

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

Bell & Howell Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA

UMI[®]
800-521-0600

**Compensation for Human Rights Violations
Against Hungarian Jewry**

**Agnes Peresztegi
Institute of Comparative Law
McGill University, Montreal
August, 1997**

**A Thesis submitted to the Faculty of Graduate Studies
and Research in partial fulfilment of the requirements
of the degree of Master of Law.
(c) Agnes Peresztegi, 1997**



National Library
of Canada

Acquisitions and
Bibliographic Services

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque nationale
du Canada

Acquisitions et
services bibliographiques

395, rue Wellington
Ottawa ON K1A 0N4
Canada

For the home reference

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-44071-0

Canada

ABSTRACT

There is no comprehensive monograph dealing with the complex legal issues of compensation for the damage done to European Jews by the Nazi regime. The purpose of this thesis is to set forth and analyze the political and legislative means employed by the Hungarian Government to settle human rights claims brought by Hungarian Jewish citizens and Jewish organizations arising from Hungarian legislation discriminating against Jews, and from the nationalization and confiscation of property by the former communist regime in Hungary. The thesis also examines the German compensation system as it applies to Hungarian Jewish citizens.

RESUME

Il n'existe pas de monographie complète relative aux questions juridiques complexes des réparations dues au titre des préjudices subis par les juifs européens sous le régime nazi. La finalité de cette thèse est d'exposer et d'analyser les moyens politiques et législatifs mis en oeuvre par le gouvernement hongrois afin de faire aboutir des actions intentées par des associations et des citoyens juifs hongrois au nom des droits de l'homme. Ces contestations portent sur des lois hongroises ayant un caractère discriminatoire à l'encontre des juifs ainsi que sur la nationalisation et la confiscation de biens menées par l'ancien régime communiste en Hongrie. Cette thèse examine aussi le système allemand de réparation tel qu'il s'applique aux citoyens juifs hongrois.

TABLE OF CONTENTS

<u>PREFACE</u>	1.
I. <u>INTRODUCTION</u>	4.
II. <u>HISTORICAL BACKGROUND OF HUMAN RIGHTS VIOLATIONS AGAINST HUNGARIAN JEWRY</u>	8.
A. THE "JEWISH LAWS" BETWEEN 1920-1939	8.
B. HUMAN RIGHTS VIOLATIONS AGAINST HUNGARIAN JEWRY DURING THE HOLOCAUST (1939-1944)	11.
C. UNFULFILLED JUSTICE: VIOLATIONS BY THE NATIONAL PROVISIONAL GOVERNMENT (1945-1949)	19.
D. HUMAN RIGHTS VIOLATIONS UNDER THE COMMUNIST GOVERNMENTS (1949-1989)	20.
III. <u>COMPENSATION LEGISLATION REDRESSING VIOLATIONS COMMITTED AGAINST HUNGARIAN JEWRY DURING THE HOLOCAUST</u>	24.
A. THE PARIS PEACE TREATY AND COMPENSATION LAWS IN HUNGARY BETWEEN 1945 AND 1948	24.
1. The Paris Peace Treaty	32.
2. The National Jewish Restitution Fund	35.
B. THE GERMAN COMPENSATION LAWS	40.
1. The Luxembourg Agreement	40.
2. The Federal Compensation Law	43.
3. Compensation by German Companies, who Exploited Slave Labor	45.
4. German Compensation of Hungarian Holocaust Survivors	47.
IV. <u>COMPENSATION IN INTERNATIONAL LAW</u>	57.
A. AN INTRODUCTION TO THE THEORY OF COMPENSATION	57.

B.	COMPENSATION IN INTERNATIONAL LAW, THE LEGACY OF THE GERMAN COMPENSATION	60.
1.	The World Jewish Restitution Organization	71.
C.	OUTSTANDING INTERNATIONAL CLAIMS OF HUNGARIAN HOLOCAUST SURVIVORS	75.
1.	Claims Regarding Foreign Financial Institutions and Insurance Companies, Switzerland	75.
2.	Further Claims Against Foreign Countries	93.
D.	ONCE COMPENSATION IS AVAILABLE: THE DIFFICULTY OF DISTRIBUTION	98.
V.	<u>DESCRIPTION OF RECENT COMPENSATION LAWS OF HUNGARY</u>	101.
A.	STATUS OF NATIONALIZATION LAWS IN POST- COMMUNIST HUNGARY	101.
B.	DESCRIPTION OF COMPENSATION LAWS FOR INDIVIDUAL CLAIMS	108.
1.	General Overview	108.
2.	The First and Second Compensation Laws	110.
a.	<i>Eligible Individuals</i>	110.
b.	<i>Procedure</i>	111.
c.	<i>Scope of Damages</i>	113.
d.	<i>Form of Compensation: Compensation Vouchers</i>	114.
e.	<i>Special Rules Governing the Purchase of Agricultural Land and First Option to Purchase Property During Privatization</i>	119.
f.	<i>Financial and Tax Considerations</i>	120.
3.	The Third Compensation Law	121.
a.	<i>Eligible Individuals</i>	121.
b.	<i>Procedure</i>	122.
c.	<i>Scope of Damages</i>	123.
d.	<i>Forms of Compensation: Compensation Vouchers and Annuities</i>	125.
4.	The Fourth Compensation Law Bill	126.

C.	DESCRIPTION OF COMPENSATION LAWS FOR CLAIMS OF COMMUNITY PROPERTY	128.
1.	Church Property Reprivatization	128.
2.	Compensation for the Jewish Community	137.
D.	ANALYSIS OF COMPENSATION LAWS OF HUNGARY	147.
1.	Current Status	147.
2.	The Hungarian Compensation Scheme	148.
3.	Comparison of the Hungarian and Other East European Compensation Schemes	151.
VI.	<u>CONCLUSION</u>	164.
VII.	<u>BIBLIOGRAPHY</u>	170.

APPENDIX A

APPENDIX B

APPENDIX C

PREFACE

I have never been warned so many times to stay objective than during my research on the issue of compensation of the Hungarian Jewry for human rights violations. The 1990's Hungarian legal elite has been concerned in building a new democratic society, and my original plan for my Master's thesis was the subject of the future institutional accommodation of Hungarian Jews. However, in building the future the past cannot be neglected.

In one of my term papers on Hungarian Jewry¹ I came to the conclusion that Hungarian Jews cannot agree on what position to take in Hungarian society because they do not agree on their past, nor on the course needed for the present. Even more so they cannot agree on their future. However, the debate over compensation brought the representatives of all sides of the Jewish community together.

The Hungarian Compensation Scheme could be criticised easily. For one, individuals do not benefit in the manner they had legitimately expected. Neither can partial compensation, coming 50 years too late, change the past for the ones who suffered. However, when negotiations between the government and the Jewish representatives are completed and compensation on the community level is payed, it will ease the life of Holocaust survivors who are still alive and give an opportunity for the Hungarian Jewish community to revitalize itself. We can hope that it will not be too late.

Part of this thesis, amounting to less than ten percent, was previously used as a discussion paper for the Cuba in Transition program of the International Law Section of the American Bar Association 1994 Annual Meeting, in New Orleans. The paper indicates Katherine Simonetti, who presented the memorandum at the ABA meeting, and Fouad Onbargi, who helped in editing the paper, as co-authors with

¹ A. Peresztegi, "Jewish Hungarian - Hungarian Jew. Jews or Hungarians" (Institute of Comparative Law, McGill University, for the Social Diversity Class of 1992).[unpublished]

myself. The entire paper was produced by me, with grammatical and editorial help provided by the two above. The paper concentrated on individual claims for the restitution of agricultural property. It therefore covered only a small segment of the Hungarian Compensation Scheme. Parts of the paper were reworked and updated for the purpose of this thesis.

I would like to thank Professor Stephen Toope and Professor Irwin Cotler of McGill University, who believed that after long delays this thesis would be completed, and offered help throughout my work. McGill University, through the Saul Hayes Graduate Fellowship, and The Memorial Foundation for Jewish Culture provided generous support for writing this thesis.

Abbreviations

BEG	The German Federal Compensation Law of 1956 (<i>Bundesentschädigungsgesetz</i>)
BRÜG	The German Federal Restitution Law of 1957 (<i>Bundesrückerstattungsgesetz</i>)
Ch.C.L.	Church Compensation Law
Claims Conference	The Conference on Jewish Material Claims against Germany, Inc.
F.C.L.	First Compensation Law
F.G.D.	Government Decree implementing the First Compensation Law
Restitution Fund	National Jewish Restitution Fund (<i>Országos Zsidó Helyreállítási Alap</i>)
JOINT	The American Jewish Joint Distribution Committee
MAZSIHISZ	Association of the Hungarian Jewish Communities (<i>Magyarországi Zsidó Hitközségek Szövetsége</i>)
MIOI	National Office of the Hungarian Israelites (<i>Magyar Izraeliták Országos Irodája</i>)
MUSZOE	National Association of Forced Laborers (<i>Munkaszolgálatosok Országos Egyesülete</i>)
NÜB	National Organization for the Protection of the Interests of Nazi Persecutees in Hungary, or as it was later called Committee of Nazi Persecutees (<i>Nácizmus Magyarországi Üldözötteinek Országos Érdekvédelmi Szervezete</i> , and later the <i>Nácizmus Üldözötteinek Bizottsága</i>)
S.C.L.	Second Compensation Law
T.C.L.	Third Compensation Law
WJC	The World Jewish Congress
WJRO	The World Jewish Restitution Organization

I. INTRODUCTION

Since 1990, the Hungarian government has introduced a complex Compensation Scheme for the compensation of Hungarian citizens for human rights violations suffered between 1939 and 1987. However, the negotiations between the government and representatives of Hungarian Jewry have not been completed. Nor have the issues of Swiss bank accounts, German compensation, or artworks seized by Russia been successfully resolved.

Prior to 1995, there was little known about the history of Nazi looting by the generation born after World War II. Very few of the Hungarian Holocaust survivors ever thought of receiving any compensation from Germany, or ever discussed openly that their family had placed their savings in Swiss banks, or received more than a symbolic amount of compensation from the Hungarian Government.

It will be the job of historians to decide the course of the events. Did the information emerging from opening the archives of the former communist countries bring attention to the economic injustice done to survivors of Nazism after the Holocaust? Did the ongoing effort since World War II of the representatives of international Jewish organizations materialize? Or was U.S. Senator Alfonse D'Amato's mission to serve justice successful, as he likes to claim? Or, did the general wish of European countries heading for unification cause them to face the past. Or, simply, did the opening of classified documents in 1995 change the dynamic. Did the international pressure on former communist countries, forcing them to enact long awaited compensation legislation, ricochet and force all Western countries to do some soul and archive searching about their own role in the Holocaust? For us, it seems that once the issue of property restitution was raised in the former communist countries, Pandora's box was opened.

