

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

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### A. EXECUTIVE SUMMARY

During World War II, the independent Republic of Lithuania was attacked first by the Soviet Union in 1940, then by Germany in 1941, and finally annexed – along with Estonia and Latvia – by the Soviet Union at the end of the war. Lithuania became one of the 15 Soviet socialist constituent republics. Independence was restored in 1990.

Jews have resided in Lithuania since the 14th century with a significant influx having taken place in the 19th century under the rule of the Russian czars. Lithuania was considered the heart of the Yiddish-speaking civilization. World War II decimated the Jewish population of Lithuania. Between 1939 and 1943, between 90 and 95 percent of Lithuania's vibrant pre-war Jewish community of 160,000 was murdered. Today, approximately 4,000 Jews live in Lithuania.

Lithuania is one of the few European countries to enact restitution legislation since the Terezin Declaration was drafted in 2009. Despite passage of its communal property law in 2011, restitution of private and heirless property in the country is still an unsettled issue. Unlike its Baltic neighbors – Estonia and Latvia – private property restitution in Lithuania has been hampered by requirements that eligible claimants are citizens of Lithuania. Furthermore, Lithuania has no effective heirless property legislation.

*Private Property.* The Lithuanian government asserts that as of 2011, compensation or restitution has been made for 98% of rural and 72% of urban claims under its **1991 and 1997 Restitution Laws** which provided restitution or compensation for Holocaust era and later confiscations. However, the figures fail to reflect claims that could have been filed by non-citizens had they been permitted to participate in the restitution process. Revisions to citizenship laws between 1995 and 2010 have permitted non-citizens to reclaim Lithuanian citizenship and maintain dual citizenship with another country. A 2004 amendment to the **1997 Restitution Law** also appeared to grant courts permission to reopen the claims filing deadline (originally 31 December 2001) for persons previously

ineligible because of citizenship restrictions. The Supreme Court ultimately found the 2004 amendment to be inapplicable to persons who were not citizens by the original claims filing deadline. As a result, no mechanism exists to provide restitution for persons who were only able to reclaim their Lithuanian citizenship after 2001. In May 2015, the Lithuanian government agreed to the establishment of a joint commission to address the questions of citizenship that adversely affect private property claims as well as a number of other issues.

Part of the government's 2011 **Law on Good Will Compensation for the Real Estate of Jewish Communities ("Law on Good Will Compensation")** provided for a one-time symbolic payment to Lithuanian victims of totalitarian regimes. This payment, however, came from communal property funds and had nothing to do with the outstanding amount of unrestituted private property in the country.

*Communal Property.* After more than 10 years of negotiations between the Jewish community and three (3) separate Lithuanian governments, the **Good Will Compensation Law** was passed in 2011. The law provides for compensation (not restitution *in rem*) of LTL 128 million (EUR 36 million) to the Jewish community over a 10-year period. The payment amount is equivalent to 30 percent of the value of communal property that the government deemed eligible for restitution. The law extinguishes all future communal property claims by the Jewish community. While, the law provides far less than complete restitution/compensation of Jewish communal property, according to one prominent Jewish commentator, it "should be sufficient to guarantee long-term viability of Jewish life in Lithuania". The law was seen as necessary to make up for the shortcomings of a generally applicable communal property law from 1995. Language and other limitations written into the **1995 Religious Associations Law** made it difficult for the Jewish religious community and nearly impossible for the Jewish community at large to receive restitution or compensation for communal property.

*Heirless Property.* The often-wholesale extermination of families in Lithuania during the Holocaust had the effect of leaving substantial property without heirs to claim it. Principles enshrined in documents such as the 2009 Terezin Declaration emphasize that heirless property should be used to provide for the material needs of Holocaust survivors most in need of assistance. Lithuania has not made any special provisions for heirless property from the Shoah era.

Lithuania 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. As of 13 December 2016, no response from Lithuania has been received.

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

During World War II, Lithuania was occupied twice by the Soviet Union and once by Germany. In January 1939, Lithuania and Germany entered into a nonaggression pact. Notwithstanding this agreement, in March 1939 Germany annexed the Lithuanian territory of Memel-Klaipeda, a region with an ethnic German majority. In June 1940, the Soviet Union occupied part of Lithuania and then annexed the country in August 1940. Following the German invasion of the Soviet Union in the summer of 1941, the Germans occupied Lithuania. During the German occupation, the country was incorporated into the Reich Commissariat Ostland, a German civilian administration covering the Baltic States and western Belorussia. Soviet troops reoccupied the country in 1944. It would remain occupied until Lithuania declared its independence in 1990. (See [United States Holocaust Memorial Museum \(“USHMM”\) - Holocaust Encyclopedia, “Lithuania”](#); see also Cheryl Stovall, “Former Citizenship Restitution: A Proposal for an Equitable Resolution of Confiscated Lithuanian Property” 11 Chi.-Kent J. Int’l & Comp. L. 1, 7 (2011).)

