

The post-Holocaust Development of Legal Remedies as a Learning Process

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Post-Holocaust Property Restitution

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In this article, the author looks at the challenges and legal implications of returning property to its rightful heirs.



Remark

This paper was written by Nirit Nuriani, a student of the project-related international Summer School organized by the Chair of Public Law and International Law (Prof. Dr. Thilo Marauhn) in 2023 as part of the project funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) on “The post-Holocaust Development of Legal Remedies as a Learning Process” (“post-Holocaust Remedies” project). The work and results of the Summer School participant are reproduced here almost unedited, which is why there may be deviations in the citation style, for example.







Table of Contents

<i>A. Introduction</i>	1
<i>B. The State of Property Restitution</i>	1
<i>C. Challenges and Obstacles in Property Restitution</i>	2
I. Bureaucracy and Complicated Legislation.....	2
II. Challenges Related to Artwork Restitution.....	3
<i>D. Summary</i>	4
<i>E. Bibliography and List of Other Sources</i>	5





A. Introduction

Eva, a seamstress at Singer's factory in pre-war Germany, courageously entrusted her children to adoptive families and went into hiding with her husband during the Second World War. After the war was over, she returned to her home in Germany only to discover that all her belongings had been looted. The only surviving possession was her Singer sewing machine, which had endured the Holocaust at the factory. With this machine, she made her journey to Israel. Eva was my grandfather's mother, and her story inspired us to donate the machine to the Holocaust Memorial Museum, thereby preserving the memory of my great-grandmother's survival.

The cumulative value of the assets seized from real estate and bank accounts, as well as other property that was taken from Jewish citizens during the Second World War, was estimated at tens of billions of dollars. In 1943, a statement was issued on behalf of the USA, Great Britain and the Soviet Union, together with other allied states, whereby the property that had been looted in enemy territory would be returned to its rightful owners.

However, many Jews who claimed their property after the end of the war suffered violence and complicated bureaucratic procedures.¹ On a personal note, even my family's attempts to return other equipment that was lost during the Holocaust did not succeed. As a result, the family chose to move forward with the new life they were establishing in the State of Israel, clinging to the fact that the nucleus of the family miraculously had managed to survive the hardships of the Holocaust.

B. The State of Property Restitution

Over the years, numerous conferences have been convened in various states, involving dozens of states and organizations. In 2009, at a conference in Prague attended by approximately 50 states, it was decided to found the Terezin Institute ("European Shoah Legacy Institute" – ESLI). Its primary role was to oversee and manage the assets related to the Holocaust. According to the legally non-binding "Terezin Declaration", which was signed by 46 states, the participating states recommended, "where it has not been done, that states...consider implementing national programs to address immovable (real) property confiscated by Nazis, Fascists and their collaborators. If and when established by the Czech Government, the European Shoah Legacy Institute in Terezin shall facilitate an intergovernmental effort to develop non-binding guidelines and best practices for restitution and compensation of wrongfully seized immovable property to be issued by the one-year anniversary of the Prague Conference, and no later than June 30, 2010, with due regard for relevant national laws and regulations as well as international agreements, and noting other positive legislation in this area."²

This declaration primarily focuses on the restitution of Holocaust-era property, including Jewish cemeteries, assets, archival materials, and cultural items confiscated by the Nazis. Signatory states acknowledge the enduring physical and psychological trauma faced by survivors and emphasize the need for social and

¹ Department of Justice. Holocaust Remembrance Day 2023. Report of the Team for Arranging the Investigation of Provenance for Cultural Properties Looted in the Holocaust and Found in Israel.

² Prague Holocaust Era Assets Conference (June 30, 2009). Terezin Declaration on Holocaust Era Assets.



medical support to allow them a dignified life. These states recognize the importance of returning both public and private property to the victims of Nazi persecution and the Holocaust upholding the principle that those who endured such suffering should not live in poverty in their later years.³ Indeed, we do observe that many states are taking responsibility for the extensive property stolen from Jews in Europe during the Second World War. Nevertheless, many Jews encountered bureaucratic obstacles when seeking the restitution of their property. In response, some states have offered financial compensation instead of returning the property. But is that the ultimate solution?

