Regional consultation: Restitution of Holocaust property. 10 years after the Terezin Declaration



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Left to right: Michael Hilsenrath (World Jewish Restitution Organisation), Josifas Buršteinas (member of the Good Will Foundation), Inna Ioffe (Jewish Confederation of Ukraine), **Christoph Dieckmann**, Dainius Junevičius (Ambassador Extraordinary and Plenipotentiary of the Ministry of Foreign Affairs), Emanuelis Zingeris (member of the Parliament of the Republic of Lithuania), Arie Ben-Ari Grodzensky (Chairman of the Litvak Association in Israel), **Péter Feldmájer**, Gennady Kofman (chairman of the Jewish Community of Panevėžys (Ponevezh)), **Dan Seth Mariaschin** (B'nai B'rith International), **Andrew Eliot Baker** (co-chair of the Board of the Good Will Foundation), **Faina Kukliansky** (co-chair of the Board of the Good Will Foundation), **Monika Krawczyk**, **Dirk Roland Haupt**, Moisej Šapiro (chairman of the Jewish Community of Švenčionys district), **Dmitry Krupnikov**, **Piotr Puchta**, **Tomáš Kraus**, Gercas Žakas (chairman of the Jewish Community of Kaunas (Kovno)).

SPEAKERS' SPEECHES

FAINA **KUKLIANSKY:**
Opening remarks to the participants of the Restitution Conference

During the historic Prague Conference, Stuart E. Eizenstat, a Special Negotiator of the Claims Conference, quoted Nobel Laureate Elie Wiesel: „The Nazis and their collaborators stole riches from the rich and poverty from the poor." Indeed, the Holocaust was not only one of the worst genocides in human history, but also the greatest robbery in the world.

80 years after the Nazi occupation, we are still arguing about who are the victims, who are the murderers and who are the heroes—those who killed the Jews or those who fought the Nazis?

During the Holocaust in Lithuania, almost the entire Jewish community of Lithuania was murdered, and the Jews who miraculously survived were exiled to Siberia. But where is the wealth of these people? Where are their homes? Where are their clothes and family heirlooms that have been passed down from generation to generation? I do not even dare to ask where their lives are... Where, where, where...

Although the lives of these victims of the Holocaust vanished so quickly, their possessions certainly remained. Unfortunately, in the possession of illegitimate owners.

Today, there seems to be no light or hope in this matter. Just as there are no longer any of those whose lives—children, other relatives—have been taken away and, even if it is incomparable, all the property that belonged to them had been appropriated.

The question of restitution is not primarily a legal question, but a political, humanistic one. The Lithuanian state is obliged to recognise its responsibility as a state. We talk so much about the continuity of citizenship and the connection with the state, we discuss the restoration of citizenship, but we immediately forget everything when it comes to taking care of victims of the Nazis and returning what was once looted.

How are laws made? After all, they are passed by the Parliament of the Republic of Lithuania. And what is the Parliament of the Republic of Lithuania? It is the state. And then, under the guise of „In the name of the Republic of Lithuania...", the decisions are made not to restore citizenship because the Jews were repatriates, not to return their property because they were not citizens. And what is it that the Jews want anyway? It's always not enough for them... And anyway, you are not here anymore, so what are you fussing about?!

Exactly then it becomes irrelevant that the Jews, the same Jews who were later murdered and robbed by their fellow citizens, fought for Lithuania's independence, built up the economy, industry, trade, and nurtured Lithuanian science and arts. To this day, no matter how much the position and the opposition change, it is still impossible to achieve the justice that apparently only happens in other countries or in utopian fairy tales. The property has not been returned to the victims.

Let us talk about that.

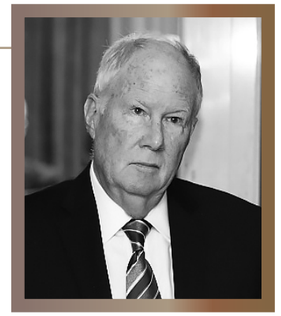
ANDREW ELIOT **BAKER:**
Greeting and Introductory comments to Restitution Conference publication

Three decades have passed since the fall of Communism and the reestablishment of independence and democracy in Central and Eastern Europe. In this time there have been considerable efforts in each country to address the legacy of the Holocaust. This has included the critical and objective study of that problematic history with special attention to the role of local actors and collaborators. It has meant addressing the personal suffering of Holocaust survivors and extending to them the same compensation benefits and welfare assistance that Germany was providing to survivors in the West. And it has involved prolonged negotiations to secure the return of or payment of compensation for former Jewish communal property while also accepting the claims of private property owners and heirs to the homes and businesses they once possessed. There is as well the challenging moral question of who should possess and benefit from the properties of millions of Jews murdered in the Holocaust with no surviving family members left behind.

A decade ago, an international conference in Prague, itself a ten-year anniversary follow-up of the Washington Conference on Holocaust-Era Assets, resulted in the Terezin Declaration. Forty-seven countries signed this legally non-binding agreement, and many Holocaust survivors and their heirs hoped it would secure the resolution of their long-standing claims. Yet, thirty years on many of those hopes are still unrealized.

With this gathering in Vilnius, the Lithuanian Good Will Foundation working in partnership with Jewish community leaders, historians, and activists, sought to shine a light on both the successes and best practice examples and the unfinished work in this region of Central/Eastern Europe. Notably, with the inclusion of historians of the Holocaust with special expertise in this region, it has reminded participants and observers alike of the unique and tragic context in which the original “looting” of these assets occurred.

We are pleased to provide this publication—in English and Lithuanian—with the hope that it can instruct and motivate and ultimately result in the completion of these decades long efforts.



ANDREW ELIOT BAKER

Rabbi Andrew Eliot Baker is AJC Director of International Jewish Affairs. In 2009 he was appointed Personal Representative on Combating Anti-Semitism of the Chairperson-in-Office of the Organization for Security and Cooperation in Europe (OSCE) and continues to serve in this position. He is an officer of the Jewish Claims Conference and has served on restitution and historical commissions in the Czech Republic, Lithuania, Romania and Slovakia. In recognition of his work in Europe he was decorated by the presidents of Germany, Lithuania, Latvia and Romania. He is a past president of the Interfaith Conference of Washington, a Commissioner of the District of Columbia Human Rights Commission, a President of the Washington Board of Rabbis and a chaplain at San Quentin State Prison.

AN OVERVIEW OF THE RESTITUTION EFFORTS OF JEWISH PROPERTY IN THE WORLD

I want to use this opportunity to provide a general overview before the conference focuses on specific issues and places. We meet now barely a month after the thirtieth anniversary of the fall of the Berlin Wall which set all things in motion.

First was the revival of Jewish life throughout this region, the former Soviet Union and Central and Eastern Europe. The longheld assumption held there was no future for Jewish life here, and the best we could hope for would be the right for Jews to emigrate. But we have seen a true revival of Jewish life that is remarkable. And with it has come the need to confront Holocaust era history in places that simply never looked clearly, critically or objectively at that history. It has meant dealing with the thorny issues of identifying former communal property and private property and the efforts to restitute that property or pay compensation for it.

We need to bear in mind that in the rest of Europe, where democracy took root in the years immediately after the end of the war, there was also no rapid progress in confronting this history. Even after the Wall fell, we were still only beginning to address some of these issues even in Western Europe. These included the Swiss bank accounts of Holocaust victims, the looted gold that was stolen from them and held by governments, and the many unpaid insurance policies that many Jews held throughout Europe.

Keep in mind that it was only in 1995 that France formally acknowledged its responsibility for the deportation and deaths of over seventy thousand French Jews. It was also that same year that the Government of Austria acknowledged its responsibility, putting to rest the fiction that Austria was Hitler's "first victim" and creating a fund for Austrian Nazi victims.

At the time one reporter covering these stories described it as, "history born again as news." These were not new revelations, but they were getting the attention they deserved and there were real political efforts to address them.

Looking back on these past thirty years, let us take account of what has been achieved and what still must be done.

During that first decade, it was class action lawsuits filed in American courts that got everyone's attention. For those who are unfamiliar with this legal mechanism, in America it is possible and even common for individual victims who have been harmed or suffered material losses to have their claims joined together in a single "class action" suit. In this way, hundreds, thousands, even tens of thousands of claims of real and potential victims can be leveled against the same perpetrator who could end up losing hundreds of millions of dollars in the event of an adverse court ruling. Even though the crimes took place in Europe, if the companies responsible for them do business in the United States, they can be subject to a US court's jurisdiction. In a global economy, it was not hard to find insurance companies whose predecessors sold policies to European Jews or German manufacturers of commercial products who made use of slave labor in Nazi times.

Swiss banks pointed to their country's own secrecy laws as a reason for not divulging any information on dormant accounts. But they were susceptible to pressure. Many public and private pension funds in the US had money invested in Swiss banks. They threatened to withdraw the money. The Senate Banking Committee held hearings, looking at the role of the Swiss banks during the Holocaust. Some governments recognized the need to do their own historical examination. Switzerland was one of them. It revealed that Swiss neutrality during the war did not really mean neutral, at least when it came to Jews and the difficult time they faced. Countries also examined their own holdings of looted gold and its origins.

We found as well, after 1989 through the Jewish Claims Conference, the umbrella organization that represents Holocaust victims in negotiations with Germany, that it was now possible to address those Holocaust survivors who had been unable to receive benefits from the German Government for their suffering. Pension programs that had been established for victims living in the West were closed by the 1970s. That meant that even if Jews



managed to leave Eastern Europe and come to the West, they were no longer eligible to receive these benefits. After the fall of the Wall the issue of Nazi victims was a part of the German unification agreement. It opened the door for the Claims Conference to negotiate benefits for these victims too.

We also saw during this time the establishment of the WJRO, the World Jewish Restitution Organization. It was a smaller constellation of organizations than the Claims Conference and it began with a very different negotiating style.

The Claims Conference conducted negotiations quietly and privately with German government representatives. Over the years they secured pensions and other payments for Nazi victims. With German unification there would be the return of private property from the former East Germany to original owners or their heirs. What about unclaimed former Jewish properties? The argument (and it was a persuasive one in this case made by the Claims Conference) was that while in a normal situation when someone dies without heirs, his or her property reverts to the state, that policy could not be applied in Germany when we speak of Jewish owned property. There were no heirs because entire families were victims of the Nazis during the Holocaust. In recognition of this, the German Government designated the Claims Conference as the "successor organization," essentially the in-heritors of that property.

When the WJRO was formed, it imagined it could make a similar claim on properties in Central and Eastern Europe. But those countries did not accept that their responsibility was the same as Germany's.

“In May 1998, the three Baltic presidents at their summit meeting in Riga announced the creation of international historical commissions to deal with the Holocaust in their countries. It opened the door to a critical confrontationwith that history.”



In fact, they also considered themselves victims—of the Nazis and then of the communists. There were internal Jewish battles between the WJRO and local Jewish communities as to who was the rightful claimant for property that, so far, governments were not prepared to return.

By the second decade we saw increased developments with respective governments and institutions. An international conference organized in Washington and hosted by the State Department in the last weeks of 1998 surveyed all the issues that could be termed, Holocaust era looted assets. It was at that meeting that countries adopted principles regarding looted art, an issue that is still with us. It led to the creation of the International Commission on Holocaust Era Insurance Claims (ICHEIC) to address comprehensively the issue of unpaid claims.

Negotiations were taking place in various countries. In the Czech Republic and in Slovakia there were studies done to determine the value of looted Jewish assets. This led to the creation of funds to support surviving Nazi victims and Jewish communal activities. The US Government, under the leadership of Ambassador Stuart Eizenstat, negotiated major agreements with Germany to pay compensation to former slave and forced laborers and with Austria to compensate Austrian Jewish survivors for their material losses.

In this region we focused on Jewish property restitution which could be identified as falling into three categories: the first being former Jewish communal property, the second being private property where there were living owners or heirs, and the third—sometimes considered more symbolically than practically—is the issue of heirless Jewish property. Eventually, common approaches joining international (WJRO) and local representatives brought tangible results.

Political leverage for these efforts came largely from the United States. Many of the countries in this region were actively seeking membership in NATO which was largely managed by Washington. American pressure played a significant role to get these countries to deal with their Holocaust era history.

It also meant dealing literally with the history itself. In May 1998, the three Baltic presidents at their summit meeting in Riga announced the creation of international historical commissions to deal with the Holocaust in their countries. It opened the door to a critical confrontation with that history.

Jewish claims on private properties had their own complications. In some cases, claims could only be filed if claimants had first made efforts in the immediate postwar years or if they were currently citizens. This was a special burden for many former Jewish owners who made new lives in Israel or the United States. In other cases, laws were passed that focused on returning property nationalized under communism but making no provision for property that had first been seized during Nazi times.

“When the WJRO was formed, it imagined it could make a similar claim on properties in Central and Eastern Europe. But those countries did not accept that their responsibility was the same as Germany’s. They also considered themselves victims.”

Some countries were quick to deal with these issues and others less so. In Hungary, an early agreement led to annual payments based on the value of former communal properties to support Jewish community life. In Poland, by way of contrast, legislation provided for a complicated and costly claims process to receive individual properties that could then be used to support communal life. In the Czech Republic, the restitution of communal property was done city by city without any national legislation, but it was quite successful.

Here in Lithuania, where I helped lead negotiations, it took ten years to secure compensation for former Jewish communal property. We dealt with three Governments and three different Prime Ministers. Negotiations were frequently put on hold when elections would take place, fearing there could be a public backlash. In the end, we accepted payment of compensation that was by admission of the government only equal to a third of the actual value of these properties, with payment drawn out over ten years. We had expected more, but this has still given us the ability to support Jewish life in Lithuania through our Goodwill Foundation.

In some cases, countries were looking to avoid other problems. In the case of Czechoslovakia and Poland, they did want to assume any obligation to restitute properties that had been owned by ethnic Germans in territory that was now part of their territories. But there were also Jewish claimants from these same territories who should not be ignored. Some countries simply delayed and deferred enacting any legislation. This was the case with Poland which to this day has not adopted any legislation to address private property claims.

The third issue is that of heirless property. In the case of Germany, there could be no escaping this obligation. In Central and Eastern Europe, it has been a much harder issue to pursue. Of course, Jewish property was quite extensive in this part of the world, and with the Nazi genocide very few of its owners or heirs have survived. It remains an important principle, identified in the Terezin Declaration. We hoped this would open the door to some payments, particularly to support elderly survivors in their last years. A few countries have addressed it. These include North Macedonia and Serbia in legislation they adopted. The Government of Latvia also included it in legislation that it proposed, but unfortunately it failed to gain passage in Parliament.

We know there has been very real and tangible progress over these many years, even as there are still outstanding issues. We no longer have the levers of NATO Membership or EU Accession that may have helped push governments to move on these issues in the past. But we can also hope that as more and more governments and political leaders know the right thing to do and as they do it, we can persuade the rest to follow suit. As a way of marking the tenth anniversary of the Terezin Declaration, the US Department of State will prepare a comprehensive status report of the country by country progress on restitution matters. That should help us in our advocacy efforts. [Note: This report was issued in July 2020.]



DIRK ROLAND **HAUPT**

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COMPENSATING FOR NATIONAL SOCIALIST INJUSTICE AND INDEMNIFYING JEWISH VICTIMS: THE GERMAN EXPERIENCE

Ladies and Gentlemen,
First of all, I would like to thank the Good Will Foundation for inviting me to participate in today's event. Before I begin my presentation, I would like to clarify whom I represent by attending today. I am the director of the Treaty Law Division at the Federal Foreign Office of the Federal Republic of Germany. However, I am here today as a researcher at the University of Lund and an expert in international law. Therefore, my presentation is a result of scientific research and not the expression of the official political position of the Federal Government of the Federal Republic of Germany. I am neither authorized, nor have I sought authorization to represent it at today's event. Emphasizing this, I am turning now to my presentation which I will give in English.

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Ladies and Gentlemen,

[001] after this disclaimer which guaranteed my participation at this conference today, I would like to speak about the German experiences in compensating for National Socialist injustice and indemnifying Jewish victims. My presentation is divided into two main parts:

(i) contextualization of indemnification policy, and

(ii) deliberations on legislative landmarks,

whereas both parts are building upon insights into the case of Germany.

I
INDEMNIFICATION POLICY CONTEXTUALIZED

1
INTRODUCING AN ARM'S LENGTH PRINCIPLE PUTTING PERPETRATOR SOCIETIES AND PERSECUTED PERSONS ON A PAR

[002] The overarching insight and the most important lesson learned by Germany is to be summarized in the finding that **Jewish indemnification is a long-term political process which introduced novel compensatory paradigms**. It is not—and cannot be—a one-off political or legislative decision. And it is not—and cannot be—a field of forces, in which it would suffice to have recourse only to traditional and established political and legal concepts.[1]

[1] Sources used and consulted for this part include:

(i) Goschler, Constantin, *Wiedergutmachung. Westdeutschland und die Verfolgten des Nationalsozialismus 1945–1954*, München: Oldenbourg, 1992.

(ii) Goschler, Constantin, *Schuld und Schulden. Die Politik der Wiedergutmachung für NS-Verfolgte seit 1945*, Göttingen: Wallstein, 2008, zweite Ausgabe.

(iii) Robinson, Nehemiah, *Indemnifications and Reparations, Jewish Aspects*, New York: Institute of Jewish Affairs of the American Jewish Council and World Jewish Congress, 1944.

(iv) Robinson, Nehemiah, *Beraubung und Wiedergutmachung. Der materielle Schaden der Juden während der Verfolgung. Reparationen, Rückerstattung und Entschädigung*, New York: Institute of Jewish Affairs of the American Jewish Council and World Jewish Congress, 1962.

(v) Robinson, Nehemiah, *Ten Years of German Indemnification*, New York: Conference on Jewish Material Claims Against Germany, 1964.

(vi) Rosenne, Shabtai, „In memoriam: Jacob Robinson, November 28, 1889-October 24, 1977", *The Life, Times and Work of Jokūbas Robinzonas – Jacob Robinson*, ed. Eglė Bendikaitė and Dirk Roland Haupt, Sankt Augustin: Academia, 2015.

[003] At the end of September 2001, a kilometer from here in the Tolerance Centre, on Naugarduko gatvė 10, on a Sunday afternoon, the then U.S. Deputy Secretary of the Treasury and present Jewish Claims Conference Special Negotiator, Stuart E. Eizenstat, reported on his talks with the Government of Lithuania on a compensation scheme for Jewish persecutees, stating that "**[i]**ndemnification is a process which pursues the twin goals of justice and urgency. It is a process about *victims*. It is about *individuals* who have waited sixty years for something. Of course, it is not about 'perfect justice,' a phrase that may never pass one's lips in the same breath as 'Holocaust.' But it is about waiting for some *recognition*, some voucher to validate the misdeeds that have been perpetrated. And it is a process that needs to be improved stepwise."

[004] The key words in this statement are "victims," "individuals," and "recognition." While it would appear that these terms hardly need any explanation, their usage in the framework of indemnification policy calls for contextualization—historical, political, legal, social, and moral. This presentation will need to revert to them as paradigms of second-generation indemnification policy.

[005] Transnational discourse on indemnification of Jewish persecutees started even before the end of World War II, and the example of the Robinson Brothers, Jacob and Nehemiah, merits to be revisited, as it is closely connected both to the Lithuanian Jewish history and to the international law of Holocaust indemnification. Already at a very early stage and without comprehensive knowledge of the inconceivable impact of the Holocaust, primarily emigrated Jewish lawyers resumed leadership in shaping the contours of what would emerge as *first-generation indemnification policy*.

[006] In late 1944, Nehemiah Robinson (1898–1964) presented a 300-page book entitled INDEMNIFICATION AND REPARATIONS: JEWISH ASPECTS, which emanated from his work at the Institute for Jewish Affairs in New York. He first drafted a thorough inventory of Jewish assets in Europe prior to the Nazi persecution, and on this basis, he arrived at a cautious estimate of Jewish losses, which he computed at over $8 billion. He then examined the conditions for possible compensation and concluded that a restoration of the *status quo* ante was not possible, as the economic and social landscape in Europe would be completely changed after the war.

[007] For Robinson, the persecution of Jews was under no circumstances comparable with other National Socialist crimes. For non-Jews, compensation was usually limited to recovering as much as possible for the respective persecuted persons and reestablishing their lives in their former places; this was no longer possible for Jews. Robinson, therefore, distinguished between two types of measures:

> *(i) restorative measures*, which aimed to restore the former conditions, and
>
> *(ii) constructive measures*, i.e., forward-looking solutions which aimed to build a new life for the surviving Jewish persecutees, often far away from their former homeland and which, according to Robinson, the situation demanded first and foremost.

While what he called restorative measures were to consist primarily of individual restitution and compensation, the constructive measures were aimed at a collectivist conception of indemnification. The new beginning of the surviving Jewish persecutees was to be financed through a global compensation of the Jewish people. In fact, most of the Jewish indemnification plans during the war and afterwards were based on the assumption that there was hardly a future for European Jewry in their former homeland. They were therefore under the perspective of immigration, emigration or resettlement.

[008] When Robinson wrote his book, he was able to point to some attempts to reclaim Jewish property and Jewish rights in a number of already liberated territories. In North Africa in particular, but also in the liberated part of France, efforts were underway to reverse the discrimination and confiscation of property of the Jewish community that had been brought about by the Vichy regime's racial legislation. The resistance of anti-Jewish structures in particular proved to be a considerable obstacle, which is why Robinson felt that an international regulation of the problem was necessary. The Great Powers or the future United Nations should set up a special organization to implement Jewish indemnification.

[009] Nehemiah Robinson also considered that a considerable part of the Jewish property would be without legal heirs. Since it was deeply immoral for this property to be inherited by the respective States, Robinson considered it necessary to **create a Jewish organization that would be able and legitimized to claim the heirless property and to represent absent persons.** With the plan to establish a "Jewish Agency for Reconstruction," Robinson developed the basic idea of Jewish successor organizations which would emerge later. In addition to claiming the heirless Jewish property, their task was to initiate the reconstruction of Jewish life. In this way, it was to be an instrument of the **global indemnification claim of the Jewish people**.

[010] The work of Nehemiah Robinson had a lasting effect on the further development of Jewish demands for reparation. It was guided by the following intention and purpose:

> *(i)* The Jewish claims were regarded as unique; they could not be placed on a par with the claims of other persecuted groups.
>
> *(ii)* A distinction was made between the individual and the collective side of the claims because the Jewish people in its entirety was affected and therefore collective claims existed.

He concluded that a central Jewish authority had to be created which would be legitimized to represent such global claims and in particular to make claims relating to the extensive heirless Jewish property.

[011] Opinions differ on what the policy of indemnification of Nazi persecutees finally achieved in more than seven decades. Stuart E. Eizenstat speaks of "imperfect justice," while some historians define it as "damaged justice." Eizenstat thus regards indemnification as a perfectible process that may never reach an end point, but which at least moves forward like an arrow on a progress chart. Against this background, the question arises as to whether the outcome of indemnification differs when perceived from the perspective of those persecuted by the Nazis on the one hand and from the German society on the other. While we are to a certain extent able to emphasize the relevance of the topic in its present meaning, it must also be noted that indemnification in the past sometimes had a different political priority and value than it does today. The compensation claims of Nazi persecutees always competed with other issues which were often perceived as much more pressing by contemporaries. Moreover, **one of the basic conditions of this political field was that indemnification policy had to be defined as an independent issue in the first place**. The most important precondition for achieving that was a **process of differentiation, targeted at taking indemnification policy out of the general context of reparations for war damage**.

[012] As mentioned in **[006]**, the roots of the political discourse on concepts of first-generation indemnification policy date back to the period before the end of World War II. Initially, this was a reaction to the fact that traditional international law did not provide for the legal basis of holding States accountable for the treatment of their own citizens. Foreign citizens, on the other hand, could at least indirectly be compensated through their States by means of the traditional international law concept of reparations. After 1945, a rupture with this State sovereignty-based tradition evolved, from which new standards of international law gradually derived, and this process has not yet been completed.

[013] In the decades that followed, the indemnification discourse developed an inverse structure. While the initial aim was to compensate for the legal disadvantage of those injured by their own State, it soon became clear that the theoretical possibility of foreigners to participate in reparation solutions mediatized by their States was of little practical significance. Thus, the foreign persecuted persons now appeared to be the disadvantaged subjects, as they had until recently been largely excluded from individual compensation as Nazi persecutees. Therefore, **the demarcation between Nazi persecution and war damage has always been one of the most controversial issues in indemnification policy**.

[014] If one looks at the political field of indemnification in its entirety, it is particularly noticeable that, as a rule, the voice of the persecuted was hardly heard. First and foremost, German politicians and civil servants spoke with representatives of other States or organizations which were only sometimes themselves former persecuted persons. The places of these meetings were usually official locations, unless discreet deliberations required venues adapted to confidentiality. Negotiations were often held in Germany and in the German language. Exceptions can be found mainly in the initial and final phases of the indemnification policy, when, on the one hand, German associations of persecutees were able to play an important role in the national context and, on the other hand, survivors' organizations and individual claimants gained greater influence in the international framework. While the German-Israeli-Jewish negotiations in Wassenaar in 1952 still switched between German, English and Hebrew, at the international negotiations in Washington and Berlin in preparation for the forced laborers' foundation at the end of the 1990s, English was the sole language of negotiation. The public was mostly unaware of all this, and

especially in the Federal Republic of Germany, a skeptical or even negative attitude usually prevailed. This only changed in the late 1980s, when public attention to indemnification solution has increased considerably in West Germany, and in the 1990s, when this topic was at times even able to attract the interest of a worldwide which, greatly assisted by media mechanisms, had shifted from the role of an interested observer to that of an important factor in indemnification policy.

[015] The extent to which the victims of National Socialism were heard also depended, *inter alia*, on the extent of their presence in the various societies: while the proportion of those persecuted by the Nazis among the German population after 1945 was minimal, in the 1950s—to name an opposite case—around 25 per cent of the population in Israel were Holocaust survivors. But it should be cautioned to deduce from such figures any conclusions pertaining to the reason for this interest. In the first years after the war, the Israeli public showed little interest in the fate of the survivors, who, in the first postwar decades, were initially stigmatized as merely passive victims, in contravention to the Zionist myth of masculine heroic resistance fighters.

[016] By and large, the rules of international negotiations applied in the policy field of reparations, with the notable difference that non-governmental organizations played an important role from the outset. The **Claims Conference on Jewish Material Claims against Germany** (hereinafter referred to as "Jewish Claims Conference" or "Claims Conference"), whose special status was enshrined in the **September 10, 1952 German-Israeli Reparations Agreement**, often cited as the Luxembourg Agreement, deserves special mention. It became the historical model for all organizations which bring forward claims for compensation for historical injustice against foreign or own governments. (See also **[040]** slides 8:1–8:9 and **[048–053]** *infra*.)

