

ROMANIA

Approximately 725,000 persons identified themselves as Jewish in pre-war Romania. Over an estimated 300,000 Romanian Jews were murdered during the Holocaust, and only about 11,000 currently live in the country. Romania has a number of laws dealing with the restitution of confiscated communal and private immovable property, but claims processing, as well as the restitution of, or compensation for, such property has proceeded exceedingly slowly and, in many instances, has been non-existent.

Communal Property

A number of applicable laws, government and emergency orders, and decisions govern the restitution of immovable, communal property confiscated from religious and minority organizations or institutions. In 1997, the Federation of Jewish Communities in Romania ("FEDROM") and the WJRO established the Caritatea Foundation, which assumed responsibility for submitting claims for confiscated, formerly Jewish communal property, as well as for managing any recovered property or related compensation.

Ultimately, the Caritatea Foundation submitted 1,980 claims to the pertinent government agency.¹ Since the expiration of the 2003 deadline for communal property claims, that government agency apparently has adjudicated less than 500 claims, half of which have been resolved positively, as a result of which the Caritatea Foundation has received 37 properties, seventeen plots of land and some compensation.

The Foundation has registered its concern regarding various problems with the claims process: some involve legislative deficiencies – including that no compensation is provided for demolished or certain modified buildings, and that property appraisals are not based on market value; while other concerns relate to the prolonged delays in resolving claims due, in significant part, to difficulties in obtaining relevant documentation, limited archival access and the high level of proof required. For a number of years, the Foundation has not received the compensation called for by positive rulings already decided in its favor.

Private Property

Romania has a particularly complex system with respect to private property restitution. For example, in certain cases an individual may make a confiscated property claim through an administrative process governed by special regulations while, in other cases, the court system, pursuant to the country's civil law, must be used. At the same time, separate laws exist for claiming different types of property -- such as for forest land, agricultural land, state farms, or residential property – which has led to

¹ Approximately 2,600 communal properties, as well as 807 cemeteries have been identified as belonging to the Jewish community in Romania prior to World War II.

inconsistent results by the courts and administrative agencies.² Moreover, some laws – passed in the 1990s – entitled former owners to restitution in rem while subjecting precisely the same property to privatization. Romanian courts, as a result, were inundated with lawsuits. Subsequent legislative attempts were intended, but did little, to alleviate the situation.

Law No. 112 (1995), for example, enabled current tenants to purchase the buildings they lived in while entitled former owners of such buildings to receive compensation.³ Several years later, *Law No. 10* (2001) was enacted, in large part, to resolve the prevailing confusion, but it served to further confound the state of affairs. *Law No. 10* entitled former property owners to restitution in rem, while granting tenants a five-year lease. Problem was, many properties in issue already had been purchased by tenants pursuant to *Law No. 112*. The result: even more lawsuits were generated, as former property owners challenged the tenants' ownership titles.⁴

Further, under *Law No. 10*, potential claimants faced a number of other problems, including the following: property seized during the Holocaust was not clearly covered; effective foreign notice of the claims process was not provided; no compensation for demolished buildings; uncooperative government archives made ownership records difficult to obtain; and there was no compensation mechanism when natural restitution was not feasible. In addition, claims had to be submitted to a decentralized system of local councils which confused potential claimants and led to inconsistent decisions by the councils. Moreover, Romanian law sets no time limit for resolving restitution claims, which resulted in prolonged delays in rulings, as “the lack of deadlines for responding to claims ... has ... basically shut down all access for rightful owners to courts of law.”⁵

Through *Law No. 247* (enacted in 2005; amended 2008), Romania again sought to rectify and simplify the restitution process for confiscated private property, as well as to provide a payment mechanism. Among other matters, *Law No. 247* provided for the following:

² The European Court of Human Rights has registered its concern, noting that “not all courts and not even all panels within one court have the same practice (some of them accept and others reject claims based on Civil Code.)” (European Parliament Study, “Private Property Issues Following the Change of Political Regimes in Former Socialist or Communist Countries,” 2010, p. 110.) In sum, “[t]he Romanian framework for restitution of property lacks coherence and unity. The progressive development of the restitution policy has [led] to different approaches in restitution for different types of properties with separate institutional set-ups for implementation. The result is ... an uncertain and ineffective system.” (European Parliament Study, p. 101.)

³ *Law No. 112* was a response to “the avalanche of law suits and the lack of consistent jurisprudence in the Romanian courts.” (European Parliament Study, p. 104.)

