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HEIRLESS PROPERTY RESTITUTION – THE SERBIAN MODEL

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Abstract: Since the end of the second world war, different legal arrangements have been made in the field of restitution of Jewish property in Europe. Whereas western Europe under the leadership of US, French and English occupying forces created many important legal arrangements for the restitution, the central and eastern European Block has remained isolated also in this legal field, mainly due to the leading legal communist doctrine of lack of private property regime and constitutional protection of this right. This article deals both with the history of restitution legislation, and moves on to current legal legislation in this field, focusing on the latest legislation in Serbia in regard to restitution of Jewish Property. It relates, under all to the holistic approach, meaning a solution both to Jewish restitution property claims under the general Serbian legislation, Jewish communal but mainly and answer to the issue of Heirless Jewish property in Serbia. This specific part of the legislation, might also have in the future important effect on the re building of the bridges of friendship and partnership between the Republic of Serbia, the Jewish people and the state of Israel. The article closes with some international relations comments as to the potential effects of this specific legislation.

Key words: restitution, legislation, property, Jewish people, Serbia, Israel.

INTRODUCTION

The Holocaust, being a unique historical event, did not only concentrate on the physical extermination of all individual Jews, but also the infringement and the looting of Jewish property and the full destruction of Jewish life and culture.

The Aftermath of the Holocaust, left most Jewish communities in Europe devastated, unorganized and with little chance to survive, all this due to the lack of any infrastructure and the loss of its members.

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First steps to the re-establishment of communities, sometimes not that organized, were taken by Jewish organizations, such as the joining, assisting to round up and supporting the very few survivors that were able to return from the camps back home. Belgrade, a city completely clean from Jews (*Jude rein*) as of 8th June 1942, experienced in the post war era the rebuilt of its community with such help (Locker, 1988, pp. 81).

The case of Belgrade was not the only one across Europe, and many communities, both in Yugoslavia, but also elsewhere were faced with the same situation.

POST WAR AGREEMENTS

The post war legal agreements between the allied forces and the Republic of Germany paved the way as of the London Accord to the establishment of legal structure and arrangements allocating fund for the reviving of the Jewish communities and means to rehabilitate the survivors (Jelinek, 1989, pp. 128). These steps would be further developed in Germany following ongoing negotiations between the Federal Government, State of Israel and Jewish Organizations (de la Croix, 1985, pp. 4).

Slowly but surely other similar restitution agreements have been presented in countries such as Austria and Greece.

The Austrian model dealt first with the annulment of the unlawful expropriation of properties. Such a decision led at a later stage to the negotiations between the JCC under Dr. Nahum Goldman for the compensation for heirless property restitution for the Jewish community. Such an agreement was later in 1961 signed between the JCC and the Austrian government, allowing the so-called heirless property to be allocated for the benefit of the respected Jewish organization, benefits for survivors and rehabilitation of the Jewish Community (Oberhammer, Reinisch, 2000, pp. 752). Later on in the scope of the latest restitution legislation in Austria, the Austrian government once again followed this model, supporting the Jewish community based upon the allocation of heirless properties.

In the case of Greece, the government has revoked its right of inheritance of heirless property in the case of Jewish ownership, allowing the direct usage of Jewish heirless property for relief aid and support of Jewish activities in Greece. With respect to this legislation of 1946, Greece was one of the first countries to create a clear and coherent structure for the rehabilitation of its community and its members via the restitution of Jewish Heirless property (Constantopoulou, 2014, pp. 71).

POST COMMUNISM RESTITUTION ARRANGEMENTS

Following the instatement of the Iron curtain and the splitting of Europe between Western parts and Eastern parts, most of the Central Eastern European

Communities fell under the Soviet Regime. Under this Regime, issues relating to basic Human rights, such as property rights, were of course not discussed both in public, but also not between Communities and the Local Communist Regimes as both individual property ownership was non existing under the law, and the exercising of religious affairs, such as the maintaining of the life of Jewish community again was not relevant under these legal systems (Timm, 1997, pp. 86).

Following the collapse of the Soviet Union, Central and Eastern European countries began to address issues relating both needs of survivors, Jewish communities, and the installment of national laws dealing with the unlawful confiscation of properties under the Communist Regime, allowing both the State of Israel and prominent Jewish Organization, under which the WJRO to campaign for the enactment of legislation for restitution of Jewish Property.

HEIRLESS RESTITUTION LEGISLATIONS POST COMMUNISM ERA

Recognizing the experience gathered over the years in this respect, different countries applied different models. The Former Macedonian Republic of Yugoslavia, passed a special Heirless restitution law, allocating a sum of 17 million euros to the Jewish Community in order to establish a Holocaust Museum in the center of Skopje. One of the thoughts probably behind this move was the enormous devastation of Jewish Life in Macedonia and Trakja leading almost for the full destruction of the Jewish people there.