The Jewish population in Lithuania before the war numbered approximately **160,000**. Refugees arriving from German-occupied Poland drove the number up to between 240,000 and 250,000 in 1941. By the end of 1941, Nazi Einsatzgruppen (with assistance from Lithuanian auxiliaries) had murdered most of the Jews in Lithuania. The remaining 40,000 Jews were sent to ghettos and concentration camps. In 1943 and 1944, the ghettos were transformed into concentration camps and 25,000 of the remaining Jews were sent to labor and concentration camps in Latvia, Estonia and Germany, while 5,000 were sent to death camps in Poland. By the summer of 1944 when the Soviet Union reoccupied Lithuania, between 90 and 95 percent of Lithuanian Jews had been murdered. ([USHMM - Holocaust Encyclopedia, “Lithuania”](#).) Approximately **4,000** Jews currently live in Lithuania.

Some sources also indicate that the **majority** of the Roma population in Lithuania during the war (approximately 1000) was either killed or deported to Auschwitz-Birkenau. As of 2012, the Council of Europe estimates that **3,000** Roma live in Lithuania.

At the end of World War II, as a country then occupied by the Soviet Union, Lithuania was not a party to an armistice agreement or any treaty of peace. Lithuania was, however, impacted by the tacit agreements of the other Allied Powers during the [February 1945 Yalta Conference](#) - between President Franklin D. Roosevelt (United States), Prime Minister Winston Churchill (United Kingdom) and Chairman of the Council of Peoples’ Commissars Joseph Stalin (Soviet Union) – and the [July 1945 Potsdam Conference](#) – between President Harry S. Truman (United States), Churchill (and later Prime Minister Clement Atlee) (United Kingdom) and Stalin (Soviet Union). The three (3) powers met at these two (2) conferences to negotiate terms for the end of the war. Afterwards the Soviet Union annexed the Baltic States.

Lithuania was thereafter incorporated into the U.S.S.R. as the Lithuanian Soviet Socialist Republic (Lithuanian S.S.R.). However, during the Cold War period, the United States continued its so-called Baltic non-recognition policy whereby the United States did not recognize what it considered the unlawful incorporation of the Baltic States into the Soviet Union.

After World War II, the Soviet Union entered into a number of settlement agreements with other countries, which pertained to raising claims related to Lithuania, Latvia and Estonia that existed at the time the three (3) Baltic countries were incorporated into the U.S.S.R. These included agreements with **Bulgaria** on 18 January 1958, **Hungary** on 14 March 1958, **Czechoslovakia** on 30 June 1958, **Denmark** on 27 February 1964, **United Kingdom** on 5 January 1968 and 15 July 1986, **Netherlands** on 20 October 1967, **Norway** on 30 September 1959, and **Sweden** on 11 May 1964.

In 1990, Lithuania declared independence, and became the Republic of Lithuania. The country became a member of the Council of Europe in 1993 and ratified the European Convention on Human Rights in 1995. As a result, suits against Lithuania claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Lithuania became a member of the European Union (EU) 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.)

The Terezin Declaration underscores that it is important “where it has not yet been effectively achieved, to address the private property claims of Holocaust (Shoah) victims concerning immovable (real) property [...] in a fair, comprehensive and nondiscriminatory manner consistent with relevant national law and regulations, as well as international agreements.” (Terezin Declaration, Immovable (Real Property), para. 2.)

During and after World War II, property belonging to Lithuanian Jews was confiscated in a number of ways, including through: the 1939 German annexation of the Memel-Klaipeda land; nationalization/expropriation under the laws of the U.S.S.R. (Lithuanian S.S.R.); resolutions passed by the Lithuanian Provisional Government in 1941; decrees and orders passed by the occupying Germany government; and property acceding to the state as heirless property. (Faina Kukliansky, “Works in Progress: Examples from Communities – The Case of Lithuania” in *Holocaust Era Assets – Conference Proceedings, Prague* (26-30 June 2009), p. 640.)

Lithuania's private property restitution regime differs from its Baltic neighbors – Estonia and Latvia – in that Lithuanian law has excluded non-citizens from participating in the restitution process.