[017] In view of these circumstances, it is hardly surprising that the policy of indemnification was dominated by a logic of *realpolitik*. All claims for indemnification, however morally well-founded they may be, first had to be translated into a political context and subjected to the functional logic prevailing there. As a rule, the German side treated claims for indemnification in accordance with the political weight associated with them, which naturally led to distortions. These were detrimental to Eastern Europe, while Jewish claims made by the USA, for instance, were privileged. In addition to the support by the United States Government, it played an important role in this setting that German politicians and officials considered

> *(i)* the influence of international Jewish organizations to be very high and
>
> *(ii)* the possibility not to be irrelevant that legal jurisdiction exercised in the United States, on Jewish plaintiffs' putative class actions under the 1948 Alien Tort Statute (28 U.S.C. § 1350, Ch. 646, 62 STAT. 934) over matters that had occurred in Germany, could lead to rulings with considerable, unforeseeable impact on the issue of Jewish indemnification and to exterritorial enforcement of decisions based on such jurisdiction.

However, concerns about the potentially immeasurable claims for compensation from East Central Europe also limited the payments to the West as it was feared that by making concessions in this direction, claims from Poland and other East European States would be prejudiced.

[018] If one takes the counterfactual thought experiment, asking the question what would have happened if the solution of the indemnification problem had been left to Germany's discretion alone, it can be assumed with some justification that even then steps would have been taken towards the material rehabilitation and compensation of Nazi persecutees. However, such a "German way" of indemnification, which had occasionally been demanded, would certainly have led not only to other accentuations, but also to much more modest results. But it was not a matter of good will of individual decision-makers as to whether or not measures were taken to materially compensate for National Socialist persecution. Rather, there were also structural reasons to take the course of action which was taken, such as the necessary restoration of legal certainty and the possibility of civil lawsuits, which is in principle open to those persecuted, at least in Germany. This legal recourse was, however, considerably restricted in the interest of the internal pacification of postwar society and the stability of public finances.

[019] To what extent did the conditions in East Germany differ from this? Unlike in the Federal Republic of Germany, the occupying power played hardly any role in this context. The Soviet Union was primarily interested in enforcing its own reparation claims and did not interfere in the question of individual compensation and care for those persecuted by the Nazis as long as their own interests were not affected. In the discussions that led to the establishment and expansion of a system of privileged care and support for Communists persecuted by the Nazi regime, other persecuted groups were either unable to express themselves or did not succeed in making themselves heard in this discourse, but were at best the subject of paternalistic attention. This was especially true for the Jewish victims of persecution. In contrast to West Germany, the initial framesetting was not informed by the restoration of the rule of law, but rather by basic functions underlining the viability and superiority of a Socialist order. It was not until the 1980s, when East Germany, under the pressure of its increasingly worsening balance of payments crisis, sought a most-favored-nation treatment by the USA, that the political field of indemnification by the East German regime was expanded to include an international dimension. However, the attempt to create a linkage between Jewish indemnification claims and trade facilitation simply as general conditions and terms of business necessarily had to lead to the failure of the talks. The East Germans, attempting to imitate capitalist logic, overlooked or ignored that the financial payments also had to be accompanied to some extent by recognition of one's own responsibility for the National Socialist crimes. The East German regime was never willing or able to engage in the specific moral economy of indemnification that had emerged in the decades of negotiations, especially between the Federal Republic of Germany and the Jewish Claims Conference.

[020] After the end of the Cold War, the political field of indemnification and reparation expanded considerably. Starting from Switzerland, the whole of Europe now became the object of new demands for compensation and apology which related primarily to participation in the legalized robbery and deportation of the Jews. The old pattern of societies of victims and perpetrators was thus partially disrupted without, however, calling into question Germany's central role as originator of National Socialist terror. At the same time, though, the rules of the game in the political field of indemnification and reparation changed: United States courts and investment strategies became key elements in this conflict, to which Germany, as well as Europe, often reacted with accusations of extortion. Ultimately, this was above all a reflex to the fact that the old comfortable situation, according to which the perpetrators' heirs could largely dictate the conditions on which the victims or their descendants received compensation, was no longer valid. The criticism of the excesses of the juridification and commercialization of reparation misses the point and thus distracts from **the actually important change introducing an arm's length principle which puts the perpetrator societies and persecuted persons in the political and legal conflict on a par** and which had never been in place in this quality before.

[021] This equality, which was incipient with the partial shift into a United States context, came of course at the price of indemnification and reparations getting entangled in the internal balance of power in the United States. This distinguishes the U.S. commitment to this question in the 1990s from that in earlier decades when foreign policy considerations had been at the center of attention—and had partly caused the deficits in reparation that were now reappraised. Thus, U.S. moral policy and the interest of individual lawyers and politicians in contingency fees and reelection became important factors. But this is by no means *per se* more unfair than the operating dynamic existing in Germany—and Europe, including Lithuania—which had dominated the policy of indemnification and reparations up to that point, and the results speak for themselves as the political determination of the United States indeed led to new benefits for Nazi persecutees who would otherwise have remained without compensation. The fact that the structure of these benefits reflects above all a United States perspective on the history of National Socialist persecution is hardly surprising, given the results of indemnification policy in Germany.

2
INDEMNIFICATION AS LEGAL (AND MORAL) CONVERSION

[022] In the shadow of the Cold War, colliding models of justice had developed, and these also shaped the politics of indemnification in the Federal Republic of Germany and in East Germany. Since 1990 there has been a readjustment of ideas of justice. The conflict between East and West and its resolution thus had a decisive influence on the policy of indemnification and reparations. Changing perspectives on the Nazi past and changes in national and international moral sensitivities repeatedly brought new aspects of injustice and persecution to the fore. Hence, the question of success and failure, of justice and injustice of compensatory schemes constantly arose anew and differently. Given all the shortcomings of this undertaking, it is a unique attempt to create legal peace, coupled with an ambition to compensate for historical

injustice, and to rebuild damaged lives—the result of which should perhaps also be measured by the improbability of this process.

[023] In West Germany after 1945, the focus was primarily on restoring the civil legal order, which was based on trust in reliable legal institutions. After a transitional phase, during which the existential needs of the liberated inmates of the National Socialist concentration camps were at stake, the individual compensation principle therefore became the basis of efforts to indemnify. In addition to private property, the liberal compensatory model focused on the ability to work, whereby the guarantees for private property was clearly privileged. However, liability for National Socialist crimes overburdened and overtaxed civil law which was not prepared for State crimes of this quality and quantity. For this reason, civil law claims for compensation based on personal injury were soon replaced by claims of a public law nature, and their admissibility in due course considerably restricted; details of this process will be developed in **[040–129]**. More precisely, the legal claims for compensation of the persecuted were by no means only created by the indemnification legislation; rather, existing claims under civil law were replaced by claims under public law. Conversely, the admissibility of public law claims for indemnification were in part even extended compared to the framework of the German Civil Code.[2] The legal determination that the Federal Republic of Germany is not the legal successor of the German Reich but identical with it as a subject of international law, was also assigned to the role of a joint and several debtor. On the one hand, the Federal Republic of Germany thus faced up to history, but on the other hand it has an interest in limiting the total burden for this very reason. However, indemnification fomented a dynamic system which produced financial payments which far exceeded all historical foresight.

[024] This identifies a first aspect of the legal (and moral) conversion on which the indemnification policy was based. The question to be raised is thus: Who was advantaged, and who was disadvantaged by the legal conversion that was triggered by indemnification? Again, a counterfactual question may help here: What would have been the case if there had been no indemnification? As the example of the forced laborers shows, for decades the only way for those of them who were German nationals to sue for their claims remained open under civil law where the chance of success in the legal instances of civil procedure was extremely little. At least from this perspective, the establishment, in the indemnification legislation, of new legal instruments offered an advantage for the persecuted, even if it meant that they had to waive some of their theoretical claims. Conversely, the society in the Federal Republic of Germany was unburdened in this way from the legal and institutional risks that would have inevitably led to a large number of civil lawsuits for Nazi persecution. This played a particularly important role in the first post-war decades, when not only the murderers but also the victims were among us. Due to their often-youthful age, however, the latter remained present for much longer, which is why the structure of the prosecution gradually shifted: it was no longer the individual perpetrators but their societies that were to assume liability.

[025] In East Germany, on the other hand, which cultivated a selfconception as a new, antifascist formation disconnected from the burdened traditions of German history, a politicized, paternalistic concept of care emerged, which was oriented primarily on the value of the politically persecuted, Communist resistance fighters for the system legitimacy of the East German regime. Thus, while in the Federal Republic of Germany efforts were made to counteract the remaining group identity of Nazi persecutees, in East Germany it was primarily the continuously dwindling group of Communist fighters who were advantaged. In addition, the different views of the Federal Republic of Germany and the East German regime on the National Socialist was closely linked to their respective views of the present. In the Federal Republic of Germany, National Socialism was long regarded primarily as an attack on the rule of law, which is why the term "National Socialist tyranny" was preferred. The East German regime, on the other hand, regarded "fascism" as capitalism's last resort in view of its looming crisis. As a consequence, in the perceptions of the Federal Republic of Germany and the East German regime, Nazi persecution and extermination policies focused on different objects: in the former case it was the Jews, while in the latter it was the Communists and, not least, the Soviet Union. This is why the focus of indemnification and reparations differed greatly in the Federal Republic of Germany and in East Germany. The Federal Republic of Germany had opted for individual compensation for the victims of National Socialist injustice, whereas the East German regime acquiesced in collective reparations for the Soviet Union and Poland.

2 *Bürgerliches Gesetzbuch.*

[026] In both German states, the structure of the persons entitled to claim did not simply reflect the reality of persecution but was mediated by the respective sociopolitical perspective. Inclusion and explosion in the group of those persecuted under the Nazis was not only dependent on fiscal constraints and varying political assertiveness but also on social prejudices. Below the surface of systemic contradictions, astonishing similarities can be found here. This applies in particular to the persecuted groups that have been publicly addressed as "forgotten victims" since the 1980s in the Federal Republic of Germany and who had not previously received compensation. These included, for example, the forced laborers or persons who had been forcefully sterilized. Above all, a central explosion criterion united West and East Germany beyond the borders of the system: for all the differences in the respective measures in favor of former Nazi persecutees, they were in principle always limited to "Germans"—albeit with the not inconsiderable difference that the East German regime, acting under the denomination "German Democratic Republic," made only the current place of residence on its territory a precondition, while the Federal Republic of Germany refrained from this and thus also assumed responsibility for German immigrants.

[027] After the reunification, the legacy of the East German regime in dealing with those persecuted by National Socialism was largely discredited. In addition, the accession of the five new federated states to the Federal Republic of Germany had created considerable new indemnification and reparations needs. As in other areas, the standards applicable in the Federal Republic of Ger-many were broadly transferred to East Germany. However, while the former leading resistance fighters living in East Germany often recalled their conspiratorial patterns acquired in the 1930s and 1940s, the East German population reacted in part with incomprehension and express protests to the revival of former Jewish property titles in the course of restitution. The narratives of National Socialist crimes linked to indemnification, as they had developed in the Federal Republic of Germany and East Germany, thus ultimately proved to be not only a field of conflict between the German "perpetrator society" and former Nazi persecutees but also an unwieldy element on the path to inner unification.

[028] Moreover, in the 1990s, the policy of indemnification came into the context of a global dispute about standards of justice after the collapse of the utopia of "really existing Socialism" as proclaimed by the East German regime. One of the consequences of the triumph of the liberal system, which entailed a revaluation of private property and led to a new property revolution in East Central Europe, was the rediscovery of the question of Jewish property looted under National Socialist rule in Europe. In its wake, the memory of those associated with this property also reappeared with renewed vigor. **Property and memory thus became two intricately linked aspects of a globalized policy of indemnification.** The new wave of demands for compensation in the 1990s culminated at the end of the decade in the negotiations on the establishment of the Foundation "Remembrance, Responsibility and Future" (*Stiftung "Erinnerung, Verantwortung und Zukunft"*). It implemented, *inter alia*, the principle that indemnification claims are not subject to statute of limitation—with the consequence that this principle is increasingly being used as an argument in other cases of State injustice against minorities. Not only Jews, but also Germans insist on their historical property claims *vis-à-vis* East Central Europe.

[029] This leads to the second conversion associated with the policy of indemnification, namely the transformation of guilt into debt. The comparison between the Federal Republic of Germany and East Germany shows great differences in this issue. In the Federal Republic of Germany, the policy of indemnification was accompanied by an intensive discourse on guilt, which, however, was increasingly overshadowed by demands, in the mid-1960s, to put an end to the continuous endeavors of identifying the extent of guilt and those who are guilty. The ambivalent tension between moral guilt and material debt, however, remained principled. In contrast, such a discourse was completely absent in East Germany, at least as far as the own regime and the individuals living there were concerned. As far as it did not concern the justification of the extensive reparations to the Soviet Union, the guilt for the National Socialist crimes was externalized and imposed on the Federal Republic of Germany. Finally, the reunified Berlin Republic was dominated by a discourse of responsibility that took into account the distance in time to the Third Reich and the corresponding change in the generations involved. This marked the end of the application of the principle of converting guilt into debt. Luxembourg in 1952 and Berlin in 1999 are, figuratively, at the beginning and end of this process. In the Agreement between the Federal Republic of Germany and the State of Israel and the two Protocols between the Federal Republic of Germany and the Conference on Jewish Material Claims against Germany, which were signed in Luxembourg, the

creditor side expressly stipulated that the material payments of the Federal Republic of Germany did not mean a reduction of the historical guilt. In Berlin, on the contrary, the Federal Republic of Germany, upon signing the agreements leading to the Foundation "Remembrance, Responsibility and Future," was able to present itself as the honest debtor who responsibly paid the obligations inherited from its forefathers.

3
THE UNIVERSALIZATION OF INDEMNIFICATION

[030] Indemnification for Nazi persecutees has become the worldwide model for demanding compensation for historical injustice. Just as the condemnation of National Socialist crimes after 1945 provided new ideas for international criminal justice, so does indemnification appear to be able to provide impulses for the development of new international standards in dealing with the victims of historical injustice. "Luxembourg" thus stands next to "Nuremberg." The policy of indemnification is characterized by the fact that the dead of industrial mass murder—as well as those of conventional murder which has become more prominent in recent years—by no means played a central role. Rather, the primary aim was to rehabilitate and compensate those who had suffered and survived one of the many facets of Nazi terror. What may be regarded as an unforgivable deficit of German indemnification, namely not having paid adequate compensation for the mass murder in the concentration camps, is thus in a sense also a product of the impossibility of making the events associated with it the subject of politics.

[031] However, the demands of the current discussion on indemnification go much further, and it is now usually understood less as a material and more as a symbolic act. Thus, the question is no longer so much about the extent to which material reparations can contribute to the rehabilitation of individual victims, but rather about the extent to which indemnification becomes the medium of symbolic compensation between two groups that are irreconcilably opposed to each other by their past or, conversely, further deepens this division. Here, however, money can work in both directions; it can become a medium of both recognition and envy. Thus, in the discussion about globalization and more universal indemnification, two main directions can be distinguished:

(i) One combines an optimistic assessment of this process, based on a positive evaluation of the German case. It sees the spread of a new global morality which includes reparation for the former victims and thus becomes an important component of transitional justice, and emphasizes the reconciliation potential of this process. Indemnification is capable of putting the relationship between former victims and perpetrators on a fundamentally new basis and of overcoming old conflicts. It further stresses the ability of indemnification to overcome the memories of victims and perpetrators that separate them by establishing a common narrative of events that burden both sides. Reparation becomes a cultural process aimed at the recognition of the other, thus bringing a central category of recent socio-philosophical debate into focus. The development of a common perspective on the incriminating past becomes a prerequisite for positively shaping the future. Ultimately, such considerations, which understand **indemnification as a communicative history**, aim to develop a perspective for the solution of current conflicts, especially the conflict between Israelis and Palestinians in the Middle East.

(ii) The other direction holds that the power of the changes in the communicative memory of those directly affected stands in stronger opposition to an approach of perceiving indemnification as communicative history. The question is not whether such a conflict resolution is desirable, but rather to what extent the historical example of indemnification and reparations for Nazi persecutees is suitable as a model for overcoming conflicts based on an actual or perceived historically founded victim-perpetrator relationship. This, in turn, raises the important issue of the extent to which the development of common narratives about the past are projects of intellectual elites with occasional legitimation and motivation in need of explanation. In such attempts at reconstructing dividing perceptions of the past by the medium of indemnification, it is usually less the perpetrators who enter into dialog with the victims, but rather more or less legitimate representatives of perpetrator and victim collectives.

[032] How does this relate to the experiences and attitudes of those individuals and collectives who suffered persecution themselves? What the German case teaches is that there is a difference whether these experiences and attitudes are personal or merely mediated ones. The model of indemnification as a communicative story seems more plausible as far as historical crimes are concerned, which have reached the cultural memory of those born after the persecution. This difference is, of course, becoming increasingly blurred at present, with reference to the Holocaust, where there is increasing talk of the victim role of the second generation, and this process even includes the perpetrators whose descendants sometimes also declare themselves to be victims. And it is to be expected that sooner or later the third generation will also come into view.

[033] The different assessment of the universality of the model of indemnification as a model for overcoming historically rooted conflicts is also based on a fundamental conflict in the assessment of the problems of modern societies. The equally individualistic and universalistic concept of the Enlightenment is increasingly complemented—if not undermined—by a stronger, compartmentalizing emphasis on group rights; conversely, the unease at this particularistic turn towards new forms of identity politics is palpable. It would appear that the predominant idea of struggling for a better future has turned to mourning for the victims of past crimes instead. However, such a policy of victimization does not necessarily lead to greater recognition, but, possibly, also to competition between the communities that have suffered the consequences of their respective victim identities.

[034] Although the current debate on the universalism of indemnification tends to refer directly or indirectly to the concrete example of German reparations for victims of Nazi persecution, it often takes little account of its particularities. The tendency to focus on the problem of the recognition of cultural difference is strongly influenced by the context of application, especially by postcolonial and neonationalist disputes, in the wake of which internal conflicts in modern societies are largely reduced to problems of the culture of interpretation of competing groups. However, the examination of this debate and the German case can shed light on each other. Firstly, it becomes clear that the German indemnification policy, as a main rule, was conceived using individualistic categories. The only exceptions are a few global contributions to the Jewish Claims Conference, which, however, became the core of accusations of misappropriation and enrichment. The approach of the indemnification legislation of the Federal Republic of Germany, which focused on individual claims of former victims, resulted essentially from its roots in domestic law and was at the same time opposed to the collective reparations to foreign States. However, this demarcation of boundaries repeatedly dissolved in the course of the policy of indemnification that had been pursued over decades, thereby reinforcing a modern trend in international law that increasingly strengthens the rights of individuals vis-à-vis foreign States and thus also undermines the sovereignty of the modern nation-State.

[035] Finally, it also becomes clear to what extent the material aspects were at the center of the policy of indemnification of Nazi persecutees. The question remains, however, what contribution this made with regard to the alternative "reconciliation or deepening of the conflict between victims and perpetrators" or the collectives associated with them. First of all, the heterogeneity of those persecuted under the National Socialist regime constituted a major additional hurdle for the development of an overarching narrative of persecution. In the Federal Republic of Germany, a competition become obvious between, on the one hand, an integrationist perspective which seeks to bring together the victims of World War II and Nazi persecution, and, on the other hand, a view highlighting Jewish memory that focuses on the Shoah. Both always existed simultaneously, sometimes in mixed proportions, and at times the one model prevailed, at other times the other one. In both cases, however, there is no common victim-perpetrator perspective, as a multitude of controversies over the past in the Federal Republic of Germany have shown. In East Germany, in contrast, a common narrative was created with ostensibly greater success, namely that of the common legacy of the antifascist resistance, which, in conjunction with the legacy of the political persecution of communists, invited the entire population to identify with it. This fiction came with the price of the permanent exclusion of numerous other victims from the memory, among them most notably the Jewish persecutees. After German reunification, various developments overlapped again. The most striking of these is that—as a paradoxical consequence of the development of the Holocaust into a universal standard for human rights violations—the Germans themselves are increasingly able to see themselves as Hitler's last victims again. That movement which initially led to a renaissance, in the 1990s, especially of Jewish claims for restitution, thus to a certain extent led beyond itself and is increasingly being taken up by other groups.

[036] If the question of the effects of the policy of indemnification is reduced to the relations between Germans and Jews and thus to the posthistory of the Holocaust, the outcome is undoubtedly that this relationship has changed in a positive way since 1945. However, the interpretation

of the National Socialist past, and in particular the crimes associated with it, was and is controversial, and the various persecuted groups have fought for their place in this history with greater or lesser success. Quite apart from this, the claim of unified historical narratives, which implicitly underlies the idea of indemnification as communicative history, is in any case incompatible with the pluralization of historical images that is interwoven precisely by the representatives of the recognition of difference.

[037] Indemnification also became an important element of an emerging European identity. Ironically, this is once again due to pressure from the United States which accused Europe of having profited from the looting of the Jews in the shadow of the Third Reich's hegemony, and these accusations, above all, contributed to increased efforts to promote European Holocaust awareness as well as indemnification. However, European reactions to these accusations vary widely. In some European states, for example, there have always been considerable reservations about this U.S. originated history policy and the adoption of the United States Holocaust policy.

[038] However, rehabilitation also threatens to become a risk for the emergence of a common European historical consciousness, as exemplified by unfulfilled Polish or Greek claims for restitution. In the end, new questions emerge from the results achieved by the policy of indemnification pursued so far. For alongside the macropolitics of indemnification, there is a micropolitics that is located at the level of practice. Its investigation leads to the question of which conflicts arose in the individual encounter of the indemnification bureaucracy with the persecutees and how they were handled. Further, it is also necessary to ask what changes indemnification has brought about in the lives and attitudes of the persecutees and their societies. The answer to this question will hopefully not only further sharpen our picture of the results of indemnification of Nazi persecutees, but also help us to better assess the opportunities and problems of transferring this model to other cases of historical injustice. We do not know whether the current global trend towards demands for rehabilitation and apology will eventually subside, or whether a new sensitivity for the victims of past courses of State action has become permanently established. However, in view of continuing genocidal tendencies in our present, the historical material for such justice efforts does not seem to dry up for the foreseeable future, even if indemnification of those persecuted by the Nazis will at some point finally become history. Aspects of the ongoing transformation of German indemnification policy are dealt with in **[093–095]** *infra*.





II

DELIBERATIONS ON LEGISLATIVE LANDMARKS OF JEWISH INDEMNIFICATION

[039] The description of the provisions in German law for the indemnification of Jewish persecutees and victims of National Socialist injustice is offered below in two forms of presentation:[3]

(i) in **[040]**, displaying a condensed, brief overview based on a selection of relevant presentation slides as used in the "Regional Consultation about Restitution of Holocaust Era Assets," organized by the public establishment Foundation for Disposal of Good Will Compensation for the Immovable Property of Jewish Religious Communities (Good Will Foundation) on December 2, 2019 in the Lithuanian Jewish Community in Vilnius, and

(ii) in **[041–129]**, containing an indepth explanation of these legal provisions.

1

OVERVIEW

[040] Selection of relevant presentation slides as used in the lecture on this topic in the "Regional Consultation about Restitution of Holocaust Era Assets" on December 2, 2019:

3 Sources used and consulted for this part include:

(i) Blessin, Georg; Wilden, Hans, *Bundesrückerstattungsgesetz: und Elfte Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz. Kommentar*, München: Beck, 1958.

(ii) Wiedergutmachung und Entschädigung für nationalsozialistisches Unrecht: öffentliche Anhörung des Innenausschusses des Deutschen Bundestages am 24. Juni 1987, Bonn: Deutscher Bundestag, Referat Öffentlichkeitsarbeit, 1987.

(iii) Conference on Jewish material claims against Germany: 1951-2001: 50 years of service to Holocaust survivors, New York: Conference on Jewish Material Claims Against Germany, 2001.

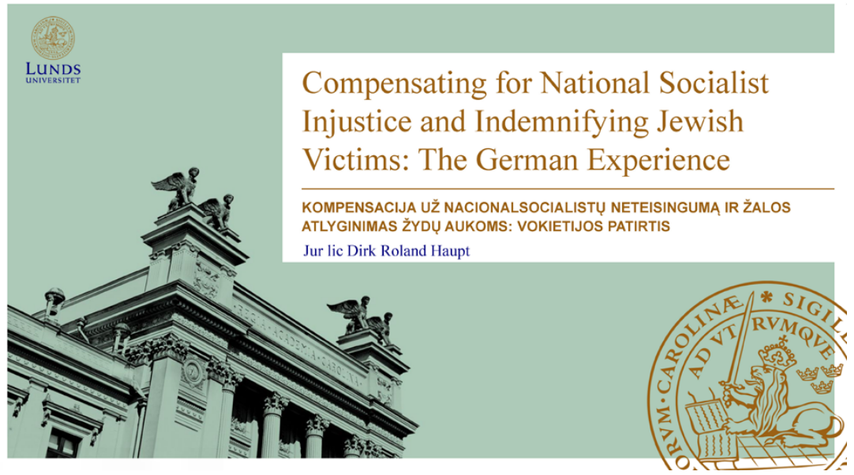
(iv) Federal Ministry of Finance: Compensation for National Socialist Injustice. Indemnification Provisions, Berlin: German Federal Ministry of Finance, 2020.

(v) Gemeinsame Verantwortung und moralische Pflicht: Abschlussbericht zu den Auszahlungsprogrammen der Stiftung „Erinnerung, Verantwortung und Zukunft", ed. Michael Jansen, Günter Saathoff, Göttingen: Wallstein, 2007.

(vi) Nündel, Katja, Der Beitrag der Jewish Claims Conference zur Entwicklung internationalen Rechts, München: Grin, 2003.

(vii) Zweig, Ronald W., *German Reparations and the Jewish World A History of the Claims Conference*, London: Frank Cass, 2001.

Slide 1 _____



Slide 2 _____



Slide 3 _____

From Occupation Law to Federal Law

- Occupation law
  - Military Government Law No. 59 of November 10, 1947 on Restitution of Identifiable Property, as amended (American and British zones)
  - Decree No. 120 of the French Military Government of November 10. 1947 on the Restitution of Stolen Property (French zone)
  - Restitution Order BK/O(49)180 of the Allied Kommandantura for Berlin of July 26, 1949 (all sectors of Berlin)
  - Many different compensation provisions continued to exist alongside each other
- Need to differentiate between restitution and compensation

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Slide 4 _____

The Concept of Restitution

- Restitution is the restoring of property to the rightful owner that had been wrongfully confiscated between 1933 and 1945 as a result of racial, religious or political persecution
- In a broader sense, it encompasses all the measures to be taken by the responsible party in order to return an injured party to a condition or situation that would have obtained had no wrongful act been committed
- Under a narrower view, the concept is synonymous for “restitution in kind”—*restitutio in integrum*— consisting of the attainment of the *status quo ante,* i.e., the situation existing before the commission of the wrongful act or omission.