On June 2009, 46 counties endorsed the Terezin Declaration, a declaration trying for the first time under existing international law to create a soft law basis for the promotion of restitution legal orders. The declaration refers to all fields of restitution, and all relevant issues varying from the welfare of survivors, the memory of the Holocaust, restitution of property, art and the preservation of Jewish cultural artifacts and places of religious relevance. The document was co-endorsed by 46 states (later on Serbia joined as a signatory country).

The declaration sets forth, not only the moral basis for the restitution of the property, but tries also to bypass internal European law limitations, such as Art. 345 of the European Treaty excluding property issues from the capacity of the European Commission. The declaration was also accompanied by an agreement between the Czech Republic as at that time the temporary President of the European Union and the European Commission. This long dispute regarding the competences of the Union is still of great interest and was discussed during the first global forum for restitution of Jewish property held on 9th June 2016 at the Ministry of Foreign affairs in Jerusalem in coordination with the Ministry of Social

Equality, special Envoys of various European Union countries and prominent Jewish organizations such as WJRO.

Therefore, one could proclaim that the endorsement of the Terezin declaration is an understating on a national level on behalf of the countries that they should follow and promote legislation for restitution of property, including for the first time in history, a document agreed upon by so many countries, calling for the restitution of Heirless property as a means to reach goals of survivors welfare, community rebuilding and education.

A year later, the signatory countries met once again in Prague in order to announce the guidelines and best practices for restitution and compensation of immovable (Real) property confiscated or otherwise wrongfully seized by Nazis Fascists and their collaborators during the Holocaust (Shoah) Era between 1933-1945. Once again, these roles acknowledge the need for the allocation of funds that could be based on Heirless property for the good of Holocaust survivor's needs, and their communities.

SERBIAN RESTITUTION LEGISLATION

Serbia was the first country to take steps and measures to incorporate these notions and ideas in the scope of its internal legislation. Serbia first enacted a legislation tackling issues relating to religious property owned by the Orthodox Church and religious communities in 2006 (Law on restitution of property to churches and religious communities – Official Gazette of the Republic of Serbia, No. 46/2006). This important step allowed the Serbian government to commence with the return of the unlawful confiscation of the property seized by the Communist Regime, and assist in a way to the restoring of religious communal life in the modern Republic of Serbia.

Article 6 to the legislation, defines the Church or religious community as such that is defined so under Serbian Churches and Religious community acts. The article also refers to the legal heirs of that entity as a legal person allowed claiming under this legislation.

Under Article 9 of the law, restitution was not limited only to the scope of the actual ritual cities (churches for example) but was referring to all types of property held by the respected religious body, such as agriculture land, construction land, forest land, residential and commercial buildings, apartments and other business premises. In addition, the article also refers to cultural, historical and artistic movables.

The law drew a deadline for the submission of the claims, creating a time span of about two years (30th September 2008).

Following the legislation, the Republic of Serbia moved towards tackling also individual rights of property owners that were taken unlawfully. At this stage, it is

important to note that this legislation was dealing mainly with the properties expropriated as of the 9/3/1945 by then the Communist Yugoslav state (Law on restitution and compensation – Official Gazette of the Republic of Serbia, No. 72/2011).

Following the legislation of the law, in January 2012, the Restitution Agency assumed the role of conducting the individual restitution claims. The Agency could however only act vis-à-vis individual claims submitted as of March 2012 until March 2014. Art. 1(2) of this legislation also opened the door not only for confiscations after the war, but recognized that there might be confiscation that was a direct result of the Holocaust without referring to the specific dates of confiscation or limitations.

Interesting enough, the legislation calls under Art. 5(4) for the Republic of Serbia to create an additional law, external to the legal regime envisioned in the general restitution law, dealing with the issue of Heirless property of Holocaust victims and other victims of Nazi fascism in the territory of the Republic of Serbia.

SERBIAN HEIRLESS PROPERTY LEGISLATION

On 27th February 2016, the law named Law on elimination consequences of seizure of property of Holocaust victims who have no living legal successors was enacted (Law on elimination consequences of seizure of property of Holocaust victims who have no living legal successors, Official Gazette of the Republic of Serbia, No. 13/2016), bringing in principle a holistic approach to the remaining restitution challenges that the Republic of Serbia holds with not only its Jewish community, but represents its moral affirmation stated before for the creation of a platform allowing the state to deal with various issues of restitution.

The law is set forth to regulate the restitution and compensation of properties that belong to members of the Jewish community which do not have legal heirs. This includes also the restitution and compensation of properties belonging also to associations relating to the Jewish community. The law applies the general provisions set under Art. 2 to the General restitution bill, and by doing so, assure same measures of Justice and maintaining of legal rights as the Republic of Serbia rendered to individual claimants under the general law.

Furthermore, this law envisions not only the technicalities of restituting such properties, but also allocates a yearly sum for the financial support of the Jewish community, needs of Holocaust survivors both in Serbia and abroad, and educational programs. The legislation defines all these lines of activities under Art. 22 to the legislation, setting at the legislation level the legal norm for the proper allocation of the respected funds.