The horror of the Holocaust cannot be translated into monetary compensation. However, based on the impossibility of the task, the perpetrators should not be excused from trying their best to compensate the survivors and families of victims.

While the value of life, health, and freedom cannot be measured, property has value, easily expressed in monetary terms. No justice would bring back the dead and change the victims' past. However, justice on an economic level is possible to render. This thesis will argue that no government should enrich itself with the property of its citizens whom it exterminated or whose annihilation it aided. Therefore, the Hungarian government should give adequate compensation for the property of Jewish victims of Nazism.

Without learning about the human rights violations suffered by Jewish victims, it would be difficult to assess whether the current Compensation Scheme is acceptable or not. Therefore, first, this thesis intends to describe the human rights violations committed against Hungarian Jewry during World War II. Then it will recount the deeds of the National Provisional Government. During the Communist era², nationalization legislation of individuals' property did not discriminate against Jews. However, because the current Hungarian Compensation Scheme formulates one system which includes all human rights violations between 1939 and 1989, this thesis intends to examine those violations as well.

Second, compensation laws of Hungary and Germany enacted after World War II will be examined. The compensation laws of Hungary were rarely implemented. However, they were enacted right after the original injustices, not like the current compensation laws, and had formed a detailed if unimplemented compensation scheme. We will argue, that the German government should extend its compensation payments to Holocaust survivors living in Hungary. The third part of this thesis deals with compensation in international law, with an emphasis on the legacy of the German compensation laws. The controversy with Swiss banks, and with the Russian museums is also discussed. We will argue that under international law, the aim of victims should always be full compensation for human rights violations. However, partial compensation can be accepted if circumstances justify such. When examining

² Communist used as an adjective to describe the period between 1949 and 1989, for which the literary translation from Hungarian to English is Socialist. However, this is the prevailing practice in legal English literature.

compensation under international law, we come to the conclusion that the international community should demand that States willing to compensate for human rights abuses, do so under the principles and guidelines of the United Nations, based on the international obligation of compensation, and not on an *ex gratia* basis. This section also examines the difficulty of representation of world Jewry by the World Jewish Restitution Organization. It is our opinion that organizations like the World Jewish Restitution Organization, can effectively represent human rights claims. Therefore, similar organizations should have *ad hoc* standing under international law.

The fourth section describes and analyzes the recent Hungarian Compensation Scheme. It will argue that the Hungarian government was not, and will not be in the foreseeable future in the position to offer more than partial compensation for human rights violations. However, in regard to the issue of heirless property, adequate compensation is due to the Jewish community. It is our opinion that compensation for the Jewish community should have been given under the Paris Peace Treaty, though fifty years late, and not under the new Compensation Laws. The thesis will also argue that giving compensation for private property damages is in most cases a better solution than *in integrum restitution*. Moreover, compensation given out in the form of vouchers was an unfortunate solution from the standpoint of the victims.

Arguing for full restitution of the injustices of the past based both on legal and moral grounds may be welcomed by victims of human rights abuses. However, we will argue that keeping in mind the impossibility of just compensation, the Hungarian Compensation Scheme, after its numerous amendments, is close to an acceptable solution. In Hungary, there is only one area where we would appreciate the offer of significantly greater compensation in real terms, and that is in the field of heirless property.

Human rights violations for the purpose of this thesis include any violations

of human rights as set forth in the Universal Declaration of Human Rights.³ The word "compensation" in this study denotes all types of redress, material and non-material, for victims of human rights violations. The word "indemnification" stands for redress "of a variety of non-property damages, deprivations, and losses inflicted upon individuals. These range from damages to life and limb, and to health, through deprivation of liberty, to occupational losses and the loss of employment rights, benefits and pensions"⁴. The word "restitution" "encompasses the restoration of properties confiscated or alienated under duress from their rightful owners"⁵. The term "reparation" is often used in connection with the German compensation payments. Reparation, in international legal terminology, refers to "[p]ayment made by one country to another for damages during war."⁶ Therefore, for the purpose of this thesis, the term "German compensation" will be used in connection with redressing Jewish claims against Germany.

There are daily changes in the status of Hungarian Jewish compensation claims against the Hungarian and German governments and also in relation to private claims against Swiss banks, and Russia with its confiscation of valued art. This thesis will cover the period up to July 30, 1997.

³ Adopted by the United Nations General Assembly, Dec. 10, 1948. UN GAOR 217 A (III), UN Doc A/810 (1948) at 71.

⁴ L. Dawidowitz, "German Collective Indemnity to Israel and the Conference on Jewish Material Claims Against Germany" 54 American Jewish Year Book 471, at 471.

⁵ See Dawidowitz, *supra*, note 4 at 471.

⁶ Black's Law Dictionary (St. Paul:West Publishing Co., 1983) at 674. The latest United Nations' documents have adopted the use of the word reparation for the concept we call compensation. However, for the purpose of this thesis we will not follow that terminology.

II. HISTORICAL BACKGROUND OF HUMAN RIGHTS VIOLATIONS AGAINST HUNGARIAN JEWRY

A. THE "JEWISH LAWS" BETWEEN 1920-1939

The different so-called "Jewish Laws" served the purpose of the annihilation of Jews from all segments of Hungarian life. First, it started insignificantly, even Hungarian Jews participated in playing down the effects of the first restricting legislations. However, the international Jewish community was alarmed and raised its voice. Between 1920 and 1944, Jews were first restricted of university education, then of their participation in social and economic life, which deprived many to earn a living. Later on, they were deprived of their property, then of their liberty, then of their life.

Although different "Jewish Laws" form an entity, for the purpose of this thesis they should be examined separately, laws enacted before and after May 1, 1939. The reason for such separation is that compensation is not given under recent Hungarian Compensation Laws for human rights violations committed against the Hungarian Jewry before May 1, 1939. For violations, not governed by recent compensation laws, redress was only given immediately after the Holocaust, and only for violation of property rights, as discussed in Chapter III. However, most of the claimants could not claim their properties under the short filling periods, and even when they were able to, the claims were rarely settled. Therefore, the human rights violations discussed in this section have not been compensated for.

The first law, which restricted Jews, Act No. XXV. of 1920⁷, was called the

⁷ Hungarian acts were published in: *A Hatályos Magyar Törvények Gyűjteménye* (Budapest: Franklin-Társulat) up to 1949. Other Hungarian legislations were published in: *Magyarországi Rendeletek Tára* (Budapest: Magyar Királyi Belügyminisztérium) between 1867-1944, and in: *Magyar Közlöny: Rendeletek Tára* (Budapest) between 1945-1948. From 1949 to the present date, all Hungarian legislations are published in: *Törvények és Rendeletek Hivatalos Gyűjteménye* (Budapest: Közgazdasági és Jogi Könyvkiadó published until 1993, from then:

first *numerus clausus* law. The act limited the acceptance of Jews to universities. Jewish participation at university education was numerically restricted by calling for a representation of different nationalities and races according to their percentage in the general public. Moreover, the act stated that only applicants, whose morals and loyalty to the nation could be unconditionally trusted, are allowed to be accepted into university education and to continue their studies, which was another method to control who would be permitted to earn a university degree. Although, the universities exercised their freedom in implementing the *numerus clausus* law, Jewish enrollments were kept around 6%. The first *numerus clausus* law deprived many Hungarian Jews of higher education.

The second *numerus clausus* law was enacted as Act No. XIV of 1928⁴. It limited Jewish participation even more, by establishing a more extended proportion-system. In addition to taking into consideration one's national and racial background, the universities also investigated the occupation and background of the parents of the applicant. The different occupations were to be represented according to their proportion in the general public, and children of parents with military record, or with a career in the public sector received priority at acceptance. Jews in Hungary, as everywhere else, were present in certain professions in larger concentration due to the fact that they were historically prohibited from serving in several types of occupation. Although, Jews participated in Hungary's armed struggles in larger proportion than their percentage in the general population, they usually did not hold public office. For this reason the second *numerus clausus* law enforced an even stronger restriction on Jewish higher education.

The *numerus clausus* laws were in violation of the Minorities Protection Treaty, which Hungary had approved willingly because of its concern with the fate of its co-nationals in the neighbouring states. Therefore, Hungarian Jews could have engaged in political and international actions against the *numerus clausus* laws.

Közlöny és Lapkiadó Vállalat).

⁴ See *supra*, note 7.

However, they decided to stay mute with the hope that these laws would not be harshly implemented.

The First Jewish Law, Act No. XV. of 1938⁹, opened a new dimension in the restriction of Jews. It was destined to limit Jewish participation in the social and economic life of Hungary. Under the Act, Jewish employment had to be restricted to 20% at freelancing-type positions (including, but not limited to lawyers, doctors, engineers), and all financial, trade and industrial businesses, which employed more than 10 employees. Exempted were (i) disabled war veterans; (ii) war veterans, who served on the front; (iii) deceased war veterans' widows and children; (iv) converts to the Christian faith on, or before August 1, 1919, who continuously kept their Christian faith; and (v) descendants of converts, if they did not embrace the Jewish faith. Under the original estimates, about 15,000 Jews were to lose their employment, which, including their families, affected approximately 50,000 people¹⁰. Not only was the number of Jewish employment controlled, salaries were also limited.

Only days after the First Jewish Law was enacted, the ultra-right attacked Jews again, claiming that even their 20% participation in the social and economic life of the country was unjustified based on their ratio among Hungarians, which amounted to about 5%. Unfortunately, historic moments were unfavourable to Hungarian Jews.

The First Jewish Law was passed in the aftermath of the Anschluss. Then, as a result of the Munich Pact, the *Felvidék* (Upper Northern Hungary before 1920) was returned to Hungary. In addition to ethnic Hungarians and Slavs, Jews also lived in large numbers in *Felvidék*. The ultra-right targeted them in their rhetoric as a "new danger", and called for greater restriction of Jews. In the meantime, Germany and Italy enacted Jewish laws, and although more lenient than the previous two, there

⁹ Supplemented by the executive Decree No. 4350/1938 of the Prime Minister. See *supra*, note 7.

¹⁰ R. Braham, *A Magyar Holocaust* (Budapest: Gondolat, 1988) vol.1. at 107.

were drafts of Jewish laws in Poland, in the rest of Czechoslovakia, and also in Romania. Fears that Jews would emigrate from these territories to Hungary were not baseless. All these factors contributed to the general atmosphere which made it possible to pass the Second Jewish Law.