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Slide 5 _____

The Concept of Compensation

- Compensation refers usually to money, but sometimes also to other materials or goods given as an equivalent to make amends for a loss, damage, or injury when restitution is not possible.
- Compensation law governs personal injury and damage to property not covered by restitution.
  - Act of August 22, 1949 on the Treatment of Victims of National Socialist Persecution in the Area of Social Security

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Slide 6 _____

Principles for Uniform Restitution and Compensation Legislation

- Chapter Three (Internal Restitution) and Chapter Four (Compensation for Victims of Nazi Persecution) of the Convention of May 26, 1952 [between the U.S.A., the United Kingdom and France, on one hand, and Germany, on the other hand] on the Settlement of Matters Arising out of the War and the Occupation

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Slide 7

Federal Legislation on Restitution

- Federal Act of July 19, 1957 for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal Entities of Equal Legal Status (Federal Restitution Act)
- After reunification: analogous provisions for the new *Länder* in East Germany in the Act of September 23, 1990 Regulating Open Property Matters and the Victims of Nazi Persecution Compensation Act of September 27, 1994 (Article 3 of the Compensation and Corrective Payments Act).

Slide 8.1

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")

- Under this Agreement, the Federal Republic of Germany undertakes
  - to deliver goods to the State of Israel worth a total of DEM3 billion over a period of 12 years to support, integrate and settle Jewish persecutees who have acquired Israeli citizenship through immigration;
  - to provide, pursuant to a separate agreement with the Conference on Jewish Material Claims against Germany (Jewish Claims Conference), DEM450 million to support, integrate and settle Jewish refugees outside Israel

Slide 8.2

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")



Foreign Minister Moshe Sharett and
Federal Chancellor and Foreign Minister Konrad Adenauer

Slide 8.3

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")

- Agreement between the Federal Republic of Germany and the State of Israel [on indemnification of material damage and on global recompense for the cost of the integration of the Jewish refugees]
- Article 16(a)*(ii)*: Letters No. 1*a* (Moshe Sharett to Konrad Adenauer) and 1*b* (Konrad Adenauer to Moshe Sharett) enshrining the "automatic accrual of rights clause"

Slide 8.4

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")

- Hague Protocol No. 1 Drawn Up by Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany
  - Compensation
  - Restitution
  - Establishment of a Special Fund for the Support, Integration and Settlement of Jewish Victims of National Socialist Persecution outside Israel

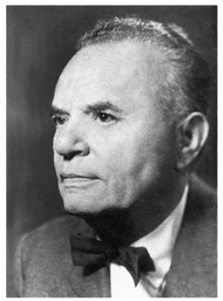
Slide 8.5

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")

- Hague Protocol No. 2 Drawn Up by Representatives of the Government of the Federal Republic of Germany and of the Conference on Jewish Material Claims against Germany Consisting of Several Enumerated Organizations
  - Commissioning of the Jewish Claims Conference with the implementation of the provisions entailed in the Agreement between the Federal Republic of Germany and the State of Israel for the benefit of the Jewish Claims Conference

Slide 8.6

Luxembourg Agreement of September 10, 1952 ("German–Israeli Reparations Agreement")



Jacob Robinson
Jokūbas Robinzonas
(1889–1977)



Nehemiah Robinson
Nehemija Robinzonas
(1898–1964)

- *Indemnification, Reparations, Jewish Aspects* (1944)
- *Problems of European Reconstruction* (1945)
- *Beraubung und Wiedergutmachung: Der materielle Schaden der Juden während der Verfolgung. Reparationen, Rückerstattung und Entschädigung* (1962)
- *Ten Years of German Indemnification* (1964)

Slide 9.1

Federal Compensation

- Additional Federal Compensation Act of September 18, 1953
- Federal Compensation Act of June 29, 1956
- Final Federal Compensation Act of September 14, 1965
  - Article VIII(1): No claims could be made after December 31, 1969. This means that applications can no longer be submitted.
- General Act of November 5, 1957 Regulating Compensation for War-Induced Losses

Slide 9.2

Federal Compensation

- Special legislation
  - Act of May 11, 1951 Governing Compensation for National Socialist Injustice for Public-Sector Employees
  - Federal Act of June 25, 1958 on Compensation for National Socialist Injustice through War Disablement and Survivors' Pensions
    [addressing, *inter alia,* Jewish WWI veterans]

Slide 10

Extra-Statutory Provisions for Jewish Victims

NEĮSTATYMINĖS NUOSTATOS DĖL ŽYDŲ AUKŲ

Slide 11

The Need for Extra-Statutory Provisions

- Automatic accrual of rights clause vs. the reality of hardships
- The concept of "Article 2 Agreements"
- Article 2 Fund eligibilty criteria
- Hardship Fund and hardship benefits for Jewish victims of persecution
- Compensation for Jewish victims living in Central and Eastern Europe
- Care for elderly survivors of the Holocaust
- Kindertransport Fund

Slide 12

The Concept of "Article 2 Agreements"

- Article 2 of the Agreement of September 18, 1990 on the Enactment and Interpretation of the Unification Treaty:

  The Federal Government is prepared, in continuation of the policy of the Federal Republic of Germany, to enter into agreements with the Claims Conference for additional Fund arrangements in order to provide hardship payments to persecutees who, thus far, received no or only minimal compensation according to the legislative provisions of the Federal Republic of Germany.

Slide 13

The Status and Role of the Jewish Claims Conference

- The Jewish Claims Conference was tasked with distributing the funds provided by Germany.
- The Jewish Claims Conference has sole responsibility for making decisions in individual cases, based on the criteria set out in the Article 2 Agreement, as revised.
- The Federal Ministry of Finance conducts regular talks with the Jewish Claims Conference about the implementation of the Agreement with the aim of adjusting the entitlement to payments.

Slide 14

Article 2 Fund Eligibility Criteria

- Jewish Nazi victims who were persecuted as Jews and who
  - Were incarcerated in a concentration camp or labor battalion during specific time periods as defined by the Federal Ministry of Finance; *or*
  - Were imprisoned for at least three months in a ghetto; *or*
  - Were imprisoned for at least three months in certain "open ghettos"; *or*
  - Were in hiding for at least four months, under inhumane conditions, without access to the outside world in German Nazi occupied territory or Nazi satellite states; *or*
  - Lived illegally under false identity or with false papers for at least four months under inhumane conditions in German Nazi occupied territory or Nazi satellite states; *or*
  - Were a fetus during time that their mother suffered persecution.

Slide 15.1

Hardship Fund

- Special cases of hardship continued to emerge where applicants were not eligible for payments because they had missed the deadline.
- Moreover, various Eastern European countries introduced emigration opportunities for Jewish citizens in the late 1970s, as a result of which significant numbers of Jewish victims of Nazi persecution were able to emigrate from these countries to Israel.
- Under the German law applicable at the time, individuals in this group did not qualify for compensation.

Slide 15.2

Hardship Fund

- For this reason, the Knesset demanded changes in German compensation provisions.
- Under the Guidelines of the Federal Government of October 3, 1980 for Hardship Benefits for Jewish Victims of Persecution, Jewish victims of Nazi persecution can receive a one-off payment of DEM5,000 (€2,556.46) through the Jewish Claims Conference.

Slide 16.1

Hardship Benefits for Jewish Victims of Persecution

- In 2012, the arrangements that had been made until then were documented in a revised version. Under this Article 2 Agreement, as revised, Jewish victims of Nazi persecution who were directly affected by Nazi violence as defined in Section 2 of the Federal Compensation Act, or those who lost their parents due to Nazi violence (child victims of persecution), and who have received no compensation payments to date, can receive a one-off payment of €2,556.46. Claims under the hardship fund can also be made by individuals who were not yet born at the time of the persecution but suffered in the womb from their pregnant mother's persecution.

Slide 16.2

Hardship Benefits for Jewish Victims of Persecution

- In addition to one-off payments, the Agreement also covers ongoing monthly payments for Jewish victims of Nazi persecution who are in financial distress and, in addition,
  - were detained in a concentration camp or ghetto as described in Section 42(2) of the Federal Compensation Act; *or*
  - lived under degrading conditions either in hiding or in illegality under a false identity.

Slide 17

Compensation for Jewish Victims Living in Central and Eastern Europe

- The Revised Article 2 Agreement now also covers assistance under the Agreement of January 29, 1998 Governing Compensation for Jewish victims Living in Central and Eastern Europe (the former "Central and Eastern European Fund," or CEEF).
- There is no legal entitlement to assistance under the Article 2 Agreement, as revised. Payments are strictly tied to the individual recipient. They cannot be inherited, or transferred, or be paid out to third parties—with the exception, under additional conditions, of surviving spouses or, if the spouse is also deceased, of surviving children as joint beneficiaries.

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Slide 18

Care for Elderly Survivors of the Holocaust

- In recent years, the need for home nursing and medical care for the elderly survivors of the Holocaust has increased particularly considerably.
- That is why the Jewish Claims Conference also receives funds under the Article 2 Agreement, as revised, for Jewish victims of Nazi persecution as defined in Section 1 of the Federal Compensation Act who have not yet received any payments for the purpose of maintaining and improving nursing and care options, especially care in their own homes.

LUNDS UNIVERSITET

Slide 19.1

Kindertransport Fund

- Following intensive discussions in connection with the 80th anniversary of the *Kindertransport*, the Federal Ministry of Finance and the Jewish Claims Conference agreed on a one-off symbolic payment of €2,500 for *Kindertransport* evacuees.
- The term *Kindertransport* ("children's transport") refers to an evacuation operation which began following the *Reichspogromnacht* on November 9, 1938. Around 10,000 Jewish children travelled without their parents from Germany and territories that had been annexed or occupied by Germany to safe countries.

LUNDS UNIVERSITET

Slide 19.2

Kindertransport Fund

- The one-off payment is intended to recognize the suffering of these children, who were forced to leave their families in peacetime. In many cases, they never saw their families again.

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Slide 20

LUNDS UNIVERSITET

Special Aspects of Restitution and Compensation in East Germany

YPATINGI RESTITUCIJOS IR KOMPENSACIJOS ASPEKTAI RYTŲ VOKIETIJOJE



Slide 21.1

Restitution to, and Compensation for, Jewish Persecutees in East Germany

- Pursuant to its Section 1(6), the Act of September 23, 1990 Regulating Open Property Matters applies to individuals and associations that were persecuted between January 30, 1933 and May 8, 1945 on racial, political, religious or ideological grounds and lost their property as a result.
- The Act thus builds on provisions governing the return of property, i.e. on the principle of restitution taking precedence.

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Slide 21.2

Restitution to, and Compensation for, Jewish Persecutees in East Germany

- The Act stipulates that the Jewish Claims Conference is the legal successor to any heirless or unclaimed Jewish lost property.
- The principle underlying the legislation is that returning property is preferable to providing compensation for it. Thus, assets confiscated are returned *in specie,* if possible. If it is not possible, for reasons of fact or law, to return the property or if the persons concerned have exercised their right to opt for compensation instead, they receive compensation under the Victims of Nazi Persecution Compensation Act.

Slide 21.3

Restitution to and Compensation for Jewish Persecutees in East Germany

- These payments come from the Compensation Fund, a special federal fund.
- Starting in 2002, comprehensive settlements were reached between the Compensation Fund and the Jewish Claims Conference in cases in which the Conference is the eligible party.

Slide 21.4

Restitution to, and Compensation for, Jewish Persecutees in East Germany

- The settlements reached were in respect of, *inter alia,*
  - synagogues and their contents (2002),
  - movable property and household effects (2004),
  - the property of self-employed persons (2006),
  - security rights over land and bank account balances (2007),
  - assets of organizations (2009),
  - businesses without immovable property (2013),
  - small shareholdings (2013),
  - compensation in accordance with section 1(1) of the Victims of Nazi Persecution Compensation Act (2014).

Slide 22

Settlement of Claims Made by Jewish Persecutees of U.S. Nationality in East Germany

- Until 1976, U.S. citizens could submit claims for loss of assets in the territory under effective control of the East German regime, acting under the denomination “German Democratic Republic,” to a commission set up by the U.S. Government. Subsequent talks conducted with the East German regime on compensation did not produce any results.
- After reunification, the Agreement of May 13, 1992 between the Federal Republic of Germany and the Government of the United States of America Concerning the Settlement of Certain Property Claims made it possible for U.S. citizens to either accept compensation in the United States under the Agreement or to claim restitution (or compensation) in Germany.

Slide 23

Settlement Agreements

- The East German regime, acting under the denomination “German Democratic Republic,” had concluded settlement agreements with Austria, Denmark, Finland and Sweden that covered all restitution claims of victims of Nazi persecution living in these States.

2

IN-DEPTH EXPLANATION OF THE PROVISIONS IN GERMAN LAW FOR THE INDEMNIFICATION OF JEWISH PERSECUTEES AND VICTIMS OF NATIONAL SOCIALIST INJUSTICE

(i) Genesis

A Origin of Indemnification under the Occupation Law

[041] Almost immediately after the end of World War II, it became clear that compensation needed to be provided to those who had suffered damage as a result of National Socialist injustice. Those who had been persecuted due to their political opposition to National Socialism or on the grounds of race, religion or ideology were particularly affected. The first legal provisions, drawn up in 1945 by the Occupying Powers and local authorities, were aimed at this group of persecutees. They were largely welfare-oriented in nature and were based on the needs of the recipients.

[042] The federated states (*Länder*) established in the U.S., British and French occupation zones introduced uniform regional compensation provisions. Parallelly to the purely welfare-based provisions, further measures were taken that gave victims a legal entitlement to compensation. However, a large number of different compensation provisions continued to exist alongside each other, and as they were often neither mutually coordinated nor systematized according to uniform legislative principles, these were difficult to keep track of, both in terms of content and in organizational terms. The first clear step in standardizing this area of law was to draw a line between restitution and compensation. (*Cf.* **[040]** slides 3–5 *supra*.)

B Restitution

[043] The three Western Occupying Powers passed restitution acts for their occupation zones and for West Berlin in 1947 and 1949. These acts dealt with restitution of, and compensation for, property that had been unjustly confiscated between 1933 and 1945 as a result of racial, religious or political persecution. Following the establishment of the Federal Republic of Germany on May 23, 1949, restitution claims against the German Reich and legal entities of equivalent legal status involved in such confiscation were governed by the of July 19, 1957 Federal Act[4] for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal Entities of Equal Legal Status[4] ("Federal Restitution Act"; 1957-I FEDERAL LAW GAZETTE 734).

[044] After the reunification, analogous provisions were adopted for the new federated states in East Germany acceding to the Federal Republic of Germany in

(i) the Act of September 23, 1990[5] Regulating Open Property Matters[5] (1990-I LAW GAZETTE OF THE GERMAN DEMOCRATIC REPUBLIC 1899, as promulgated in 2005-I FEDERAL LAW GAZETTE 205, with subsequent amendments), which entered into force together with the Unification Treaty, and

(ii) the Victims of Nazi Persecution Compensation Act of September 27, 1994[6] (as promulgated in 2004-I FEDERAL LAW GAZETTE 1671, with subsequent amendments).

(*Cf.* **[040]** slide 7 *supra*.)

[045] The restitution process was concluded a long time ago. The application deadlines have passed, and the administrative procedures have ceased to operate.

C Initial Indemnification Provisions in the Occupation Zones

[046] Compensation law governs personal injury and damage to property not covered by restitution. Legislation by federated states were adopted in the U.S. occupation zone as early as 1946. They provided for provisional payments for healthcare, vocational training, self-employment, averting financial distress, and pensions for victims and their dependents. On August 22, 1949, the Act on the Treatment of Victims of National Socialist Persecution in the Area of Social Security[7] (1950-I FEDERAL LAW GAZETTE 179) was adopted for the entire U.S. occupation zone by the Economic Council of the Joint Economic Area. It was promulgated as federated state law in Bavaria, Bremen, Baden-Württemberg and Hesse in August, 1949. In line with Article 125 of the Basic Law, these federated states acts became federal law when the Federal Republic of Germany was established and the Basic Law entered into force. In the federated states in the British and French occupation zones and in West Berlin, similar legislation was enacted which, with the exception of the federated states in the British occupation zone, covered the same types of damage as the Act on the Treatment of Victims of National Socialist Persecution in the Area of Social Security. (*Cf.* **[040]** slides 3 and 5 *supra*.)

D Luxembourg Agreement and Settlement Convention

[047] In compliance with the legislative actions taken by the federated states and local authorities prior to the establishment of the Federal Republic of Germany, the latter continued to treat moral and financial compensation for the wrongs committed by the National Socialist regime as a priority. At a special meeting of the German Federal Parliament (*Deutscher Bundestag*) on October 27, 1951, Federal Chancellor Konrad Adenauer declared that Germany was responsible for the atrocities committed by the National Socialist regime. He stressed that the German people had an obligation to provide moral and material compensation, and he offered to enter into negotiations with the State of Israel and Jewish interest groups. One month later, 23 Jewish organizations joined forces and organized the Conference on Jewish Material Claims against Germany ("Jewish Claims Conference" or "Claims Conference") with the aim to enforce compensation claims against Germany.

[048] Talks with representatives of Israel and the Jewish Claims Conference were taken up in The Hague on March 21, 1952. These negotiations focused on two issues:

(i) the aim of concluding an Agreement between the Federal Republic of Germany and the State of Israel (1953-II FEDERAL LAW GAZETTE 35), regarding indemnification of material damage and on global recompense for the cost of the integration of the Jewish refugees to the State of Israel, and

(ii) the two "Hague Protocols" (1953-II FEDERAL LAW GAZETTE 85 & 94) between the German Federal Government and the Jewish Claims Conference governing individual compensation for the victims of National Socialist persecution.

[049] These two agreements are inextricably linked. They were both signed in Luxembourg at the same time, on September 10, 1952, and are known as the "1952 Luxembourg Agreement." Germany agreed to pay DEM3 billion to the state of Israel and DEM450 million to the Jewish Claims Conference. (*Cf.* **[040]** slide 8:1 *supra*.)

[050] Of great practical importance was the correspondence in Letters No. 1*a* (Minister of Foreign Affairs of the State of Israel Moshe Sharett to Federal Chancellor and Federal Minister of Foreign Affairs Konrad Adenauer) and 1*b* (Konrad Adenauer to Moshe Sharett), as cited in Article 16(a)*(ii)* of the 1952 Luxembourg Agreement (1953-II FEDERAL LAW GAZETTE 53 & 65). This exchange of letters enshrined the "automatic accrual of rights clause," pursuant to which claims of Israel nationals under legislation in force in the Federal Republic of Germany on internal restitution, compensation or other redress for National Socialist wrongs would be entitled to an automatic accrual of rights to Israel nationals whenever future legislation of this nature will provide for them. (*Cf.* **[040]** slide 8:3 *supra*.)

[051] The payment to the State of Israel was intended to help uprooted Jewish refugees without means who had come from Germany and from territories that had previously been under German occupation or rule. A large part of this payment was made in the form of deliveries of goods.

[052] According to the second Hague Protocol, the DEM450 million fund was intended for the support and integration of Jewish victims of persecution living outside Israel. The Jewish Claims Conference was tasked with implementing this.

[053] In Hague Protocol No. 1 (1953-II FEDERAL LAW GAZETTE 85), the German Federal Government committed itself to setting up a legislative program for restitution and compensation provisions across the Federal Republic of Germany. The Protocol defined the main principles of this legislation. Principles for uniform restitution and compensation legislation had already been set down in the Chapter Four (Compensation for Victims of Nazi Persecution) of the Convention of May 26, 1952 between the Three Powers [United States, the United Kingdom and France] and the Federal Republic of Germany on the Settlement of Matters

4 *Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger (Bundesrückerstattungsgesetz - BRüG).*

5 *Gesetz zur Regelung offener Vermögensfragen.*

6 *NS-Verfolgtenentschädigungsgesetz.*

7 *Gesetz über die Behandlung der Verfolgten des Nationalsozialismus in der Sozialversicherung.*

arising out of the War (1954-II FEDERAL LAW GAZETTE 181) upon termination of the Western allies' occupation in 1952. (*Cf.* [040] slides 6 and 8:4 *supra*.)

E
Payments by the East German Regime

[054] The East German regime steadfastly refused to follow the example of the Federal Republic of Germany when it came to indemnifying victims of Nazi persecution. Its antifascist foundation myth played a particularly important role in its refusal to accept any claims for compensation from abroad. Legally, the East German regime considered itself entirely detached from the Third Reich. Rather, it claimed to be part of an antifascist tradition. On this basis, it did not provide material support for victims of the Nazi regime living in other countries and also refused to accept that it shared moral responsibility for the crimes of Nazi Germany.

[055] Under the laws in force in the Soviet occupation zone, however, victims of fascism who were viewed favorably by the system received special benefits in the context of general health care, old-age pensions and survivors' pensions. They were also given lumpsum honorary pensions.

[056] Because the reinstatement of private property was incompatible with nationalization efforts of the Soviet occupation power and subsequently the East German regime installed by it, the only existing compensation legislation—that of the Free State of Thuringia, which came into force in 1945—soon ceased to be applied and was repealed in 1952.

[057] Acting under the denomination "German Democratic Republic," the East German regime concluded settlement agreements with Austria, Denmark, Finland and Sweden—all of which had recognized the statehood of the entity called "German Democratic Republic" in terms of international law—that covered all restitution claims of victims of National Socialist persecution living in these countries. (*Cf.* [040] slide 23 *supra*.)

F
1953 Additional Federal Compensation Act, 1956 Federal Compensation Act, and 1965 Final Federal Compensation Act

[058] The first compensation act that applied throughout the Federal Republic of Germany was the Additional Federal Compensation Act of September 18, 1953[8] (1953-I FEDERAL LAW GAZETTE 1387). The Additional Federal Compensation Act was based on the Act on the Treatment of Victims of National Socialist Persecution in the Area of Social Security mentioned in [046], but it considerably expanded the scope of the earlier piece of legislation. Nevertheless, the provisions of the Additional Federal Compensation Act soon proved insufficient.

[059] The Federal Compensation Act[9] was adopted on June 29, 1956 (1956-I FEDERAL LAW GAZETTE 562). It entered into force with a retroactive effect from October 1, 1953 and fundamentally changed compensation for the victims of National Socialism. In addition to extending eligibility, it encompassed various new regulations that benefited victims. The Act also introduced the principle of costsharing between the Federation and the federated states. Previously, the latter had borne the costs exclusively.

[060] Under the 1956 Federal Compensation Act, compensation could be provided in the form of pensions, one-off payments, retraining grants, medical treatment and pensions for surviving dependents. The original application deadline under the Federal Compensation Act was October 1, 1957. This was subsequently extended to April 1, 1958.

[061] In applying the legislation, however, it soon became clear that further modifications were needed. Lawmakers started to work on a final revision of the Act. Following four years of intense negotiations in the competent committees of the German Federal Parliament (*Deutscher Bundestag*) and of the Federal Council (*Bundesrat*, the legislative body that represents the federated states of Germany at the federal level), the Final Federal Compensation Act[10] was adopted on September 14, 1965 (1965-I FEDERAL LAW GAZETTE 1315), its very name emphasizing that it was to be the last.

[062] This Act significantly extended the April 1, 1958 application deadline: Article VIII(1) of this Act specified that no claims could be made after December 31, 1969. This means that applications can no longer be submitted. The Final Federal Compensation Act did not cover Nazi victims in the Communist countries of the former Warsaw Pact. However, it is still possible for payments for damage to health to be increased if the victim's condition deteriorates. It is also possible for initial decisions to be revised through secondary procedures if they are proven wrong according to the current interpretation of the law. (*Cf.* [040] slide 9:1 *supra*.)

[063] Numerous implementing regulations to the 1956 Federal Compensation Act have been issued over the past decades:

(i) The first three of these are amended regularly to adapt the ongoing payments (pensions) to rising costs of living.

(ii) The fourth implementing regulation governs the reimbursement of insurance companies for costs incurred under Section 182(1) of the 1956 Federal Compensation Act.

(iii) The fifth implementing regulation identifies the pension schemes that were dissolved by National Socialist measures of persecution.

(iv) In the sixth implementing regulation (concentration camp directory), the German government established which prison camps were to be considered concentration camps in the context of the provision in Section 31(2) of the 1956 Federal Compensation Act governing the assumed loss of earning power.

[064] Under the 1956 Federal Compensation Act, the following groups of persons are eligible for compensation or support:

(i) victims of persecution by the National Socialist regime;

(ii) expellees as defined in the Federal Expellees Act[11] of May 19, 1953 (as promulgated in 2007-I FEDERAL LAW GAZETTE 1902) as well as stateless persons and refugees as defined in the Geneva Conventions. In this context, victims of persecution are defined as those who suffered damage to life, limb or health, deprivation of freedom, depreciation of property or assets, or damage to their business or professional career as a result of National Socialist persecution due to their political opposition to National Socialism or for reasons of race, religion or ideology;

(iii) those who suffered persecution as a result of being involved in artistic or academic pursuits of which the Nazi regime disapproved, or because they were close to a victim of persecution; *and*

(iv) surviving dependents and close relatives who were also adversely affected by National Socialist persecution.

[065] Those who suffered general war-induced losses as a result of the war started by Nazi Germany, for example prisoners of war or victims of the bomb war, are not considered to be victims of targeted National Socialist persecution as defined in the 1956 Federal Compensation Act.

G
1957 General Act Regulating Compensation for War-Induced Losses

[066] The November 5, 1957 General Act of Regulating Compensation for War-Induced Losses[12] (1957-I FEDERAL LAW GAZETTE 1747) concerns the claims of those who suffered dam-age during the National Socialist regime and did not qualify as victims as defined in Section 1 of the 1956 Federal Compensation Act. While the Compensation Acts discussed in [058–065] cover all property and non-property claims, this Act provides for compensation only in cases of damage to life, limb, or health as well as deprivation of freedom. Section 5 of the Act grants a right to compensation for unlawful violations of these legal rights in accordance with the general legal provisions, in particular in accordance with the provisions on State liability and civil law regulations on unlawful acts (Sections 823 *et seqq.* of the Civil Code). (*Cf.* [040] slide 9:1 *supra*.)

[067] Claims under Section 5 of the Act were recognized only if, on December 31, 1952, the victim was domiciled or permanently residing within the Act's territory of application at the time or in a State which had recognized the Government of the Federal Republic of Germany by April 1, 1956, or if one of the other residence or qualifying date requirements specified in Section 6 were fulfilled. There were exceptions for immigrants of ethnic German origin (expellees), returnees and persons who settled in the territory of the Federal Republic of Germany after December 31, 1952 by way of family reunification, but these are of virtually no practical importance today.