To date, two main laws in Lithuania have addressed restitution/compensation of private property seized during the Holocaust and after: the **1991 Law on the Procedure and Conditions of Restoration of the Rights of Ownership to Existing Real Property (18 June 1991, Law No. I-1454) (“1991 Restitution Law”)**, and the **1997 Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (27 July 1997, Law No. VIII-359) (“1997 Restitution Law”)**.

### 1. 1991 Restitution Law

The **1991 Restitution Law** provided for either restitution *in rem* or compensation when return *in rem* was not possible. Compensation was offered in the form of substitute property of equal value or voucher/monetary compensation. Property that could be restituted under the law included agriculture and forestland, homes, buildings (residential and commercial), and land surrounding buildings and homes.

Claims were lodged by filing a form with the Land Reform Service. Claimants were required to submit proof demonstrating size and location of the land. Claimants also had to demonstrate that they were descendants of the former owner. For owners seeking agricultural property, they had to show that they were engaged “in the tilling of land, or are returning for the purpose of engaging in farm activity” (**Article 4**).

Proving ownership was purportedly relatively easy because land records still existed from the 1940s ([William Valetta, “Completing the Transition: Lithuania Nears the End of its Land Restitution and Reform Program”, 11 FAO LEGAL PAPERS ONLINE \(2000\), p. 5.](#)) Where land records were lost (and in Vilnius where no standard records were kept (the area was part of Poland until 1945)), it was more difficult to compile proof of ownership and location and size of the property. (*Id.*). Possible records included purchase/sale agreements, mortgages or documents from archives. If none of those were available, a claimant could request a hearing where elderly local persons testified as to the situation in 1940. (*Id.*)

Owners and their heirs could claim property under the **1991 Restitution Law**. Recovery, however, was restricted to *permanent resident Lithuanians who had a certification of citizenship*. The **1991 Law on Citizenship of the Republic of Lithuania (12 December 1991, Law No. I-272)** stated that persons, who were citizens prior to 15 June 1940, and their children and grandchildren, are citizens – unless they acquired citizenship of another country. This meant that because most Holocaust survivors and their heirs fled from Lithuania and became citizens of another country, they were ineligible to claim property under the law.

a. **Constitutional Court Decisions Relating to the 1991 Restitution Law**

In the mid-1990s, a series of Lithuanian Constitutional Court cases examined the constitutionality of the restitution measures laid out in the **1991 Restitution Law**.

On 27 May 1994 the Lithuanian Constitutional Court examined whether domestic laws on property restitution rights were compatible with the Constitution. ([Constitutional Court of the Republic of Lithuania, Case No. 12/93, 27 May 1994 Ruling on the restoration of ownership rights to land on the restoration of ownership rights to land](#).) In its decision, the Court held that possessions which had been nationalised by the Soviet authorities since 1940 should be considered as “property under the *de facto* control of the State”. The Court also stated that, “The rights of a former owner to particular property have not been restored until the property is returned or appropriate compensation is afforded. The law does not itself afford any rights until it is applied to a concrete person in respect of specific property. In this situation the decision of a competent authority to return the property or to compensate has the legal effect that only from that moment does the former owner obtain property rights to the specific property.” ([Jurevičius v. Lithuania, ECHR, Application No. 30165/02, Judgement of 14 November 2006 \(“Jurevičius”\)](#), ¶ 20 (quoting decision of the Constitutional Court).) The Court also held that it was constitutional for fair compensation to be paid when property could not be restituted in kind and that it was “impossible to impartially reconstruct the complete former system of property relations which existed in Lithuania in 1940.”

In two other decisions from 1994 (15 June and 19 October), the Constitutional Court underscored the idea that property restitution in Lithuania was actually *partial* restitution. (See [Constitutional Court of the Republic of Lithuania, Case No. 11-1993/9-1993, 15 June 1994 Ruling on the restoration of citizens’ ownership rights to residential houses](#); [Constitutional Court of the Republic of Lithuania, Case No. 10/1994, 19 October 1994 Ruling on the restoration of the ownership rights to residential houses](#).) The Court described how the government in Lithuania, as a re-established state as of 1990, was not responsible for the Soviet occupation beginning in 1940. It also was not responsible for consequences of the occupation. Since the 1940s, many private individuals, in compliance with the laws of the time, had purchased previously nationalized property. Accordingly, the **1991 Restitution Law** was meant to take into account not only the rights of the original owners, but also those who had lawfully purchased the property in subsequent years. (*Jurevičius*, ¶ 20.) Thus, *partial* restitution was deemed acceptable.