B. HUMAN RIGHTS VIOLATIONS AGAINST HUNGARIAN JEWRY DURING THE HOLOCAUST (1939-1944)

A list of the laws enacted between May 1, 1939 and December 22, 1944, and pursuant to which property was confiscated by the government is attached hereto as part of Appendix A. These laws provided the basis for Act No. XXIV of 1992 on the Partial Compensation for Damages Unlawfully Caused by the State to Property Owned by Citizens in the Interest of Settling Ownership Relations for Legislation Enacted Between May 1, 1939 and June 8, 1949 (the "Second Compensation Law").

It is a well known fact that Hungary was a German ally during World War II. It is also recognized that Hungary was under Fascist control after the October 15, 1944 Nazi coup. However, responsibility for the period between March 19, 1944, when the Germans occupied Hungary, and the October Nazi coup is questionable. Before October 15, 1944, when Hungary was occupied by Germany, the government was formally appointed by Governor Horthy. Therefore, the Allies did not consider the Sztójay Government a puppet government, and thus held Hungary responsible for its war time activities up to that date¹¹. For the purpose of this thesis we would adopt the position of the Allies.

Between 1939 and 1944, the legal scheme enacted by the Hungarian legislators did not leave any living space for Jews. The systematic legislation supplemented by local ordinances, public announcements, wall-notices, and private actions encouraged

¹¹ Memorandum No. 6. Art. 1. of the OMGUS. See I. Vásárhelyi: *Restitution in International Law* (Budapest: Akadémia Kiadó, 1964) 128.

by the government took everything from Hungarian Jewry. Not only did 540,000¹² Hungarian Jews die during that period, but their personal and community property were confiscated by the government and looted by their neighbours. Synagogues, apartments, houses, schools, hospitals, old-age homes, orphanages, religious baths, factories, land, businesses, stores, pictures, books, clothing, animals, furniture, jewellery, and religious articles were taken. When the Hungarian Jews had nothing left, most were deported to Auschwitz.

The Second Jewish Law, Act No. IV. of 1939¹³, signalled a new phase in the destruction of the Jews. The Jewish community considered the *numerus clausus* laws and the First Jewish Law an internal issue. They fought back by declaring their Hungarian nationalist feeling, and called upon their patriotic behaviour in past centuries. They claimed that they were Hungarians, and therefore they should not be discriminated against. They asked the international Jewish organizations to refrain from any action on their behalf, because they felt that they would be able to solve this temporary internal issue. However, when the bill of the Second Jewish Law materialized, they had to admit that they were wrong. First, they appealed for help to the English, then to the French Jewish communities. However, their appeal was not about raising international awareness of the Hungarian situation, but about financial aid, and helping Hungarian Jews to emigrate. In the meantime, in Hungary, Jewish representatives, with the help of some liberal parties, attacked the Second Jewish Law bill as unconstitutional, as it was against human and divine justice, and as it was against the interest of the Hungarian nation. The Second Jewish Law was "in violation of the Hungarian Constitution and of its basic principles relating to the unitary character of the Hungarian political nation, equality before the law, and the protection of acquired rights"¹⁴ argued the representative of the Hungarian Jewish

¹² Included Jews from territories annexed by Hungary by 1944. See Braham, *supra*, note 10 at vol.2. 454.

¹³ See *supra*, note 7.

¹⁴ J. Levai, ed., *The Black Book: the Nazi crime against the Jewish people* (NY: Nexus Press, 1974) at 149.

Community on January 12, 1939. However, all efforts were in vain. Against all protests, the bill was passed on May 4, 1939.¹⁵

The Second Jewish Law begins with a definition of classification, of who is considered Jewish. A Jew was someone, who: (i) is a member of the Israelite religion; (ii) at least one parent is a member of the Israelite religion; or (iii) at least two grandparents are members of the Israelite religion. Exempted were: (i) those who were born Christian; (ii) who has converted to the Christian faith before his/her 7th birthday; (iii) whose parents were converted to the Christian faith before January 1, 1939; or (iv) who has converted before August 1, 1919, and whose parents lived in Hungary at least since January 1, 1849. Also exempted, but not their descendants, were: (i) disabled war veterans, (ii) honoured war veterans, (iii) widows and orphans of war veterans that died in action, (iv) government advisors, (v) university professors, (vi) olympic champions, (vii) Christian priests.

Under the Second Jewish Law, Jews were not able to acquire Hungarian citizenship, their political and civil rights were limited, and they could not hold government positions. All Jewish judges and lawyers had to resign by January 1, 1940; nor could Jews hold teaching or notary positions after January 1, 1943. Jewish acceptance to universities was limited to 6%, and Jewish membership in professional organizations was also limited to 6%. They were not allowed to direct movies or theater plays, or be a director of cultural institutions. Jewish participation in commerce was limited to 6 or 12%, depending on the type of trade. They could not buy or sell land without a special permit, and could have been ordered to sell or rent land for a fixed price. Businesses with less than 5 employees could employ 1, while businesses with over 5 employees yet less than 9, were allowed to employ 2 Jews. Just this last provision effected about 250,000 Jews, 65,000 of them living in Budapest.¹⁶

¹⁵ See Braham, *supra*, note 10 vol.1. at 125-130.

¹⁶ See Braham, *supra*, note 10 vol.1. at 131.

The Second Jewish Law weighed especially heavily on the Jewish communities annexed by Hungary. This was the law under which the deportation of about 16,000-18,000 Jews without Hungarian citizenship was based. These deported Jews were massacred in Kamenec-Podolsk, in August 1941.

The Third Jewish Law, Act No. XV. of 1941¹⁷, on marriage law, was the first law resembling the Nürenberg laws. Under the Second Jewish Law, the definition of Jews was based on religion rather than on race. Under the Third Jewish Law, the determining factor became one's racial origin. According to the legislators, mixed marriages caused degeneration of the national spirit, and were disadvantageous for Hungarians. Therefore, the Law prohibited mixed marriages between Jews and non-Jews. The Law also extended the definition of Jew to any person, (i) who had more than two grandparents that were Jewish; (ii) whose two grandparents were Jewish, except if that person was born Christian, and his/her parents were Christians when that person was born.

Between Hungary's German occupation, March 19, 1941 and the armistice on January 20, 1945, the legislative bodies enacted hundreds of restrictive acts to which Jews were subjected. The following section will only list a few, which have special importance in the compensation process.

a. *Forced labor service*

The Second Jewish Law did not calm down the anti-Jewish sentiment in Hungary, as some had hoped it might. Instead, in March, Act No. II of 1939¹⁸ was enacted on national defence. This act marked the beginning of forced labor service. The forced labor service supplemented regular army service. However, by its aims and means it was not only directed to help the army in building or doing roadwork, it also had the purpose of decimating Jewish men. Although the original plan was to

¹⁷ See supra, note 7.

¹⁸ See supra, note 7.

send every non-desirable man to forced labor service, most of the members of the forced labor battalions were Jewish.

Soon, after the introduction of forced labor service, Government Decree No. 2870/1941¹⁹ deprived Jews of the ability to fight with arms. By 1943, their uniforms were taken away and yellow arm-bands were introduced. Their treatment and survival greatly depended on their commanders. These commanders were Hungarian soldiers, and some of them were human to their troops, which led to confrontations with the Germans. However, many commanders harboured anti-Semitic feelings or had other reasons for maltreating the often better-educated Jews. Even before forced labor servicemen were put under direct German control, 42,000 forced labor servicemen died by the time of the German occupation of Hungary, on March 1944.²⁰

b. *Yellow star*

First the infantrymen in the forced labour service were separated from the rest of the Hungarian servicemen. Later, all Jews were singled out from the rest of society. Government Decree No. 1240/1944²¹ imposed on Jews the wearing of the yellow star. From April 5, 1944, Jews had to sew the discriminating sign on their clothes.

c. *Confiscation*

Jewish property was confiscated in numerous ways. Confiscation during the Holocaust occurred through: (i) seizure due to governmental act or by abuse of such act; (ii) transaction under duress, threats, or unlawful taking; or (iii) seizure by members of government authorities.

¹⁹ See *supra*, note 7.

²⁰ R. Braham, *The Hungarian Labor service System 1939-1945* (New York: Boulder, 1977) 120.

²¹ See *supra*, note 7.

After the discriminating legislation, many Jews became impoverished and were forced to sell their belongings. Jews who had businesses or professions falling under the restrictive legislation had to hide their ownership or involvement and therefore entered into special contracts to do so. Later when Jews were not allowed to own practically anything, they had to sell their property at a marginal price. Jews were in a situation that was easily abused by unscrupulous non-Jews.

Jews had to report their property. There was a special Commissioner who was appointed in the Spring of 1944, to oversee Jewish compliance with the law of reporting. The Commissioner administered the attachment of Jewish property. When Jewish businesses were taken, officers were delegated by the government to operate the businesses and take the earnings. The Hungarian government was not alone in benefiting from Jewish property. As an example, in the Spring of 1944, 1500 apartments were taken from Jews and given to Christians, who had been bombed out in Budapest. Whatever the Germans needed, radios, printing machines, linen, or apartments, was taken from Jews and given to the Germans.

d. *Bailments*

Under Decree No. 1600/1944 of the Prime Minister²², Jews had to place their valuables, e.g. gold, jewellery, into compulsory bailment. Moreover, they had to declare and deposit their cash if valued at more than 3,000 pengo. The banks and financial institutions, who acted as bailees, attached identification cards to every item and issued bailment bonds, which were given to the bailors.

e. *Ghettoization*

First, without appropriate legislation, Jews of Sub-Carpathia and of North-East Hungary were closed into ghettos. Then, under Order 6138/1944 and Directive

²² See *supra*, note 7.

6163/1944 of the Minister of Interior²³, ghettos were designated for the rest of the Jewish communities living outside of Budapest. Initially in Budapest Jews were restricted to live in the so-called "star-buildings", later they were concentrated in the ghetto. After Jews moved to the ghettos and most of their property was taken, they were deported. The only exception to deportation was the Jewish community of Budapest, which was moved to the ghetto but not deported.

f. *Deportation*

Although it is true that mass deportations only started after the occupation of Hungary by Germany on March 19, 1944, "(i)t is self-deception if anyone shifts responsibility for the genocide in Hungary solely and exclusively to Germany" said Hungarian Foreign Minister László Kovács speaking before The World Jewish Congress (the "WJC") in New York, in 1994²⁴. At the invasion of Hungary, the Germans sent only a few SS groups of 700 to 900 members to deal with the final solution of Hungarian Jewry. Most of the Holocaust survivors remember members of the Hungarian gendarme guarding them in the ghettos, and walking them to the trains. Celebrations in villages just "dejudized" were not rare incidents. By the time Jews only remained in Budapest the military situation was not favourable for the Axis powers. That and the possibility of a coup by the gendarme pressured governor Horthy to halt deportation of Budapest Jews.²⁵

g. *Looting and massacres*

The atrocities against Hungarian Jews were not always carried out by nominally "legal" means. Jewish property was looted in many ways. First, Jewish businesses and apartments were broken into. Then, when Jews had to move to ghettos, their apartments and stores were cleaned out by neighbours and others.