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8 *Bundesergänzungsgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung.*

9 *Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung.*

10 *Zweites Gesetz zur Änderung des Bundesentschädigungsgesetzes (BEG-Schlußgesetz).*

11 *Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge.*

12 *Gesetz zur allgemeinen Regelung durch den Krieg und den Zusammenbruch des Deutschen Reiches entstandener Schäden.*

[068] In principle, claims had to be submitted within one year after the Act entered into force, i.e., by December 31, 1958. If the submission deadline had passed, an extension could be granted for one more year, i.e., until December 31, 1959. Today, cases under Section 5 are only being processed; no new claims can be submitted. (See further [113–118] *infra.*)

H
Compensation Provisions under Special Legislation

[069] The indemnification legislation was supplemented by various compensation provisions under special legislation. (*Cf.* [040] slide 9:2 *supra.*)

[070] A piece of legislation aimed at public service employees who had been removed from public service under the National Socialist regime and had lost their rights—the May 11, 1951[13] Act of Governing Compensation for National Socialist Injustice for Public Sector Employees (1951-I FEDERAL LAW GAZETTE 291)—entered into force with retroactive effect from April 1, 1951. It aimed to place public service employees who had suffered persecution in the position in which they would have found themselves had the persecution not taken place. On March 18, 1952, it was followed by a similar law for public sector employees living abroad who had emigrated as a result of the persecution suffered (1952-I FEDERAL LAW GAZETTE 137).[14] Both of these pieces of legislation were made obsolete by the Administrative Consequences of the War Conclusion Act of September 20,[15] (1994-I FEDERAL LAW GAZETTE 2442 and 2452).

[071] The Act on the Treatment of Victims of National Socialist Persecution in the Area of Social Security was adopted by the Economic Council of the Joint Economic Area (consisting of the U.S. and British occupation zones) on August 22, 1949, before the German Bundestag had convened for the first time. It was aimed at those whose social insurance claims, especially pen-sions, had been reduced or lost. Most of those affected were Jewish entitled beneficiaries and political opponents of the Nazi regime who had fled or emigrated to other countries. In 1950, this Act was extended to the federated states within the former French occupation zone, making provisions uniform across the country. Consolidated legislation for the entire country—the Act Amending and Supplementing Regulations on Compensation for National Socialist Injustice in the Social Insurance System—was adopted on December 22, 1970[16] (1970-I FEDERAL LAW GAZETTE 1846). The costs were—and still are—covered exclusively by the pension and accident insurance providers without government involvement.

[072] Jewish World War I veterans who were victims of National Socialist persecution as described in the 1956 Federal Compensation Act and had lost part or whole of the pensions, to which they were entitled as victims of war, received compensation under the June 25, 1958[17] Federal Act on Compensation for National Socialist Injustice through War Disablement and Survivors' Pensions (1958-I FEDERAL LAW GAZETTE 412). This piece of legislation was made obsolete by the First Regulatory Reform Act of April 24, 1986[18] (1986-I FEDERAL LAW GAZETTE 560). A corresponding law for claimants residing abroad was adopted on August 3, 1953[19] (1953-I FEDERAL LAW GAZETTE 843) and entered into force with a retroactive effect from October 1, 1950.

I
First Comprehensive Agreements with European States

[073] From 1959 to 1964, the Federal Republic of Germany concluded comprehensive agreements with Austria, Belgium, Denmark, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom for the benefit of nationals of these States who had suffered National Socialist persecution. Germany made available a total of DEM971 million (€496.46 million) on the basis of these agreements. The governments of the States concerned were responsible for distributing these funds amongst the victims. The comprehensive agreements have been entirely fulfilled and are now closed.

13 *Gesetz zur Regelung der Wiedergutmachung für Angehörige des öffentlichen Dienstes.*

14 *Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts für die im Ausland lebenden Angehörigen des öffentlichen Dienstes.*

15 *Dienstrechtliches Kriegsfolgen-Abschlußgesetz.*

16 *Gesetz zur Änderung und Ergänzung der Vorschriften über die Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung.*

17 *Bundesgesetz zur Wiedergutmachung nationalsozialistischen Unrechts in der Kriegsopferversorgung.*

18 *Erstes Rechtsbereinigungsgesetz.*

19 *Gesetz zur Wiedergutmachung nationalsozialistischen Unrechts in der Kriegsopferversorgung für Berechtigte im Ausland.*

J
Arrangements with Eastern European States

[074] Following German reunification and the end of the East-West conflict, the German Federal Government concluded agreements with Eastern European States on compensation for victims of National Socialism in Central and Eastern Europe. These were modelled after the agreements on lumpsum compensation that had been concluded with Western European States between 1959 and 1964. The primary aim of these was to provide humanitarian aid in cases of hardship, rather than compensating victims for damage to property. To be eligible for payments, applicants had to prove that they had been victims of persecution as defined in Section 1 of the 1956 Federal Compensation Act.

[075] The Federal Republic of Germany and the Republic of Poland conducted a bilateral exchange of notes on October 16, 1991 establishing the "Foundation for German-Polish Reconciliation" in Poland, which is subject to Polish law and was financed with a one-off contribution of DEM500 million (€255.64 million). The funds were intended for persons who had suffered serious damage to health during World War II due to National Socialist injustice and were in financial distress at the time.

[076] Similarly, foundations for "Understanding and Reconciliation" were established in three successor States of the Soviet Union—located in Minsk, in Moscow and in Kyiv—and endowed with a total of DEM1 billion (€0.51 billion). The three foundations gave the assurance of making payments to National Socialist victims in other States of the former Soviet Union.

[077] The Federal Republic of Germany granted separate assistance amounting to DEM2 million (€1.02 million) to Lithuania, Latvia and Estonia. These funds were used especially to support social institutions for victims of National Socialism.

[078] Germany conducted a bilateral exchange of notes with the Czech Republic on December 29, 1997, in which the two States agreed to establish the German-Czech Future Fund—an endowment fund under Czech law, headquartered in Prague, funded by both States and designed for a period of ten years. The aim of the fund is to finance social projects serving the two States' common interests, especially projects that benefit victims of National Socialist violence. Examples include care for the elderly, support for ethnic minorities and joint economic and environmental projects. Between 1998 and 2000, funds amounting to DEM80 million were made available for similar measures in other Central and Eastern European States with which no comprehensive compensation agreements have been concluded. Known as the "Hirsch Initiative," these arrangements covered Albania, Croatia, Hungary, Macedonia, Romania, Slovakia, Slovenia and former Yugoslavia. Various national institutions, usually the national Red Cross, assumed responsibility for carrying out the initiative.

K
Comprehensive Agreement with the United States

[079] A comprehensive agreement between Germany and the United States was concluded on September 19, 1995. It dealt with compensation for victims of National Socialism who were already U.S. nationals at the time of their persecution and had not previously received any compensation. The criteria were based on those of the 1956 Federal Compensation Act, i.e., persecution on the grounds of race, religion or ideology. Further criteria also included detention in a concentration camp and forced labor. In terms of content and approach, it was modelled after similar agreements that had been concluded with other Western States between 1959 and 1964. (Cf. [073] supra.) Approximately DEM3 million (€1.5 million) were made available. The U.S. government was resposible for allocating the funds. An additional payment of DEM34.5 million (€17.6 million) was made under a supplementary agreement of January 25, 1999 which concluded the comprehensive agreement.

L
Washington Conference on Holocaust-Era Assets

[080] A Conference on Holocaust-Era Assets took place in Washington, D.C., in December 1998. It was attended by Germany and 44 governments as well as 12 non-governmental organizations. The result was a legally non-binding agreement dated December 3, 1998 on the *Washington Conference Principles on Nazi-Confiscated Art* (often referred to as the "Washington Declaration"). In acknowledgement of its historical and moral responsibility, Germany issued a Joint Statement by the Federation, the federated States and national associations of local authorities on December 9, 1999 regarding the

implementation of this agreement. In this document, Germany committed itself to tracing and returning art confiscated during National Socialism, especially Jewish property.

[081] A manual, published in February 2001 and revised in November 2007, offers practical guidance on tracing and identifying works of art confiscated by the National Socialists and for preparing decisions on their possible return. The German Lost Art Foundation (*Deutsches Zentrum Kulturgutverluste*) regularly publishes the information it has on its database about works of art that were moved, transferred or confiscated in connection with National Socialist persecution online.[20] There is also the option of conducting provenance research which offers access to the results of investigations into primary and secondary sources as well as specialist literature. Provenance research can also be performed via the Federal Office for Central Services and Unresolved Property Issues.[21]

M
Foundation "Remembrance, Responsibility and Future"

[082] The Foundation "Remembrance, Responsibility and Future" (*Stiftung »Erinnerung, Verantwortung und Zukunft«*) was established in order to provide compensation to former forced laborers. It was established by the Act on the Creation of a Foundation "Remembrance, Responsibility and Future" of August 2, 2000[22] (2000-I FEDERAL LAW GAZETTE 1263, with subsequent amendments) and equipped with DEM10.1 billion (€5.16 billion). The money was made available by the Federal Republic of Germany and by German companies.

[083] The main purpose of the Foundation was to make financial resources available for individual one-off payments to affected survivors. The payments were made by partner organizations in the various countries. Resources from the Foundation were primarily granted to those who had been subjected to forced labor in concentration camps and ghettos as well as to victims who had been deported from their home countries and subjected to forced labor while being imprisoned or subjected to prisonlike conditions. Payments were also made to victims of forced labor in agriculture.

[084] Section 11(1), fifth clause, of the Act on the Creation of a Foundation "Remembrance, Responsibility and Future" provided for payments to compensate victims for other personal injury suffered in connection with National Socialist injustice, for example in the course of medical experiments or in the case of death or serious damage to the health of a child kept in a home for forced laborers' children. Under certain conditions, payments from the Foundation could also be made to compensate victims for material losses.

[085] Seven international partner organizations, coordinated by an international board of trustees, were responsible for accepting and examining claims. The final application deadline was December 31, 2002. The payments were completed in early 2007. New applications may no longer be filed.

[086] In total, more than 1.7 million individuals, including 1.66 million forced laborers, received payments. Of the Foundation's capital, €4.37 billion was disbursed for payments to former forced laborers. Following the end of the payments, the Foundation's endowment has, as provided in Section 2(2) of the Act on the Creation of a "Foundation 'Remembrance, Responsibility and Future," been used to support international projects that serve intercultural understanding, the interests of survivors, youth exchanges, social justice, remembering the danger of totalitarian systems and tyranny, and international cooperation on humanitarian issues. (*Cf.* **[029]** *supra*.)

N
Ghetto Work Recognition Guidelines and Pension Substitution Supplement

[087] Under the Ghetto Pensions Act of June 20, 2002[23] (2002-I FEDERAL LAW GAZETTE 2074, with subsequent amendments), Holocaust survivors who took on remunerated employment of their own free will while detained in a ghetto that had been created by the National Socialists are eligible for a social security pension.

[088] Numerous claims under the Ghetto Pensions Act were initially refused. In October 2007, the German Federal Government therefore adopted the Ghetto Work Recognition Guidelines,[24] under which victims of Nazi persecution could receive a one-off payment of €2,000 for work in a ghetto which did not constitute forced labor and which had not yet been recognized under social insurance law. However, payments under the Ghetto Pension Act and the Ghetto Work Recognition Guidelines were mutually exclusive. Those whose work in a ghetto had been recognized as forced labor and who had already received compensation for it from the Foundation "Remembrance, Responsibility and Future" did not qualify for payment, either. The final application deadline was December 31, 2011. The revision of the Ghetto Work Recognition Guidelines of July 20, 2011 (2011:110 FEDERAL GAZETTE of July 26, 2011) removed the link between the payment in recognition of work in a ghetto and the receipt of a pension under the Ghetto Pension Act with retroactive effect. As a consequence, the fact that work in a ghetto has been taken into account under social security law now no longer precludes a oneoff payment being made in recognition of ghetto work. The First Act of July 15, 2014[25] to Amend the Ghetto Pensions Act (2014-I FEDERAL LAW GAZETTE 952) allows payments to be granted with a broad retroactive effect, as far back as July 1, 1997.

[089] Under a German-Polish agreement that was concluded on December 5, 2014 and came into effect on June 1, 2015, recipients in Poland are now also eligible for pensions.

[090] Further, since July 2017, applicants are entitled to a one-off payment of €1,500 under Section 2(2) of the Ghetto Work Recognition Guidelines if their application submitted to the German Pension Authority (*Deutsche Rentenversicherung*) was rejected solely on the ground that the general qualifying period set out in Section 50(1) of the Book VI of the Social Security Code of December 18, 1989[26] on Statutory Pension Insurance (1989-I FEDERAL LAW GAZETTE 2261, with subsequent amendments) was not yet fulfilled.

O
Payment to Former Soviet Prisoners of War in Recognition of their Treatment in German Detention

[091] The German Federal Parliament (*Deutscher Bundestag*) decided on May 21, 2015 that former Soviet prisoners of war should receive a symbolic payment in recognition of their time in German detention. Members of the Soviet armed forces who were detained as prisoners of war by Germany in World War II (during the period from June 22, 1941 to May 8, 1945) could receive a one-off *ex gratia* payment of €2,500. The application deadline was September 30, 2017. There was no legal entitlement to the payment; claims were tied to the individual recipient and could not be transferred or inherited. The legal successors of former Soviet prisoners of war were not eligible to apply. The details were set out in the Guidelines of September 30, 2015[27] on a Recognition Benefit for Former Soviet Prisoners of War.

P
The Ongoing Transformation of the Indemnification Policy

[092] Seventy-five years have passed since the end of World War II. To this day, individual indemnification payments are still being made to persons who experienced personal persecution and injury as a result of National Socialist injustice in accordance with Section 1 of the 1956 Federal Compensation Act. However, demographic developments mean that in the foreseeable future, these active and personal reparations to the survivors of the Holocaust and Nazi terror will come to an end.

[093] For national and international as well as political and historical reasons, the policy decisionmakers in Germany are of the opinion that this should not mark the end of indemnification in the sense of drawing a line under Germany's activities in this area. Rather, against a backdrop of increasing anti-Semitism and Holocaust denial, there now needs to be a greater focus on what happened before and after 1945, on how the young democracy of the Federal Republic of Germany dealt with its National Socialist past, what lessons were learned (and what were missed) and what lessons are to be learned from the crimes against humanity, crimes of aggression and genocide committed by the National Socialist regime, and how this can be communicated to future generations in a meaningful and lasting way. Indemnification for National Socialist injustice is thereby shifting from a program of active assistance for the victims of persecution towards activities that focus on

20 <http://www.lostart.de/Webs/EN/LostArt/Index.html>.

21 *Bundesamt für zentrale Dienste und offene Vermögensfragen*, <https://www.badv.bund.de/EN/UnresolvedPropertyIssues/ArtAndProvenanceResearch/start.html>.

22 *Gesetz zur Errichtung einer Stiftung »Erinnerung, Verantwortung und Zukunft«.*

23 *Gesetz zur Zahlbarmachung von Renten aus Beschäftigung in einem Ghetto.*

24 *Richtlinie über eine Anerkennungsleistung an Verfolgte für Arbeit in einem Ghetto, die keine Zwangsarbeit war.*

25 *Erstes Gesetz zur Änderung des Gesetzes zur Zahlbarmachung von Renten aus Beschäftigung in einem Ghetto.*

26 *Sozialgesetzbuch – Sechstes Buch: Gesetzliche Rentenversicherung.*

27 *Bekanntmachung der Richtlinie über eine Anerkennungsleistung an ehemalige sowjetische Kriegsgefangene.*

communicating the ways in which Germany has taken responsibility for its past. Since German foreign policy principles and the Federal Government's public stance on certain domestic policy and sociopolitical issues are and will be difficult to communicate without reference to its continued responsibility for the crimes committed before 1945, it will be necessary to draw more strongly on the restitution and indemnification records of victims of the National Socialist regime.

[094] As the Holocaust recedes further into the past and active indemnification claims decline, and given that today there are generations growing up in Germany who, as a result of their migrant backgrounds, have neither family links nor regional or cultural links to the National Socialist era, it is becoming ever more important to shine a light on these records. This requires political concepts on how to follow-up tasks of indemnification for National Socialist injustice. One direction to follow could the establishment of a fully and uniformly accessible digital platform to provide access to all restitution and indemnification records which are held in various locations throughout Germany and abroad. Hundreds of thousands of individual case files contain detailed records of the victims of National Socialist injustice. In these records, the victims describe the persecution they experienced as well as their family histories, including names, dates and locations, the names of perpetrators and other victims, and much more. They are invaluable not only for academic research and for the relatives and descendants of the victims and survivors, but also for the purposes of Holocaust education.

(ii)
Extra-Statutory Federal Indemnification Payments

A
Hardship Provision for Victims of Pseudo-Medical Experiments

[095] Persons who had suffered damage to their health due to the pseudo-medical experiments carried out in several National Socialist concentration camps were entitled to compensation for the damage caused to body or health. They initially qualified under federated states law and subsequently under the 1953 Additional Federal Compensation Act, superseded by the 1956 Federal Compensation Act, and were also entitled to compensation from a special fund under Article V of the 1965 Final Federal Compensation Act of 1965.

[096] In a cabinet decision of July 26, 1951, the Federal Government had already established a hardship provision for victims of human experiments who had not been harmed on the grounds of political opposition, race, religion or ideology, or did not fulfil the statutory residence or qualifying date requirements, or had failed to meet the application deadline. This consisted of a one-off payment in cases of particular hardship. Due to its strictly subsidiary nature, this provision did not apply to anyone who had already received indemnification from another source or who was eligible for indemnification under a comprehensive agreement between the Federal Republic of Germany and one of the European States mentioned in

[074]. Due to the particular cruelty of the pseudo-medical experiments, the territorial application of these provisions, which was originally limited to certain territories, was extended by a subsequent cabinet decision of June 22, 1960 to include assistance for victims of human experiments who live in States, with which the Federal Republic of Germany did not have diplomatic relations at that time. Claims by nationals of these States–*viz*. Poland, Czechoslovakia, Yugoslavia, Hungary and Romania were examined individually on behalf of the German Government by a neutral commission of the International Committee of the Red Cross (ICRC) in Geneva that had been established for this purpose. Compensation was granted from the funds made available by the Federal Government.

[097] In an effort to provide compensation for the victims of experiments as quickly as possible, the Federal Government, in agreement with the ICRC, concluded comprehensive agreements with Yugoslavia, Czechoslovakia, Hungary and Poland for the benefit of those applicants who had not yet received compensation but could expect a decision in their favor.

B
Hardship Fund for Those not of the Jewish Faith Who were Persecuted on Racial Grounds

[098] A fund for those who are not of the Jewish faith but were nonetheless persecuted as Jews under the National Socialist regime was established in 1952, i.e., even before the Luxembourg Agreement. This group of individuals suffered persecution, as the Nazis, based on the of September 15, 193528 Act for the Protection of German Blood and German Honor (1935-I Reich Law Gazette 1146) and the Reich Citizenship Act of September 15, 1935[29] (1935-I Reich Law Gazette 1146)—the so-called "Nuremberg Laws"—persecuted Jews on racial rather than religious grounds and therefore also targeted those who were not of the Jewish faith but were regarded as Jews under the Nuremberg Laws and National Socialist race theory.

[099] Payments from the fund may be granted to individuals who were persecuted because of their Jewish origins as defined by the Nuremberg Laws of 1935 or to near relatives who were also adversely affected by persecution. Those who are or were members of the Jewish faith at the time of persecution or at the time of the decision on their claim for compensation are not eligible. The reason for this distinction is that the fund does not address these victims who fall under the responsibility of the Jewish Claims Conference, which represents the interests of individuals of the Jewish faith.

[100] Payments from the fund may be granted either in the form of one-off or ongoing assistance. The factors taken into consideration include the gravity and impact of the persecution as well as the financial and personal circumstances of the applicant and of any relatives legally obliged to provide support to the claimant. The amount of the ongoing assistance payments is determined by reference rates which are regularly adjusted in line with general economic trends. One-off assistance is generally granted to cover the cost of living, specific costs incurred by illness which are not otherwise covered, or for the acquisition of household articles or clothing. There is no legal entitlement to payments which are strictly tied to the individual recipient and cannot be inherited or transferred. Payments under the fund can be provided to organizations running elderly homes or other homes if these organizations make a long-term commitment to provide a certain requisite number of places in their homes to those eligible for payments.

(iii)
Extra-Statutory Provisions for Jewish Victims

[101] After the application deadline under the 1965 Final Federal Compensation Act had expired at the end of 1969, special cases of hardship continued to emerge where applicants were not eligible for payments because they had missed the deadline. Moreover, various Eastern European States introduced emigration opportunities for Jewish citizens in the late 1970s, as a result of which significant numbers of Jewish victims of Nazi persecution were able to emigrate from these States to Israel. Under the provisions applicable at the time, individuals belonging to this group did not qualify for indemnification. For this reason, the Knesset suggested that amendments be made to German statutory law on indemnification. In a resolution of December 14, 1979, the German Federal Parliament motioned the Federal Government to enact hardship guidelines to enable this group of victims to receive support. Under the ensuing guidelines of October 3, 1980 (1980:192 FEDER-AL GAZETTE of October 14, 1980), Jewish victims of National Socialist persecution can receive a one-off payment of DEM5,000 (€2,556.46) through the Jewish Claims Conference. (*Cf.* **[040]** slides 15:1–15:2 *supra*.)

[102] Since 1992, the guidelines have formed part of what is known as "Article 2 Agreements" between the Federal Government and the Jewish claims Conference. The concept of "Article 2 Agreements" is based on the wording in Article 2 of the Agreement of September 18, 1990 between the Federal Republic of Germany and the German Democratic Republic on the Enactment and Interpretation of the Treaty between the Federal Republic of Germany and the German Democratic Republic concerning the Establishment of German Unity, Signed in Berlin on August 31, 1990 (1990-II FEDERAL LAW GAZETTE 889; often referred to as "1990 Supplementary Agreement"), pursuant to which

[t]he Federal Government is prepared, in continuation of the policy of the Federal Republic of Germany, to enter into agreements with the Claims Conference for additional Fund arrangements in order to provide hardship payments to persecutees who thus far received no or only minimal compensation according to the legislative provisions of the Federal Republic of Germany.

(*Cf.* **[040]** slide 12 *supra*.)

[103] With reference to Article 2 of the 1990 Supplementary Agreement, the Federal Republic of Germany, in 1992, concluded an Article 2 Agreement with the Jewish Claims Conference on the indemnification of Jewish victims of Nazi persecution who have not yet received any payments. According to this agreement, Jewish victims of National Socialist persecution who were directly affected by National Socialist violence as defined in Section 2 of the 1956 Federal Compensation Act, or those who lost

28 *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre.*

29 *Reichsbürgergesetz.*

their parents to National Socialist violence (child victims of persecution), and who have received no compensation payments to date, can receive a one-off payment of €2,556.46. Claims under the hardship fund can also be made by individuals who were not yet born at the time of the persecution but suffered in the womb from their pregnant mother's persecution. (*Cf.* **[040]** slide 16:1 *supra*.)

[104] In addition to one-off payments, the agreement also covers ongoing monthly payments for Jewish victims of National Socialist persecution who are in financial distress and, in addition,

(i) were detained in a concentration camp[30] or ghetto[31] as described in Section 42(2) of the 1956 Federal Compensation Act, *or*

(ii) lived under inhumane conditions either in hiding or in illegality under a false identity.

(*Cf.* **[040]** slide 16:2 *supra*.)

[105] In principle, if one of the two forms of compensation is approved, it rules out receiving the other. However, one-off payments from German sources and ongoing assistance payments under the Article 2 Agreement are not mutually exclusive. The latter covers assistance under the 1998 Agreement Governing Compensation for Jewish Victims living in Central and Eastern Europe, administered by the "Central and Eastern European Fund." (*Cf.* **[109]** *infra*.)

[106] Ongoing assistance is granted for the duration of the financial distress. Pensions provided on account of old age, reduced earning capacity or death and comparable payments are not taken into account when calculating income. There is no legal entitlement to assistance under the Article 2 Agreement. Payments are strictly tied to the individual recipient and cannot be inherited or transferred. They cannot be paid out to third parties. An exception applies to surviving spouses or, if the spouse is also deceased, to surviving children as joint beneficiaries in cases where the victim dies after submitting an application but before a decision is reached. In such cases, the payment is capped at €2,556. It is necessary to provide proof of entitlement. Should this not be possible, the entitlement can be substantiated in a suitable and plausible way. The payments can be refused in full or in part if the applicant resorted to improper means or caused, encouraged or allowed the submission of incorrect or misleading information, either through willful intent or gross negligence. In such cases, payments may be claimed back in whole or in part. (*Cf.* **[040]** slide 17 *supra*.)

[107] The Jewish Claims Conference was tasked with distributing the funds provided by Germany. It has sole responsibility for making decisions in individual cases, based on the criteria set out in the agreement, as revised. (*Cf.* **[040]** slide 13 *supra*.)

[108] Eligibility under the Article 2 Fund is limited to Jewish Nazi victims who were persecuted as Jews and who meet the following eligibility criteria:

(i) Were incarcerated in a concentration camp or labor battalion during specific time periods as defined[32] by the German Federal Ministry of Finance; *or*

(ii) Were imprisoned for at least three months in a ghetto as defined[33] by the German Federal Ministry of Finance; *or*

(iii) Were imprisoned for at least three months in certain "open ghettos" as defined by the German Federal Ministry of Finance; *or*

(iv) Were in hiding for at least four months, under inhumane conditions, without access to the outside world in German Nazi-occupied territory or Nazi satellite states (Nazi instigation); *or*

(v) Lived illegally under false identity or with false papers for at least four months under inhumane conditions in German Nazi-occupied territory or Nazi satellite states (Nazi instigation); *or*

(vi) Were a fetus during the time that their mother suffered persecution as described above.

(*Cf.* **[040]** slide 14 *supra*.)

30 A list of concentration camps for the purposes of the Article 2 Agreement with the Jewish Claims Confer-ence can be found at *www.bundesfinanzministerium.de/Haftstaetten*.

31 A list of ghettos for the purposes of the Article 2 Agreement with the Jewish Claims Conference is available at *www.bundesfinanzministerium.de/Ghettoliste*.

32 A list of concentration camps for the purposes of the Article 2 Agreement with the Jewish Claims Confer-ence can be found at *www.bundesfinanzministerium.de/Haftstaetten*.

33 A list of ghettos for the purposes of the Article 2 Agreement with the Jewish Claims Conference is available at *www.bundesfinanzministerium.de/Ghettoliste*.

[109] The eligibility criteria for the Central and Eastern European Fund are the same as the Article 2 Fund, on the premise that all applicants to the former fund meet the financial hardship criteria. Since January 1, 2013, payment amounts under the Central and Eastern European Fund are the same as those from the Article 2 Fund—a goal that the Claims Conference had long sought for. The only criterion which distinguishes eligibility under the Article 2 Fund from that under the Central and Eastern European Fund is the criterion of whether the applicant is residing outside former Communist bloc States of Eastern Europe and the former Soviet Union, or not.