2. **1997 Restitution Law**

The [1997 Restitution Law \(and amendments\)](#) repealed the **1991 Restitution Law**. The preamble of the law stated “the rights of ownership acquired by the citizens of the Republic of Lithuania before the occupation are not revoked and have continuity.” According to **Article 1**, the **1997 Restitution Law** applied to “the real property which was nationalised under the laws of the USSR (Lithuanian SSR) . . .” This included land, forests, water bodies, structures used for economic and commercial purposes, and

residential houses (**Article 3**) up to 150 hectares (**Articles 4-6**). Compensation for property that could not be returned by the State was available according to **Articles 12-16**. Compensation was paid in the form of shares of state-owned companies.

Claimants could prove ownership using documents from mortgage books, deeds of conveyance, court decisions, deeds of nationalization, certificates from archives, wills and other government-authorized documents (**Article 9(1)**). If no documents were available, a claimant could appeal to the court to establish ownership rights in the manner prescribed by the Code of Civil Procedure (**Article 9(2)**).

The **1997 Restitution Law** (1) covered claims still pending from the **1991 Restitution Law** claims process, and (2) also provided an opportunity for persons who were ineligible under the former law, or missed the deadline to file a claim (**Article 10**).

New claims under the **1997 Restitution Law** had to be filed by **31 December 2001**. Subsequent amendment to the law permitted claimants who failed to present citizenship or right of ownership documents with their claims to submit those records by **31 December 2003**.

Owners and their heirs could claim property under the **1997 Restitution Law**. Recovery was limited to Lithuanian citizens (**Article 2**). As with the **1991 Restitution Law**, the terms of the **1997 Restitution Law** precluded non-citizens from claiming property, but the 1997 law removed previous additional requirements of permanent residence and certification of citizenship.

Thus, the **1997 Restitution Law**, while asserting in its preamble that ownership rights from before the occupation have continuity, failed to take into account the situation of Lithuania's former Jewish population, the majority of which were murdered or left the country after the war. There can be no continuity of ownership rights if the former Lithuanian Jews cannot meet the law's citizenship requirements.

### **3. Changes to Citizenship Laws Continue to Leave Former Non-Citizens Without Restitution Options**

A series of court decisions and amendments to Lithuanian citizenship laws eventually paved a way for Lithuanian Holocaust survivors – who had become citizens of foreign countries – to reclaim their Lithuanian citizenship. However, they continue to be excluded from seeking restitution of their confiscated private property in Lithuania.

#### **a. 1995 Law Amending the Act on Citizenship of the Republic of Lithuania**

A 1995 amendment to the citizenship law, **Law Amending the Act on Citizenship of the Republic of Lithuania** (3 October 1995, Law, No. I-1053), revised citizenship restrictions. Only those persons who “repatriated from Lithuania” to their ethnic homeland, were excluded from regaining citizenship. While the 1995 amendment to the

citizenship law essentially permitted Lithuanian Jews who were citizens of countries *other than Israel* to reclaim their citizenship and then, in theory, apply for property restitution under the **1997 Restitution Law**, the **World Jewish Restitution Organization (WJRO)** has observed:

the complicated and often-amended citizenship law meant that most survivors living abroad did not know, and were not informed, that they could apply for Lithuanian citizenship or that they needed Lithuanian citizenship to qualify under the restitution law. Additionally, by 1995, certain municipalities had already rejected restitution claims based on non-citizenship, and applicants generally did not understand that the 1995 amendment enabled them to seek dual citizenship and revive their claims. Other municipalities had not yet reviewed restitution claims and therefore these applicants had not been informed that their claims would be rejected based on non-citizenship and that they could now obtain dual citizenship.

(WJRO, “Position Paper on Private Property Restitution in Lithuania”, May 2015, p. 3.)