²³ See *supra*, note 7.

²⁴ *Wall Street Journal* (7 October 1994) at 2.

²⁵ See Braham, *supra*, note 10 vol.1. at 148.

Things they carried with them to the ghetto were taken by guards. Whatever they could save was taken while departing the train or at arrival. Property they trusted to their neighbours was rarely returned.

Jews could meet their death during the Holocaust even before deportation in thousands of ways. First, at the massacre at Kamenec-Podolsk, in August 1941, or at the massacres in Southern Hungary, in January 1942. At force labor service Jews were abused to death, frozen, shot, or were burned alive. Staying in Budapest was not assurance of survival, as many Jews starved, or fell ill and received no medical help. Many Jews were also shot on the banks of the Danube. Those that were left, except the majority of Jews of Budapest, were deported and met their death outside of Hungary.²⁶

Before the German occupation of Hungary, about 63,000 Jews died from the total Jewish population of roughly 825,000 (including the Jewish population of territories annexed by Hungary, during World War II). After the occupation, more than 500,000 Jews were annihilated at the hands of mostly German Nazis.²⁷ With the help of Hungarians, Hungarian Jews, about 440,000, were deported to the German concentration camp, Auschwitz-Birkenau. The ones who were not gassed in the concentration camps or the few who were deported to labor camps, had to work. Many of those who worked, laboured at German companies such as I.G. Farben, Krupp, or Siemens.

Some of the victims of concentration camps were subjected to pseudo-medical research. Next to Auschwitz-Birkenau operated the Buna chemical factory (I.G. Farben industrie), where a gynaecologist from Berlin, Dr. Clauberg, experimented on infertility procedures. Many of the Hungarian victims were subjected to chemical infertility procedures. Dr. Mengele choose women under 30 years old. The victims, who received X-Ray therapy died. Those who survived received lasting scars, became

²⁶ See Braham, *supra*, note 10 vol.1. at 169, 174, 257.

²⁷ See Braham, *supra*, note 10 vol.2. at 454.

C

sterile, and suffered lifelong medical complications. Hungarian victims were also subjected to the infamous phlegmon- malaria- and twin-experiments.²⁸

C. UNFULFILLED JUSTICE: HUMAN RIGHTS VIOLATIONS BY THE NATIONAL PROVISIONAL GOVERNMENT (1945-1949)

Although the first laws redressing anti-Jewish legislation were enacted in 1945, these laws providing restitution to Jews whose property had been confiscated during World War II were rarely implemented. Not only did the State not return Jewish property, it took more from its citizens. After the war, Hungary's financial position, especially its hard currency reserve was depressed. Under Decree No. 4800/1946 of the Prime Minister, gold, jewellery, precious metal, and hard currency over the established limit had to be turned over to the government. The inventory of jewellery businesses was also nationalized.

At the end of World War II, after signing a peace treaty with Moscow, the National Provisional Government of Hungary attempted to reorganize the feudal system of land ownership. In 1945, the first step in this process was the nationalization of large estates²⁹ with their division into smaller parcels ("smallholdings") for farming by peasants.³⁰

As a general rule, only parcels larger than 57.5 hectares³¹ were nationalized

²⁸ Dr. P. Bács, "Az állorvosi kísérletek magyar vonatkozásai" *Szombat* (November 1994) 5.

²⁹ Act No. VI of 1945. See *supra*, note 7.

³⁰ Nationalization of agricultural land, which included numerous large neglected estates as well as small estates on which modern agriculture could not be initiated, was viewed as the best way to update Hungary's inefficient agricultural sector. The plan was to redistribute land to small landholders who would then be able to modernize their agricultural production.

³¹ Approximately 142 acres.

with compensation.³² However, compensation was not complete. Although smaller landholders usually received the 25% of market value compensation owed to them by the new owners, many were never compensated for the remaining 75% that was due from the government. Owners of large estates received little to no compensation and were usually refused the right to retain the remaining 57.5 hectares of their land, a right guaranteed by the nationalization laws. Land belonging to war criminals, those who were recognized as traitors, and members of fascist organizations were confiscated. The government redistributed the nationalized and confiscated parcels in small parcels to farmers who were already working on small estates. Most of the Jewish land owners were not able to retain the 57.5 hectares, or apply for any compensation, because most have not yet returned to Hungary.

In addition to land reform and the law on valuables, between 1945 and 1948, the government nationalized the coal mining industry, the bauxite mining industry, the aluminum industry, large industrial companies and railways and took control of the banking system.³³ A list of the laws enacted between December 22, 1945 and June 8, 1949 and pursuant to which property was nationalized by the National Provisional Government is attached hereto as part of Appendix A. These laws provide the basis for Act No. XXIV of 1992 on the Partial Compensation for Damages Unlawfully Caused by the State to Property Owned by Citizens in the Interest of Settling Ownership Relations for Legislation Enacted Between May 1, 1939 and June 8, 1949,

D. HUMAN RIGHTS VIOLATIONS UNDER THE COMMUNIST GOVERNMENTS (1949-1987)

In 1949, the first communist government in Hungary was elected. Generally,

³² With some exceptions; e.g. land belonging to peasants was nationalized only if it exceeded 115 hectares. Also, the government confiscated World War II political criminals' land regardless of acreage.

³³ Act No. XIII of 1946, Act No. XX of 1946, Act XIII of 1948, Act No. XXV of 1948, Government Decree No. 13390/1948 (1949.I.5.). See *supra*, note 7.

the types of nationalization which occurred in Hungary under the communist regime, and which are covered by the current compensation laws, are (a) nationalization ("államosítás"), defined under Communism as the taking of property into state ownership with partial or no compensation; and (b) confiscation ("elkobzás") defined as the taking of property of political criminals.³⁴ Property which was expropriated ("kisajátítás") (i.e. for which adequate compensation was received) is not covered by current compensation laws.

Under the communist regime, the Hungarian government nationalized agricultural and forestry production facilities, large industrial companies, all transportation companies, pharmacies and all buildings larger than single-family homes. Real and personal property belonging to persons who illegally left the country was also confiscated. The government also confiscated property of "class enemies" and of persons who had been granted "privileged" status under the previous regime.³⁵ In addition, ownership of certain types of property, such as family homes, was restricted.

Under the 1949 constitution of Hungary³⁶ and arts 88-92 of the 1959 Civil Code³⁷ public property enjoyed priority. Mineral resources, forests, water, mines, transportation companies, banks, and postal services were exclusively State property.³⁸ In addition to State property, the other main form of property ownership was property belonging to social organizations, mainly cooperatives. Between 1948

³⁴ The term "political criminals" includes only those persons convicted under the communist regime. The confiscation of property of political criminals of World War II was considered to be lawful and is therefore not covered by the compensation laws. See art. 2. para (2) of Second Compensation Law.

³⁵ Privileged status was granted to (i) disabled servicemen and their spouses and deceased servicemen's orphans and (ii) "vitéz" (exceptional servicemen), among others.

³⁶ Act No. XX of 1949. See *supra*, note 7.

³⁷ See *supra*, note 7.

³⁸ Art. 6 of Act No. XX of 1949. See *supra*, note 7.

and 1967, peasant families were required to "voluntarily" contribute their land to agricultural co-operatives. Although some of the cooperatives were dissolved for brief periods and then later reformed, by 1967, 97% of private farms were collectivized.³⁹

A list of laws enacted between June 8, 1949 and July 30, 1987, pursuant to which property was nationalized by the Communist government is attached hereto as Appendix B. These laws formed the basis for Act No. XXV of 1991 on the Partial Compensation for Damages Unlawfully Caused by the State to Property Owned by Citizens in the Interest of Settling Ownership Disputes (the "First Compensation Law").

The atrocities performed in the name of Communism in Hungary were not of the same magnitude as the horrors of Stalin in the Soviet Union. However, they were committed according to the same pattern. People, who were recognized as "class enemies" or political criminals were resettled, imprisoned, or detained in camps. Political trials were staged and innocent people were imprisoned or even executed. Many died as a result of inhuman interrogation or imprisonment.

All these acts of the Communist government effected Jews and non-Jews alike. There are some who argue that government officers often enforced harsher measures dealing with Jews than with some non-Jews. They attribute this to the fact that many Jews embraced Communism and became officials, and cut themselves off from their Jewish roots. In the process of alienating themselves from their community, they wanted to show that they would never favour Jews, therefore they imposed harsher norms on Jews. Moreover, Hungary is a Roman Catholic country. It was always easier to enforce legislation against the non-Roman Catholic Churches, especially against the non-Christian ones. A third factor is that the anti-Semitic sentiment of many Hungarians did not cease to exist after the Holocaust. Hungary is one of the two countries (the other is Poland), where pogroms took place after 1945. All these factors contributed only to private actions of discrimination against Jews by

³⁹ M. Süveges, ed., *Elbádások az agrárjog köréből* (Budapest: TK, 1992) at 114.

government officials, and not to negative discrimination by the Hungarian government.

The underlining economic reason why the nationalization legislation had heavily affected Jewish interests, was that the Jews were predominantly responsible for the modern development of Hungary since the turn of the nineteenth century. The first nationalized sectors, heavy industry and banking, because of their nature, affected only a few wealthy families. However, the nationalization of medium sized industries by the Communist government affected many. As an example, at the end of the 1940's, of the 1,721 nationalized retail stores, 1,504 were owned by Jews; of the 491 nationalized buildings, 383 were Jewish property. Not only did businessmen lose there livelihood, many professions were "cleaned" off of politically undesirable elements. In the years 1948-49, 687 lawyers were disbarred on "political grounds", 439 of them being Jewish.⁴⁰

There is one area, where Jewish claims can be singled out from claims of other Hungarians many of whom suffered under Communism. That is the area of compensation for the Holocaust. As discussed under the human rights violations by the National Provisional Government, Hungary enacted a comprehensive system of restitution legislation for property rights violations committed against Hungarian Jewry during the Holocaust. However, the National Provisional Government failed to implement its restitution legislation. In 1947, before the Communists took control of Hungary, the Paris Peace Treaty was signed, which explicitly imposed the liability on Hungary to fully compensate the Hungarian Jewry. Although all this legislation was binding on the Communist government, it did nothing to fulfil its obligations, and instead took what little wealth remained from the Jewish community.