Looking into the financial support to the Communities, the Government of the Republic of Serbia has committed itself to allocate from the state budget a fixed yearly sum, independent from the amount of property to be restituted under this law. Art. 9 to this legislation, allocates a sum of 950,000 euros for this described purpose for the coming 25 years starting with 1.1.2017. Once again, this sets a unique example for the ongoing and long range support of the Serbian government to the community, and clearly demonstrates how the Serbian government is convinced in the need for a vital and strong Jewish community.

Understanding the complexity of gathering information, and substantiating a restitution or compensation claim under the general regime of the Serbian law, the legislator extended the deadline for submission of the claims to the scope of three years since the law came into force. Furthermore, the request submitted to the Agency can be completed with the proper documentation even after the deadline has passed.

Whereas this legislation wishes to demonstrate the good will and interest of the Republic of Serbia, not only with the local Jewish community but also with the Serbs of Jewish origin living abroad, under Art. 23 a monitoring board is to be set up, including two representatives of the Serbian Jewish communities, and two representatives of the World Jewish Restitution Organization. This would allow the integration of non-resident Serbian Jews to be a vital and lively part of the decision-making process regarding the allocation of the respected funds.

Under Art. 9 and 13 of the legislation, the Jewish Communities recognized elsewhere under the general Serbian law may submit claims for Heirless properties, or also for properties of Jewish ownership that have failed to comply with the deadline stipulated under the General restitution bill. In this case, should the Restitution Agency decide to give the property back or to compensate for it, the property shall be allocated under this law to the Jewish community (in this respect the share legal outcome for a successful Heirless property claim), and then under other arrangement not stipulated either by government or parliament the Jewish community and the right owner should come to terms between themselves as for the allocation of funds or property. In this regard, the above-described model resembles the good will fund set up by the Jewish Claims Conference.

The board would be reviewing on a yearly basis the monetary program for the following calendar year, thus allowing also the individuals that might be affected by the respected allocation to be aware of their possibilities. Both the appointment of the reviewing board as this described step are presented in order to promote transparency and support the wishes and will of the Serbian government to make this legislation a success story.

In order to conclude, I believe that the Serbian model holds interesting elements to it, incorporating in a way the accumulated experience in the different models of

treating of Heirless property. At first, it does not exclude claims, whether they are made by the community or by individuals via the community. It holds before its eyes the goal of maximum restitution. Besides the mass of properties, the Government of Serbia allocates a fixed forcible allocation for the sustainability of Jewish life in Serbia. Both minded the decision to create a professional procedure under the Agency for Restitution, setting forth a timely deadline of three years, and constantly engaging in meetings with the Jewish community and Representatives of WJRO in order to explore the way to submit as many claims as possible. Most probably due to this approach representatives of the European Commission to Belgrade have noted this law in the annual progress report, and commended the Serbian Government for their steps.

CONSEQUENCES OF THE SERBIAN RESTITUTION MODEL

It is therefore with no doubt, that the newest Serbian Restitution law dealing with elimination consequences of seizure of property of Holocaust victims who have no living legal successors, presents a very worthy positive signal on behalf of the Serbian government and parliament towards its Jewish minority, however, due to the fact that many former Serbian Jews are living both in Israel and the US, also an important signal to its strategic partners there.

In many ways, the negotiations, and the preparation of the legislation went back to back with diplomatic engagement between the representative of the restitution authority, Justice Ministry, and diplomats both from Israel, the US and others.

At the height of the negotiations, even the European Shoah Institute (ESLI) established by the Terezin Declaration, coordinated the diplomatic efforts not only made by the US Administration and the Israeli government but also other friendly governments such as Germany, the Czech Republic, and Great Britain.

Thus, the Serbian Government enjoyed the ability to present this important legislation piece in different international forums, including the European Parliament, and in this respect enjoy the political recognition of these unique steps undertaken by the Republic of Serbia.

However, the law was not only aimed towards politicians and for political purposes only. It serves a great measure as a bridge building process between the people of the Republic of Serbia and the Jewish nation, including the state of Israel. The legislation provides a significant financial life line for the proud Jewish minority living in Serbia, and would create both cultural and intellectual platforms to exchange views and ideas by both Serbs and Israelis.

Out of special respect to the victims, the legislation would also allow to support Needy Survivors and thus allows to bridge between the people of the Republic of Serbia, and its former citizens suffering great atrocities under the Nazi occupation.

This again, serves as a special individual recognition of the Republic of Serbia of its Jewish former citizens persecuted during the war.

In this respect, the legislation allows the Serbian government to receive its political recognition of its step vis-à-vis its political partners, the creation of a further dialog with its former Jewish citizens suffering under the Nazis and also creating a future prospect for a cultural dialog between the people, ensuring and supporting the flourishing relations between Serbia and the Jewish People.

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RESTITUCIJA IMOVINE BEZ NASLEDNIKA – SRPSKI MODEL

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Ključne reči: restitucija, zakonodavstvo, imovina, Jevreji, Srbija, Izrael.

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