**b. 2006 Constitutional Court Decision and 2010 Law on Citizenship**

A decade later, a 2006 Ruling by the Lithuanian Constitutional Court found it was unconstitutional for Lithuania not to recognize dual-citizenship of former citizens who “repatriated” from Lithuania to a country considered an ethnic homeland (e.g., Israel). (See [Constitutional Court of the Republic of Lithuania, Case No. 45/03-36/04, 13 November 2006, Ruling on the citizenship of the Republic of Lithuania.](#))

The [2010 Law on Citizenship \(2 December 2010, Law No. XI-1196\)](#) reflects the 2006 Constitutional Court ruling and provides that a Lithuanian citizen *may be a citizen of another state at the same time* if he was exiled or fled from occupied Lithuania before 11 March 1990 and acquired citizenship of another state, or if he is a descendant of the person who was exiled or fled (**Article 7(2)-(4)**). Qualifying persons can apply to have their citizenship reinstated (**Article 9**) but the courts have nevertheless confirmed that granting dual citizenship is an “extraordinarily rare exception[]”. (See [Constitutional Court of the Republic of Lithuania, Case No. 40/03; 45/03-36/04, 13 March 2013, Decision on the interpretation of the provisions of the Constitutional Court’s rulings of 30 December 2003 and 13 November 2006 related to citizenship issues.](#)) Moreover, the **2010 Law on Citizenship** – which came into effect in April 2011 – did nothing to assist those previously ineligible persons from being able to file a restitution claim, because the claims filing deadline under the **1997 Restitution Law** closed on 31 December 2001.<sup>1</sup>

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<sup>1</sup> It is worth noting that a 2003 law ([Law on the Implementation of the Law on Citizenship \(21 January 2003, Law No. IX-1298\)](#)) also permitted Jews who arrived in Israel before 1948 (before it was a Jewish *state*) to regain their Lithuanian citizenship, but again, this measure came into effect after the property restitution claims filing deadline.



c. **2004 Act Amending the Law on Restoration of the Rights of Ownership of Citizens to the Existing Real Property**

When a 2004 amendment to the **1997 Restitution Law, Act Amending the Law on Restoration of the Rights of Ownership of Citizens to the Existing Real Property (12 October 2004, Law No. IX-2490)** was passed, it appeared to reopen claims filing deadlines for those persons who had previously been excluded on citizenship grounds and had later reclaimed citizenship after restitution claims filing deadlines. However, as seen in [\*Shub v. Lithuania, ECHR, Application No. 17064/06, Decision of 30 June 2009\*](#), Lithuanian high courts interpreted the 2004 law's reopening the time limit for claims provision to only be applicable to persons who had acquired a right to restitution within the prescribed time limit of the restitution law (i.e., by 31 December 2001) and who had not been able to act on it within the deadline for good cause. Where a person became a citizen *after* the 31 December 2001 deadline, he could not submit a restitution claim. (*See also* Supreme Court of Lithuania, Case No. 3K-7-24/2008, 25 February 2008 (“The rights of ownership to existing real property may not be restored in respect of a person who acquired the citizenship of the Republic of Lithuania after December 31, 2001, because an application submitted by such a person will not create legal consequences.”).)

The result is that after numerous iterations of its citizenship and restitution laws, Lithuania's restitution regime still excludes former non-citizens from reclaiming their confiscated property.

According to the **WJRO**, between 1991 and 2011 the government received roughly 9,500 claims for private homes and more than 57,000 claims for land. (*See* WJRO, “Immovable Property Review Conference of the European Shoah Legacy Institute: Status Report on Restitution and Compensation Efforts” November 2012 (“WJRO 2012 Report”), p. 15 (Lithuania).) The government has asserted that by 2011, compensation or restitution had been made to 98% of claimants for property in rural areas and more than 72% of claimants in urban areas. (*Id.*) This included compensation paid to 4,567 claimants and restitution *in rem* to 2,250 claimants. (*Id.*) The government has not provided figures for the value of these properties. The figures also do not reflect claims that could not be made under either restitution law because the would-be claimants were non-citizens.

In May 2015, the Lithuanian government agreed to the establishment of a joint commission – including international, **WJRO** and local Jewish community participation – to address the questions of citizenship that adversely affect private property claims as well as a number of other issues.

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

4. **Notable European Court of Human Rights Decisions Relating to the 1991 and 1997 Restitution Laws**

Applicants have filed a number of actions relating to the **1991 and 1997 Restitution Laws** (and the related citizenship laws) with the **European Court of Human Rights**. Many of these actions deal with common themes, including whether claimants are entitled to restitution *in rem*, whether the length of proceedings are unreasonably long and whether the citizenship requirements on property restitution are permissible. The following are a few examples:

a. **Citizenship**

In 2009, in *Shub v. Lithuania*, the **ECHR** issued a decision addressing the citizenship requirement for property restitution in Lithuania. ([\*Shub v. Lithuania\*, ECHR, Application No. 17064/06, Decision of 30 June 2009.](#)) The applicant sought the return of a building owned by his relatives prior to Soviet nationalization of the property. He sought return of the building under the **1991 Restitution Law** but was told by authorities that he did not meet the law's requirements (he was not a Lithuanian citizen and he did not reside in Lithuania). Between 2002 and 2003 the applicant sought and received Lithuanian citizenship by a decree of the State's President. In 2005, the applicant requested that the domestic court extend the deadline for him to file a restitution claim (the period under the newer **1997 Restitution Law** had closed on 31 December 2001). He asserted he could not have made a claim within the statutory period because he did not yet have his Lithuanian citizenship (a 2004 amendment to the restitution law (**Act Amending the Law on Restoration of the Rights of Ownership of Citizens to the Existing Real Property (12 October 2004, Law No. IX-2490)**) appeared to open the possibility of extending claim filing deadlines).

In 2005, the Vilnius Regional Administrative Court granted applicant's request because he had actively sought the restitution of the property and sought Lithuanian citizenship to complete the necessary restitution requirements. That same year, the Supreme Administrative Court overturned the decision. In its view, the restoring/extending the time limit provision from the 2004 amendment could only be used by persons who had acquired a right to restitution within the prescribed time limit (by 31 December 2001) and who had not been able to act on it within the deadline for good cause. Applicant only became a Lithuanian citizen after the 31 December 2001 deadline.

As a result, applicant alleged his **Article 6** (right to fair trial) and **Article 14** (right to be free from discrimination) rights under the **European Convention on Human Right ("Convention")** and **Article 1 of Protocol No. 1** (right to peaceful enjoyment of one's possessions) of the **Convention**, had been violated.

With respect to **Articles 6 and 14**, the **ECHR** stated it was not a court of appeal and that applicant had counsel present at all domestic proceedings and had been "afforded ample opportunities to state his case and contest the interpretation of the law which he considered incorrect". As a result, the **ECHR** found no violation.

With respect to **Article 1 of Protocol No. 1** and **Article 14** of the **Convention**, applicant asserted that the restitution law was incompatible with **Article 1 of Protocol No. 1** because it limited restitution to Lithuanian nationals. The **ECHR** stated that there is no Convention right to acquire citizenship and no obligation on Contracting States to restore property expropriated before they ratified the Convention. The Lithuanian restitution law did not permit the applicant to claim the restitution of his relative's property because he was not a citizen. Thus, he had no right or legitimate expectation over the property and there could be no **Article 1 of Protocol No. 1** violation.

**b. Restitution *in rem* and Length of Proceedings**

In *Aleksa v. Lithuania*, the court examined whether there was a right to restitution *in rem* (versus compensation) and whether the domestic proceedings had been unreasonably long. ([Aleksa v. Lithuania, ECHR, Application No. 27576/05, Judgement of 21 July 2009 \("Aleksa"\)](#).) The applicant had filed for restitution of a portion of a building in Kaunas in 1992. The City Board initially restored applicant's partial interest in the building. The decision was later modified so that the applicant would receive compensation in lieu of restitution *in rem*. The applicant wanted restitution *in rem*. He challenged the City Board's decision in both administrative and judicial proceedings that lasted until 2008, when the applicant refused to accept an order to pay compensation for his share of the building by the City Municipality.

In 2009, the ECHR found that even though the matter was complex, involved several interrelated court proceedings, and occurred during legislative amendments to the law, 10 years was too long for resolution. (*Id.*, ¶ 60.) The Court therefore found a violation of **Article 6(1)** of the **Convention** (right to fair trial) on the reasonableness of the length of proceedings.

Regarding the applicant's claims that he was entitled to restitution *in rem*, the Court found that under applicable domestic legislation, he did not have the right to recover the actual premises. Authorities were only required to compensate him via alternate property or paying pecuniary compensation. (*Id.*, ¶ 73.)

Other similar actions relating to the reasonableness of the length of proceedings and whether there is a right to restitution *in rem* include [Igarienė and Petrauskienė v. Lithuania, ECHR, Application No. 26892/05, Judgement of 21 July 2009](#), [Padalevičius v. Lithuania, ECHR, Application 12278/03, Judgement of 7 July 2009](#), and [Jasiūnienė v. Lithuania, ECHR, Application No. 41510/98, Judgement of 6 March 2003](#).

## **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 main Jewish community organization in Lithuania is the [Jewish Community of Lithuania](#).

The WJRO estimates that approximately 1,500 Jewish communal properties existed in Lithuania before the war but most were destroyed either during the Holocaust or during the Soviet regime.

