Stocks of Goods and Materials Lost by virtue of Regulations Containing Discriminatory Provisions against Jews or of Leftist Behavior); **Decree 3630/1945 of the Prime Minister** (on Paying the Value of Taking Over Business Furnishings (Equipment) and of Investments (Reconstructions) Related to Licenses to Sell Alcoholic Beverages Withdrawn Based on the Anti-Jew Laws); and **Decree 10.480/1945 of the Prime Minister** (on Settling Personal Pharmacy Licenses Lost by virtue of Regulations Containing Discriminatory Provisions against Jews). (Government of Hungary Response to ESLI Immovable Property Questionnaire, 20 October 2015, p. 4.)

According to the Hungarian government, the following laws were passed in order to give effect to **Articles 26** and **27** of the **Treaty of Peace with Hungary: Decree 300/1946 of the Prime Minister** (on Settling Movable Property Lost by virtue of Regulations Containing Discriminatory Provisions against Jews); **Decree 12.530/1946 of the Prime Minister** (on Deleting Proprietary Rights of Certain Immovable Properties Registered for the Benefit of the State Treasury); **Decree 6400/1947 of the Prime Minister** (on Farm Equipment Lost by Virtue of Regulations Containing Discriminatory Provisions against Jews); **Decree 5280/1947 of the Prime Minister** (on the Restrictions on Returning Cold Stores and Poultry Processing Plants Lost by Virtue of Regulations Containing Discriminatory Provisions against Jews or of Leftist Behavior); and **Government Decree 13.160/1947** (on Handling Abandoned Property of Jews [Section 4(2)]). (Government of Hungary Response to ESLI Immovable Property Questionnaire, 20 October 2015, p. 7.)

After World War II and for the next 40 years, Hungary became the People’s Republic of Hungary and fell under the Soviet sphere of influence. Restitution efforts in the 1940s

were thus short-lived and many properties were confiscated for a second time under nationalization measures.⁵

Hungary held its first free election in 1990. The restitution process in Hungary (which chiefly pertained to providing compensation) began in 1991, following the transition from a socialist regime to a market economy and democratic state system. It developed in response to the recognition that although the People's Republic of Hungary had assumed an obligation to compensate victims of Nazi persecution, Fascists and their collaborators (*see e.g.*, **Armistice Agreement** and **1947 Treaty of Peace with Hungary** and related laws), this compensatory obligation had been left somewhat unfulfilled with the destruction of private property under the socialist regime.

1. Act XXV of 1991 and Act XXIV of 1992

The compensation regime in the 1990s was primarily designed to provide gradual compensation for victims of property nationalization during the socialist era. This aim is reflected primarily in the fact that the scope of **Act XXV of 1991** (on the partial compensation damages wrongfully caused by the state to the property of citizens, for the purpose of the settlement of ownership relations) was originally limited to damages caused *after* 8 June 1949. [Act XXIV of 1992 \(on the partial compensation of damages wrongfully caused by the state to the property of citizens by application of legal regulations adopted between 1 May 1939 and 8 June 1949, for the purpose of the settlement of ownership relations\)](#) expanded the scope of **Act XXV of 1991** to cover a greater number of takings and provided additional time to submit claims.

The regime was designed to have a broad scope, applying to all types of private property whether taken lawfully or unlawfully, except bank accounts, securities, insurance claims, and most claims for artworks. The basic intention was not only to set right expropriations that took place during the socialist regime, but it was also to establish the new market economy after 1989.

The legislature recognized that due to the sheer number of potential claims and the scope of property in issue, as well as the cost of potential compensation and the economic situation of the country, it was impossible for the state to provide restitution or full compensation. Thus, the legislature set out to provide partial compensation in the form of vouchers or bonds with limited transferability for a broad range of expropriations that occurred over a long period. The ceiling for compensation was approximately USD 21,000 (HUF 5,000,000)⁶ and it was issued on a sliding scale basis depending on the value of the property. No *in rem* restitution was offered for private property.

⁵ Unlike many other East European countries, or the Soviet Union, not all private property was confiscated in Hungary. Many people in Hungary managed to own real estate, small businesses and valuable personal property, such as artwork.