[110] The Federal Ministry of Finance conducts regular talks with the Jewish Claims Conference about the implementation of the agreement with the aim of adjusting the entitlement to payments. Until July 1, 2019, when the last round of negotiations between the Federal Government and the Claims Conference took place in New York, more than 25 additional agreements were made.

[111] In recent years, the need for home nursing and medical care for the elderly survivors of the Holocaust has increased particularly strongly. That is why the Jewish Claims Conference also receives funds under the Article 2 Agreement for the purpose of maintaining and improving nursing and care options, especially care in their own homes, for Jewish victims of persecution as defined in Section 1 of the 1956 Federal Compensation Act. (*Cf.* **[040]** slide 18 *supra*.)

[112] Effective January 1, 2019, the Kindertransport Fund agreed between the Federal Ministry of Finance and the Jewish Claims Conference grants a one-off symbolic payment of €2,500 for Kindertransport evacuees, most of whom were brought to the United Kingdom in the first place. The one-off payment is intended to recognize the particular suffering of these children, who were forced to leave their families in peacetime. In many cases, they never saw their families again. This fund is open to Jewish Nazi victims who met the following criteria at the time of transport:

(i) they were under 21 years of age, unaccompanied by their parents and took part in a transport that was not organized by the German government in order to escape potentially threatening persecution by German forces;

(ii) they were transported from somewhere within the German Reich or from territories that had been annexed or occupied at the time;

(iii) the transport took place between the socalled *Reichspogromnacht* on November 9, 1938 and the declaration of war by Germany on September 1, 1939 or was approved by the German authorities after November 9, 1938 but before September 1, 1939.

Applications must be submitted by survivors, not heirs. However, if an eligible survivor passes away after an application form is received and registered by the Jewish Claims Conference, the surviving spouse is entitled to payment. If there is no surviving spouse, the children of the eligible child survivor are entitled to the payment. (*Cf.* **[040]** slides 19:1 and 19:2 *supra*.)

3
COMPENSATION UNDER THE GENERAL ACT REGULATING COMPENSATION FOR WAR-INDUCED LOSSES

(i)
1988/2011 Federal Government Guidelines on Hardship Compensation to Victims of National Socialist Injustice under the 1957 General Act Regulating Compensation for War-Induced Losses

[113] The Federal Government Guidelines on Hardship Compensation to Victims of National Socialist Injustice under the 1957 General Act Regulating Compensation for War-Induced Losses were issued on March 7, 1988[34] (1988:55 FEDERAL GAZETTE of March 19, 1988), reissued on March 28, 2011 and revised on October 15, 2014 (FEDERAL GAZETTE of October 15, 2014). They stipulate that compensation is provided to persons who were not victims of persecution as defined in Section 1 of the 1956 Federal Compensation Act, but who, due to their physical or mental constitution or to their personal or social behavior, were either individually or collectively targeted by the National Socialist regime, and as a result suffered injustice. These payments are intended to mitigate

34 *Richtlinien der Bundesregierung über Härteleistungen an Opfer von nationalsozialistischen Unrechtsmaßnahmen im Rahmen des Allgemeinen Kriegsfolgengesetzes.*

hardship that persists despite the provisions of the 1957 General Act Regulating Compensation for War-Induced Losses (*cf.* [066–068] *supra*), either because the victim missed the relevant deadline or for other reasons.

[114] Claimants eligible for payments include victims of forced sterilization and the euthanasia program as well as individuals who were identified by the National Socialist regime in State or party structures as "work-shy," "refusing to work," "asocial," "homosexual," "criminal" and "vagrant" and who suffered National Socialist persecution for this reason. Victims of psychiatric persecution and members of the youth resistance movement also fall into this category. Lawfully imposed penalties are deemed to constitute injustice if they were unusually harsh, taking the circumstances of the time and of war into account. Payments are also made to persons who were imprisoned between 1933 and 1945 provided that the imprisonment was based on a penal decision that was subsequently reversed by law.

[115] Payments can be granted only to German citizens or, in the case of individuals who are not German citizens or who acquired their citizenship after May 8, 1945, to claimants who are of German ethnic origin as defined in Sections 1 and 6 of the 1953 Federal Expellees Act. An individual must either be domiciled or have his or her permanent place of residence in the Federal Republic of Germany at the time he or she submits an application for compensation.

[116] Compensation is provided in the form of one-off payments (up to €2,556.46), ongoing monthly payments, and additional ongoing payments (in individual cases). Persons who suffered significant damage to their body or health, victims of forced sterilization and victims of the euthanasia program are entitled to a one-off payment of €2,556.46. Persons who suffered deprivation of liberty receive a one-off payment of €76.69 for each month (or part thereof) of detainment, up to a maximum of €2,556.46. Victims of forced sterilization and those affected directly by euthanasia measures are entitled to ongoing monthly assistance in addition to the one-off payment. Additional ongoing payments can be granted in certain exceptional cases in which there are special circumstances that make further assistance necessary and the victim is in financial distress.

[117] Assistance under these guidelines is strictly tied to the individual recipient and cannot be inherited or transferred. In exceptional cases, assistance may also be granted to surviving spouses, if they were significantly affected by the injustice or its consequences.

[118] Children whose parents were both killed due to a National Socialist measure of persecution may receive a one-off payment of €2,556.46 provided that, at the time of their parents' death, they had not yet reached the age of twenty-one or, if they were still undergoing education and were entitled to maintenance, they had not yet reached the age of twenty-seven. All assistance is provided in compensation for the injustice suffered.

(ii)
Payments to Victims of the National Socialist Military Judiciary

[119] Individuals who were convicted of "inciting disobedience," "conscientious objection" or "desertion" during World War II were eligible for a one-off payment of €3,834.68 in addition to any payments received or due under the 1988/2011 Guidelines described in [114–118], as rulings in those cases handed down the *Wehrmacht* judiciary during World War II are generally considered unjust under rule-of-law principles. Provision for this payment was made in the Instructions of December 17, 1997[35] for the Final Settlement of the Rehabilitation and Compensation of Individuals Convicted during World War II for "Inciting Disobedience," "Conscientious Objection" or "Desertion" (1998:2 FEDERAL GAZETTE of January 6, 1998) as amended on December 30, 1998 (1999:8 FEDERAL GAZETTE of January 14, 1999). The application deadline was December 31, 1999.

4
PROVISIONS FOR THE FEDERATED STATES (*LÄNDER*) WHICH ACCEDED THE FEDERAL REPUBLIC OF GERMANY UPON REUNIFICATION IN 1990

(i)
1992 Compensation Pension Act

[120] The provisions on honorary and dependents' pensions for Nazi victims from the federated states (*Länder*) which acceded the Federal Republic of Germany upon reunification in 1990 were revised in the Compensation Pension Act of April 22, 1992[36] (1992-I FEDERAL LAW GAZETTE 906). This new legislation was necessary because the legal basis for honorary pensions paid out by the East German regime to fighters against fascism and the victims of fascism, as well as their dependents, largely ceased to apply on December 31, 1991.

[121] As well as establishing that payment of honorary pensions already in existence on April 30, 1992 be continued in the form of compensation pensions (the amount of which was modified), the 1992 Compensation Pension Act also gives victims of National Socialism who were refused an honorary pension on unconstitutional grounds by the authorities East German regime responsible at the time, or whose pension was initially approved but subsequently withdrawn, a right to submit a new application.

(ii)
Extra-Statutory Provisions Based on the 1992 Compensation Pension Act

[122] Compensation is also available to those who are victims as defined in Section 1 of the 1956 Federal Compensation Act but are not entitled to a compensation pension under the 1992 Compensation Pension Act and were, or are, unable to receive payments under other compensation regulations on account of living in the territory, over which the East German regime exercised effective control. The legal basis for this compensation is formed by the 1992 Federal Government Guidelines on Section 8 of the 1992 Compensation Pension Act (1992:95 FEDERAL GAZETTE of May 21, 1992). Those who left the territory, over which the East German regime exercised effective control after June 30, 1969 and started living in the territory of the Federal Republic of Germany within its boundaries as of October 2, 1990 are also entitled to submit an application.

[123] In accordance with Section 8 of the 1992 Compensation Pension Act, pensions under these supplementary guidelines are available to victims of persecution who, *inter alia*,

(i) were detained for at least six months in a concentration camp as defined in the 1956 Federal Compensation Act, *or*

(ii) spent at least twelve months in certain other National Socialist prison camps, *or*

(iii) suffered at least twelve months of another form of deprivation of freedom of a certain degree of severity.

In exceptional cases, other forms of damage that are comparable in terms of gravity and impact to the aforementioned circumstances can be taken into consideration. If a victim of persecution who fulfils the prerequisites is deceased, the victim's surviving spouse can, under certain conditions, receive a pension in accordance with Section 2(6) of the 1992 Compensation Pension Act if he or she is incapable of working.

[124] Any payments received under Federal Government or federated state provisions not connected with the 1956 Federal Compensation Act are deducted from the pension. As with pensions under the 1992 Compensation Pension Act, payments under the 1992 Federal Government Guidelines are refused or revoked, either in part or in full, if the eligible person or the person from whom the eligibility is derived has, in a function exercised in the service, or for the benefit, of the East German regime, violated the principles of humanity or the rule of law or has seriously abused this position for personal gain or to the disadvantage of others.

(iii)
Property Law Provisions in the Territory of the Federated States (*Länder*) which Acceded the Federal Republic of Germany upon Reunification in 1990

[125] The Act of September 23, 1990 Regulating Open Property Matters, still adopted by the first freely elected parliament of the entity denominated "German Democratic Republic," entered into force together with the Unification Treaty. As set out in Section 1(6) of the Act, it is also applicable to individuals and associations that were persecuted between January 30, 1933 and May 8, 1945 on racial, political, religious or ideological grounds and lost their property as a result. The Act, which continues to apply in the Federal Republic of Germany after reunification and has repeatedly been amended, thus builds on provisions governing the retransfer of property, i.e., on the principle of restitution taking precedence. Claims for retransfer of real estate property may no longer be registered after December 31, 1992, for movable property after June 30, 1993. (*Cf.* [040] slide 21:1 and [045] *supra*.)

35 *Erlaß zur abschließenden Regelung der Rehabilitierung und Entschädigung von während des Zweiten Weltkrieges aufgrund der Tatbestände Wehrkraftzersetzung, Kriegsdienstverweigerung und Fahnenflucht Verurteilten.*

36 Entschädigungsrentengesetz.

[126] The Act stipulates that the Jewish Claims Conference is the legal successor to any heirless or unclaimed Jewish lost property.

[127] The principle underlying the legislation is that restituting property is preferable to providing compensation for it. Thus, assets confiscated are returned *in specie*, if possible. If it is not possible, for reasons of fact or law, to return the property or if the persons concerned have exercised their right to opt for compensation instead, they receive compensation under the 1994 Victims of Nazi Persecution Compensation Act. These payments come from the Compensation Fund, a special federal fund. The amount of the compensation is determined by restitution provisions. (*Cf.* **[040]** slide 21:2 and [045] *supra.*)

[128] Commencing in 2002, comprehensive settlements were reached between the Compensation Fund and the Jewish Claims Conference in cases in which the latter is the eligible party. The settlements reached were in respect of—

(i) synagogues and their contents (2002),

(ii) movable property and household effects (2004),

(iii) the property of self-employed persons (2006),

(iv) security rights over land and bank account balances (2007),

(v) assets of organizations (2009),

(vi) assets of the clothing industry (2011/2012),

(vii) securities (2012),

(viii) businesses without immovable property (2013),

(ix) small shareholdings (2013),

(x) compensation in accordance with Section 1(1) of the 1994 Victims of Nazi Persecution Compensation Act (2014), and

(xi) shareholders of *Interessengemeinschaft Farbenindustrie AG* ("IG Farben") (2014).

(*Cf.* **[040]** slides 21:3 and 21:4 *supra.*)

[129] Until 1976, U.S. citizens could submit claims for loss of assets in East Germany to a commission set up by the U.S. Government. The subsequent talks conducted with the East German regime on compensation did not produce any results. After reunification, the negotiations were continued with the Federal Government and concluded with the Agreement of May 13, 1992[37] between the Federal Republic of Germany and the Government of the United States of America Concerning the Settlement of Certain Property Claims (1992-II FEDERAL LAW GAZETTE 1222). Under Article 3(1) of the Agreement, U.S. nationals were entitled to elect whether to receive a portion of the settlement amount under United States law or to pursue domestic remedies in the Federal Republic of Germany. (*Cf.* **[040]** slide 22 *supra.*)

Concluding Remark

[130] Rabbi Andrew Baker rightly remarked: When you cannot fully compensate, fully restitute what has been unlawfully taken from the Jewish citizens of Germany and from other groups who were attacked by Nazi persecution, then at least it is worthwhile reflecting whether the way Germany conducted her policy of Jewish indemnification has contributed to at least a certain quality of—let be imperfect but still—legal peace. For the rule of law to prevail and to be effective as "the gentle civilizer of nations" (as Martti Koskenniemi phrased it), a major lesson is that international law serves the purpose of maintaining, or restoring, or mending legal peace, but not the purpose of deleting, or rectifying what is conceived as historical injustices. The German example evidences that **Jewish indemnification as long-term political process resulted in novel paradigms in compensation and restitution**, both in international and municipal law and in the political comportment of States and their agencies. What Jacob and Nehemiah Robinson had anticipated and reclaimed already in 1944, would inform Jewish indemnification even more than seventy-five years later.

Thank you very much for your attention.

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37 *Abkommen vom 13. Mai 1992 zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Vereinigten Staaten von Amerika über die Regelung bestimmter Vermögensansprüche.*



JOACHIM TAUBER

Joachim Tauber obtained his Ph.D. from the University of Erlangen–Nuremberg in 1989. He has served as the director of the Nordost–Institute (IKGN) at the University of Hamburg since 2010. He completed his post-doctoral qualification with a monograph about the Jewish working force in Lithuania 1941—1944. In May 2017 he was appointed a professor of modern history at the University of Hamburg. His research interests include the history of German-Lithuanian relations, the German occupation of Eastern Europe in WWI and WWII, and the Holocaust in the Baltic States. He has published many articles, and his most recent book is *Arbeit als Hoffnung. Jüdische Ghettos in Litauen 1941—1944* [Work as Hope. Jewish Ghettos in Lithuania 1941—1944] (Berlin/Boston: De Gruyter, 2015).

STAGES AND PERPETRATORS OF THE HOLOCAUST IN LITHUANIA

Thank you, Faina. My name is Joachim Tauber, I am a member of the Commission as Faina has already told you. In my presentation I focus on the stages and perpetrators of the Holocaust in Lithuania. In 20 minutes, you cannot give a concise picture of everything that happened here in Lithuania, but I would like to focus on a few things to give you some glimpse of what was going on. There were three stages: the first was the notorious killing of Jews during the first days of the war, the second—systematic mass murder of Jews from September to December 1941, the third and last stage—the foundation and liquidation of the ghettos after the mass murder of 1941.

On June 22, 1941, the mood of the people in Lithuania changed totally, it was a kind of mental crossroad between Lithuanians and Jews. For many Lithuanians the following quotes are representative:

"Like the thunder of a thunderstorm, it resounds in Lithuania: WAR (emphasis in the original—J. T.). What a joy, WAR. One meets the other—one congratulates the other with tears of joy in one's eyes. Everyone suspects that the hour of liberation is near..."
„In me... a surge of joy arose. At the same time, my mother, my brother... and some neighbors danced like madmen around."

You see, for the Lithuanians the German attack was liberation. Liberation from the Soviet occupation. For the Jews, it was a catastrophe. Dov Levin was in Kaunas: „Although crowds from Lithuanians greeted the Germans with flowers, it was no surprise that we closed our shutters, drew the curtains and locked us in our apartments." In Vilnius, young Noah Shneidman enjoyed the hot summer day outside the city. He initially thought the air alarm sirens were an exercise until he went home: „My mother opened the front door. We looked at each other distraught. A single word from my mother explained everything: war... I was in a terrible shock... I knew enough about the Nazi crimes to realize that we were about to have a tragedy... The first day passed in excitement and turmoil."

It was a totally different estimation of the situation and the violence against the Jewish population started with this day. I am using the definition of a pogrom by Christoph Dieckmann and Saulius Sužiedėlis: a collective violent attack directed against the Jews simply because they were Jews, that is, anti-Semitic violence inflicted on the people themselves, their lives and properties, including acts of public humiliation. This, as you all know, happened during the first days of the war and the most notorious of these acts is the appalling massacre at *Lietūkis* garage in Kaunas. Kaunas was the hotspot of this kind of violence. Another example of the killings happened at the Seventh Forth. The Germans had their hand in all these largescale actions. This is because Reinhard Heydrich, Chief of the German Security Police, gave the order to instigate the locals to take revenge at the Jewish 'traitors'.

Who were the perpetrators? Most of them were local partisans, nicknamed *baltaraiščiai* because of their white armbands. They became a nightmare for the Lithuanian Jews. The motivation on the Lithuanian side was the stereotype that Communism or Stalinism is a kind of Jewish invention and is headed by Jews, the common denomination for this prejudice is *Žydų komuna*. This was a driving motive for the inhabitants and constitutes a significant difference from the Nazis. They had more ideological reasons: racism and the whole anti-Semitic thinking of the 19th century motivated the Nazis to attack and destroy the Jewish communities in Lithuania. Communism as a Jewish invention was only one motive for the Germans.

It is interesting that in 1942 the Lithuanian partisan newspaper *Laisvė* (Freedom) came back to the events of 1941 and wrote about the motivation of partisans: „... some got guns and went into the battle for the fatherland, others broke into shops, private houses and houses of refugees, where there was an opportunity to grab something, to take with them, to dig in the earth." So, you see, even 1942 the official newspaper of the partisans knew that there were not only heroes in June and July 1941, but there were also people who used the situation to attack violently the people and to plunder their belongings. And most of the people attacked were Jews. Sarah Ginaite, who survived the Kaunas ghetto, draws the conclusion in her memoirs: „Undoubtedly, not all *baltaraiščiai* were murderers of Jews, but in these days between June and August 1941 all the murderers of the Jews wore white armbands, they were *baltaraiščiai*."

My conclusion of Stage 1 is short; it was violence, spontaneous, German instigated, mostly aimed at Jewish men at this time, and it was unsystematic and the aim was to inflict terror to the Jewish population.

Stage 2: When the Germans took over, systematic mass murder was starting. You all know that with the German Wehrmacht came the Special Units of the Security Police and they became almost immediately killing squads. For the Baltic States Einsatzgruppe A was responsible (around 990 men), for Lithuania *Einsatzkommando* 3, around 180 men. Two things are important: all Einsatzgruppen in the Soviet Union around the end of August began to kill not only Jewish men, but women and children too, that is genocide. For the killing of Jewish men there may be some 'rational' explanation, e.g. to get rid of fifth columns who were fighting behind the back of the Wehrmacht and so on; but when you start to kill children and women, then it is genocide. The death toll in Lithuania therefore reached its height from August to November 1941. Considering the fact that the whole *Einsatzkommando 3* consisted of around 180 men at all, it is quite obvious that these few men cannot kill hundreds of thousands of people. This sheds a light of the importance of Lithuanian help. In Lithuania there was a special killing commando named after one young SS Officer Hamann (*Rollkommando Hamann*, that is a raiding squad) that was manned by Lithuanians. The most important document on the systematic murder of Jews in Lithuania is the terrible and famous Jaeger report. Jaeger was the chief of *Einsatzkommando 3* and he fabricated a list of the murders in which he accounted for every crime scene and how many people, how many men, how many women, how many children were shot. In the end he came up with more than 130,000 people killed until the beginning of December.

There were also Lithuanian police battalions that took part in the actions. There were Lithuanian police battalions that guarded the ghettos. Figures are hard to give, let's say somewhere between 12,000 and 15,000 men, but confining the Lithuanian collaboration to the police battalions and the Rollkommando Hamann is a conclusion that is far too narrow.

One key document is an order of the chief of the Lithuanian Police, Vytautas Reivytis, giving instructions to all the police departments in Southern and Western Lithuania:

"... Immediately arrest all male Jews from the age of 15 and all Jewish women whose Bolshevik activities were known to the city or who even today still show such activities or cheeky appearances. The report shall specify the number of Jews seized and arrested... This statement must be executed within 48 hours. The detained Jews must be guarded until they are taken over and transported to camps."

Instead of transportation units, the *Rollkommando Hamann* came and the killing took place. So, the German killers got the numbers of the victims with the help from local administration. Without this help that included providing the killing places outside towns, it would not have been possible

for the few men of *Einsatzkommando 3* to kill over 100,000 people. And the covert language only to arrest those Jews who were Bolsheviks, we know from the German sources too, it was a camouflaged language like *Endlösung*. Those addressed got the real intention of Reivytis: we got some of the reports of the police departments back to Kaunas. They understood what was ordered and they arrested all Jews, not only Bolsheviks.

One of these Lithuanian administrators was Jonas Noreika. Our commission gave a clear statement concerning Noreika and I would like to quote it: "…Jonas Noreika, following the directives of the German Commissar of Šiauliai, Hans Gewecke, issued orders for the ghettoization and expropriation of the Jews of the District, and followed up the process with additional detailed instructions… Nearly all victims rounded up under these orders were subsequently murdered as part of the killing operations carried out by the Nazis and their collaborators during the summer and fall of 1941, by far the bloodiest page in Lithuania's modern history. This is the historical reality supported by unequivocal documentary evidence. If this is not participation in the process of the genocide of Lithuania's Jewish citizens, then what is?"

Conclusion: again it is the local situation that has to be taken into account, the behavior of individuals shows a great difference. For example, more than 100 policemen left the Kaunas-based TDA battalion after it was used for so-called Jewish actions, i.e. killing of Jewish men for the first time. There is only one explanation:



these men did not want to kill human beings only because they were Jews. Lithuanians as individuals became guilty, but 'the' Lithuanians as a people did not. As there is no collective guilt for the Germans, there is none for the Lithuanians.

Stage 3. The ghettos and the liquidations. Discrimination of the Jews started at once in June 1941: they had to wear a yellow star, they were not allowed to use public baths, park benches and so on. What took six years in Germany, half a year in Poland, took only weeks or days in Lithuania and then the Jews were forced to go to the ghettos. The three ghettos are well known: Šiauliai, Kaunas and Vilnius. Now only the 'usefulness' of the Jews counted for their life. After the notorious actions in the ghettos in the late summer and autumn 1941, the 'quiet' period between December 1941 and September 1943 took place. As I said, it were economic reasons and motivations that stopped the killing. When the Germans understood that they were losing the war, the end of the ghettos was imminent. For example, it was easy for the German security police to point to some Jewish partisans who had fled to the woods to show the ghetto in Vilnius as a security risk and the liquidation started. Only few Jews survived. The Lithuanian Jews had the lowest chance to survive the German occupation.

My conclusion will be short: the murder of the Lithuanian Jews was initiated, organized and executed by Germans, such speed, brutality and effectiveness were possible because Lithuanians helped the German occupiers. These helpers were in the police battalions, in the local partisan units, in the Lithuanian administration, and undoubtedly some 'normal men'. Not only those that pulled the trigger became perpetrators, but also those who like Reivytis and his local bureaucrats did provide networks, information, human resources for the killers. Jonas Noreika is just another example of this.

What we need to understand is that there was not one holocaust but many; the picture is a very differentiated one: the situation in Kaunas was different from Vilnius or from the countryside. Only looking into these specific local conditions, only identifying the local German and Lithuanian actors and their behavior can we get a clear impression of what happened. *Ačiū už dėmesį*, thank you for your attention.



CHRISTOPH DIECKMANN

Christoph Dieckmann works presently as a postdoc researcher at the University of Bern in the project "Sounds of anti-Jewish Persecution". He researched Yiddish Historiography on the Russian Civil War at the Fritz Bauer Institute in Frankfurt am Main and taught Modern European History at Keele University, UK. He is a member of the Presidential International Commission for the Evaluation of Nazi and Soviet Crimes in Lithuania. His study *Deutsche Besatzungspolitik in Litauen* 1941—1944 [German Occupation Policy in Lithuania 1941—1944] was published in 2011 and was awarded the Yad Vashem International Book Prize for Holocaust Research in 2012. He co-edited the office-diary of Heinrich Himmler 1941/42 (Hamburg 1999), published books on ghettos (2009) and the impact of German warfare on mass crimes (2015).

AN HISTORICAL VIEW OF HOLOCAUST IN LITHUANIA

Dear ladies and gentlemen, dear Faina, thank you very much for the invitation. I would like to discuss with you in the first step a few arguments of how to analyze and research our common complicated history and then in the second step to present a few arguments deriving from my research of the robbery of Jews in Lithuania during German occupation in 1941–1944. I can touch only a few aspects and we might find some time in the discussions to elaborate on many of the relevant issues here.

Multiple perspectives are essential for understanding the context properly; without knowing the Lithuanian, the German and the Jewish side and its specific prehistories, it is very difficult to understand what happened and why. I am proposing to use the terms "experience" and "expectations" to reconstruct and analyze the structural and cultural context and the range of choices the involved groups had at specific points of time.

When I mentioned Germans and Lithuanians in the title this does not mean that they were equal partners in this, but power questions are always related to the questions we ask about the past of our societies and I am interested in power as it was really distributed and not as some bureaucrats wanted it to be distributed on paper.

We should not think of power as something that somebody has, as a kind of possession, as a constant attribute of somebody. But we should understand power as an effect of relations between people and groups. If we think of power as a relational issue, then we have to rearrange our analysis of power. I'll return to the issue later in a few minutes.

Since the 1990s the basic assumption has become stronger and stronger that each and everybody has at least in some way a choice of what to do, how to act and react in difficult situations. The diverse behavior of individuals in the German police battalions, for example, shows clearly that it was possible not to participate in killing operations without risking to be severely punished. Joachim Tauber just mentioned an example of the Lithuanian first police battalion in Kaunas where over 100 remained after the first experience of the activities within the police. There was a choice. The fundamental assumption of choice does not mean to judge permanently in hindsight, the person should have rather done this or that. What we see is that people in similar situations actually made different and diverse choices. There exists no determinism here or automatism of how people will behave. Our task as historians includes to ask specifically which choice people did have. And to answer these questions with the actual specter of choices that people made in similar situations. Therefore, we do not know better or pretend to be better people than they were 70 or 80 years ago. We try and analyze the range of choices they actually made. Analyzing and understanding does not mean to justify choices, just as to compare different phenomena does not mean to equalize them but to learn about the similarities and differences.

The task of a historian is to do just what historians are supposed to do and not to act as judges but to look at the available sources to the best of their abilities and to try and reconstruct and analyze the history on the basis of the evidence and to do that in as balanced a way as possible with a hope that this might improve the empirical basis on which then the discussions can take place. And part of this task of historical analysis is historization of terms as well, of the concepts we use to understand history. For our topic here, the term or concept of 'collaboration' is highly relevant.

