

**Information regarding the steps taken by the Republic of Croatia with a view to restitution and the relevant issues covered by “Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933 – 1945, Including the Period of World War II”**

## **1. LEGISLATIVE FRAMEWORK**

The Act on Compensation of Property Confiscated during the Yugoslav Communist Rule ("Official Gazette", nos. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 65/01, 118/01, 80/02 and 81/02 – hereinafter: Act on Compensation), which came into force on 1 January 1997, represents a basic legal framework for the restitution of confiscated property, including the restitution of immovable property confiscated or seized by Nazis, Fascists and their collaborators during the Holocaust era.

The rights arising from the Act on Compensation are individual rights attributed to former owners, or his/hers successors in the first line (Article 9). Provisions of the Inheritance Act are implemented in terms of the inheritance rights, unless otherwise stipulated by the Act on Compensation. The successors of the previous owners acquire ownership over the property which is granted regardless of the method of the establishment of ownership shares by previous final decisions on predecessor inheritance, unless they have agreed otherwise (subsequently detected property).

Legal entities or their successors from whom property had been confiscated have the right to compensation for confiscated property only in cases they maintained incessant legal heritage, continued business activities or have had headquarters on the territory of the Republic of Croatia (Article 12).

The former owner has no right to compensation for confiscated property in case when compensation issue has been settled by international agreements. The rights stipulated by the Act on Compensation can be obtained also by foreign nationals and foreign legal entities, if such possibility is granted by the provisions of international agreements.

Further, pursuant to the Act on Compensation, the right to compensation is recognized for the following property: 1. undeveloped construction land, 2. agricultural land, forests and forestry land, 3. residential and business facilities, or ideal shares of such facilities, as well as apartments and business premises as special sections of the facilities, i.e. ideal sections of those special sections along with the accompanying land lot, 4. ships and vessels, 5. companies, 6. chattels (Article 15).

The legal practice established in the context of the implementation of the Act on Compensation as well as in the process of the review of the decisions taken in the procedures for the compensation for confiscated property, shows that the natural restitution represents a

primary solution in the process of restitution. Only in cases when natural restitution is not possible for legal or factual reasons, the property is compensated in pecuniary manner.

When the restitution model is in question – restoration of or compensation for property, the scope of compensation and property encompassed by the Act on Compensation, the modality of restitution depends primarily on the economic capacity and other consideration of legal and moral character.

The Act on Compensation by its title refers to the property confiscated during the Yugoslav Communist rule (i.e. as of 15 May 1945). However, it is much more comprehensive in its contents and indirectly encompasses confiscation of property committed earlier, i.e. during the Fascist and collaborators regime and the Holocaust era.

In exercising the right to compensation for confiscated Jewish property (in particular property confiscated in the period from 1941 to 1945), the Law on Compensation contains explicit references to the Law on Proceeding with the Property that the Owners had to Abandon During Occupation, and the Property Confiscated by Occupying Forces and their Collaborators (Official Gazette of the Democratic Federal Republic of Yugoslavia – DFJ, no. 36/54) as well as the Act on Confirmation and Amendments to the Law on Proceeding with the Property that the Owners had to Abandon During Occupation, and the Property Confiscated by Occupying Forces and their Collaborators (Official Gazette of the Federal People's Republic of Yugoslavia - FNRJ, nos. 64/46, 105/46, 88/47 and 99/48).

Pursuant to the stipulations of these acts, confiscated property had to be restored immediately, but there were also significant exceptions where the property was not restored, and instead became the state property.

By entitling that former owners the right to compensation for property confiscated on the basis of these regulations, the legislator indirectly made possible the recognition of the right to compensation for the property confiscated from 6 April 1941 onwards, even though the date by which the right to compensation could formally be exercised pursuant to the Act on Compensation remains 15 May 1945. This confirms the possibility of exercising the right to restitution or compensation in view of Jewish property confiscated from 6 April 1941, provided that the other preconditions stipulated by the Act on Compensation have been fulfilled.

The Jewish Community property as religious community property is restored by the same principles as for other religious communities, provided that the provisions of the Act on Compensation related to legal entities are fulfilled.

## **2. CHANGES IN LEGAL AND ADMINISTRATIVE PRACTICE**

Change in administrative practice is visible in view of the fact that foreign citizens could not exercise the right to compensation for confiscated property pursuant to the Act on

Compensation. The Constitutional Court of the Republic of Croatia, following the constitutional complaint, rendered the Ruling and Decision on 21 April 1999 in relation to the application of the Act on Compensation with regard to foreign citizens, stating that they cannot be absolutely excluded from exercising the right to compensation for confiscated property, as it would lead to the unfounded distinction. This resulted in the adoption of the Act on the Amendments to the Act on Compensation for the Property Confiscated during the Yugoslav Communist Rule in 2002 ("Official Gazette", no, 80/02 and 81/02 - amended) providing the possibility for foreign citizens to exercise the right in cases when international agreements have been concluded.