⁶ Between 1991 and 2000 – when most of the vouchers were issued – the exchange rate changed from roughly HUF 72 to USD 1 to more than HUF 250 to USD 1. This meant

The scope of *who* was eligible for compensation under these two laws was also limited to those persons who (1) were Hungarian citizens, (2) were Hungarian citizens at the time of suffering the damage; (3) suffered damage in conjunction with being deprived of their Hungarian citizenship; or (4) were Non-Hungarian citizens but who were permanent residents in Hungary on 31 December 1990. (**Section 2(1).**) Eligible heirs were also limited to spouses or direct descendants. (**Section 2(2).**)

In its 2015 response to ESLI's Immovable Property Questionnaire, the Hungarian government stated that with respect to access to archives and according to **Section 17(2) of Government Decree 104/1991 (03 August)** (on the Implementation of Act XXV of 1991 on the Partial Compensation of Damages Wrongfully Caused by the State to the Property of Citizens, for the Purpose of the Settlement of Ownership Relations), state administration bodies, notaries of local governments, business associations under the **Act on Civil Procedure**, archives and all legal entities having such data – unless otherwise provided by a legal regulation – are obliged to make the data, documents or copies thereof, necessary for granting a compensation claim, available for the claimant, at his/her request. (*See* Government of Hungary Response to ESLI Immovable Property Questionnaire, 20 October 2015, p. 19.) Costs of obtaining the documentary evidence are born by the claimant. (**Section 17(3).**)

The claim filing process **closed in 1994**.

The **World Jewish Restitution Organization (WJRO)** identified certain limitations to this restitution regime, including that there was a narrow definition of who was considered an heir, access to necessary ownership documentation was made difficult because of data privacy laws and limited access to archives, global notification of the claims process was limited, and the claims process was slow with serious delays in payments. (*See* WJRO, “Immovable Property Review Conference of the European Shoah Legacy Institute: Status Report on Restitution and Compensation Efforts”, November 2012 (Hungary, pp. 10-12).)

The adoption of the regime was followed by dialogue between the Constitutional Court and the legislature, and, after its adoption, with the citizenry in the form of individual submissions for constitutional redress. As a result, the statute's scope (as originally reflected in **Act XXV of 1991**) was amended to include expropriations perpetrated from 1 May 1939 onwards, which meant expropriations during the war of Jewish property and property of other victims would be eligible for compensation (as reflected in **Act XXIV of 1992**). The compensation regime also recognized that while the socialist regime had provided some compensation to the country's Jewish population, the previous compensation regime had ultimately been a failure. This was due to the state's intention to destroy private property altogether in seeking to establish a socialist regime.

that those who received vouchers early effectively received three times as much compensation value.

In 1993, the Constitutional Court of Hungary reviewed **Act XXV of 1991** and **Act XXIV of 1992** (*see* Decision Nos. 15/1993 (III.12.) and 16/1993 (III.12)), and held that **Article 27, Paragraph 1** of the **Treaty of Peace with Hungary** provided for “fair compensation” when restoration (restitution *in rem*) was impossible. Taking into account the scope of the compensation regime established by the government and the economic situation of the country, the Constitutional Court held that partial compensation was “fair” and thus in compliance with the **Treaty of Peace with Hungary**. The Constitutional Court also determined that only providing full compensation for members of the Jewish community who held legal title for restitution or compensation under the **Treaty of Peace with Hungary** would constitute unjustified positive discrimination, favoring one group of victims over all others.

Notwithstanding the Constitutional Court’s finding that the laws provided “fair” compensation, the available compensation amounts under the laws (including the approximately USD 21,000 ceiling for compensation paid in not easily transferrable vouchers) in practice, resulted in what is more accurately termed *symbolic* compensation.

Between 1991 and 2015, nearly 79,000 claims were made under the private property restitution laws, with approximately 62,000 resulting in a favorable ruling and 17,913 being denied. As of 2015, the Hungarian government paid HUF 10,982,370,000 in compensation notes and HUF 663,041,000 has been paid in vouchers supporting agricultural enterprises. (Hungary Response to ESLI Immovable Property Questionnaire, 20 October 2105, p. 41.) These figures do not distinguish between Jewish and non-Jewish claimants.

Since endorsing the Terezin Declaration in 2009, Hungary has not passed any new laws dealing with restitution of private property.⁷

2. Notable Private Property Actions from Other Jurisdictions

a. European Court of Human Rights

Applicants have filed a number of due process related actions at the **European Court of Human Rights** (“ECHR”) relating to **Act XXV of 1991** and **Act XXIV of 1992**. One such action is *Kantor v. Hungary*. (*See Kantor v. Hungary, ECHR, Application No. 458/03, Judgement of 22 November 2005.*) In *Kantor*, the applicant filed an action in a district court in Hungary in October 1994 for compensation for a building pursuant to **Act XXIV of 1992**. The action was not resolved until May 2002 with the service of a Supreme Court decision. In 2005, the **ECHR** found that an action taking nearly eight (8) years to pass through three (3) levels of domestic jurisdiction (district court, regional court, Supreme Court) was unreasonably long. The Court therefore found a violation of

⁷ However, in 2013, the government passed **Decree No. 449/2013 on the Order of Restitution of Cultural Assets Held in Public Collections Whose Ownership Status is Disputed**. The law relates to property held in a public collection.