So where does this term come from? The French word *collaboration* initially meant only to work together. When Marshal Phillipe Petain coined the slogan in October 1940 in order to explain the cooperation of unoccupied regions of France in South with Nazi Germany, the Vichy regime believed that this formula of *collaboration* would open up some freedom of action to achieve a two-fold aim: on one side, to preserve what was left of French sovereignty, to preserve that under the conditions of German dominance and, on the other side, to realize its own *revolution nationale* which was deeply influenced by the right wing *weltanschauung* (world view). The aim of *revolution nationale* had developed in prewar times and strove to reorganize French society in a way in which it would overcome the effects of the 1789 French Revolution. So, the revolutionary slogans of *Liberté*, *Fraternité* and *Egalité* should be replaced by work, family and fatherland. All the faults of modernity had to be overcome by the authoritarian antidemocratic regime which would avoid alleged weaknesses of interwar France and create eventually a different modernity. The rapid defeat of France in 1940 by the German Wehrmacht allegedly confirmed the weakness of the former French Republic.

This means that Vichy France had its own agenda, its own motifs and goals and did really pursue its own policy, even though the Germans had occupied part of the country and were in a dominant position.

Now, when you look at other countries under German occupation, we find similar constellations, the non-German policy was often shaped by both the experience of the 1930s and the expectation of how the war would end, who would dominate the next decades in Europe. So non-German policy was not only a reaction to the German policy but was also influenced in its core by other experiences and expectations. Collaborators wanted to serve their own fatherland to preserve what was left of its autonomy and to prepare for better future in their eyes.

Because of the defeat of the Germans and their allies and the extent of the mass crimes during WWII, the term 'collaboration' then completely changed its meaning at the end of the war. It then turned into a highly pejorative term meaning 'treason of the fatherland'. 'Collaboration' and treason turned into synonyms, basically meaning the same thing. Resistance movements in the liberated states and people used this term to explain the reasons of the past and to blame mostly others for what had happened and to make a new start after the war. Now, having collaborated meant having harmed the nation and in many states trials were conducted under the charge of collaboration, of treason. Since then we feel that all collaborators are to be seen as traitors who are disloyal and who lost honor as citizens of the nation. I would claim that today the term 'collaboration' is not a useful analytical term anymore but an instrument in judicial and political conflicts. I do not really see it how—as it is again and again being proposed—we could successfully get this term out of its national postwar context of judging traitors and use it as a historiographical tool.

If you look at historiographical works and reactions of non-Germans to German or Nazi policy, you see that there was no clear dichotomy, a simplistic division, between collaboration with the enemy on one side and resistance on the other side. All the different types of behavior—collaborationism, accommodation, attentism, dissent—varied over time and depended on the specific context. The picture we get, if we look more closely at this, has many different facets and is quite complicated. Moreover, very often we find different elements at the same time. Elements of cooperation with the occupier, agreement and consent coexist with elements of resistance, dissent and distance, and all that, I repeat, changed over time. The situation in 1941 and 1942 was very different from the one in 1943 and 1944, thus the judicial context changed the meaning of the term 'collaboration'. And I would claim that many terms

and arguments that we are using in historiography about the Shoah are essentially formed by a judicial context. That's part of the problem, I believe we should change that. Terms like 'perpetrators', 'bystanders', 'victims', 'intentionalism' and others stem from court situations. As if we were asking who is to blame, who is guilty and to what extent.

Especially the blaming attitude is omnipresent and we victimize ourselves. Andrew Baker has already mentioned that Austria claimed it was the first victim of Nazism. That is completely wrong, we, Germans were the first victims of Hitler. So, victimizing yourself and blaming others, it is all over, everybody has done it and we are still doing it. We do not take responsibility for our past. And that is the task. Instead, we infantilize ourselves, prefer myth to truthful history, instrumentalize history for our alleged needs of identity politics. And we use ethnic categories as analytical tools, which is a very dangerous track—to use ethnic categories as tools. Instead of understanding our history in social and political terms and trying to analyze the developments as they were, we see history as judgement day for our people, for our folk. Ethnic categories are not helpful here, they actually repeat to a certain extent national socialist thinking. As if history is by definition a battleground of our various people, of our *Völker*.

The robbery of Jews (I am coming to Part 2) was an integral part of the Shoah, the persecution and murder of European Jews. We, here, are all aware of the immense scale of loss



of Jewish property in Lithuania's few larger cities and its hundreds of shtetls and villages. Just think of ghettoization, Joachim Tauber mentioned already, ghettoization process meant a complete loss and theft of Jewish property, the Jews had to move out and to leave almost everything behind, contributions for every Jew living in the community had to be paid, around 100 rubles per person. As a historian I am interested, how many rubles did Germans demand, because then you can make a conclusion of how many people the Germans believed were there. A hundred rubles per person was kind of rule here, Jews were deprived of most of their means. They tried and sometimes managed to smuggle with them into the ghettos some valuables.

So, what happened with the booty, how was the redistribution of the Jewish property organized, who could take what? We, as historians, need to think as antisemites to reconstruct inner logic of the participants here. How do antisemites think: Jews, you have robbed us, non-Jews, and we have all the right in the world to take our property back, we are just taking back, we are not robbing, just taking back.

This was an organized process. Officially it was forbidden for anyone to take privately anything from empty Jewish houses. During the process of ghettoization committees redistributing Jewish property were set up all over Lithuania in the summer 1941. The beneficiaries were rewarded in the following order: first, the Germans, second, members of the Lithuanian administration and only then the ordinary Lithuanian population. Despite being organized, the ghettoization and robbing was not an orderly process, it was supposed to be, but it was not, there was a lot of corruption, dealing, hiding, fighting over who would get the best apartment or the best furniture. In the Lithuanian State Archive, we see plenty of petitions sent by different organizations and some private citizens: "Please, give me this cow"; "Give me this item the Jews no longer need anymore"; "My husband was deported by the Soviets, can I get compensation from the Jews?" and so on.

Already in summer 1941, committees to redistribute the Jewish property were working at full speed. Germans wanted to take the best, they needed the things for the army, for administration, they needed valuables for supporting their finance system, etc. These redistribution processes continued until 1944.

So, what is the German logic here? Also, fighting with each other about who gets what. German aims were basically structured by the overwhelming task of conducting and eventually winning this war. Anything that would ease the German ability to conduct war and get closer to victory would be welcome or would be seen as a necessity, winning by German antisemites, that is. Anything that would seriously harm the possibility to win the war would not be done or implemented.

Now, Germans wish and policy was to control the difficult side effects of warfare. Remember the experiences of WWI, of 1918, the mood at the home front was of crucial importance for many decisions. They wanted to minimize inflation and to export the war debts. Germans hate inflation until today, the black zero has to stand all the time. Much of the German infight stemmed from a certain choice: whether to invest the booty into the foreign economies in order to further exploit them for the German warfare, that is Goering and his people. Or, whether to use the booty for consolidating the German budget and thus to limit the devaluation of the money. For example, by far the largest part of the German income from renting out Jewish labor in Lithuania went into hands of the German civil administration and thus into the German war budget. Goering with the four-year plan and Himmler with the SS received much less of the share. The purpose of renting out the Jewish labor was to consolidate the German budget in order to minimize German inflation. Because of WWI, 1923 and 1929, we, Germans, hate inflation, that's chaos. Renting out Jewish labor was discussed in this context by the Germans.

German and Lithuanian civil administrations were competing over who gets what. Now, if both parties wanted the same thing very often Lithuanians would win. Why would Germans let Lithuanians get a share? To bribe non-Germans into complicity, to draw them in, out of necessity. Joachim Tauber has mentioned that Germans were completely underresourced, depending, out of necessity, on the readiness of non-German collaboration in Lithuania and all over Europe. We find that everywhere. This was a central problem of the occupational power structure: the readiness of non-Germans to cooperate needed to be created, confirmed and stabilized. Therefore, Germans knew they had to give something to the Lithuanian administration as a reward for their cooperation. To keep Lithuanians motivated, was thus part of German occupation policy. The Lithuanian city administration, police departments, orphanages, schools, hospitals were getting Jewish houses, land, cows and horses, furniture, medical equipment, watches, radios, blankets, dishes or whatever else was taken from Jewish homes.

There is no doubt that the functioning of a local, in this case non-German administration, under any occupation is legitimate under international law. Otherwise, the survival of the occupied population would be at risk. In other words, the problems of collaboration during WWII turn into a difficult problem only if we include the mass crimes into the picture. "Collaboration" with the Germans during WWII always implies the question of non-German involvement in the mass crimes. Now, I want to emphasize, the Lithuanians under occupation did not just give up at their own will and initiative. Many cooperated in spheres they wanted to cooperate and did not cooperate in spheres where they did not want to cooperate. We know many examples of that.

On paper, Lithuanians did not have many rights, but in practice the Germans really needed this cooperation to achieve anything. Lithuanians would not be ready to act against most of their fellow Lithuanians, in an ethnic sense. And the Germans knew this and took it into consideration.

What does this mean for the history of Lithuanian behavior under the German occupation? It means, most importantly, that Lithuanians did have a choice which the Jews did not really have. The Jews were living in a situation where they were choiceless while Lithuanians had a choice. On the basis of which values did Lithuanians make their choices?

The ideological and cultural mainstream in Lithuanian population was clearly ethnic nationalist. Nationalism had grown rapidly

within the last 20 years during the time of independence, especially under [President – ed.] A. Smetona. And became even stronger through the experience of Soviet rule in 1940 and 1941. The values of the society were massively influenced by the question: Does this serve the Lithuanian nation state, or does it harm the Lithuanian nation state?

Love and service for the Lithuanian fatherland was the crucial norm for many, and many shared, what the sociologist Michael Mann has called 'nationstatism', the utopian expectation that the homogenous nation state will solve all important problems. We find various strands within Lithuanian nationalism. From 1926 on, the liberal and left were very weak, the dominating forces were the conservatives and the more extreme right. Right-wing radicals were slowly growing stronger and were organized in the Iron Wolf under A. Voldemaras. They have been pushing Smetona without great success towards a more radical policy against non-Lithuanians. And within the conservatives, it was the conservative younger generation, that was pushing towards more radical nationalist policy as well. So, members of this younger conservative generation and some right-wing radicals were actually the main members of the so-called Provisional Government (June to August 1941). Very important for the further involvement of the Lithuanian police forces and Lithuanian police functionaries in the murderous anti-Jewish policy was the success of the radical right-wing at the end of July 1941 to overtake almost the complete leadership of all Lithuanian Armed Forces. Explicit fascist forces took over through a putsch in the second half of July 1941, with the help of the German gestapo. These young soldiers and policemen were openly fascist and antisemitic, of course in the name of a fascist version of a future Lithuanian nation state. From this group came the main perpetrators, who all the time, and I must emphasize this, under German command, would isolate and murder the Lithuanian Jews in the cities and in the countryside. My numbers are different from the ones of Joachim Tauber. Until the late autumn in 1941, 156,000 were murdered. To make it very clear: the Germans were the main initiators of this mass killing of the Lithuanian Jews.

One of the crucial questions is now, why did the rest of the Lithuanian society and all the other non-radical right-wing politicians accept these unprecedented mass killings? We do not have one public statement against the horror, not one. The usual answer to this question is: Well, it was a totalitarian system, it was too dangerous. But this top-down approach ignores what happened in many other political spheres at the same time. We find many public collective protests against German policy in the economic sector, against policies in the educational sector, in the settlement sector, when the Germans were coming back in spring 1942, in the sector of antipartisan warfare. Protests all the time, discussions, public ones, but we don't find one public collective protest against the killing of the Jews. Not one. We find only individual protests. One telling example is today's topic, the handling of Jewish property. The Germans tried again and again to get hold of most of the Jewish property. But since they relied on the Lithuanian administration to get hold of it, it was not very successful.

This also has a prehistory. Radical ethnic antisemitic nationalists, Lithuanians, had demanded already at the end of the 1930s, explicitly in 1939, that is before the first Soviet occupation, at the end of independence of the Lithuanian nation state, to get Jews out of Lithuanian cities within five years. And we all know what the society was like at the end of the 1930s, there were Lithuanians pushing into the cities, but large parts of the urban middle class were constituted by mostly Jews and Poles, also by some Germans and Russians. Some ethnic Lithuanian nationalists now demanded to accelerate this process of Lithuanisation of the cities, in only five years' time, all Jews had to be out. We must accelerate the formation of the Lithuanian middle class. It was the same phenomenon all over Eastern and Central Europe, the same process of the creation of homogenous nation states. Thus, in 1939 we already had this notion of 'get the Jews out of the cities within five years'. [President] Smetona did not allow this: independent Lithuania was not an antisemitic state. He would say, "We have enough space for everyone," Voldemaras' faction would say, "No, this is a zero-sum game, it is either them or us." So, this is part of the difference between ethnic and civic nationalism.

But we need to differentiate even more. Let's think about the difference (and I am coming to notorious Noreika) between Urbaitis and Noreika. Jonas Noreika replaced the less radical chief in Šiauliai county, he replaced Ignas Urbaitis on the same day when the Provisional Government resigned, August 5, 1941. A week before this, July 29, Urbaitis, the County Chief, had presented his "project" on how to deal with the property of communists and Jews. It was directed primarily against those Jews who were supposedly actively involved in the communist movement. Their property should go to the state without compensation. All the other Jews should be allowed to register their property with the Lithuanian local administration, they should be allowed to keep their movable property. The immovable property, however, should be taken from them if the Jews changed their place of residence, which was imminent by the upcoming ghettoization. That was the project presented on July 29 by Urbaitis. Antisemitic? Yes, but it was not radical enough and Urbaitis was replaced by a new County Chief. Noreika comes in.

Once in office, Noreika immediately issued a stricter version, namely a complete ban on all Jewish property. Both immovable and movable property should be taken from all Jews, only 200 marks should be left to each Jewish family. We know that on August 22, he issued an order to send all the Jews of Šiauliai to the Žagarė ghetto within a week and the people were murdered there. This is a very good example also of the range of choices people had at the time even among antisemites. How did Jewish belongings find their way to the homes of ordinary Lithuanians? What was left after the Germans and Lithuanian Administration took their share, was auctioned in public auctions in Lithuanian cities, towns and villages.

In the summer 1941, 90,000 provincial Jews were already placed in improvised ghettos all over the countryside. Ten thousand of mostly men were already killed in rural areas. Committees were already working, redistributing Jewish property. Lithuanian people, ethnic Lithuanians on horse carts and carriages all over Lithuania were taking things from these auctions and bringing them home: furniture, dishes, clothes, towels, toys, pillows, etc. After these auctions, the Lithuanian administration reported to Germans about the money they had made from the auctions. Twenty thousand marks here or 15,000 marks there, it was supposed to be all right. It was not all right. Germans were trying to get this money for themselves. Still, we have many documents proving that the Lithuanian administration would not always cooperate with the Germans and would not give the money away. They wanted to keep the money for Lithuanian purposes. Why? Their antisemitic logic was the following: the Jews had been exploiting Lithuania, so Lithuanians were justifiably taking their money back; not the Germans, we, Lithuanians, are entitled to get it back.

The important point now hard for us to understand in hindsight is that the Germans could hardly have forced the Lithuanians, county chiefs or city mayors to give that money to them, because they did not have sufficient means to do this. There were only a few hundred German policemen and 12,000 to 13,000 Lithuanian policemen, there was no way of forcing them. They would have to use Lithuanian policemen who were under the Lithuanian Administration and these policemen were convinced that it was Lithuanians who should get the Jewish property. So, heads of the Lithuanian administration thought that if they take the Jewish property and redistribute it, this would be a good social policy for the country, an antisemitic welfare policy: the redistribution of property according to ethnic nationalist principles and this happened not only in Lithuania but all over German occupied Europe and in Germany itself. The most famous example is Hamburg: we have 100,000 citizens who profited of the property of 30,000 of Jewish households through auctions. So again, this is not a blaming game, oh you Eastern Europeans, you are so barbaric, no no no, the first finger points to us, ourselves.

A letter from 1942, written by Lithuanian partisans to the agrarian functionary Beck, in south-east of Lithuania: *"The police in Ignalina and the former town mayor, Tijūnėlis, as well as the present mayor, Albertas Aliejūnas, seized many objects of Jewish property for themselves. Police personnel and the two mayors hid these things with their relatives and friends in the villages ... We know that the police have the following in its possession: 220 gold rings, 55 gold watches, 35 sofas in good condition, 45 cabinets, 180 beds including mattresses, 45 cows, some 50 fur coats, 250 beehives. In addition, there are many items that have been sorted, including clothing, shoes, etc. Only a tenth of the Jewish property was sold*

to the local residents when the Jews were liquidated. For example, gold, hides and other valuables were not offered for sale at all, and were not passed on to the German army. We, the partisans from Ignalina, are extremely grateful to the German army that liberated us."

We see, German occupation was used for Lithuanian infights. Unfortunately, the robbery and redistribution of the Jewish property is a huge part of the Holocaust in Lithuania in which the local population was massively involved. More than in the shootings and more than in the actual persecutions. In the provinces there were mainly Lithuanians who benefited, they moved into the houses and bought cheaply the movable Jewish property. Most German efforts to control and chase the Jewish property in provinces failed.

It is true that the Lithuanians in provinces were mostly very poor at that time. But there is also a moral question. Should I, as a poor Lithuanian, take Jewish property, even if it is just a sheet from a bed of a person who was persecuted, who was my neighbor. These were moral decisions many had to make, they could have said no, I don't want to take it. And some people did not take it. Even if one had not been an antisemite before one had taken a Jewish item, very often one became one after having taken it, to justify what one had just done. First came the deed, then the ideology, not always the other way around. The problem is that in 1941 and later too many Lithuanian people said, I will take it. From an antisemitic perspective, they did not rob anyone in their own justification, just took back what was taken from them by exploiting their country and now got what they deserved.

So when we ask ourselves an analytical question: "Did the killing of the Jews make the German occupation policy in Lithuania more stable and successful or less stable and successful?", what would be the answer? The answer is: it made it more stable, in Lithuania and elsewhere. And this is a huge moral disaster for non-Germans, not only for the Lithuanians but for all the other people in German occupied territories.

There is a diary of Ona Šimaitė, an admirable rescuer of Jews in Lithuania. This diary has been published by Julija Šukys and you know what made Šimaitė very sad? During the Nazi occupation she was hiding many Jews. But not only. She was also trying to save their property, so she was giving away some Jewish items for safekeeping to some Lithuanian people she knew. Now Šimaitė notes in her diary that she was in shock when after the war she asked those people to return the items to the Jews she had saved and people refused. She was so desperate and ashamed. The history of the complicity of Lithuanians during the Holocaust is much more than about involvement in the shootings, persecution, humiliation, public beatings and robbery and being OK with it.

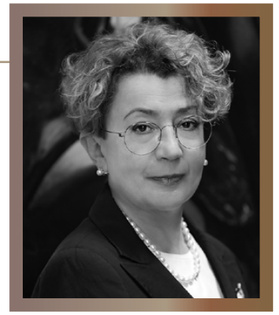
What occurred in Lithuania was an early and huge robbing campaign in the occupied territory of the former Soviet Union. Not because Lithuanians were particularly bad, no, but because of the German occupation policy. Not only in Lithuania, but in all occupied regions the Germans deliberately exploited the greed and envy of the local societies. And many non-Germans failed this test of their moral integrity, religious beliefs and humanity.

I have emphasized, I believe that the situation like this was not only in Lithuania, but in most European states in regions under German occupation, whether we look at Latvia and Estonia, at Poland, France, the Netherlands, Belgium, Hungary or Slovakia. The picture of deep involvement of non-German perpetrators against the local Jews was everywhere very disturbing.

We tend to believe that under the occupational regime everything depends on the occupiers. This is a distorted picture and we need to include all the occupied groups into our picture, in a specific historic context. Just how I started, multiple perspectives, we must have them in mind. Thinking and explaining mass violence needs analysis of the whole society, not just of a few bad people. A top-down approach needs to be complemented and corrected by bottom-up approach. We have to analyze complicated processes instead of simplistic cause and effect relations. Only then we might get nearer to what actually happened and why.

In the context of non-German cooperation with Germans this means: the Shoah was a German initiative, but, unfortunately, executed with the help of very many, it turned into a European project, the Jews were trapped almost everywhere.

Thank you.



FAINA
KUKLIANSKY

Faina Kukliansky is a Chairperson of the Lithuanian Jewish (Litvak) Community and a lawyer. After the restoration of independence of Lithuania in 1990, she was elected a member of the first board of the Jewish community of Lithuania. Later she became active as a lawyer representing the community interests. In 2013 Kukliansky was elected as the chair of the Jewish community of Lithuania and the chair of the Vilnius Jewish Community (position of a lay leader). In May 2017 and July 2021 she was re-elected as a chair of the Lithuanian Jewish Community. Faina Kukliansky is also a co-chair of the Foundation for Disposal of Good Will Compensation for the Immovable Property of Jewish Religious Communities' Board. Kukliansky has received a number of awards from the Lithuanian state, including the Order of the Knight's Cross "For Contributions to Lithuania" awarded by the President of Lithuania, and Star of Lithuanian Diplomacy by the Ministry of Foreign Affairs of Lithuania.

THE GOOD PRACTICE AND CURRENT CHALLENGES OF RESTITUTION: THE CASE OF LITHUANIA

I am sorry that my report is rather long, but, unfortunately, that is how it comes out. I cannot see many governmental representatives here who should be here and should be primarily interested in the analysis of restitution that is taking place in Lithuania and in our hopes; but we can also share it with each other. Therefore, I would like to start with the idea that came to me, because next year is not only the year of Jewish history, but also the year of Gaon and the year of Sugihara. It occurred to me that Jews who could apply to Sugihara and Zvanderdijk for visas, that is, Lithuanian Jews, did not do so. They stayed in Lithuania, they believed in their state and did not take the opportunity to flee this country. Now, let's see what they ended up with.

On 21 June 2011, the Law on Good Will Compensation for Real Estate of Jewish Religious Communities was passed in the Republic of Lithuania. The preamble reads: "The Seimas of the Republic of Lithuania recognizes the significant contribution of the Jewish community of Lithuania to Lithuanian culture and public progress prior to the Second World War which was the beginning of the occupation of Lithuania and the Holocaust as the total destruction of Jewish existence; taking into account [many other things], adopts this Law on Good Will Compensation for Real Estate of Jewish Religious Communities."

The state also took into account the provisions of the Terezin Declaration. Article 2(4) of that law states as follows: "The amount of compensation provided for in paragraph 1 shall be final, claims may not be made in the future and the amount of compensation fixed for the property of Jewish religious communities and Jewish communities shall not be altered." Today, we are not asking about the return of the property of Jewish religious communities, a third of which is being returned, but about private property belonging to victims of crimes by Nazi and communist regimes, which has not been returned or compensated by the state. We are raising this issue 75 years after the end of World War II, when almost the entire Jewish community in Lithuania was exterminated and the surviving victims never regained their property. As the state has failed to make commitments for compensation, these victims are referred to as "forgotten victims" or "undeserving victims", because the national legal framework in the state is designed in such a way that it becomes impossible for some victims to recover property or compensation.

It should be noted here that restitution legislation adopted by international organizations is optional, or soft law. Or "non-binding legislation", in accordance with international law. This highlights a clear distinction between unratified international legislation and enforceable national legislation. Thus, in theory, victims are not entitled to restitution, or not all victims are entitled to restitution. In Europe, however, practices have emerged, and there is a tendency for states to commit themselves to restitution or compensation for victims. This follows the practice of European countries as summarized by the Ministry of Justice of the Republic of Lithuania and the Seimas. Under international law, states have discretion in defining the victims of the totalitarian regime as beneficiaries of compensation. Victims of the totalitarian regime who fall outside national law will not be able to appeal against it under Article 1 of Protocol 1 of the ECHR, the European Court of Human Rights. This also applies to the heirs of the victims. It is up to the state to determine whether or not the heirs are entitled to compensation.

> **"As the state has failed to make commitments for compensation, these victims are referred to as "forgotten victims" or "undeserving victims", because the national legal framework in the state is designed in such a way that it becomes impossible for some victims to recover property or compensation."**

Let's look at the situation in Lithuania. I will examine the problem of restitution of private Jewish property that has been nationalised or otherwise expropriated since 1940. This issue has not been addressed in depth in literature, although it has both theoretical and practical implications. This is important from a theoretical point of view, because Jewish property was nationalized during the Soviet occupation of 1940, on the same legal basis or, more accurately, equally illegally as the property of the entire Lithuanian population, but unlike the property of the Lithuanian population of other nationalities, Jewish property, like the Jews themselves, was facing a completely different destiny. In practical terms, this is important because it has been more than 70 years after the beginning of expropriation, however, the property has never been returned to those who were not citizens of the Republic of Lithuania during the period of validity of the law.

Jews today make up a small minority in Lithuania. In interwar Lithuania, Jews were considered a national minority as well. Mykolas Romeris wrote out about the problem of the Jewish race in his monograph *The State*. He wrote: "This relationship is no different from that of the nation, which in Europe stands out especially from everyone else as it has no territory or mass/permanent center. With purely personal characteristics of its dispersed members it has been able to maintain its different essence over thousands of years without succumbing to national or ethnic assimilation of the environment. I'm talking about Jews. But after about 2,000 years of living among the peoples of Europe, without having their own separate territorial residence center, the Jewish nation must have been infused with a considerable amount of local people's bloodstream. However, in Lithuania, the municipal institution of national personal autonomy has its own history, but only in relation to one national minority, namely the Jews." On 10 January 1920, a temporary law on the rights of Jewish community councils to burden Jewish residents with taxes was passed by the Provisional Government.
It was a law that created the foundation of a personal Jewish municipality in Lithuania. Romeris refers to it as the history of Jewish personal autonomy in Lithuania.

Then, according to the data of the 1923 Lithuanian census, Jews accounted for 7.2% of the residents of Lithuania. It can be assumed that in 1940 there were a total of 240–250 thousand Jews in Soviet Lithuania. It is obvious that Jews make up a significant minority among other nations nowadays. According to the 2011 census, Jews make up 0.08%percent of residents. Just under 7.2% in 1923. Despite the figures provided describing Jews as a national minority, until 1940 Jews had an undoubted influence on Lithuania's economy. I will give you only one figure: of the 1,593 companies with an annual turnover of 500 million litas that were nationalized between 1940 and 1941, 1,320, i.e. 83%, belonged to Jews. Given the amount of property owned by Jews by private property rights and

the fact that the Jewish community was practically destroyed, the question should naturally arise: how the restitution of Jewish property is taking place in Lithuania after the restoration of independence and whether it is happening at all. Here, in my opinion, two aspects should be explored: how and when Jewish property was expropriated; and secondly, the laws currently in force under which Jewish property can be returned to the former owner. As mentioned above, some Jewish property was nationalized or otherwise expropriated between 1940 and 1941, i.e. during the Soviet occupation. Most of these unfortunate people were exiled with their families to Siberia. But let's see what happens next with the Jewish property in Lithuania.