⁴ Subsequently, in 2009, Romania enacted *Law No. 1*, which clarified that property purchased by tenants pursuant to *Law No. 112* was protected and did not have to be returned to former owners who, the law then declared, were only entitled to compensation. (European Parliament Study, pp. 105 – 106.)

⁵ European Parliament Study, p. 109. Over, 200,000 private property claims were submitted pursuant to the 2003 deadline set under *Law No. 10*. As of 2010, seven years later, only some 119,000 of the claims had been adjudicated and of the adjudicated claims, in less than half was some sort of remedy proposed. In the end, as of 2010, only 5% (or about 10,300) of the over 200,000 claims made under *Law No. 10* were determined to be eligible for (but have not yet necessarily received) compensation.

- property confiscated after 1945 was covered (identical to *Law No. 10*);⁶
- “just and equitable” compensation reflecting market value when property cannot be returned;
- shift in the presumption of property ownership from the State to the claimant;⁷ and
- extension of document submission deadline for previously filed claims

Law No. 247 (together with Government Decision No. 1481, issued in 2005) also authorized establishment of the *Proprietatea Fund* (“Property Fund”), out of which compensation was to be paid when confiscated property could not be returned in kind. The Property Fund is an investment fund which consists of shares of a number of state-owned companies and, at least initially, was to hold the equivalent of 4-5 billion Euros in registered capital. Once the fund was listed on the Bucharest Stock Exchange, fund shares were to be issued as compensation to eligible claimants. To date, however, Property Fund shares have not been listed on any regulated market and, thus, shareholders cannot trade or easily cash in their shares. The European Court of Human Rights has concluded that “compensation by securities to Proprietatea Fund does not yet represent effective compensation because their market value cannot be established.”⁸

In sum, in spite of legislation that appears beneficial, the restitution process in Romania, when implemented, has been profoundly flawed, with overlapping rights and procedures, significant delays in rulings and payments, and frequent confusion as to outcomes. This may, in part, explain why there are over 1,000 Romanian property restitution claims before the European Court of Human Rights (“ECHR”) and why Romania has been on the losing side of many restitution cases decided by the court. While the ECHR does not have the jurisdiction to compel states to enact property restitution laws per se, nor is authorized to address a country’s nationalization process, once a country does enact restitution laws, the court can rule on whether the process is implemented in a “fair and effective manner.”⁹ In that respect, the ECHR has frequently criticized Romania for its exceedingly slow process and ineffective payment mechanism,

⁶ Although both *Law Nos. 10* and *247* refer only to property confiscated beginning in 1945, *Law No. 641* (enacted December 1944) abolished all laws and decrees – including anti-Jewish decrees of the Antonescu regime – issued in the period 1941-1944. That law, in effect, returned all confiscated Jewish properties to their former owners, prior to their subsequent communist nationalization. The Romanian government also issued Ordinance No. 83 (1999), which states that citizens whose property was affected by racial persecution between September 6, 1940 – March 6, 1945 had the right to submit restitution claims. Nonetheless, the situation relating to property seized during the Holocaust remains ambiguous; officials of the Romanian Jewish Emigrants’ Association in Israel and the Foundation for the Restitution of Jewish Properties in Romania have maintained and complained – including to the Committee of Ministers of the Council of Europe, in December 2005 – that properties of Jewish citizens seized during the time of Antonescu’s regime during World War II remain registered as State properties.

⁷ *Law No. 247* provides that a claimant’s title to a property should be presumed by law, unless otherwise shown by the State. This mitigated the previous difficulty of proving one’s right to restitution in an environment where property ownership documents were often lost, missing or otherwise difficult to access in relevant archives. In fact, however, the presumption of ownership called for by *Law No. 247* apparently is not applied and claimants still are asked to furnish property titles, which remain quite difficult to obtain.

⁸ European Parliament Study, p. 112. Moreover, in 2010, the government put into effect *Emergency Ordinance No. 62* which, retroactively, blocked the already reduced compensation payments for property that certain claimants had opted to take, in lieu of waiting for the Property Fund to function. And, subsequently, in March 2012, the government suspended compensation payments for restitution pursuant to *Emergency Decree No. 4*.