C. Challenges and Obstacles in Property Restitution

I. Bureaucracy and Complicated Legislation

Despite the willingness of states to return property to Holocaust survivors or the heirs of Holocaust victims, the laws enacted by the states do not always align with the nature of achieving the goal of property restitution to Holocaust survivors. Many Jews were confronted with complicated and insurmountable legal procedures that effectively prevented them from reclaiming their assets.

For example, this can be observed in the case of Lithuania. Approximately 220,000 Jews lived in Lithuania before the war, and over 90% of the Jewish community was murdered by the Nazis during the war. Most Lithuanian Jews who managed to escape during the Holocaust were unable to reclaim their stolen property. Lithuania did pass a law for property restitution, but it only applied to Lithuanian citizens. Consequently, it unjustly prevented many affected individuals residing outside Lithuania from filing claims on their lost property. Many Lithuanian citizens were also denied Lithuanian citizenship under Lithuania's citizenship law, as they "returned" to their ethnic homeland of Israel, even though this was for reasons of survival. In recent years, Lithuania has amended its citizenship law, allowing many to regain citizenship. Nevertheless, the registration period for those excluded from filing claims based on citizenship has not been reopened, and as a result, many Israelis are still denied the right to claim their Holocaust-era property.⁴ Recently, there have been proposals by the Lithuanian Prime Minister to provide financial compensation for those claims that were unjustly denied under the existing law.⁵

Another example can be seen in Poland. In the past, the Polish government enacted legislation for property restitution, allowing Polish citizens, including former citizens, to file claims for their property. However, a parliamentary committee added residency requirements that hindered and prevented many Polish citizens who had left the country due to the war from pursuing their property claims.⁶ In 2017, the Ministry of Justice proposed a new and comprehensive law for private property restitution. However, the law raised several issues as it lacked any physical return of remaining assets, whether privately or publicly owned. It proposed compensation in cash or promissory notes, but only up to 20% of the value of the property, and set a one-year time limit for submitting claims. Additionally, the law limited claimants to current Polish citizens who were also Polish citizens at the time of property seizure.⁷

³ Prague Holocaust Era Assets Conference. (June 30, 2009). Terezin Declaration on Holocaust Era Assets.

⁴ World Jewish Restitution Organization (WJRO). Lithuania.

⁵ WJRO. November 20, 2022. The WJRO welcomes Lithuanian Prime Minister's Proposal on Holocaust Era Property Restitution.

⁶ U.S. Department of the Treasury (April 5, 2000). Stuart Eizenstat Deputy Secretary of the Treasury and Special Representative of the President and Secretary of State for Holocaust Issues Senate Foreign Relations Committee. Press Release. From the Office of Public Affairs, LS-526.

⁷ U.S. Embassy in Ukraine, Pompeo, M. (Secretary of State) (2020). Release of the JUST Act Report.



II. Challenges Related to Artwork Restitution

During the Nazi regime, around 600,000 pieces of valuable artwork and thousands of Jewish items and books were stolen from Jews in Europe. These items ended up in Israel, mainly in museums and the National Library, in the years following the war, even decades after.⁸ Property of this kind presents unique challenges. Firstly, heirs often lack the information or means to trace the journey of such assets. Consequently, there is significant importance attached to conducting thorough “provenance research” for cultural properties that were taken during the Nazi regime, especially for the State of Israel. Provenance research is an investigation aimed at tracing the historical trajectory of a work of art and identifying its rightful owners, from the time of its creation by the artist to the identification of its current owner. The results of provenance research can provide information about the original property rights holder and also about their heirs, facilitating a proper resolution for both parties. However, today, in the State of Israel, where the majority of Holocaust survivors live, the issue of systematic provenance research for suspected looted artworks stolen from Holocaust survivors has still not been properly settled.⁹