On 8 February 2008, the Administrative Court of the Republic of Croatia adopted a legal opinion pursuant to which foreign nationals have the right to compensation for confiscated property – pursuant to the provisions of the Act on Compensation – unless the issue of compensation for their confiscated property has been settled by international agreements. It was also pointed out that those persons have been given the same rights as the citizens of the Republic of Croatia, as regards the compensation for confiscated property, except for the right to restitution when recognition of such a right is in discord with other acts stipulating over which immovable (real) property foreign citizens cannot have or acquire ownership, in which case those persons have the right to compensation instead of restitution. Such a standpoint was also confirmed by the Supreme Court of the Republic of Croatia.

### **3. INSTITUTIONAL ACTIVITIES**

Due to the change of the administrative practice, the expert group, under the auspices of the Ministry of Justice of the Republic of Croatia, was established with the objective of elaborating the new draft amendments to the Act on Compensation.

The Ministry of Justice of the Republic of Croatia, based on the proposal of the expert group, prepared the Draft of the Act on the Amendments to the Act on the Compensation for the Property Confiscated during the Yugoslav Communist Rule. This Draft was submitted to the parliamentary procedure for adoption. Due to the fact that the Draft has not passed all parliamentary committee readings in the anticipated time the legislative adoption procedure needs to be repeated.

Once adopted, the amendments to the Act on Compensation, shall codify the current legal practice in Croatia, confirmed by the legal opinion of the Supreme Court, and shall provide fully equality before the law to both nationals and foreign citizens with regard to exercising the right to restitution or compensation for confiscated property (except in cases where limited acquisition of ownership rights has been stipulated by special regulations regarding foreign citizens).

#### **4. ENVISAGED LEGISLATIVE CHANGES**

The Draft of the Act on the Amendments to the Act on Compensation for the Property Confiscated during the Yugoslav Communist Rule stipulates, inter alia, the procedure and modalities of exercising the rights to compensation for the property confiscated from foreign natural persons, as follows:

- the term to submit the application for compensation for confiscated property for the former owners – foreign citizens who have not yet submitted their applications as well as for those whose applications were finally rejected or dismissed because they did not have Croatian citizenship,
- the procedures initiated following the applications of the foreign citizens which had not been finalized by the date these amendments came into force will be completed according to the provisions of the proposed amendments, In other words, the persons entitled to compensation are not under obligation to submit new applications,
- the compensation to foreign natural persons is determined in another form (as a rule in the bonds of the Republic of Croatia) in cases where immovable (real) property cannot become privately owned (impossible acquisition of immovable (real) property pursuant to the provisions of special regulations and non-existence of reciprocity, respectively; acquisition of ownership rights over immovable (real) property by the Republic of Croatia which had managed the property subsequently),
- the bonds of the Republic of Croatia are issued in HRK and are payable in identical semi-annual instalments during 20 years, starting from 1 January 2015,
- unified record on all submitted applications by foreign natural persons is to be established as well as on cases of compensation and on decisions on compensation for confiscated property,
- the procedure is conducted following the application of the former owner, submitted to the competent state administration office, according to the location of property,

Several other issues such as the time for submission of applications or that the former owner has no right to compensation for confiscated property in cases when the issue of compensation has already been settled by international agreements are also regulated by the proposed amendments to the Act on Compensation.

#### **5. FUTURE STEPS**

Taking into account immeasurable suffering and damages inflicted upon the members of the Jewish peoples and their communities, but also upon other victims of persecution perpetrated by Nazis, Fascists and their collaborators, in cases when their private and communal immovable (real) property was confiscated, the Republic of Croatia is taking concrete and targeted actions to correct the inflicted damages to the maximum possible extent, primarily through the implementation of the Act on Compensation, including in relation to both Croatian citizens and foreign nationals.

With a view of addressing specific cases of confiscated or seized property during Holocaust era, which would not fall within the scope of application of the Act on Compensation,

including the property of Jewish institutions and communities as well as heirless property, the Croatian Government is currently considering possible options, which would enable legal and practical solutions aimed at achieving both substantive and symbolic recognition of material and/or moral character. The solutions which are currently under consideration include, *inter alia*, possible establishment of a foundation established for specific purposes with a broad mandate of ensuring substantial and symbolic recognition (material and/or moral) for the confiscated or seized property of Jewish institutions and communities (“communal property”) and heirless property, support to the preservation of cultural and religious heritage of Jewish communities in Croatia as well as specific educational purposes, social care to elderly and other relevant forms of activity.