⁴⁰ "Hungary" 52 American Jewish Year Book 363, at 365.

III. COMPENSATION LEGISLATION REDRESSING VIOLATIONS COMMITTED AGAINST HUNGARIAN JEWRY DURING THE HOLOCAUST

A. THE PARIS PEACE TREATY AND COMPENSATION LAWS IN HUNGARY BETWEEN 1945 AND 1948

In January 1945, the Hungarian Temporary National Government (*Magyarország Ideiglenes Nemzeti Kormány*) signed the armistice treaty with the Allies. The position of the Allied Powers was well described in a letter sent by V.M. Molotov to the Honourable General Consul of Great Britain A.J.C. Kerr in 1943:

It is the opinion of the Soviet government that in addition to the Hungarian Government, the Hungarian people are also responsible for providing help to Germany, moreover, for the massacres and other violent acts, the looting and the abuses, which were committed in the occupied territories.⁴¹

In the meantime, Hungary held a different position about her involvement in the war. In Hungary, it was argued that Hungary had done a lot for its Jews. They were deported only at the end, and until deportation, their lives were said to be much better than in neighbouring countries. There were East European Jews who found safe hiding in Budapest. Jews who lived in the Budapest ghetto also survived the Holocaust, and Hungary took credit for halting their deportation. The official Hungarian argument was, that they did what they had to do to please the Germans, but not more. Therefore, Hungary, as a state was not responsible for these acts. If they had not complied with the German requests, then Hungary would have been run over by Germany much earlier, and all Hungarian Jews would have perished in the Holocaust. For the accusation of violent acts, looting and abuses carried out by

⁴¹ S. Balogh, *A népi demokratikus Magyarország külpolitikája 1945-1947* (Budapest: Kossuth Könyvkiadó, 1982) at 303.

Hungarians, the response was that there is no such thing as collective responsibility, only acts of individuals.

It is not possible to judge how much of this argument is true. However, it caused a schizophrenic situation. Hungary, by being a weak, powerless entity, never negotiated for better conditions under the armistice and then under the peace treaty. Hungary never even presented its view of its participation in the war. At home, the Government talked about the need for reparations from Germany for the effects of German occupation, and for the looting by the withdrawing German forces. However, instead of pleading their claim in Paris, the Hungarian representatives were mostly silent during the negotiations. As a result, Hungary signed the Paris Peace Treaty⁴² with no real intention to implement it.⁴³

Hungary fancied herself as the victim of World War I and then World War II. Although, historians could argue for the "historical necessity" which drew Hungary into both wars on the side of the Germans, it still cannot put Hungary into the position of a victim, only of a loser. However, Hungary would never admit to that. After the war, the general public sentiment was that everyone has lost. Why should the Jews receive preferential treatment? By 1946, articles had appeared, saying that there was enough said about the Holocaust.⁴⁴

After World War II, the scale of war damage and property rights violations were such that no reconstruction was possible without political and economic aid. Hungary had to pay war reparations. The Hungarian state lost territories, which resulted in population exchange with Czechoslovakia. To be able to restart the economy, the state had to nationalize the heavy industries, and had to reorganize the structure of agricultural land distribution, which was also accomplished through

⁴² "Final Act of and Annex of the Paris Conference on Reparation, Paris, 1945." 40 American Journal of International Law, Supplement 117.

⁴³ See Balogh, *supra*, note 41 at 220-256.

⁴⁴ See for example: L. Gyöngyi, "Beszéljünk másról" *Haladás* (20 October 1945).

nationalization.

Then, there was the issue of addressing the violations Hungary committed against its Jewish population. Although numerous pieces of legislation were enacted to redress Jewish claims, enforcing those acts was not a state priority. The general public was aware of what happened during the Holocaust, however, they were busy rebuilding their own lives. Nor was the average officer handling claims sympathetic to the plight of the Jews. Not only was help scarce, anti-Semitism was still alive. When the economy hit bottom in 1946, the first anti-Semitic protests appeared, then pogroms broke out claiming Jewish lives.⁴⁵ While applying for restitution granted by law, Jews were accused of using their suffering to gain an advantage. With this atmosphere, many Jews left Hungary, and those that decided to stay, opted not to claim their property.

Although little was implemented, the following is a description of compensation laws enacted shortly after the war, to redress the human rights violations Hungary committed against its Jewish population. The first laws relating to restitution for property claims were enacted in 1945, before the creation of the Communist regime. Under the armistice treaty, Hungary undertook to abolish all Jewish Laws and redress any disadvantage done by them. As early as March 17 of 1945, the government in Debrecen declared the Jewish Laws unconstitutional. The government declared under Decree No. 200/1945 of the Prime Minister, that it would deal with all property rights issues within 30 days after Budapest came under civil government. Then, in May 1945, under Decree No. 5950/1946 of the Prime Minister, the Government proposed the establishment of a committee to search for Hungarian citizens' property taken outside Hungary's borders during World War II. The committee was headed by an appointee recommended by Jewish organizations. They recovered the so-called Bezdán, Tatabánya, Nagykorös, and Buchenwald materials. The aim of the committee was to handle these properties separate from the ones kept at the Hungarian National Bank, and to give them back to the original

⁴⁵ See Braham, *supra*, note 10 vol.2. at 462-466.

owners. However, only in a few cases did the rightful owners recover their property from the assets administered first by a joint committee, than by the Hungarian National Bank.

In January 1946, the compensation conference in Paris examined the issue of property removed by force from different countries. However, they offered no solution. The most important Hungarian post-war compensation legislation has been Act No. XXV of 1946⁴⁶. Under the act, which is still in force, the government proclaimed to assist Hungarian Jewry and denounced their suffering. Art. 2 of the act declares that the government undertakes the establishment of an organization, which was to inherit all abandoned and heirless Jewish property. The fate of the National Jewish Restitution Fund is discussed later in relation to the Paris Peace Treaty.

Between 1945 and the enactment of the Paris Peace Treaty of 1947, hundreds of acts, decrees and other legal instruments were passed to redress the legal injustice committed against the Jews.⁴⁷ After the restitution laws were enacted, the problem of eligibility to file claims was often raised. Due to the horrible ways in which most Hungarian Jews were annihilated, the law on declaring one missing or deceased was amended. Religious marriages, invalid for lack of a compulsory civil marriage, were validated by a simple procedure.

Under the discriminating laws, Jews who desired to continue their trade, or own property, or do anything falling under the prohibitions of the legislation, had to hide their ownership or involvement and therefore entered into special contracts. Moreover, by not being able to own most anything, they had to sell their property for marginal sums. Under Law No. VI of 1932 on usury, as amended in 1945, most of these contracts could have been attacked in court. Claims could have been filed for

⁴⁶ See *supra*, note 7.

⁴⁷ To find a detailed list of such laws, see Dr. E. Déry et al., *A fasiszmus üldözöneit védő jogszabályok* (Budapest: JOINT, 1946) at 171-177.

a year. If one was prevented from filing on time, then that person had a year to file from the date the obstructing circumstances ceased to exist, but not later than January 1, 1950. The right of restitution of property was restricted to the owner, and the owners' spouse, siblings, children and grandchildren. When a restitution claim existed for a person who was missing or deceased, then a custodian was appointed by the Commissioner for the Abandoned Property⁴⁸, who filed in the name of that person at court.

One of the most problematic areas of property was confiscated agricultural land. In 1945, the government enacted the agricultural land reform, which abolished the feudal large estates system. In theory, Jewish landowners could have retained small parcels, a right guaranteed under the nationalization laws. However, in practice it rarely happened. Therefore, landed property was excluded from restitution.

In 1944, under the fascist regime, the government appointed a Commissioner to administer the debts owned by Jews. There were assigned accounts at the Hungarian Post and Savings Bank, where debts, rents, purchase prices owned to Jews had to be paid. In 1945, Jews could have applied for a nominal amount, but the bank had no money at that time of payment. By the time the bank collected funds to pay Jews, the currency had greatly devaluated. Therefore claimants lost all practical interest in demanding the amount.

It was next to impossible to gain restitution for industrial and trading companies, furniture and fixtures of businesses, inventory and various trade licences. After the war, the main emphasis was to restart the economy of the country. Many factories and companies had been altered to meet the needs of the war industry, and had been frequently bombed. The Minister who supervised the industry at issue, was authorized to appoint directors and officers to the factories. The Commissioner either rented the facilities of a company or entrusted a custodian to head it, but did not

⁴⁸ See more below, at section III.A.2. The National Jewish Restitution Fund.

provide compensation to the owner.⁴⁹

Owned, rented or otherwise utilized business-locations, and real properties, used exclusively for the purpose of business could be claimed by Jews. Jews could gain the right of usage to that property, from the current user. However, the court had to examine all circumstances and rule under equity. As a consequence, it became almost impossible to claim anything back. If Jewish property was stored or owned by railroad companies, claims would have to be filed by August 3, 1945, or 30 days after the claimants arrived back in Hungary. Needless to say, this period was also insufficient for most to file a claim. Before 1945, many professional businesses, such as pharmacies, needed a licence to operate. To reclaim a pharmacy, a tobacco, or an alcohol licence lost under the Jewish laws, the statutes gave the usual short filing period which made it again impossible to claim for most victims.⁵⁰

Detailed legislation was needed for the restitution of moveable properties. Moveable properties, which were left in an apartment and not claimed by the owner, were rented to the user of the apartment or had to be transported to a warehouse administered by the local authorities. If the owner came back after the moveable property was rented or stored, s/he had to request the Commissioner to return the property. However, the original owner lost his/her rights to claim the property, if s/he did not notify the holder of the property at issue before December 31, 1946. If furniture, household products, or clothes were assigned to individuals in emergency situations, the rightful owner could not claim them as long as the emergency situation existed. In practice, most of this property was not returned to the owners.⁵¹

Another provision made the position of the owner even more hopeless. If the moveable property was sold to a third person, who was not a close relative of the seller, than the owner had no legal action against the third party holder. Abandoned

⁴⁹ See Déry, *supra*, note 47 at 47-60.

⁵⁰ See Déry, *supra*, note 47 at 47-60.