### **1. 1995 Religious Associations Law**

The first law passed in Lithuania relating to the return of religious property was the **1995 Law on the Procedure for the Restoration of the Rights of Ownership of Religious Associations to Existing Real Property** (“1995 Religious Associations Law”).

Under the law, religious associations, which had functioned in the Republic of Lithuania prior to 1 July 1940, could seek restitution of religious property confiscated by the State (**Article 2**). Successors of the religious communities from 1940 were also entitled to restitution but successorship had to “be established by the supreme authority of the appropriate religious authority” (**Article 2**). The stringent successorship requirement was essentially an insurmountable hurdle in reclaiming most Jewish communal property. This was partly because the Jewish community did not have a chief central authority (for example, like an Archbishop of the Anglican Christian church) to authorize a successor for the purpose of bringing claims under **Article 2**. Moreover, because of the almost total destruction of the Jewish population during the war, it was nearly impossible to prove that post-war Jewish communal entities were the legal successors of the pre-war entities. The government would not recognize the **Jewish Community of Lithuania**, which was formed in 1991, as an heir and successor to the properties that had been taken from pre-war Jewish organizations. The **Jewish Community of Lithuania** was seen as a more general organization and not a religious community. (See Naphtali Lavie, “Fighting for Crumbs: Financial Restitution in Eastern Europe”, 23 February 2009, Jerusalem Center for Public Affairs; Paul Jaskunas, “Vilnius Lost”, January/February 2003, Legal Affairs (“Jaskunas”).)

Another limitation on the law was that restitution only applied to *religious* property – e.g., synagogues, houses of worship. In pre-war Lithuania, communal properties had included synagogues, hospitals, schools, libraries, bathhouses, etc. for the Jewish community. (See *Jaskunas*). Yet, the quasi-secular properties (all except the synagogues) could not be restituted under the **1995 Religious Associations Law**.

The law provided for either restitution *in rem* or a state buy-out of the property (**Article 3**). The religious community could choose from four (4) buy-out options: (1) transfer without payment the property of the same kind or value in the ownership of the community; (2) pay-out of a cash indemnity; (3) support for the repair of the groups' monuments, buildings of worship; or (4) the lease of the land without announcing an invitation for bids (**Article 12**).

The claim-filing process under the **1995 Religious Associations Law** closed in **December 2001**.

The ultimate effect of the limitations from the **1995 Religious Associations Law** was that only the orthodox Jewish religious community (only about 5% of Lithuania's total Jewish population) was able to apply for the restitution of communal property owned and used by Lithuania's pre-war Jewish population. (See [Hearing before the Commission on Security and Cooperation in Europe, "Property Restitution in Central and Eastern Europe: The State of Affairs for American Claimants" 16 July 2002](#).) Few properties were returned under the law.

In 2002, a government Commission on Restitution of Jewish Communal Property in Lithuania convened to review Jewish communal property issues. (See [Commission on Security & Cooperation in Europe, "Property Restitution and Compensation in Post-Communist Europe: A Status Update", 10 September 2003, at p.23](#).) It was composed of both government officials and members of the local and global Jewish organizations. For the next 10 years, Rabbi Andrew Baker led negotiations with the Lithuanian government on behalf of the international Jewish organizations and the local Jewish community. These efforts spanned the length of three (3) different governments, reflecting the difficulties associated with try to resolve the outstanding communal property issues.

In 2002, the government also prepared amendments to the **1995 Religious Associations Law**, which would have broadened the definition of communal property and created a fund to pay compensation for property that could not be restituted *in rem*. (*Id.*)

In response to the Commission's review of communal property, in 2005 the Jewish community compiled a list of 438 remaining communal buildings that it thought were eligible for restitution. From that list, the government determined 152 properties would be eligible for return under proposed amendments to the communal property law. (See WJRO, "Immovable Property Review Conference of the European Shoah Legacy Institute: Status Report on Restitution and Compensation Efforts" November 2012, p. 13 (Lithuania).)

## 2. 2011 Law on Good Will Compensation for the Real Estate of Jewish Communities

Finally, in 2011, a new [Law on Good Will Compensation for the Real Estate of Jewish Communities \(“Law on Good Will Compensation”\)](#) was enacted in response to the limitations of the **1995 Religious Associations Law** on the Jewish community.

