

# THE HOLOCAUST (SHOAH) IMMOVABLE PROPERTY RESTITUTION STUDY

## OVERVIEW

The *Holocaust (Shoah) Immovable Property Restitution Study* is the first-ever comprehensive compilation of all significant legislation passed since 1945 by the 47 states that participated in the 2009 Prague Holocaust Era Assets Conference and endorsed the 2009 Terezin Declaration that came out of the Prague conference.

The Terezin Declaration (and its companion document, the 2010 Guidelines and Best Practices, endorsed by 43 countries) focuses in substantial part on the treatment of immovable (real) property restitution: private, communal, and heirless property. The Study examined private, communal, and heirless property as discrete components of each country's restitution efforts from 1944 to 2016.

### Background

For countries in Eastern Europe, there was little time to create successful restitution schemes before Communist regimes came to power in each country and collectivized and nationalized private property. As a consequence, for Eastern European countries legislation of the 1990s and 2000s necessitated a more comprehensive approach – covering greater time periods and more property than is the case of Western Europe. However, Holocaust-era confiscated property is often specifically excluded from post-Communist restitution legislation.

By contrast, countries in Western Europe initiated restitution measures almost immediately after the end of World War II. The work of national commissions and subsequent legislation of the 1990s and 2000s was therefore mainly focused on restitution completion efforts – gap-filling the restitution measures of the 1940s and 1950s.

### Summary of Private Property Findings

The Study found that some Eastern European states have substantially complied with the Terezin Declaration and accompanying Guidelines and Best Practices regarding restitution of private immovable property, many have only partially complied, and Poland and Bosnia-Herzegovina have not complied.

Many of the former Communist states of Eastern Europe have made-efforts to comply with the Terezin Declaration and Guidelines and Best Practices. There are, however, important areas where the laws of these states do not yet meet the standards of the Terezin Declaration. For example, Croatia, Lithuania, Macedonia, and Slovenia limit eligible claimants to those who are citizens of their respective countries.

Other former Communist states of Eastern Europe have not yet fulfilled their Terezin Declaration obligations to enact immovable property legislation covering Holocaust-era property. Poland, with the largest Jewish population in prewar Europe of which ninety percent did not survive the war, is the prime example. Poland and Bosnia-Herzegovina stand alone as the

only countries that have failed to establish a comprehensive private property restitution regime for property taken either during the Holocaust or Communist eras, or one that addresses both types of takings.

The Study found that most Western European states have complied or substantially complied with the Terezin Declaration and accompanying Guidelines and Best Practices regarding restitution of private immovable property.

### **Summary of Communal Property Findings**

The Study found that some Eastern European states have substantially complied with the Terezin Declaration and accompanying Guidelines and Best Practices regarding restitution of communal immovable property, but many have only partially complied.

For the former Communist Eastern European states, with the onset of Communism, both Jewish and non-Jewish communal property was either nationalized or never returned to the various ethnic and religious groups in whose hands it was held prior to the war. After the fall of the Iron Curtain, most former Communist Eastern European countries passed laws to return communal property to the ethnic and religious communities from whom it had been taken. Only Bosnia-Herzegovina and Montenegro have failed to enact communal property restitution legislation covering either Holocaust-era confiscations or Communist-era takings.

Progress in some countries that passed laws to return communal property has been very slow. For example, in Poland, fewer than half of 5,550 Jewish communal property claims filed under the 1997 restitution law have been adjudicated.

In some countries, reconstituted Jewish organizations often were excluded from utilizing restitution laws because they came under different legal ownership than the pre-war Jewish community, or sought to reclaim communal property that was not used strictly for religious purposes (e.g., Jewish schools, hospitals, or community centers operated by various Jewish groups). Ownership over many formerly Jewish communal properties in Latvia remains in dispute and are not subject to current restitution legislation. Croatia, where the restitution law passed in the early 1990s covered only Communist era property confiscations, excludes property that was taken during the Holocaust, and does not cover properties that were owned by different Jewish legal entities.

The Study found that most Western European states have complied or substantially complied with the principles of the Terezin Declaration and accompanying Guidelines and Best Practices regarding communal immovable property.

### **Summary of Heirless Property Findings**

The Study found that most European states have not complied with the Terezin Declaration and accompanying Guidelines and Best Practices regarding restitution of immovable heirless property. Some have only partially complied.

Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Latvia, Lithuania, Luxembourg, Montenegro, Poland, and Slovenia have not enacted heirless property legislation. Of note are the Baltic States and Poland, which had the highest percentage of deaths in its Jewish population in all of Europe, and correspondingly, likely the largest percentage of heirless property due to the number of deaths.

Austria, Belgium, France, Germany, Greece, Hungary, Italy, Macedonia, the Netherlands, Norway, Romania, Serbia, and Slovakia have all enacted heirless property legislation. Yet, a list of enacting countries fails to capture whether the country has fulfilled the letter and spirit of the Terezin Declaration. For example, while Romania has an heirless property law on its books, the law was never meaningfully implemented. In the case of Hungary, the country has taken certain legislative measures with respect to heirless property since 1997, but these partial steps did not address the value of all heirless property in Hungary.

A large obstacle is that, under the domestic law of most European countries, both Western and Eastern, heirless property reverts to the state. The Terezin Declaration, recognizing the uniqueness of the Holocaust and the unprecedented scale of heirless property left following the mass murder of millions of people, recommends that heirless property should be allocated for the benefit of needy Holocaust survivors, commemoration of destroyed Jewish communities, and Holocaust education rather than simply escheating to the state. Unfortunately, this has not been implemented.

## **Conclusion**

The commitments in the Terezin Declaration bring a measure of long-overdue justice to victims and their heirs. Though far from perfect, the widespread adoption of at least some form of restitutionary legal regime in virtually all European countries in the last seventy years, and especially beginning in the 1990s, has resulted in far more property returning to its rightful owner(s) than would have otherwise been the case.

However, over seventy years after the Holocaust, a substantial amount of immovable property confiscated from European Jews remains unrestituted. While there have been significant steps forward in a number of endorsing countries, in the post-Communist countries of Eastern Europe there remains much to do regarding return of private and communal property.

## **About the Study**

The Study was sponsored by the **European Shoah Legacy Institute (ESLI)** as part of its Terezin Declaration monitoring mandate. The Study was conducted and completed by Michael Bazylar, Lee Boyd, Rajika Shah and Kristen Nelson, along with the invaluable assistance of willing Terezin governments, stakeholders, pro bono attorneys, and experts in the field of property restitution.