⁵¹ See Déry, *supra*, note 47 at 67-71.

moveable property which was not considered property belonging to apartments and houses had to be reported to the Commissioner by June 24, 1945, in Budapest or by July 8, 1945 outside of the capital. Under the rules, the property was not abandoned if the original owner's parents, children or spouse claimed the property. Non-compliance with the reporting obligation or the transfer of the property under the reporting obligation, was punishable in the same manner as embezzlement. However, the deadlines were repeatedly extended, and it was practically impossible to enforce the reporting duty.⁵²

Most of the commercial paper held by Jews was also lost during World War II. Under the new rules, the original owner, or if the commercial paper was entrusted to a financial institution, then that institution, could have asked for the annulment of lost commercial paper, if the claimant knew the serial number of the paper. Some financial institutions had registers, from which they could have known the serial numbers, but most individuals had lost their commercial papers during the upheaval.⁵³

Detailed legislation was also needed in the area of workers compensation. These rules dealt with rehiring, firing, tenure, final compensation and pension. Acts to redress social security and pension benefits for people deported and sent to forced labour were introduced not only after the war, but also in 1951 and in 1958.⁵⁴

Legislation relating to public rights touched upon many areas such as rules governing citizenship, name change, passports, business licences, and tax issues. Procedures for political rehabilitation and the rehabilitation of public employees, if fired after May 28, 1938, based on the employee or the employee's spouse's origin, were established. Issues relating to education had to be addressed. For example, the recognition of foreign degrees; articling time for lawyers and accountants; special

⁵² See Déry, *supra*, note 47 at 67-71.

⁵³ See Déry, *supra*, note 47 at 77-81.

⁵⁴ See Déry, *supra*, note 47 at 81-89.

exam periods, and semester acknowledgements for university students; special exams and semesters for high school students; or special rules if one had lost the certificates of one's education. Lawyers and notaries who had been excluded from their respective Bar associations were readmitted.⁵⁵

Social help was offered, including clothing, food and financial assistance, by the Office of Public Welfare (*Népgondozó Hivatal*) (later the Ministry for Public Welfare and Interior) for the deportees and for individuals and their relatives, who had been prosecuted for their political beliefs. The American Jewish Joint Distribution Committee (the "JOINT") and the National Relief Committee for the Deportees (*Deportáltakat Gondozó Országos Bizottság*), had also helped deportees.

Housing shortages afflicted inhabitants of Budapest. There was a housing shortage in the city even before the war. After the bombing of Budapest, many buildings became uninhabitable. The problems were dealt with by the Housing Agencies. They were responsible for allocating apartments, and collecting payments for the owner or tax assessment payments for the use of the apartment and the use of the furnishings in the apartment. When Jews returned from deportation or from forced labor service, many found someone else living in their apartment. Many of these tenants' original apartments had been destroyed during the war and they moved into the empty Jewish apartments, with or without the knowledge of the Housing Agencies. Regardless whether they moved in good faith or not, these new tenants were not moving out. Nor could the owners, in most cases, recover any money collected in their behalf by the Housing Authorities.

If one were simply to read the innumerable laws and decrees Hungary had enacted after the war, one would think that a thorough compensation program had been created for the benefit of Jewish Holocaust survivors. Although these enactments were comprehensive, most of them provided filing periods or procedures which made it almost impossible for many victims to be compensated. By 1947, legal decisions

⁵⁵ See Déry, *supra*, note 47 at 89-142.

had also turned against lawful Jewish interests. In a Supreme Court ruling, the state waived its responsibility for forced labor service, and appropriately denied pension payments for Jewish forced laborers.

1. The Paris Peace Treaty

In February 1947, France, Great Britain, the Soviet Union and the United States signed the Peace Treaty with Hungary, in Paris.⁵⁶ The interpretation of the Peace Treaty has been ambiguous from the beginning. The Treaty has no unified system, nor is the terminology univocal. It is the result of the power struggle between the Soviet Union and the Western Allied Powers. While the Soviet Union emphasized collective reparation, the Allies were more interested in individual compensation. Despite Hungary's expense as a Soviet satellite, the compensation provisions applicable to individual Hungarian Jewish claimants followed the Allies' recommendation.

Early in the war, as a result of the mass scale of human rights violations, the international Jewish organizations realized that they would need to organize their efforts to obtain compensation. They were hoping to influence the peacemaking powers. Therefore, they prepared a joint recommendation in 1946, and submitted it to the Peace Conference. Under the recommendation, Hungarian victims of racial and religious persecution were to be given the status of United Nations nationals to secure the restitution of their property. It was also recommended that for the rehabilitation of survivors, the abandoned and heirless Jewish properties be transferred to the Jewish community.⁵⁷

⁵⁶ Act No. XVIII of 1947 promulgated the Paris Peace Treaty in Hungary. See *supra*, note 7.

⁵⁷ M. Himmelfarb, "Peace Treaties" 49 *American Jewish Yearbook* 562, at 565.

Under art. 26, para. 9(a), of the Peace Treaty⁵⁸, individuals, corporations or associations who were treated as the enemy under the laws in force in Hungary during the war, are given the status of United Nations nationals to further secure the restitution of their property. Under the most detailed and lengthy art. 26, Hungary is under obligation to restore all legal rights and interests of the United Nations and their nationals as they existed on September 1, 1939. All discriminatory measures were to be abolished. Properties were to be returned in their current form. Any property transfer conducted under force or duress should be invalidated. If a United Nations national suffered loss or damage to property, Hungary should compensate at the rate of two-thirds to the amount necessary, at the date of the payment, to purchase similar goods or make good the loss suffered. However, expected gains could not be compensated for.

Article 27 repeats the provision of the previous article on restitution or compensation for the sequestration, confiscation, or control of property on account of the owner's racial origin or religion. However, art. 27, para. 2 extends restitution to heirless property of persecuted persons, organizations, and communities. Under the provision, all heirless property of deceased Jews, and destroyed communities or organizations should be transferred to the organization representing them, and such property should be used for the relief and rehabilitation of survivors. Under art. 27, para (2) the transfer of properties should have been effected within a year after the Peace Treaty came into force.

Under art. 29, any Allied Power had the right to seize, retain, liquidate or take any other action with respect to Hungarian property found on its territory, and apply such property or the proceeds against the claims of its citizens. The only exceptions to this rule were: (i) property used for diplomatic purposes; (ii) property of religious bodies or private charitable institutions; (iii) property of Hungarian nationals who were residing with permission in the country in which the property was located,

⁵⁸ "Treaty of Peace with Hungary, 1947" 42 American Journal of International Law, Supplement at 225 [hereinafter Treaty].

X

except Hungarian property which was subjected to measures generally not applicable to property of Hungarian nationals resident in the same country; (iv) property rights arising since the armistice or the resumption of economic relations; (v) literary and artistic property. Therefore, when the retreating Russian army took artworks as reparation which belonged to Jews, they not only violated general international law⁵⁹, but also violated art. 29 of the Paris Peace Treaty.

Time limitations were one of the essential aspects of restitution under the Paris Peace Treaty. The original time limits of the Paris Peace Treaty, between 6 and 12 months, turned out to be too short. Even if the Provisional Government and then the Communist Government had truly intended to implement the provisions of the Paris Peace Treaty, it would have taken much longer. However, the real problem with the time limit was not the concluding but the starting date. By the time the Paris Peace Treaty was signed and Hungarian Jews and Jewish organizations could have claimed their property, too much time had passed from the date the properties were taken. It was very difficult, if not impossible, to recover them. Once recovery became impossible, compensation became the only solution. Several Constitutional Court cases deal with Hungary's present obligations under the Paris Peace Treaty. As a result of the current Compensation Scheme, the neglected provisions of the Paris Peace Treaty will finally be implemented by Hungary.

The Paris Peace Treaty needed appropriate local legislation and their implementation to succeed. In the case of non-compliance, there was possible litigation before an international tribunal by a state, but not by an individual. However, anyone who would like to bring a case before such an international tribunal would face obstacles. After the Communist takeover of Hungary, the Western Powers attempted to establish such an international tribunal and to argue that Hungary is in violation of the Peace Treaty because Hungary did not guarantee human rights for all

⁵⁹ Art. 56 of the Hague Convention (No. IV) Respecting the Laws and Customs of War on Land. See B. Weston, R. Falk, A. D'Amato, eds, *Basic Documents in International Law and World Order* (St. Paul: West Publishing Co., 1990) at 135 [hereinafter Hague].

of its citizens.⁶⁰ Under the Peace Treaty, if disputes concerning the "interpretation or execution of the treaty" could not be resolved by negotiations, a commission would hear the dispute. The commission was to consist of two members, one appointed by Hungary, and one appointed by the disputing Allied Power. If they could not agree on the case, then a third member of the commission was to be appointed by the Secretary-General of the United Nations. However, Hungary refused to appoint its member to the commission. Therefore, the General Assembly asked the International Court of Justice whether the Secretary-General could appoint the third member of the commission regardless whether Hungary appointed its member, and whether such commission of two members could decide on the dispute. The Court decided that the third member could not be appointed, and therefore, the case could not be adjudicated. No further attempts at adjudication were successfully pursued.

2. The National Jewish Restitution Fund

Soon after liberation, in March 1945, the position of The Government Commissioner for the Administration of Abandoned Properties (*Elhagyott Javak Kormánybiztosa*) (the "Commissioner") was established⁶¹. The Commissioner, who reported to the Prime Minister, was responsible for collecting and utilising the abandoned properties, and for returning properties after the owner had returned to Hungary. Assets could have been claimed by a petition containing the detailed description of the assets. The Commissioner had to administer abandoned Jewish and Nazi property together, which itself caused problems.

There is very little information available about the Commissioner and his

⁶⁰ The case of *Interpretation of Peace Treaties* (Second Phase) also included Bulgaria and Romania. See Advisory Opinion [1950] I.C.J. Rep. 221.

⁶¹ Under Decree No. 727/1945 of the Prime Minister. Detailed description of the Commissioner's rights and duties were regulated by Decree No. 10490/1945 of the Prime Minister. See *supra*, note 7.

activities.⁶² However, the few sources agree that the Commissioner did not follow the law. According to Lajos Stöckler, the then - president of the Jewish community, many local governments used moveable properties left by the Nazis, which previously belonged to Jews, and had no intention of returning them. The Commissioner would only rent furniture to returning Jews for an illegal fee. The Commissioner also rented out abandoned factories belonging to Jews. To solve the problem of heirless Jewish properties, the government established the National Jewish Restitution Fund.⁶³

Under the Paris Peace Treaty and laws enacted in 1946, the National Jewish Restitution Fund (*Országos Zsidó Helyreállítási Alap*) (the "Restitution Fund") was established as a legal heir to the abandoned and heirless Jewish property. Under art. 2 of Act No. XXV. of 1946, the Restitution Fund is the successor to all properties that had belonged to people deceased between June 26, 1941 and December 31, 1946, as a result of their persecution based on their israelite religion or Jewish origin. Art. 3 deals with properties of Holocaust victims, which were carried away by duress from Hungary, and whose ownership cannot be determined. These properties will also be transferred to the Restitution Fund upon their transportation back to Hungary. The Restitution Fund was to assist needy persecuted Jews and institutions aiding them.