Article 6(1) (right to fair trial) of the **European Convention on Human Rights** on the reasonableness of the length of proceedings.

b. United States

Plaintiffs have filed a number of property-related actions in United States courts seeking property confiscated in Hungary during the Holocaust era. Most of these actions relate to financial assets, gold and fine art including the cases of *de Csepel v. Republic of Hungary*, 169.F.Supp.3d 143 (D.C. Cir. 2016) (seeking the return from Hungary of the renowned Herzog art collection plundered by the Nazis during WWII); *Simon v. Republic of Hungary*, 812 F.3d 127 (D.C. Cir. 2016) (seeking compensation from Hungary and its national railway for personal property taken during WWII); and *Rosner v. United States*, 231 F. Supp. 2d 1202, 1205 (S.D. Fla. 2002) (action against U.S government for compensation for personal property contained in a Gold Train in the possession of pro-Nazi Hungarian troops, which was disposed of by sale and donation when the United States determined it was not possible to identify the properties' owners).

The [*de Csepel* action has survived three motions to dismiss by the defendants and is currently on appeal for the second time to the United States Court of Appeals for the District of Columbia Circuit. The *Simon* action was initially dismissed by the District Court on jurisdictional grounds but was reinstated on appeal and is currently pending in the District Court. The *Rosner* action resulted in a settlement whereby the United States paid USD 25.5 million into a fund for the benefit of destitute Hungarian Holocaust survivors located in Hungary and the United States. \(See \[Associated Press, "Settlement in WWII 'Gold Train' Theft"\]\(#\), \[Washington Post, 12 March 2005, A14\]\(#\); \[The Hungarian Gold Train Settlement, "Statement of the United States Concerning Approval of the Settlement"\]\(#\).\)](#)

One property-related legal action filed in the United States that included a compensation claim for confiscated *real* property is *Abelesz v. Magyar Nemzeti Bank*. In this action, plaintiffs filed a case in 2010 against two banks in Hungary and the National Railway of Hungary alleging expropriation of personal and real property assets during the Holocaust. The district court dismissed the action without prejudice – a decision upheld on appeal – based upon plaintiffs' failure to exhaust domestic remedies, i.e., to bring their claims first in Hungary before filing suit in the United States. It held that defendants have "shown that Plaintiffs can bring a civil action in the Hungarian courts to seek a remedy for wrongs allegedly committed by Magyar [Bank]" and plaintiffs failed to show a compelling reason for not pursuing a remedy in Hungarian courts. (*Abelesz v. Magyar Nemzeti Bank*, 2013 WL 4525435, *1 (N.D. Ill. Aug. 20, 2013); *Fischer v. Magyar Allamvasutak Zrt.*, 777 F.3d 847, 860 (7th Cir. 2015) cert. denied sub nom. *Fischer v. Magyar Ilamvasutak ZRT*, 135 S. Ct. 2817 (2015).) One of the plaintiffs has pursued legal action in Hungary and has lost. The plaintiffs are therefore preparing to re-file in U.S. courts.

D. 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.)

The compensation and restitution regime for communal property in Hungary was initiated at the same time as the private property regime. However, for communal property the process lasted for almost 20 years, and it provided an option for religious communities to choose between *in rem* restitution and compensation.

1. Act XXXII of 1991

Act XXXII of 1991 (on the settlement of the ownership status of former church owned real properties) provided for restitution of/compensation for religious properties nationalized *after* 1 January 1946. A 1997 amendment to **Act XXXII of 1991** permitted religious groups to apply for annuities funded by the government in the amount of their unrestituted communal property.

The compensation/restitution regime for communal property was completed in 2011.

The umbrella organization for the Jewish community in Hungary is [MAZSIHISZ \(the Federation of Hungarian Jewish Communities\)](#).

According to the **WJRO**, **MAZSIHISZ** relied upon **Act XXXII of 1991** to obtain the use of a number of buildings in Hungary. In reliance on the **1997 Amendment**, **MAZSIHISZ** also reached an agreement with the Hungarian government whereby in exchange for an annuity bond worth approximately USD 75 million (that provides roughly USD 5 million per year), the organization would not seek restitution of an additional 152 pieces of formerly Jewish-owned communal property. (*See* WJRO, “Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe”, June 2009 (Hungary, pp.14-15).)