The law does *not* provide for restitution *in rem* of any religious property. Instead, LTL 128 million (approximately EUR 36 million) will be paid to the Jewish community over a period of 10 years beginning in 2013. According to the WJRO, LTL 128 million was calculated to be 30 percent of the official value of the 152 Jewish communal properties the government deemed eligible for restitution. By the terms of the law, all future claims for property by Jewish religious communities and Jewish communities are extinguished (**Article 2**). (See also [Dinah Spritzer, “On restitution, a rundown of where they stand in Eastern Europe”, JTA.org, 3 December 2012.](#))

Rabbi Andrew Baker, Director of the International Jewish Affairs for the American Jewish Committee and lead negotiator with the government during the 10-year lead up to the passing of the **Law on Good Will Compensation**, has acknowledged that even though LTL 128 million does not represent the full value of Jewish communal property in Lithuania it “should be sufficient to guarantee long-term viability of Jewish life in Lithuania.” ([Good Will Foundation, “Lithuanian funds to reach Holocaust survivors in 2013”, 5 December 2012.](#))

Compensation can only be used for (1) religious, cultural, health care, sports, education and scientific goals pursued by Lithuanian Jews in Lithuania, and (2) one-time payments to support persons of Jewish nationality who resided in Lithuania during WWII and who suffered from the totalitarian regimes during the occupations (**Article 3**).

Back in 2005 – when it was still anticipated that the Jewish community would receive *in rem* restitution of its communal property – the **Jewish Community of Lithuania** and the **WJRO** entered into an agreement to create a foundation, the **Lithuanian Jewish Heritage Foundation** (the “**Heritage Foundation**”). The **Heritage Foundation** would be a successor organization to the formerly Jewish-owned communal property. The **Heritage Foundation** would manage returned property or compensation. However, after the **Law on Good Will Compensation** was passed and it was determined that the law would only provide lump sum compensation and not restitution, a separate [Good Will Foundation](#), was designated by the government in 2012 as the recipient of the compensation under the law. The **Good Will Foundation** decides who will receive a portion of the LTL 128 million.

The original 2011 version of the **Law on Good Will Compensation** created a number of burdens for the **Good Will Foundation**. As adopted, the law required the **Good Will Foundation** to operate similar to a government agency that received budgetary funds. This meant that the **Good Will Foundation** was not permitted to use funds for administrative costs and could not invest money that had been set aside as an endowment.



Moreover, the **Foundation** has been subjected to regular government audits and has been required to follow public procurement policy when purchasing goods and services. In March 2016, by legal amendment of the Seimas, the most onerous of the restrictions levied on the **Foundation** – relating to administrative expenses and investment of the endowment – were removed.

a. **One-time Symbolic Payments for Suffering during the Occupation**

One of the **Good Will Foundation's** first activities was managing the distribution of the one-time symbolic payments pursuant to the **Law on Good Will Compensation**. LTL 3 million (approximately EUR 870,000) was earmarked for payments to individuals in 2012 “of Jewish nationality who resided in Lithuania during the Second World War and suffered from the totalitarian regimes during this period.” The one-time symbolic payment was always understood as a symbolic gesture, which was separate from private property compensation.

The application deadline was **30 June 2013**.

In order to be eligible for the one-time support payment, the following was required: (1) confirmation person was of Jewish nationality via birth record or other document stating he/she is Jewish that one parent was Jewish; (2) confirmation person resided in current territory of Lithuania during WWII or was forced to leave Lithuania after the outbreak of WWII (all Jews residing in the current territory of Lithuania as of 22 June 1941 are presumed victims of totalitarian regimes); and (3) persons exiled or otherwise oppressed by the Soviet regime prior to 22 June 1941 had to submit evidence of this fact. (*See [World Jewish Congress, “Application phase for compensation payments to Lithuanian Holocaust survivors to begin in January”, 4 December 2012.](#)*)

All one-time payments to more than 1550 people worldwide were distributed by 31 December 2014. No new payments are planned. (*See [Good Will Foundation, “Payments”.](#)*)

b. **Support for Religious, Cultural, Health Care, Sports and Scientific Projects**

In conformity with the **Law on Good Will Compensation**, in 2015, LTL 5.75 million was to be used to fund religious, cultural, health care, sports and scientific projects pursued by Lithuanian Jews in Lithuania. The **Good Will Foundation** expected to fund 70 such projects by the end of 2015. LTL 1.5 million of the LTL 5.75 million is available for distribution by open application. The **Foundation** supports projects including: activities with all regional Lithuanian Jewish communities, the preservation of the Vilnius Synagogue, the development of the culture and sports club “Fajerlech-Makabi” and many others. (*See [Good Will Foundation, “Activities”.](#)*)

## **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.)

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



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