The Restitution Fund was the representative body of the Jewish community, therefore, under the Peace Treaty, the Restitution Fund should have received all heirless individual and all community properties. However, the procedural rules of the Restitution Fund were not consistent with the identical rules of the Paris Peace

⁶² Information about the Commissioner and his activities is scarce. The institution of Commissioner was re-named in the 1950's. The documents belonged to the Commissioner have been retained by the Government Office of Religion (*Állami Egyházügyi Hivatal*), where they were treated as confidential. The Government Office of Religion was dissolved in 1989, when the documents were moved to the Ministry of Culture. Most of the documents are not available for research for unknown reason.

⁶³ No. XXV. Act of 1946, and its executive decree, Decree No. 3200/1947 of the Prime Minister. See *supra*, note 7.

Treaty. Although lawyers protested against these discrepancies, which resulted in substantially more obstacles in the way of transferring properties, nothing was achieved by these complaints.⁶⁴

The Restitution Fund only started its work in October 1947. After such a delay, the Restitution Fund was unable to secure the heirless moveable properties. At the center of attention was the so-called "Goldtrain". There is much misinformation about the Goldtrain, because different gold assets came into Allied possession. The gold bars and gold coins of the Hungarian National Bank and the crown were "found" by the American forces and were subsequently returned to Hungary. The Goldtrain, which was also called the "Budapest loot-train", contained the compulsory bailments deposited by Jews. It was seized by Allied forces. In 1947, according to A.L. Smith's book, *Hitler's Gold*, the assets of the Goldtrain were returned to Hungary incomplete because some of the assets were taken by German guards and were never recovered.⁶⁵ According to the yearly country studies carried out by the American Jewish Committee⁶⁶, the Goldtrain and other Hungarian Jewish assets, valued at several million U.S. dollars, were only partially returned to Hungary. Assets which came into the possession of the Americans were handed over to the Intergovernmental Committee on Refugees, and were spent on general relief and rehabilitation. Valuables which came into possession of French forces were returned to the Hungarian National Bank in 1948. As early as December 1947, the Restitution Fund requested that the Hungarian National Bank transfer the returned assets to the Restitution Fund. The National Bank gave a copy of the inventory of the assets returned, but refused to act any further. Despite legal obligation, pleas of the Jewish community, and international pressure, the government refused to transfer the contents

⁶⁴ G. Ács, "A helyre nem állított alap" *Szombat* (September 1995) at 4.

⁶⁵ A.L. Smith, *Hitler's Gold: The Story of the Nazi War Loot* (Oxford, New York, Munich: Berg, 1989) at 109.

⁶⁶ "Hungary" 49 *American Jewish Year Book* 416, at 423. "Hungary" 51 *American Jewish Year Book* 361, at 362.

of the remaining assets of the Goldtrain.⁶⁷

The Restitution Fund also encountered difficulties in collecting data on the properties they could claim. Local authorities did not send information to the Restitution Fund claiming shortages of paper. The capacity of the Restitution Fund was also hamstrung in legal proceedings. Although, in 1948, the Center of the Institute of Finance (*Pénzügyi Központ*) took inventory of the assets of the Commissioner, the results were kept secret from the Restitution Fund. The authorities were not "eager" to help resolve Jewish claims. Cases were held back, or thrown back on every pretext. Jewish names of German origin also constituted a problem⁶⁸. In lack of distinctively Jewish first names, heirless properties, which used to belong to such individuals were kept by local authorities as Nazi properties, and thus were not part of the properties given to the Restitution Fund.⁶⁹

Even if the Restitution Fund were able to identify and locate a property falling under its authority, in order to claim the property, they needed the approval of a committee. The committee had the right to decide whether any property at issue would be transferred to the Restitution Fund or to the State. The committee had three members, one delegated by the Restitution Fund, one appointed by the Ministry of Finance. The head of the committee was chosen by the head of the administrative judges.

In the meantime, businesses which were rented out by the Commissioner had gone through so many transformations, that it became impossible to identify the original businesses. Thus, they were not returned either. What was left to return, and what the government was not interested in keeping, were small village houses.

⁶⁷ See Ács, *supra*, note 64 at 4-5.

⁶⁸ At the end of the 18th century, Jews of the Austro-Hungarian Empire were forced to adopt German family names.

⁶⁹ See Ács, *supra*, note 64 at 4.

According to Ferenc Gáspár⁷⁰, only houses and "internal lands" were transferred to the Restitution Fund. Most of the documents concerning the Restitution Fund at the New Hungarian Central Archives (*Új Magyar Központi Levéltár*), which were recently researched by Mr. Gáspár, related to court actions establishing the partial or full ownership of the Restitution Fund in the properties at issue. Until 1955, about one or two thousand such properties were transferred into partial or full ownership of the Restitution Fund, estimated Mr. Gáspár. The small village houses, which were in dilapidated condition, were sold within a short period. In 1951, the Restitution Fund was renamed, the adjective Jewish was taken from its full name, and became the National Restitution Fund. In 1952, houses with more than 6 rooms were nationalized without compensation by the government⁷¹. This nationalization by the government, according to statistics compiled in 1978, reduced the possessions of the Restitution Funds to only 120 houses and 141 parcels of land, by 1955. The government was not the only obstacle to the Restitution Fund successfully claiming properties and helping rehabilitate Jewish survivors. The bank account of the Restitution Fund held at the National Savings Bank (*Országos Takarékpénztár*) was blocked until 1953. Therefore no assistance was given by the Restitution Fund before that date.⁷²

In 1955, the Restitution Fund was merged into the Office of Religious Affairs (*Állami Egyháziügyi Hivatal*). Between 1955 and 1976 more properties were transferred to the Restitution Fund. However, properties were also sold, confiscated and nationalized. By 1978, the Restitution Fund had but only 16 houses and 12 parcels of land property, in its management. Every year the Restitution Fund collected funds from selling and renting properties. However, the assets of the Restitution Fund were grossly mishandled. When, the Office was dissolved in 1989, only 670,000 HUF (approx. US\$ 10,000 in 1989)⁷³ was transferred to The

⁷⁰ F. Gáspár, "Mire ad engedélyt Auschwitz?" *Szombat* (March 1992) at 5.

⁷¹ Law Decree No. 4/1952. See *supra*, note 7.

⁷² See Gáspár, *supra* 70, at 4-5, and Ács, *supra*, 64, at 3-5.

⁷³ Dr. L. Gyurkó, Address (Hungarian Parliament, 30 March 1992) In: *Országgyűlés* (30 March 1992) at 16249.

Association of the Hungarian Jewish Communities (Magyarországi Zsidó Hitközségek Szervezete) (the "*MAZSIHISZ*").

B. THE GERMAN COMPENSATION LAWS

1. The Luxembourg Agreement

As a unique act in the history of diplomacy, after World War II, Germany⁷⁴ entered into a compensation agreement with Israel. Germany was not bound by international law to compensate Jews and the State of Israel, nor was there a precedent for such a payment. In the wake of the Cold War, Germany was not even under pressure by the international community. However, Germany was ready, to some extent, to atone for its past. The funds collected under the Luxembourg Agreement helped Israel put its economy on a secure footing. It also helped, through the Conference on Jewish Material Claims Against Germany (the "Claims Conference"), to rehabilitate Jewish communities around the world. Indemnification payments given to Jewish individuals helped them to rebuild and rehabilitate their lives.

The compensation agreement (the "Luxembourg Agreement") between the State of Israel and the Federal Republic of Germany was signed on September 10, 1952. The original aim of the Israeli claim was to obtain help to resettle about 500,000 Jewish refugees, who immigrated to Israel in the first few years after the Holocaust. The cost of resettlement was calculated at US\$ 3,000 per person, therefore, the claim was for a total of US\$ 1.5 billion⁷⁵. The request of the Israeli

⁷⁴ For the purpose of this thesis, the Federal Republic of Germany, and the unified Germany are referred to as "Germany", and the Democratic Republic of Germany is referred to as "East Germany".

⁷⁵ The other approach, which was not pursued, was to claim the value of total Jewish property "lost" during the Holocaust. It was estimated at about US\$ 6 billion (in 1952 dollars). See F. Honig, "The Reparations Agreement Between Israel and the Federal Republic of Germany" 48 American Journal of International Law 564, at 565.

government, in asking compensation from Germany, was not received with unanimous support from survivors of the Holocaust. Survivors who opted for compensation felt that they could receive assistance from Germany without forgiving or forgetting the horrors of the Holocaust. Survivors who argued against receiving anything from Germany felt that they wanted no relation with Germany whatsoever. Israel wanted to guarantee that no one would interpret the Luxembourg Agreement as reconciliation between the Jewish people and Germany. Although the Luxembourg Agreement states that Germany determined "to make good the material damage caused by" its "unspeakable criminal acts" which "were perpetrated against the Jewish people during the National-Socialist regime of terror", the State of Israel only asked for a relief cost for "the heavy burden of resettling so great a number of uprooted and destitute Jewish refugees from Germany and from territories formerly under German rule", and did not ask compensation for the acts of Nazi Germany.

The final agreement provided about US\$ 820 million payable to Israel and to the Claims Conference over several years. The funds obtained under the Luxembourg Agreement were to be used for purchase of goods and services from Germany, which facilitated the resettlement of Jewish refugees. Approximately US\$ 107 million of the total amount was allocated to the Claims Conference. The Claims Conference was established as a representative body of international Jewish organizations, to secure funds (i) for the relief of Jewish survivors of the Holocaust, and for rebuilding Jewish communities devastated by the Nazis; and (ii) for the indemnification and rehabilitation of individual victims. It was the task of the Claims Conference to allocate the amount received under the Luxembourg Agreement for the assistance of Jews. The JOINT assisted the Claims Conference in its work outside Israel, and the Jewish Agency for Israel (the "Jewish Agency") helped in allocating funds in Israel. The organization served four major functions: (i) welfare, (ii) commemoration, (iii) cultural programs, and (iv) capital investment allocations.