⁹ European Parliament Study, p. 114.

consistently ruling in favor of former Romanian property owners and often directing the government to return contested property or pay appropriate damages.¹⁰ However, despite ECHR warnings that the payment mechanism in the country, among other problems, was insufficient, Romania made no effort to remedy the situation.¹¹ As a result of Romania's failure to effectively respond to ECHR rulings – ordering that timely and fair compensation be paid to claimants whose property had been confiscated – the court, in February 2010, decided to apply the “pilot judgment procedure.”¹² In the case of Atanasiu and Poenaru v. Romania (2010)(in which the ECHR held that cases involving claimants seeking property restitution from Romania raised issues related to property rights and to receiving a fair hearing under the European Convention of Human Rights) the court directed the Government of Romania, within eighteen months, to undertake all necessary measures – whether legislative, administrative or budgetary – to deal with the protracted delays in returning seized property and to provide a remedy in a timely fashion for the thousands of people seeking relief.¹³

Finally, Decree No. 113 (June 1948) entitled the umbrella organization for Jewish communities to take over the assets of deceased Jews, without descendants, who were victims of persecution, and to manage such property until there was legal clarification or a rightful heir emerged. The decree, however, has never been fully implemented.

Guidelines and Best Practices

¹⁰ For example, in The Affair Radu vs. Romania, which involved the State's seizure of an apartment in 1983, the ECHR, after a review of *Law Nos. 10 and 247*, determined that:

“the deprivation of the Claimants...right to ownership of the apartment ... [c]ombined with the total absence of indemnification for almost nine years, has subjected them to a disproportional and excessive burden, incompatible with their right to respect for their property guaranteed by Article 1, Protocol 1 [of the Convention Safeguarding the Rights of Man which states: ‘Every physical or moral person has the right of respect for his assets. He cannot be deprived of any of his property.’]”

The ECHR ordered Romania to reconstitute the property at issue or to pay the claimants material compensation for the property and an additional payment for “moral damages.”

¹¹ Indeed, the ECHR rulings have identified a number of problems with respect to Romania apart from the inefficient nature of the Property Fund payment device, including an inconsistent and contradictory restitution process, and deliberate delays in processing claims and drafting judgments. As a result of such deficiencies, the ECHR has fined Romania 12 million Euros, more than any other member country of the Council of Europe has been penalized.

¹² A “pilot judgment” enables the ECHR to address a large group of identical cases (emanating from a country) arising from the same fundamental problem. Typically, a pilot judgment not only addresses the issues in the cases before the court, but also provides directions to the State about how to resolve similar cases that arise. (European Parliament Study, p. 96.)

¹³ An ECHR decision in a pilot judgment will usually give the violating State a specified time period within which to address the problem(s) described, before imposing sanctions, which can include exclusion from the Council of Europe.

Romania participated in discussions leading to the drafting of – and endorsed – the Terezin Declaration and the Guidelines and Best Practices. While Romania has attempted to deal with the restitution of confiscated property, its efforts not only have been ineffective, they have caused vast confusion and frustration, resulting in very little justice.

The principles endorsed by the Guidelines and Best Practices favor restitution and compensation processes that are “transparent, simple ... and uniform throughout [the] country” (GBP, paragraph d), provide for “[d]ecisions [which are] prompt and include a clear explanation of the ruling” (GBP, paragraph f), pay “genuinely fair and adequate compensation” and do so “promptly” (GBP, paragraph h), and include communal and private property seized during the Holocaust (GBP, paragraph a). In stark contrast to these standards, the Romanian restitution process has proven to be extremely complex, involving laws which permit, and courts and administrative agencies which issue, conflicting and inconsistent decisions. Such decisions, typically, are made much too long after claims are filed – there being no legally imposed time limit within which judgments must be made. While it is unclear whether the restitution laws cover property confiscated during the Holocaust, it is quite clear that, years after the claims filing deadlines – both for confiscated communal and private property – a substantial portion of the claims have not been adjudicated. Finally, the Property Fund, the mechanism specifically established to provide compensation for eligible claimants when returning the contested property is not possible, simply does not function and, in any event, Romania issued a decree earlier this year which suspended compensation payments.

The Guidelines and Best Practices also are interested in restitution and compensation being provided for heirless or unclaimed property left by victims of Holocaust persecution. Several years after World War II, the Romanian government did issue a decree authorizing the umbrella organization for Jewish communities in Romania to receive and manage heirless Jewish property. The decree was never implemented and Romania has not, in any other way, addressed the restitution of confiscated Jewish heirless property since that time, including heirless property in the government’s possession.