Since endorsing the Terezin Declaration in 2009, Hungary has not passed new laws relating to the restitution of communal property.

E. 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 “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. Article 27(2) of the Treaty of Peace with Hungary

Article 27(2) of the **Treaty of Peace with Hungary** stated that all property that had been confiscated on account of race or religion and “remain[ed] heirless or unclaimed . . . shall be transferred by the Hungarian Government to organisations in Hungary representative of such persons, organisations or communities.”

Just prior to the signing of the **Treaty of Peace with Hungary**, Hungary enacted **Act XXV of 1946 (“1946 Restitution Fund Act”)**. The **1946 Restitution Fund Act** provided that an entity called the **Restitution Fund** would be the legal heir of Jewish property.

In 1993, the Constitutional Court found that **Article 27(2)** of the **Treaty of Peace with Hungary** (the heirless property provision) had not been complied with. The Court directed Parliament to take the necessary measures to implement **Article 27(2)**. (*See* Decision of the Constitutional Court of Hungary No. 16/1993 (III.12.), Hungarian Official Journal No. 1993/29 (III. 12).)

2. Act X of 1997 – 1997 Hungarian Jewish Heritage Fund Act (MAZSOK)

In response to the Constitutional Court decision in 1993 and following negotiations with **MAZSIHISZ** and the **WJRO**, the Hungarian Parliament passed **Act X of 1997** (on the implementation of provisions included in Article 27, Item No. 2, of Act XVIII of 1947,

related to the Peace Treaty of Paris) (“**1997 Jewish Heritage Fund Act**”). The law created a [Hungarian Jewish Heritage Fund \(MAZSOK\)](#), which is headed by a combination of government and Jewish officials. **MAZSOK** has a dual-purpose of assisting Holocaust survivors in Hungary and enhancing Jewish cultural heritage. **MAZSOK** funds were initially composed of a HUF 4 billion bond (USD 15-20 million) and certain heirless assets (immovable property and artwork). The **WJRO** has noted that the “estimate[d] [] value of heirless Jewish property located in Hungary range[s] from several hundred millions of dollars to billions of dollars, far exceeding the governments initial payment to MAZSOK.” (WJRO, “Immovable Property Review Conference of the European Shoah Legacy Institute: Status Report on Restitution and Compensation Efforts”, November 2012 (Hungary, pp. 10-12).)

MAZSOK paid annuities to Holocaust survivors meeting certain criteria. According to the Hungarian government, Holocaust survivors over 60 or those unable to work due to persecution were entitled to HUF 200,000 in a life annuity, paid retroactively from 1 January 1997. When **MAZSOK** was established, there were approximately 21,000 survivors who were entitled to the annuity. By 2011, the number of eligible Holocaust survivors had decreased to approximately 9,000. (See [Green Paper on the Immovable Property Review Conference 2012 \(Hungary, pp. 45-46\)](#).)

In 2007, negotiations between the government and the **WJRO** resulted in an additional USD 21 million commitment from the government to **MAZSOK** (paid in installments) to assist with the urgent needs of aging Hungarian Holocaust survivors. Two-thirds of the USD 21 million was to be distributed by the **Conference of Material Claims Against Germany (“Claims Conference”)** to Hungarian survivors living in the diaspora. The remaining one-third was to be distributed by **MAZSOK** for the benefit of survivors in Hungary. The USD 21 million was to be considered a down payment by the government against the value of all heirless Jewish property in Hungary. Between 2012 and 2013 the Government of Hungary froze assets intended for distribution by the **Claims Conference** claiming concerns of bookkeeping and transparency. (See [“Hungary to resume reparations payments through Claims Conference”, Times of Israel, 8 July 2013](#).) In July 2013, the government transferred to the **Claims Conference** the final USD 5.6 million of the USD 21 million down payment. The **Claims Conference** submitted, and the Hungarian government accepted, a report from an independent auditor accounting for the proper expenditure of all Hungarian funds transferred to the **Claims Conference** since 2007.

A special joint commission – of representatives from the government and the Jewish community – was also established in 2007 to address all remaining property restitution matters, including heirless property. However, the Prime Minister disbanded the commission in 2010 and a replacement commission has yet to be created.

Since endorsing the Terezin Declaration in 2009, no new laws have been passed that address heirless property.

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