From 23 June 1941 to 5 August 1941, the Provisional Government operated in Lithuania. Having considered the declaration on economic and social issues in its meeting of 30 June 1941, it declared it necessary to carry out the denationalization and to return private property, but not without exceptions. According to the declaration, the property owned by Jews and Russians remains undisputed property of the Lithuanian state, and Mr. Dieckmann has already spoken about it. That wording was amended at the meeting of the Provisional Government on 4 July 1941. It removed the discriminatory provision towards the Russian population, but included former Soviet activists. Nationalized Jewish property as well as nationalized property belonging to other persons who actively acted against the interests of the Lithuanian people remain the property of the state of Lithuania. During the first half of 1941, the majority of Jews were liquidated. By 1 December 1941, 133,346 Jews were shot. I do not know if these numbers match those of historians, but approximately. [remark from the audience: more]. Ok, it means more. And the survivors were distributed as follows: 4,500 in Šiauliai, 15,000 in Kaunas, 15,000 in Vilnius. Correct? Correct. After the massacre of Jews, entire towns remained empty. The issue of Jewish property was addressed in many ways. Movable property was usually distributed or sold out to local residents, museum archival properties were taken to Germany, much of Jewish real estate remained at the disposal of the local administration and was used for its needs, it also went to private individuals.

According to the decree of 13 October 1941 of the Reich Commissariat for the East (*Verkundungsblat des Reich Komisars*, Reich Commissioner's Gazette, page 27), all movable and immovable Jewish property in the East is confiscated and managed by a commissioner. The confiscated Jewish property belongs to the German Reich. The language has not been corrected. Next, the same document reads: "Pending the adoption of executive regulations of the Commissioner of the Reich, by the decree of 13 October 1941, Jewish land shall be governed by divisions for apartments." Management of apartments, houses and other property was defined. Thus, the management of Jewish property has been transferred to the competence of Lithuanian county governors and burgomasters. In other words, to the local authorities. Let's take the example of Panevėžys. There was a total of 61 Jewish farms in Panevėžys county, with a total area of 407.3 hectares. After the liquidation of Jews in the county, most of their farms were taken over by natural persons, the vast majority of whom were Lithuanians. Similarly, Jewish property was expropriated throughout Lithuania.

It's hard to say how many Jews survived in Lithuania after the war. Some say it's five per cent, others refer to higher numbers. Those few Jews who were miracle survivors returned from concentration camps back to Lithuania, but the vast majority of them moved to Palestine legally or illegally. Some of them who returned after the war to Soviet Lithuania fled it during the Soviet occupation. Between 1947 and 1951, several hundred Jews were convicted of attempting to cross the USSR state border illegally. Among them were also Lithuanian Jews. Some Lithuanian Jews took advantage of the repatriation as Polish citizens, which took place between 1944 and 1949 to leave the USSR. Some of the Jewish girls left as wives of Polish citizens. So, virtually all Jewish property remained either ownerless or at the disposal of new owners. After the war, ownerless property was being accounted by decisions, ordinances, minutes of meetings of the executive committees of various cities, and the rest of the ownerless property was municipalized. Thus, it can be concluded that Jewish property in Lithuania was expropriated and taken away in other ways. Firstly, it was nationalized or otherwise expropriated by the laws of the USSR; secondly, by resolutions of the Provisional Government of Lithuania; thirdly, by decrees and other ordinances of German occupation and local administration; fourthly, it was taken over by the state as ownerless property or belonged to neighbors of the murdered.

Our goal is to review the restoration of property rights for Jews after the restoration of independence in Lithuania. I quote one of the rulings of the Supreme Court of the Republic of Lithuania: "In this way, the Supreme Council of the Republic of Lithuania, expressing the sovereign powers of the state of Lithuania, has decided that it is objectively impossible to unconditionally restore property rights held by citizens prior to 1940." And that citizens shall have the right to recover the remaining immovable property only under the conditions and in accordance with the procedures laid down by law. Or by limited restitution. It was for this purpose that the Law of the Republic of Lithuania of 18 June 1991 on the Procedure and Conditions of Restoration of Ownership Rights to Existing Real Property and an analogous law of 1997 were adopted. Under these laws, the ownership rights of former owners are not restored to all owners and not to all the assets they had held. They provide for a number of special conditions and requirements, under which ownership of the existing immovable property may be restored to a certain group of persons. In its resolution of 27 May 1994, the Constitutional Court of the Republic of Lithuania, while analyzing the legislator's intentions in resolving the issues of restoration of the right of ownership, points out that it is objectively impossible to fully restore the system of property relations that existed in 1940. The publication of the provisions on the continuity of ownership rights was the basis for carrying out limited restitution, i.e. to seek remedies under the conditions and in accordance with the procedure laid down by laws. I could continue to cite the conclusions of the Constitutional Court of the Republic of Lithuania or the Supreme Court about the Law of



18 June 1991 on the Restoration of Property Rights and the Law of 1997. One thing is clear: some Jews, although not directly identified in the law, do not meet special conditions and requirements under which property rights to the existing immovable property can be restored to a certain group of people. It is because of them that the Lithuanian state has not made a commitment to restore the infringed rights. The property of Jews was either not nationalized or otherwise expropriated by the laws of the USSR, but went to the state and individuals as ownerless because owners were simply not there, they were killed, and the majority of those whose property was nationalized or otherwise expropriated by the laws of the USSR did not meet another special requirement – they were not citizens of the Republic of Lithuania at the set time. It seems to me that this condition, provided for in the Law on the Ownership Rights of Citizens to the Existing Real Property, contradicts the preamble of the same Law, which states that the rights of ownership acquired by citizens of the Republic of Lithuania before the occupation shall be not

revoked and shall have continuity. This concept of continuity does not seem to concern Jews—former residents of Lithuania. By expropriating their property, restricting and depriving them of their rights and killing them, Jews were not required to be citizens of Lithuania, conversely, the protocols of the Provisional Government make a very clear distinction between Jews and both Lithuanian citizens and non-Lithuanian citizens. They were merely Jews, no one cared much about their citizenship. Nationalized farms of Jews and other non-Lithuanian citizens who actively acted against the interests of the Lithuanian nation were not returned to former owners and went over to the state fund. The Provisional Government addressed the issues of denationalization of other property in a similar manner.

As has already been said, the historical truth and reality is that most of the living Jews who sur-vived the war do not live in Lithuania. Naturally, the vast majority of them settled in Israel. Thus, all these persons, in compliance with Article 1(1) of the Law on Citizenship of the Republic of Lithuania, could not exercise their rights to citizenship of the Republic of Lithuania, despite the fact that their parents, ancestors and themselves were citizens of Lithuania by 15 June 1940. These individuals were considered repatriates. Under the Law of the Republic of Lithuania on the Implementation of the Law on Citizenship, which was adopted in 2002 and entered into force in 2003, exodus to ethnic homeland and residence in ethnic homeland shall be considered repatriation. The Law does not in any way distinguish between those who left Lithuania voluntarily and those who lost their civil rights in Lithuania by Protocol No. 31 of the Provisional Government of Lithuania of 1 August 1941, i.e. by the Jewish Situation Regulations, according to which Jews are divided into the following two categories: communists and those supporting them and everyone else who is not in the first category. The first ones are jailed and otherwise punished, while others settle in separate areas selected for that purpose and wear a yellow-colored eight-centimeter-sized circle on the left part of their chest with the letter "J" written in the middle. The former Lithuanian citizens who, after their imprisonment in the Siberian camps during the years of the Soviet occupation, took the opportunity and emigrated to Israel as repatriates. In other words, Jews—former Lithuanian citizens—are subject to standards other than those of ethnic Lithuanian descent. This is why people of Lithuanian descent who emigrated to the west restored their property rights to real estate, while Jews who emigrated to Palestine and Israel did not. I wonder how the principle of inviolability of property can be applied to Jews in that case. After all, they lost their property and their rights to it without guilt, as a result of crimes that had been committed against them.

By the way, for the sake of interest, if we look at the laws on property restitution and their enforcement in other European countries, we will see that in Bulgaria, Estonia, Latvia, Romania, or Slovenia the law does not discriminate against nationals of other countries who were not their nationals. In 1999, the Croatian Constitutional Court ruled that the restoration of the right of ownership only to Croatian citizens was discriminatory. On 5 July 2002, the Croatian Parliament amended the law to grant rights to non-Croatian nationals as well. The laws are passed by a majority, but the majority is not always right. Can the majority be right when it decides that forced expulsion of Jews from ghettos in liquidation to concentration camps is repatriation? Did not those who survived in Europe become refugees, not repatriates? The concept of "repatriation", as enshrined in the law, is legally highly questionable. And not just because it does not correspond to the universally accepted understanding of this concept. By linking repatriation to a person's return to the ethnic homeland alone, it is stated that the main and only indication of what state is considered to be a person's homeland is the person's nationality.

The provision of the Law according to which persons who held citizenship of Lithuania before 15 June 1940, their children and grandchildren shall be considered citizens of the Republic of Lithuania only if they, i.e. according to the former law which has been amended, had not repatriated from Lithuania; it means that in terms of being citizens of Lithuania, they are divided into several groups. First, Lithuanians—they were considered citizens of Lithuania regardless of which country they went to. For Lithuanians, their ethnic homeland is Lithuania. Therefore, whichever country a Lithuanian goes to live to, they cannot be considered to have repatriated from their homeland, Lithuania. Just as repatriation was understood in the law. Secondly, persons of other ethnicities. This second group of persons refers to non-Lithuanian and is further divided into two groups in terms of nationality. The first group consists of individuals who went to live to any foreign state but not their ethnic homeland. These persons were considered citizens of Lithuania. The second group consists of individuals who went to live to their ethnic homeland. Such persons were not considered to be citizens of Lithuania. This is about those who left before 1991.

Prof. Vytautas Sinkevičius quite rightly stresses that according to the Constitution of the Republic of Lithuania, a person has the right not to indicate their nationality at all. This right of a person derives from Article 29 of the Constitution, which establishes the equality of all persons before the law, courts and other state institutions or officials. Today there is no dispute that an international crime against humanity was committed against Jews during World War II. Genocide, the treatment of people prohibited by international law, is a punishable act today as well. We emphasize that citizenship is a category of national law. Each state determines by its law who its citizen is. This law must be recognized by other states, provided it complies with international conventions, international custom and universally accepted principles concerning citizenship. By its resolution of 13 November 2008 on the compliance of the provisions of legal acts regulating citizenship relations of the Republic of Lithuania with the Constitution of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania decided to recognize that Article 17 of the Law on Citizenship of the Republic of Lithuania is unconstitutional and resolved to recognize that the provision of Paragraph 1 of the Law of the Republic of Lithuania on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property—"the rights of ownership to real property shall be restored to the citizens of the Republic of Lithuania to the extent that the rights of ownership established only for the citizens of Lithuania—are not contrary to the Constitution of Lithuania." Thus, there was a situation where the law on citizenship contradicted the Constitution, and that is established. On the other hand, it was also established by the Constitutional Court that a person had to be a citizen during the period of validity of that law, i.e. the Law on the Restoration of Property Rights. That is, the people who until 2011 were not citizens of the Republic of Lithuania, cannot restore ownership. And this law does not correspond to justice, to the legal side of it, nor does it correspond merely to humanity. The state of Lithuania has made it difficult or even impossible to get back the property for Jewish persons from whom the property was illegally expropriated, because the application of national law on restitution is restricted only to citizens of the Republic of Lithuania.

This is why we have appealed to the Government to point out that all those individuals who survived the war, known as Nazi victims, and who went to Israel, have not regained their property. And we propose three options to consider, because Mr. Dainius Junevičius, representing the Government here as I understand it, says that the door is not closed yet, so I would like to remind you that we are proposing either to amend the law on the restoration of property rights in such a way that the person can submit documents proving citizenship, family ties and property rights to the court, and if, for important reasons, they do not submit them earlier, the court must extend the time limits. Or, secondly, to adopt a separate law to compensate the Jewish persons from whom the property was expropriated and their heirs, while partially recovering the lost property or regaining fair compensation, thereby restoring justice to those victims in accordance with the rules of justice in force in the state. Or, without changing the law, because we do not know today how much property should be returned, to set up an institution tasked with collecting data on property to be returned within two years and then dealing with the substance of the matter, knowing those figures. So that's what we expect from our state: justice and legitimacy. Thank you.



TOMÁŠ **KRAUS**

Tomáš Kraus was born in Prague in 1954, both his parents are Holocaust survivors. Lawyer—graduate of the Law Faculty of Charles University; since 1991 the CEO of the Federation of Jewish Communities; dealt with the restitution of Jewish property and compensation for Holocaust and Nazi victims on domestic and international political levels, as well as with legislation and various other issues important not only to the Czech Jewish community. Author—writes articles and reviews to various magazines, mainly to *Rosh Chodesh* monthly; contributes to other media; regular commentator and guest for Czech TV, Czech Radio and other broadcasting stations. Professor—since the 1990s has been teaching at New York University and other education programs in Prague. Activist—COB of the Center for Documentation of Nazi Looted Art; founding member of the Czech-German Discussion Forum; founder of the European Shoah Legacy Institute; former president of the Society of Christians and Jews; active in several Jewish international organizations. AJC—working with AJC since the early 1990s; participated in many AJC conferences and projects such as "Promoting Tolerance" with the Friedrich Naumann Foundation; initiated the AJC association agreement with the Czech Jewish Federation, first of its kind in Europe, etc. Since 2018 an official AJC representative for the Czech Republic.

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: THE CZECH REPUBLIC

The Czech Republic was in a way a role model for those projects of compensations and restitutions. I can make a parallel here—maybe you have noticed that last week when Ursula von der Leyen started her new mission at the European Commission, she first of all praised our Velvet Revolution from 1989 and quoted Vaclav Havel. I am now in the same position. And I can explain why.

As Andrew Baker mentioned at the beginning of our conference, we are now commemorating thirty years after the fall of communism which enabled also us, the Jewish communities, who were living until then behind the Iron Curtain, to come in the forefront and to start to rectify injustices which have been caused decades before. What we then started was only a continuation of the process which was stopped by communist takeovers in Central and Eastern Europe.

Today we are speaking about the Terezin Declaration. We were able to have the Holocaust Era Assets conference ten years ago as a part of the Czech presidency over the European Union, it was an integral part in the program and the Terezin Declaration was, I would say, a highlight of the whole presidency. We had 43 governments sitting in one room and adopting the wording which was actually prepared by us, by me and some of us who are attending today our conference.

This was not the first event which was successful for us. We started very early after the establishing of the Czech Republic, that means the division of Czechoslovakia in 1993, respectively in 1994. We started to claim our properties together with the Catholic Church and other religious societies in the country. We created a block of religious institutions which was speaking about restitution, compensation and rectifying the injustices from the past, which in a way was quite unique. We were the first to open the doors for this possibility. It was in the form of legislation, sometimes it was also only a decision of the government, then it followed the decision of the Parliament based on something what Andrew Baker also referred to as a model—we were the first to establish a joint commission where the Jewish community was sitting together with the government. We invited also foreign experts like Andy Baker and we came to conclusions which were valid not only for the situation in the Czech Republic. The form of these joint foundations was then duplicated in some other countries, including the one we are now.

The question is how far are we today in the Czech Republic. If we stick to these three points mentioned at the beginning, first the communal property and then the private property and third heirless property, so in the Czech case, I think, the first two items have been fulfilled. We have been quite successful, although there are still some white spaces in the landscape which could be filled better. Actually, we are quite successful also in provenance research for the looted art and we have legislation which enables people to claim without any limits, even without the condition of citizenship or the condition of being direct heirs, etc. That is also quite a success story. Why? Because—and it is valid not only for the looted art but also for the first two points—because there are not that many claimants.

Faina mentioned that. Also, in our case we had something like 5 to 7 percent survivors out of those 120 thousand Jews who were living in the Czech part of Czechoslovakia. Therefore, the third point—heirless property—we never opened up. We never did it, and I think it's time to do it now. Because—and some of you know it quite well—we have established the Holocaust Victims Foundations which is quite a success, it deals with Jewish heritage, which means reconstruction of cemeteries, synagogues, investing into educational programs and so on. At the same time, it takes care of survivors, it also supports the educational programs, etc.

This investment of the government was done twice already. We got at the very beginning a sum which was quite substantial, but now it has been redistributed. Therefore, we asked the government (in between governments changed) we asked the new government to support us again, and it happened. But the money that has been invested into the Foundation will last for five years. What will come in five years, I have no idea.

I think, we should now come with some kind of a construct which will provide us with certain insurance and not to force us to go hat in hand to whatever a government would look like in five or ten or whatever years. Maybe it is time now to come with another solution which will be in a legislative form, like, for example, in Austria, where there is this so-called Judengesetz.

So far, this idea is still dormant, we are still waiting to open this up. This adds to the traditional image of the half-filled cup—are we successful or are we not successful. To a certain degree we are, and to a certain degree we are not.

The last remark—we go from one conference to another, within one year, ten years, whatever. Some time ago we discussed this with some friends in Terezin and we came to a conclusion that it would be good to establish some kind of a mechanism which would not only follow up on conferences, but monitor progress on a daily basis. This is the idea which actually materialized in establishing ESLI, the European Shoah Legacy Institute. We established that also at the framework of the 2009 presidency of the Czech Republic, and we kicked off one year later. As some of you remember, it was an institute established and financed by the Czech Government, by the Czech Ministry of Foreign Affairs. And, I think, this is one of the reasons why it was not successful. Some voices at the Czech Foreign Ministry said why the Czechs should discuss restitution with the Poles, this is not our role.



Then we thought it would be a good idea to have it as a ready-made product and to park it, for example, at the European Union as an NGO. Unfortunately, it never happened. So, maybe it is also time now to come back to this idea and to think about reviving ESLI or some institution which will look into these issues we are speaking about today, on a permanent basis, but the question is what its form should be.



PIOTR
PUCHTA

Piotr Puchta is a Polish diplomat, author, and activist, who—from 2014 to 2016—chaired the Polish delegation participating in the International Holocaust Remembrance Alliance (IHRA). Having retired from his diplomatic career in March 2019, he is now the CEO of the Foundation for the Preservation of Jewish Heritage in Poland. The Foundation's primary mission is to protect and commemorate the country's surviving heritage sites, among them synagogues, cemeteries, and mikvahs, as well as monuments of Jewish cultural heritage.

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: POLAND

I agree with what was already said that we in Poland are in more a difficult situation than our partners in the Czech Republic. I believe that if we take those three topics—communal properties, the properties of individual private people and those heirless, so we in Poland are still at stage No. 1–the communal properties, and the process started in 1997 with the adoption of a law that regulate the relations between the state and the religious communities in Poland. I, personally, did not take part in discussions but was a witness of various meetings on the international arena that led to the adoption of this law, and as it was presented in the morning, the discussions were very lively and involved many participants because there were also differences between the religious communities in Poland and Jewish organizations that were active outside Poland. But finally, we managed to come to a positive solution by adopting this law. Monika Krawczyk will speak about the legal aspects; I would like to present the situation we have today.

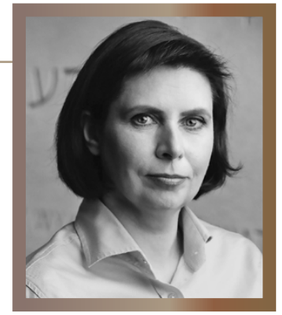
So, the adoption of this law in 1997 allowed us to open possibilities of placing applications before the Regulatory Committee, and it was done by the Union of Jewish Communities in Poland; altogether there were 5,504 cases that were initiated. Out of those five thousand cases, already until the end of May this year [2019] we had in front of the Regulatory Committee 7,556 proceedings taking place. Out of those proceedings, a total of 2,843 cases were terminated and of this number 669 proceeding ended with a settlement. The settlement meaning that there were 535 rulings that accepted the applications, which meant that the properties were restituted, 1,018 were terminated by a decision of discontinuation of the regulatory process, 548 concluded with the decision dismissing the application, and in 105 cases, the decisions were not agreed on by the Regulatory Committee. In 71 cases the proceedings were suspended.



Now, if we are speaking about the settlements, the results produced, the settlements that were concluded before the Regulatory Committee provided a cash compensation of a total amount above 28 million Polish zloty, and those were by settlements, which meant the agreement was reached, and by the decision of the Regulatory Committee the total amount was a little bit more than 60 million zloty. However, in the recent three years, we have seen a very slow process that is characterized by a noticeable regress in the work of the Regulatory Committee. It means that there is a decrease in the proceedings conducted, and the institution of postponement of those decisions is taking place without a substantial reason, meaning that there is a slowdown, dramatic slowdown. At the same time, we do not see a substantial reason for this. What is also important to say here is that as the entire country was divided into various areas of responsibility, meaning that the Foundation for the Preservation of Jewish Heritage in Poland is responsible only for those territories where there are no Jewish communities present nowadays. In the big cities like Warsaw, Krakow, Poznan, other locations, nine locations, when the property is restituted, it is returned back to the Jewish communities and other areas where there are no Jewish communities today, the responsibility for preservation of the Jewish heritage is taken over by the Foundation. The Foundation is responsible for approximately 3.5 thousand claims, and out of these claims 600 are cemeteries. Out of a total of 5,504 authorized claims filed by all Jewish communities, the Regulatory Committee has returned approximately 150 cemeteries and about 150 other real estate premises to the Foundation. Once the property is returned, Polish law imposes significant burdens on the Jewish communities. A substantial portion of the regulatory positive decision are resulting the return of actual property, cemeteries and synagogues. Generally speaking, this represents those claims that do not produce income, but are always, almost always in bad repair when transferred, meaning that the legal owners on behalf of the Jewish communities, when they take over those properties, they find themselves in a situation that one would describe as "catch-22", that is when the legal owner takes over the property that is in a very bad shape and does not have really resources to keep these properties in a proper shape. This is the situation as we see it today.



"A substantial portion of the regulatory positive decision are resulting the return of actual property, cemeteries and synagogues. Generally speaking, this represents those claims that do not produce income, but are always, almost always in bad repair when transferred, meaning that the Jewish communities, when they take over those properties, they find themselves in a situation that one would describe as "catch-22"."



MONIKA
KRAWCZYK

Monika Krawczyk, attorney-at-law with independent practice in Warsaw between 2003—2020. On January 2021 she was appointed the Director of Jewish Historical Institute in Warsaw. Between 1997—2003 she worked for CMS Cameron McKenna Law Firm in Warsaw at the Property Finance Department. Between 1999—2020 she was a member of the Governmental Regulatory Commission on Jewish Property Restitution. Between 2004—2019 she was the CEO of the Foundation for the Preservation of Jewish Heritage in Poland (FODZ); between January and October 2019 she was President of the Jewish Community in Poland, currently serves as a member of the Board. Monika Krawczyk studied law at the University of Warsaw (Poland), and Toledo University (Ohio, USA), she also pursued Jewish Studies at the Pardes Institute of Jewish Studies (Jerusalem, Israel).

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: ONCE MORE ABOUT POLAND

I am very honored to be here in Vilnius, the Vilna Gaon capital of Lithuanian Jews, and it is really great to be here. I really appreciate, Faina [Kukliansky], your effort to bring this conference about, it is very needed.

Apparently, we meet every ten years to discuss the issues of "Jewish reprivatisation". I do not want to repeat anything what Piotr [Puchta] has already said about the situation with Jewish communal properties restitution in Poland, so I will focus on just a few general observations.

Since we are talking about general concepts, about restitution as actually repairing longterm effects of the Holocaust, it is also important to point out that societies who suffered under communism also have to deal with the nationalization process in a more effective way than it dealt with before, at least some of them, with Holocaust era confiscations. For example, when Poland was liberated after the Second World War, it legislated some laws that actually returned properties that were confiscated by the German Nazis, and this process concerned all Polish citizens, regardless of whether they were Jews or not Jews. In Poland we have additional element to the question of responsibility of the effect of, let's call it, I put it in quotes, "Jewish restitution", because in many cases it is not possible to differentiate between the "Jewish restitution" and "general/Polish restitution" if we are talking about private properties. The key element here is that Poland was a fully occupied country during the Second World War; it did not have any collaborative government to which responsibility for confiscations could be ascribed. It means that Poland, as we see it in the government's consistent policy, over the time, will never agree to adopt any measures for Holocaust compensations or reparations because Poland was not a perpetrator during the Second World War. Should it go in that direction, it would mean that Poland as a country is assuming responsibility for collaborating and perpetrating the Holocaust. This is not going to happen. So, that is why we have an additional layer of problems that is not fully understood by the various international Jewish organizations involved in the problems of Eastern Europe.

In Poland, when we come to the private properties' restitution, there have been several attempts to pass new legislation about returning properties to their rightful owners who were deprived of them during Communist era (1947–1989). There were some laws that were almost passed, but at the last moment they were dropped (or as we say "sent to the space"), because some issues disallowed them to be transformed into real law.

In particular, the Law of 26 January 2001 should be mentioned, which successfully emerged from parliamentary legislative process, but was vetoed by Polish President Aleksander Kwasniewski on the grounds of a discriminatory Polish citizenship requirement.

Another attempt was carried out by Donald Tusk's government in 2008, but it failed as well. The argument against adopting it was an impact on public deficit, and its influence on EU budget reporting requirements. That bill was discontinued at Sejm (Polish parliament) level. So, this was the great excuse not to legislate it in the end.

The Law of 25 June 2015 was adopted at the initiative of Warsaw Mayor Hanna Gronkiewicz-Waltz. This law actually limits reprivatisation of properties located in Warsaw for the reasons of public interest. This Law was referred by President of Poland Bronislaw Komorowski to the Constitutional Tribunal due to major doubts on the grounds of possible infringement of the principals of the protection of acquired rights and right of ownership, but finally it entered into force with some delay on 17 September 2016.

The current coalition government headed by the Law and Justice Party (PiS) passed the Law On Reverting Certain Reprivatisation Decisions concerning Warsaw properties on 9 March 2017. An ad hoc commission was set up to review the reprivatisation cases where return decisions were made, supposedly with infringement of the law.

Today, when we come to review the situation of private properties whose ownership was lost and the title thereto was not returned to the prewar owners, we are talking about already third generation of successors, who might be still seeking restitution. They are both of Polish ethnic and Jewish origin. In the light of what was mentioned above, there is no difference in their legal status. The important question for them is whether to start any legal process aiming for restitution or still wait for a new (never-happening) reprivatisation law.

In that respect, we are almost in the same stage as we were in 1989 when Poland became a democratic state. Moreover, Poland became a democratic country which has to recognize the rule of law, including basic human rights agreed upon at international conventions and principles included in the Polish Constitution. Recognition and protection of ownership is one of its most important principles.