In addition, there is a challenge regarding the prescription period. Different legal systems attach different meanings to the passage of time when asserting claims for the return of stolen property. In Israel, the general rule states that if facts constituting the cause of action were concealed from the plaintiff for reasons beyond their control and which were unavoidable, the prescription period begins on the day these facts became known to the plaintiff. Meeting these requirements is challenging. Claimants, often survivors or their descendants, struggle to meet short deadlines due to difficulties in proving the art's origin. Museums usually win when they invoke the statute of limitations defense and deter claimants from pursuing their rights further.¹⁰

Moreover, in all of these instances, a concern regarding market regulation also emerges.¹¹ In accordance with market regulations, when an individual acquires a piece of artwork in good faith, their rights take precedence over the legal rights of heirs, a principle also found in Israeli law.¹² This raises the question of whether a change in legislation is necessary to ensure justice for Holocaust survivors seeking to reclaim their property, thereby exempting such cases. If legislation were altered to exclude the Holocaust era, it would pose a significant challenge to retroactively revoke the rights granted to innocent individuals.

⁸ U.S. Department of the Treasury (April 5, 2000). Stuart Eizenstat Deputy Secretary of the Treasury and Special Representative of the President and Secretary of State for Holocaust Issues Senate Foreign Relations Committee. Press Release. From the Office of Public Affairs, LS-526.

⁹ Department of Justice. Holocaust Remembrance Day 2023. Report of the Team for Arranging the Investigation of Provenance for Cultural Properties Looted in the Holocaust and Found in Israel.

¹⁰ Sklar, 2017.

¹¹ Department of Justice. Holocaust Remembrance Day 2023. Report of the Team for Arranging the Investigation of Provenance for Cultural Properties Looted in the Holocaust and Found in Israel.

¹² See Heller, Barth-Abelow and Dvir, 2020.



D. Summary

The extensive devastation caused by the Second World War and the loss of countless lives left little room for contemplation of matters such as the restitution of property to survivors or the heirs of the deceased. It can be observed that despite the willingness of states to recognize the importance of property restitution for all assets looted during the Holocaust, many difficulties arise, involving bureaucracy and legal issues that do not allow survivors and their heirs to claim their property. In most cases, they will, therefore, only receive financial compensation and not necessarily the property itself. Indeed, the substantial challenges prevent Holocaust survivors and their heirs from demanding what rightfully belongs to them.



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Project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)”

The research project “The post-Holocaust Development of Legal Remedies as a Learning Process (Post-Holocaust Remedies)” is carried out by the Chair for Public Law and International Law, Justus Liebig University (JLU) Giessen in cooperation with scholars from Reichmann University in Herzliya/Israel and the Instituto Colombo-Alemán para la Paz (CAPAZ) in Bogotá/Colombia. The project, conducted by Prof. Dr. Thilo Marauhn and Dr. Ayşe-Martina Böhringer, began in late summer 2022 and is dedicated to the in-depth analysis of compensation law in connection with the Holocaust and the legal framework that has been developed since 1945 for dealing with the consequences of Nazi crimes.

The project, funded by the Foundation Remembrance, Responsibility and Future (EVZ) and the Federal Ministry of Finance (BMF) from August 2022 until June 2024 as part of the Education Agenda NS-Injustice, focuses on the critical analysis of the development of political and legal instruments in dealing with the consequences of the Nazi atrocities. The following questions, among others, are addressed: After the atrocities of the Holocaust, what lessons can be learned from the compensation law measures taken to date? Which instruments are suitable for legal remedies? An important main feature of this project is the international summer school, which offered students from Israel, Colombia and Germany the opportunity to take an in-depth look at the legal process of addressing Nazi crimes. The program covered two weeks each at Reichmann University in Herzliya, Israel and JLU Giessen and included a variety of courses and excursions to relevant institutions to ensure a practice-oriented perspective. The summer school took place from 18.08.2023 to 14.09.2023. This unique way of teaching the subject of this project should also inspire future generations to engage in research-based learning, practice-oriented knowledge transfer and academic responsibility.

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