By failing to deal with restitution, Poland is not honoring the constitutional values. This unresolved problem has persisted already for thirty years. Let's look into one of the consequences: the Polish Civil Code applies 30 years' statute of limitation if the properties had been acquired by another person who is not the original owner, even if in bad faith (aware that he or she were not entitled to a property). It means that it is actually legalized that the properties will never be returned, even if properly claimed in a legal process, once the adverse possession exceeds 30 years.

Given the above, those people who actually did not wait for the neverending story of the new restitution regulation to emerge on the horizon, but fought within the existing legal system, starting often as early as in 1989, are in a much better shape than those potential claimants who waited "for ever" for a supposedly newer and better restitution law.

The existing general legal system allows the claimants direct application of the Constitution, Civil Code with vindication claims, Administrative Code with right of appeal from illegal nationalization decisions, re-entry of legal successors to Ownership Registers, etc. It was especially possible to those prewar owners or their successors who had access to the source documentation proving their title and their succession.

Unfortunately, on the losing end are those who had hoped or trusted some promises that there would be a new legislation which could simplify the claiming process.

Today, after 30 years since 1989, it seems that this process will never be simplified, it will be only more and more difficult. The burden of proof is placed on the claimant and has to be supported by source documents (such as land and mortgage register titles, other ownership documentation, which may be, or may not be, available in public archives or courts).

This is also the case of the Jewish communal properties regulated by the Law of 20 February 1997. In some cases, it is impossible to find documentation supporting the claim. In some post-communist countries, the communal Jewish restitution was simplified. I think

that in the Czech Republic, it was sufficient to provide the address of a property and statement that it was Jewish property, and the government would approve it (following its own checking). In Poland totally different approach was adopted and the Jewish community who claims it has to produce a full set of documentation. So, in some cases we will not actually be able to bring those proofs.

Another quite important subject is the Terezin Declaration of 2009. It is not binding, but it is a reference to legislation in the United States, the Just Act of 2017.

This is actually a very interesting case demonstrating how the international public law does not work by its own virtue, but becomes inspiration for internal legislation. The Just Act remains in the domestic legal sphere, but it has actually influenced other countries.

The influence in Poland became such that "Polish street" has been in a permanent fear for two years and panic that "the Jews" are coming back and taking all the property where people live. It gave a lot of argumentation for the extreme right-wing people who are now organizing petitions on the streets under the draft legislation that they plan to submit into the Polish parliament. Its purpose is, I quote "to object the demands of Jewish organizations". And who knows if the Just Act was not the cause of the situation that the Polish ruling party Law and Justice which had claimed to be so much on the far end of the political right that "It is only a wall further on the right from us", now has actually competition into the extreme right that won some seats in the Polish parliament in the elections that were held in October [2019], and I am sure we'll witness a lot of very interesting discussions. [As this article goes to print, the new far right "Konfederacja" party submitted draft law, promoted as "Stop-477" Law, to Sejm, and the first reading took place in April 2020].

I am actually glad that Germany will take over the presidency in the European Union, and one of the important items on the agenda will be fighting anti-Semitism, because now it seems that German presidency may have a lot to tell to Polish right-wingers who express anti-Semitic statements in the Polish parliament.

Such voices are raised and further discussion on restitution of private properties is unavoidable, with fingers aimed at Jewish organizations. So, this is a paradox which we are actually witnessing: it will be very difficult for us in the Jewish organizations in Poland to explain how the situation developed historically, and really have to combat heavy right-wing demagogic argumentation. It will not help us in the process of the communal properties' restitution, because the regulatory commission about which Piotr [Puchta] explained consists of the same number of the people nominated by the Jewish community and nominated by the Government, and for any positive restitution decision we really need to have a consensus. There is a consensus that a Jewish side always agrees that we should be compensated, the claim is rightful, that we proved everything and that the calculation of the value is correct. Unfortunately, the governmental side will be given much more incentives to slow down this process which is already extremely slow and make it more difficult. They will need argumentation that can defend their position against the growing extreme right-wing demands.

As you see, this issue is heavily politicized and even if we just focus on the legal subjects, politics always comes behind our back and is an important issue in all these discussions.

I would also like to mention that despite the interesting development in the discussed area, the public international law is barred from interference in the issues of ownership reserved for the domestic legislation, but we also see that the International Convention of Human Rights and the protocols to it also stress the issue of personal ownership as an important human right. This is something that we can actually look into, while seeking for solutions. The Council of Europe and OECD are also playing an important role in encouraging the countries to develop democracy and full rule of law, so hopefully the international input will influence the Polish legislative to think more positively about the restitution law and improve the process that we have today. In the end of the day, this is how the measurements or the benchmarks are being viewed in terms of the international community and the countries and national governments have to be accountable to those principles as well. Therefore, I'm hopeful of that role of human rights organizations.

Thank you.



DMITRY KRUPNIKOV

Dmitry Krupnikov is a Deputy Chairman of the Latvian Council of Jewish Communities and Chairman of the Latvian Jewish Community Restitution Fund (LEKOREF), which was set up by the Council after restitution to the Community by Latvia of five religious and communal properties in 2016. All restituted properties were transferred to LEKOREF, which is now in charge of maintaining and managing the properties. Dmitry Krupnikov was the lead representative of the Community in the restitution process and was involved in all phases of negotiations with the Saeima (Parliament) of Latvia during one year it took the Saeima to pass five laws of restitution.

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: LATVIA

I'm Dmitry Krupnikov, a Deputy Chairman of the Jewish Community and the head of the Latvian Jewish Community Restitution Fund. I had planned to do a presentation, but I think most people will fall asleep if I go over the presentation on the screen.

So, maybe a brief introduction.

Latvia had roughly 180,000 Jews before World War I, and roughly 93,000 Jews before World War II, of whom 75,000 stayed in Latvia under the Nazi occupation. Our estimate is that 600 of them survived.

During Soviet times there was a thriving Jewish community of about 36,000—40,000 Jews. Latvia in Soviet times was more liberal in some respects to emigration to Israel, so some people used it a springboard to apply to go to Israel, even moving from Russia to Latvia.

In today's Latvia, to get a personal ID you have to state your ethnicity. It is not shown on the passport or the document that is issued, but it is in the registers of the state Citizenship and Immigration department. Therefore, via the register we know that today 8,620 people declared themselves as Jewish. In reality our estimate is that under the law 12,000—15,000 people stated as Jewish in Latvia.

Latvia is similar to Lithuania, and different from Lithuania. Both countries were occupied by the Soviets in 1940, then came the Nazi occupation in 1941 followed by the Soviet reoccupation in 1944. However, there was no interim government at the start of the Nazi occupation. The property was confiscated by the Soviets in 1940 and 1941, there was no restitution at the start of the Nazi occupation (no interim Latvian government), so up to 1991 there was really not much to do in terms of restitution.

When the Soviet Union fell apart, the Latvian Government, the Latvian state took over all the properties and laws that allowed restitution were put in place, and there were several different laws. One was on religious and communal property, another was on private property.

The law on restitution of private property was one of the most liberal in Europe: you didn't have to be a resident of Latvia, you had to show that you are entitled to property, irrespective of where you lived in the world, and it was returned to you. A lot of people took advantage of this law.

The law on the religious and communal properties was very liberal, with, however, one very specific condition: in case a religious community the property belonged to in 1940 doesn't exist anymore, then the property that it would have been entitled to goes to the religious center of that faith in Latvia. And as we all know, there is no central Jewish faith or organ of the Jewish faith in Latvia. After the restitution window was closed, in 2003, a law was passed that the Riga Jewish Community represents the Jewish Community of Latvia. Therefore, most confessions in Latvia received their religious and communal property to a point where the houses that their priest lived in the countryside where returned to the church. Our estimate is that of 315 religious and communal properties that we would have been entitled to, only 35 were restituted. At the beginning of the 1989, of the fall of the Soviet Union, Latvia quickly passed several laws on returning the specific property to the Jewish community: it was a hospital, the Jewish community center, and a school. It seemed that it would move fairly quickly. However, it stalled and of the 315 properties that were on our list, only 35 have been returned. For instance, the Jewish community of Liepaja—Libau theoretically was entitled to, let's say, 40 properties, of which only seven were returned: in some cases, under the pretexts that the property had been changed, it was rebuild, maybe the plot was changed, it was not clear what it was, and that's why out of 315 only 35 properties were returned.

In 2005 and 2006 the Jewish Community took an effort of identifying and quantifying the religious, communal and heirless property that we should be entitled to, and agreed with the Government of Latvia at that time about a law which later was more or less used in Lithuania: it was textwise very similar—creating a good will fund. Then the Government submitted it to the Saeima, and one person in the Saeima, or he wasn't even in the Saeima, called several people and said "we shouldn't do it". The draft didn't even reach the Saeima.



This was in 2006. Since then, we have not moved realistically an inch. Several years ago, on the initiative of the special envoy from the United States, under the best of intentions to restart the process, he suggested to restart it with the restitution of five properties as the first step. The Jewish Community objected for several reasons. One is that once you take the first step, nobody will remember there's a next step to be made. Number two is that properties that will be returned will be a drag on the community. Laws were passed that restituted to us five properties, and we have taken over four. As for the fifth one, which we have not taken over because it's far away from Riga, there are no Jews in that small city, but we have been regularly receiving the tax bill

> **"The Jewish Community objected for several reasons. One is that once you take the first step, nobody will remember there's a next step to be made. Number two is that properties that will be returned will be a drag on the community."**

[laughing]. And they demand that we fix the roof and clear snow there. We have always stated that we'll not take it over because we would agree to take it over to give it back to the city as it was done in several different places because we can't maintain it. But the building is in such a poor condition, the city does not want it.

In Riga, of the three properties received, only one is in good state of repair, the other two have been vacant for 20 years. Imagine what the state of the properties is, and now we are being asked to maintain them, to fix the roof and walls.

> **"I would like to emphasise that Latvia on the European Radar is considered one of the least anti-Semitic countries. We have had very few incidents."**

There are several objections raised by people who oppose restitution. One of the objections is that, and now I have to read it carefully, in the Terezin Declaration it is stated that "We recommend, where it has not been done, that states participating in the Prague Conference consider implementing national programs to address immovable property confiscated by Nazis, Fascists and their collaborators." Well, the Soviet Union might have been collaborating with Nazi Germany at first, but after June 1941 it was fighting the Nazis, so some people say what it has to do with Latvia, why we have to return the properties.

Some people say if Latvia returns the properties, it would imply that Latvia was/is guilty.

De facto Latvian state did not exist from June 1940, so it is impossible to say that the Latvian state would be guilty. But the argument persists. It does not help us that within the Jewish community there is a very small group or organization, led by a man who calls himself a Rabi, though his group is so small they do not have a minyan, but he is vocal in saying that the restitution is not needed, we can't wash off blood with money. And this is a good pretext for people opposing restitution who say, "look there's one guy who says we shouldn't be doing it, so why should we be doing it?" The Council of Jewish communities represents 99 percent of the community. But still there is a voice out there.

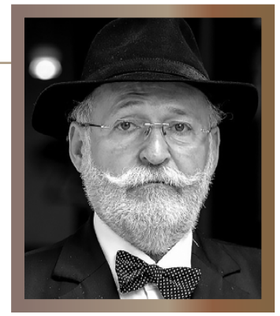
Last year we had Saeima elections. Usually the four-year election cycle is a reason that either elections just happened and we still do not have time to address the issue, or elections are happening soon, so there is no time to address the issue again.

But this time after elections in October of last year, in June this year one of the political parties dared to table a bill that would have addressed restitution similar to the Lithuanian law, the Good Will Fund, and it seemed that there was a majority to support the law. But, unfortunately, some of the political parties that promised support reneged, so the bill had to be withdrawn. After that, in October this year, the budget was passed and there were big demonstrations by teachers and medical staff that they needed an increase in salaries. We hope that there will be another attempt to address restitution in January next year when the dust settles, but we are not sure.

Latvia is aware of the Just Act, it might be a little bit concerned, but I would not say it is a great concern. At the same time, I would like to emphasise that Latvia on the European Radar is considered one of the least anti-Semitic countries. We have had very few incidents. We have a very friendly Government. It is acknowledged by everyone that Latvians took part in the Holocaust. The president of Latvia who was elected in June is half-Jewish and half of his family on his father's side is in Rumbula.

On Saturday night last week there was a candle lighting commemorative ceremony by the Freedom monument in the centre of Riga to commemorate the day of the liquidation of the ghetto in 1941. The event was organized for the fourth year by two Latvians under the slogan "We remember, it hurts, they were part of us". The president attended, as did other parliamentarians and even representatives of the National Alliance, which is kind of a right-wing party.

To summarize: we hope that these issues will be addressed, but in general we are at the very start of the process.



PÉTER FELDMÁJER

Dr. Péter Feldmájer is one of the most prominent Jewish public figures in Hungary, founder president of the MAZSIHISZ—the Federation of Jewish Communities in Hungary. He was the president and vice president of this organization for more than 20 years. He dealt with restitution issues for Holocaust survivors of high priority and with the preservation of the Holocaust victims. He represented the MAZSIHISZ inside several international Jewish organizations. Currently, he serves as the chairman of the Central Hungary Region of the MAZSIHISZ and is a board member of the MAZSÖK—Jewish Heritage in Hungary Public Endowment. Feldmájer works as a lawyer. He has four children and two grandchildren.

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: HUNGARY

First of all, I want to thank Faina and her coworkers for organizing this conference. I can say "ačiū", maybe this is a good word for it. And I think this conference is brilliant. I also want to thank Mr. Charnowitz who is the deputy head of the mission, he is somewhere here or was here, he can come from the Hungarian embassy to see this conference. And the last point, Andrew Baker, who was always working for us, has been in this business the last 28 or 29 years and we are always working together and always achieve much.

So, after the fall of the communism, the new government of Hungary, which came to power, considered the implementation of compensation to be essential. It was first conceived of as applying only to lands taken under communism. However, the Constitutional Court ruled that all assets should be subject to compensation, but their government ideas are still not applied to the damage caused during the Holocaust. The Federation of Jewish Communities in Hungary (MAZSIHISZ), which I led since its foundation, did not accept it. I have repeatedly appealed to the Constitutional Court, which, at my request, passed several resolutions covering both communism and the Holocaust, and that no distinction should be made between victims. Therefore, in principle, all assets taken away had to be taken into account in the compensation, and the Holocaust survivors were equally compensated. As people killed or imprisoned during the communism or their spouses, children, or relatives, were entitled to a receive one-sum compensation, I asked the Constitutional Court to apply this law to those killed during the Holocaust. A long, multiturn Constitutional Court process resulted in all Holocaust survivors and their spouses, children, and others being entitled to lump sum compensation, including deportees and force laborers. This form of compensation was unique since no other country recognized the claim of a family relative. At my request, it was stated that these sums are not only payable to the people living in Hungary but also to people who live in foreign countries. Also, Hungarian Jews in Israel were entitled to receive a lump sum compensation. This unparalleled benefit triggered controversy in religious circles, as it was interpreted by many as the compensation of "murderers", which, by accepting it would mean forgiveness for the perpetrators. But, as Dmitry said before, that is just an opinion. My mother never asked for this compensation, she always said no, it will be something for blood, she was a religious person.

These measures took place before the signing of the Terezin Declaration. Holocaust survivors and their descendants received the compensation, so that the Hungarian Government far outstripped other European countries. In parallel with individual needs, the community compensation case was launched, based on the compensation for stateowned property left without heirs. International Jewish organizations, in particular the WJC, Israel Singer and WJRO assisted in the negotiations. After lengthy and bitter disputes, international organizations finally agreed to settle the claims regarding heirless properties with assets transferred to a Hungarian foundation and agreed to have less representatives on the board. The Jewish Heritage Foundation in Hungary (MAZSÖK) was established by the Hungarian Government in 1997 and has been operating since then, initially as a decisionmaking association for the Hungarian Jewish Community, with the participation of representatives of other Jewish organizations and international Jewish bodies. This situation changed after 2010 and since then the Chabad movement has been in a dominant position. The MAZSÖK received various real estates to manage them and to support the revival of Jewish life with an income, and as a symbolic benefit the organization received ten artworks from museums. After 2000, in addition to the seven properties originally transferred, additional property was given. In addition, a small amount of share stock was provided to the MAZSÖK, which we were entitled to redeem for the benefit of the Holocaust survivors, and after this process, the Holocaust survivors started to receive a monthly pension supplement, which since then has been increased year by year as well as pensions adjusted for inflation. A total of 21,737 Holocaust survivors received a pension supplement. Currently, 5,084 Holocaust survivors live in Hungary, and they continue to receive this amount.

Jewish organizations considered the creation of MAZSÖK as a very important initial step and wished to continue negotiations for compensation for the property left without heirs. In the first decade of the 2000s, the Hungarian Government always emphasized its intention to continue negotiations, but did not take any important steps, later rounds of negotiations failed. Before the change of government in 2010, a joint committee was set up to start important work. The Conservative government, which came to power in 2010, did not formally dissolve the committee; it began negotiations and then transformed the committee into a general Jewish forum, and it has had no meetings after 2018. Even after 2010, the Government accepted the suggestion of Jewish organizations that scientific research should explore the issue of heirless properties and provide support for the work. A research committee was set up within the Budapest Holocaust Museum. The Hungarian government gives significant financial support for the research, the group makes reports every year, however these reports are not for public and cannot be read by representatives of Jewish organizations. So, it's a secret. The MAZSÖK is taking significant steps to help the Holocaust survivors and their children. Over the past five years, the MAZSÖK has spent about 12 million Hungarian forints (400,000USD) per year on social care and healthcare. Children of Holocaust survivors, as well as children and widows of soldiers who died in the war, part of Hungarian society, are considered "war orphans" and are therefore given various benefits through the State Pension Scheme, receive regular monthly support, and they can use the army hospital. It may therefore appear that the Hungarian Government has complied with the Terezin Declaration. However, the Hungarian Government has essentially interrupted the negotiations on compensation of heirless properties and no good progress has been made for over 20 years. The Conservative government has supported the Jewish institutions in Hungary, has supported and supports Jewish life, the Jewish religion, Jewish culture and Jewish education on an unprecedented scale, and has opened various funds to save and renovate thousands of abandoned Jewish cemeteries, but also consistently refrains from settling claims for heirless properties. In principle, there is a law to return art objects stolen from a Jew to their owners or heirs, but this has not happened. There is a possibility in principle to reclaim the looted arts, but according to my knowledge, almost all such claims have been rejected so far. Jewish organizations are constantly demanding the return of these works of art. There are ongoing surveys of other assets left without heirs, but the research results are unknown and are estimated to be very significant, since fullscale exploration requires not only property but also agricultural, industrial, artistic and commercial assets, precious metals, jewelry, precious stones.

Outside Germany, Hungary is likely to have done the most for the Holocaust survivors, but we are still a long way from receiving fair compensation for the Jewish communities. Ten years after the signing of the Terezin Declaration the Hungarian Government has been extremely helpful in helping the Holocaust survivors and also their children, but that does not mean that the government has complied with Article 27 of the Paris Peace Treaty of 1947 and commitments in the Terezin Declaration. This process will last long. The heirless property is a very hard question for the Jewish population, a hard question for the Hungarian Government. What we are sure of is that sometime, today, tomorrow or the day after tomorrow somebody should solve this problem because it's not about the money, it's about the justice. That is our duty and I hope in the next 30 years we will solve this problem.



DANIEL SETH MARIASCHIN

Daniel S. Mariaschin, *B'nai B'rith International* Executive Vice President and CEO. As the organization's top executive officer, Mr. Mariaschin directs and supervises B'nai B'rith programs, activities and staff around the world. He also serves as the director of *B'nai B'rith's International* Center for Human Rights and Public Policy. In this dual capacity, he presents B'nai B'rith's views and analysis to world leaders, international forums and conferences, the U.S. Congress and the media and coordinates *B'nai B'rith's* programs and policies on issues of concern to the Jewish community. He speaks and writes frequently on the demonization and delegitimization of Israel and has represented the organization on numerous influential global delegations and panels.

REGIONAL PRACTICE AND CHALLENGES OF RESTITUTION IN EUROPE: CROATIA AND SLOVENIA

First of all, I want to thank Andy Baker, with whom I have been working over these years, as have many of you. And I have said this before, when the history of restitution is written by scholars, Andy's role in this, which has really been tremendous over the years in many different countries, will be highlighted. He has been thanked and cited a number of times by you today, but we cannot thank him enough because it really takes somebody to lead this effort and to be at the center of all of this information and Andy has been that person.

Andy said something earlier which is very interesting about reaching this point. We started this process of restitution, in some cases, 30 years ago. In the beginning, you would enter into negotiations with country A, B or C and they would say "send us the best practices, send us an example of where this works," so we immediately would go back to the printer and would print out the Czech example or Romanian or Hungarian example, which were the early successes that we had. And our perhaps the naive assumption was that when they receive these success stories, they would just follow and do the same thing.

Well, it has just not happened. Every single country is different, but the one overriding common denominator is that few countries have gone into restitution negotiations enthusiastically. And you have heard that here today by other presenters.

Next year [2020] will be the 75th anniversary of the end of World War II, and the 75th anniversary of the end of the Holocaust, and here we are, talking about how we can manage to conclude agreements with these countries. It is really a shame, because we have been trying to bring this to fruition for so long.

Now about Croatia, just very briefly, here are some facts and figures. Somewhere between 35,000 and 37,000 Jews lived in Croatia in 1940, of which 30,000 were killed during the Holocaust. Croatia was also the site of the Jasenovac concentration camp in which between 12,000 and 20,000 Jews were killed, including 1,500 children. I just visited the site again for a tour last week.

Interestingly, Jews were actually victimized in a number of ways in Croatia. During the Holocaust under the Ustasha regime there, Jewish properties were confiscated. There was a brief period at the end of the war where there was some restitution, but even then, surviving Jews lost their property again through policies such as excluding people who did not return to what was then Yugoslavia or perversely accusing Jews as Nazi collaborators. Even in a situation where factories were confiscated and Jews lost their property but survived, they encountered serious obstacles. In trying to reclaim their property, some Jews were charged with being disloyal because the factories continued to operate in their absence. What convoluted reasoning! Government authorities confiscated it from the Jewish owners, and it continued to operate—maybe it was making tires, maybe it was making candy, whatever it was. And yet, because it had operated even without the Jewish family being there, the Jews were disenfranchised when they sought to get their property back. Even those who recovered their property later faced confiscations and nationalizations at the hands of the communist government. After the war, many of the remaining Jews left the country. And in order to leave, during that time under the Yugoslav Government you had to give up your passport and most of your property. So, they were disenfranchised once, and then they were disenfranchised again, and a third time when they had to give up their citizenship. Now, we have been discussing with Croatian officials over the past 12 years, the different categories of restitution. We are talking about communal property, private property and heirless property. These are the same common denominator categories raised with all of the countries when we negotiate. Citizenship issues are an important factor as well, because a number of countries like Croatia have insisted that possessing citizenship be a perquisite to be eligible for restitution.

In 1996 a restitution law was adopted in Croatia, but it applied only to the property confiscated after 1945, not to the property confiscated during the Holocaust by the Ustasha regime.

On citizenship, it is worth noting that the 1996 law followed an approach that went this way: if Croats living abroad no longer had Croatian citizenship, they could make a restitution claim, but only by residing in a country that had a bilateral restitution treaty with Croatia. None existed. So, you can imagine the large amount of treaties that would have to be negotiated, given the number of Croats living abroad. It became another obstacle that prevented many expatriate Croats and Jews from Croatia who were living abroad from claiming their own property.



In 2011 there was an interesting case brought by a non-Jewish Croatian woman, Zlata Ebinsbanger, in Brazil who wanted to claim her property. She did not have her citizenship, nor was there a bilateral restitution treaty between Croatia and Brazil. Her victory in court was very important because it opened

> **"We are talking about communal property, private property and heirless property. These are the same common denominator categories raised with all of the countries when we negotiate."**

up the possibility that Croatians could claim their property from wherever they were living. Unfortunately, though, Croatia needed to pass a law to implement that decision, which has never happened.

The same thing that has happened in Croatia has occurred in many other countries, and many obstacles remain. One, for example, relates to the frequency of elections. And the closer you get to an election, the less enthusiasm there is on the part of any government—not just Croatia—to deal with the restitution issue because they fear that this will become an election issue. So, the wheels have moved very, very slowly.

> **“On private property, the government has claimed over the past 18 months that it is processing properties claims. They say that they have dealt with over 240 Jewish property claims, and they still have around 100 more to review.”**

From that point in 2011 until today, we are still unfortunately going around in circles on property claims. The Croatian government has restituted a few communal properties to the Jewish community, but the process has not been completely concluded.

On private property, the government has claimed over the past 18 months that it is processing properties claims. They say that they have dealt with over 240 Jewish property claims, and they still have around 100 more to review. The World Jewish Restitution Organization (WJRO) has made an inventory of the properties and we have learned that approximately half the Jews in Croatia lived in Zagreb, and in Zagreb alone there were over 2,150 properties. So, just extrapolating out, if there were 2,150 in Zagreb, and another 2,150 properties outside, we are talking about perhaps 4,300 properties of which only 240 claims that the Government recognizes have been processed.

Croatia has not passed legislation to address heirless Jewish property.

One very important bright light here, I would say, is that the Croatian Minister of Culture is really a very forward-looking person. She has worked very closely with Dr. Wesley Fisher and Ivan Ceresnjes of WJRO, who are in discussions with the Minister of Culture on looted art and on the restoration of Jewish cemeteries in Croatia. I am pleased to report that there is some progress. By the way, Croatia will assume the presidency of the EU on 1 January 2020 and we have said to the Croatian authorities that this will be really a good time to wrap up the restitution issue during their presidency by 30 June 2020.

Now, just very briefly about Slovenia. The interesting thing is that we go from Poland with its 3.3million of Jews in 1939, to Slovenia in 1940, which had somewhere between, depending on whose numbers you are looking at, 850 to perhaps 2,000 Jews. During the war, Slovenia was partitioned among three Axis countries: Germany, Italy and Hungary.

Nevertheless, in Slovenia like in most other countries, Jewish-owned properties were in greater numbers than the percentage of the population that was Jewish, largely because many were in business and owned factories, offices and shops, in addition to private residences. So, for a long time now, over 12 years, the restitution negotiations have also moved very slowly there. WJRO and the Slovenian government are now engaged in a joint effort to inventory the properties, and that seems to be moving ahead. The Jewish community today in Slovenia is very small, perhaps 150 people.

We did meet recently with the leaders of the community. At this point I have no results to report yet, other than to note that since this has been going on for 12 years. The more time passes the more difficult it is to achieve results. But we are going back in the spring of 2020 to continue our talks.

So, Andy, that is the report from those two countries.