By the 1960's, the Claims Conference completed the majority of its work. Almost twenty years after the Holocaust, the need to spend on welfare had decreased. Major projects, such as synagogues, communal centers, and hospitals, requiring

capital investment allocations were completed. Funding Jewish culture and education became the most important function. After some deliberation, the Memorial Foundation for Jewish Culture (the "Memorial Foundation") was established in 1964 to further Jewish educational and cultural programs. It received two thirds of the remaining balance of the Claims Conference, US\$ 10.4 million. The Claims Conference kept the remaining amount and continues to aid Holocaust survivors to this day. Nahum Goldmann, who represented the Claims Conference during negotiations for the Luxembourg Agreement, hoped that he could secure additional funds for the Memorial Foundation from the Germans, and from wealthy Jewish donors.⁷⁶ However, his expectations were not met. Only the Jewish Agency contributed to the Memorial Foundation US\$ 1 million.

As part of the Luxembourg Agreement, Israel reserved her right to claim additional reparation from East Germany.⁷⁷ Of the original Israeli claim of US\$ 1,500 million, US\$ 500 million⁷⁸ was considered to be the share of East Germany. However, negotiations between the State of Israel and East Germany never started. After Unification, the Claims Conference initiated talks with Germany on compensation. In addition to the amount of the funds already paid by Germany, DM 975 million (approx. US\$ 560 million) was allocated for non East European claimants, who were unable to claim compensation before under the existing Federal Compensation Laws. Victims, who had never received any compensation or only received a one time sum were eligible to apply, not including individuals who had never left their countries or returned.⁷⁹

The Luxembourg Agreement covered compensation payable to Israel, and to the Claims Conference, for non-German citizens. The German government estimates

⁷⁶ R. Zweig, *German Reparations and the Jewish World: A history of the Claims Conference* (Boulder: Westview Press, 1987) at 151-152.

⁷⁷ See Honig, *supra*, note 75 at 578.

⁷⁸ See Honig, *supra*, note 75 at 565.

⁷⁹ "Lesz-e német kártérítés" *Szombat* (March 1993) at 5-7.

that between the 1950's and 1995 they had given reparation, restitution, and indemnification in the amount of about DM 95.5 billion (approx. US\$ 66 billion) to the Jewish world.⁸⁰ Most of it was payed as indemnification to individuals in accordance with Protocol I of the Luxembourg Agreement.

2. The Federal Compensation Law

After the war, restitution legislation was first enacted by the German authorities in the Russian zone of Germany, in October 1945. First, the Allied forces planned to enact a unified law on reparation, which would have been in force over the entire territory of Germany, regardless of the zones of the Allied powers. However, the Soviet Union did not wish to participate in this effort, because under Communism, they believed in different principles of property rights then the other Allied forces. Therefore, separate reparation laws were enacted by the United States⁸¹, France⁸² and Great Britain⁸³.

The Allied compensation laws dealing with restitution of, or compensation for, identifiable property were the basis of the German Federal Law on the Discharge of the Monetary Obligations of the German Reich and Assimilated Entities, or the Federal Restitution Law (the "*BRÜG*")⁸⁴. The Americans accepted the concept that assets for which there were no surviving heirs would be turned over to the Jewish Restitution Successor Organization, which was established before the birth of Israel.

⁸⁰ R. Atkinson "For East Europe's Holocaust Survivors, Reparations Never Came" *International Herald Tribune* (30 May 1995) at 7.

⁸¹ Law No. 59, on the Restitution of Identifiable Property, in November 1947. See K. Schwerin, "German Compensation for Victims of Nazi Persecution" 67:4 *Northwestern University Law Review* 479, at 489.

⁸² Decree No. 120 of November 10, 1947. See Schwerin, *supra*, note 81 at 489.

⁸³ Law No. 59 of May 12, 1949. See Schwerin, *supra*, note 81 at 489.

⁸⁴ The *BRÜG* was promulgated on July 19, 1957, and was amended on October 2, 1964.

The British and the French soon followed the American example. In 1949, the Jewish Trust Corporation came into existence in the English zone, and in 1952, the French Branch of the Jewish Trust Corporation was established. These organizations, and later their successor, the United Restitution Organization, helped to file claims under German law, and also dealt with claims to communal property and with claims to heirless property.

The German Government undertook under Protocol I of the Luxembourg Agreement that they would submit a uniform federal compensation law to the Parliament, to replace the different local laws. The law had to pass before the election of a new Bundestag, therefore not much time was left to draft a comprehensive indemnification statute. The Federal Supplementary Compensation Law for the Compensation of Victims of National Socialist Persecution was enacted on September 18, 1953, however, it only supplemented and unified the different local compensation laws. The first comprehensive compensation legislation was the Federal Compensation Law (the "*BEG*") in 1956. The Final Federal Compensation Law (the "*Final BEG*") of 1965 substantially amended the *BEG*. It raised the amount of compensation awarded, and also extended the group of claimants eligible to apply. The *Final Beg* also set the final deadline to apply for German compensation as of 1969. Only claimants who once lived on the territory of Germany or the so-called ethnic Germans, if they were currently living in a country having diplomatic relations with Germany, were eligible to file under the *BEG*. However, most of the Hungarian refugees qualified as ethnic Germans. Under the *BEG*, compensation was granted for damages caused by German authorities or German officers, and also for damages caused by actions of German Ally states, if such action was initiated by Germany. For example, Hungarian refugees could receive compensation for serving in force labour service or being confined to a ghetto, after April 6, 1941, in case they were living in a country which had diplomatic relations with Germany. However, Hungarian Holocaust survivors, who remained in Hungary were not eligible to claim compensation under the *BEG* or the *Final BEG*.

So far, Germany was compensating German and ethnic German victims of the

Holocaust. Under the Luxembourg Agreement, German funds were also used to pay compensation for claimants in Israel, and to impoverished victims world-wide through the Claims Conference. After negotiations, Germany entered into bilateral agreements with twelve European countries⁴⁵, and payed from DM 1 million to DM 400 million compensation to be distributed among victims of the Holocaust not compensated under other German laws. However, Germany was able to exclude Holocaust survivors living in Communist countries from payments under the German Compensation Laws. There were two exceptions. Victims of former Communist countries, who were subjected to pseudo-medical research received a one time payment. Holocaust survivors in Czechoslovakia, Yugoslavia, Poland, and Hungary received such compensation. Moreover, under the *BRÜG*, some Communist countries including Hungary received lump sum compensation.

3. Compensation by German Companies which Exploited Slave Labor

Close to 200 German companies used the slave labor of over a half-a-million concentration camp inmates during WW II. None of the German laws provided any indemnity for those who were forced to work at the companies like I.G.Farben, Krupp, and Siemens. However, some of the exploited workers initiated proceedings against several companies with the help of the major Jewish organizations. They could demand indemnification from only a few of the companies that had employed slave labor, as many of these companies had disappeared with Nazi Germany, like the Herman Göring Works, or were reduced to nothing, like the Messerschmidt company.

One of the companies which finally paid compensation for its slave labor after extensive litigation and negotiations was I.G.Farben. The chemical company, which invented Zyklon B gas, was located next to the concentration camp at Auschwitz, and worked approximately 30,000 slave laborers to death. The company did not accept any responsibility, but paid DM 30 million, which also included DM 3.75 million for

⁴⁵ Luxembourg, Denmark, Norway, Greece, Holland, France, Belgium, Italy, Austria, Switzerland, Great-Britain, and Sweden.

non-Jewish survivors. Although the payment was realized in 1958, it took years for the Claims Conference to process the claims. Close to 6,000 claimants in 42 countries received payments.⁸⁶

In 1959, the Claims Conference also reached an agreement with Krupp. More than 7,000 claimants filed from 33 countries. However, the DM 10 million paid, was divided among only 3,090 victims due to difficulties proving that they worked at Krupp factories and lack of sufficient funds to compensate more generously.⁸⁷ The Claims Conference also reached agreements with German companies in secret. One of those agreements had been with AEG/Telefunken in 1960. DM 4 million was distributed among 2,223 claimants.⁸⁸ The other company that secretly agreed to pay was Siemens. They settled for DM 7 million and compensated over 2,000 victims.⁸⁹ In 1966, another agreement was reached with Rheinmetall where under 1507 victims received DM 2,5 million.⁹⁰

Although more efforts were made, and some individual won legal actions and received nominal amounts, no other companies reached agreement with the Claims Conference or paid indemnification for the slave labor they utilized during WW II. Most of the claims which proceeded to court were thrown out due to the claimant having filled too late. The original plan of the Claims Conference, to reach an agreement with the Federal Association of German Industries, failed.

Despite the fact that most of these agreements included a section which protects the companies against further claims, the victims have never given up on securing more funds from these companies. One of the recent controversies erupted

⁸⁶ B. Ferencz, *Less than slaves* (Cambridge: Harvard U. Press, 1979) at 34-67.

⁸⁷ See Ferencz, *supra*, note 86 at 70-103.

⁸⁸ See Ferencz, *supra*, note 86 at 116.

⁸⁹ See Ferencz, *supra*, note 86 at 127.

⁹⁰ See Ferencz, *supra*, note 86 at 130-154.

in 1995, when I.G.Farben tried to reclaim their East German properties, which were nationalized by the Communist government. Former victims of the company claim that the company should be dissolved, and its assets should be used for compensation payments. I.G.Farben argues, that if further compensation is to be paid, it should be settled through the German government. Siemens, who was also sued recently for more payments adopts the same argument.

Although more compensation payments originating from German companies who used forced labor are unlikely, something has still been achieved by the continued efforts to secure compensation from them. The affected companies felt that they had to do something, and after hiring historians they are publishing the untold accounts of their participation in the Holocaust. For many survivors, the revelation of the Holocaust is more important than monetary compensation in their fight for a future, where such a tragedy could not happen again.

4. German Compensation of Hungarian Holocaust Survivors

East European countries were excluded from the Luxembourg Agreement. Even after the Unification of Germany, when additional funds were allocated for compensation, the German government was not willing to set up a new fund for compensating those who had not been compensated because they live in the former Communist countries. Germany choose to enter into bilateral agreements with the former Communist countries, allowing their governments to distribute funds among claimants. In 1993, with the help of the Claims Conference, agreement was reached with Russia, and a one time payment in the amount of US\$ 275 million was transferred. Since then, settlements were also realized with Ukraine, which received US\$ 275 million; with Belarus, which collected US\$ 138 million; and with Poland, which accepted US\$ 345 million.⁹¹

Under art. 30, para. 4 of the Paris Peace Treaty, Hungary gave up all of its

⁹¹ See Atkinson, *supra*, note 80 at 7.

and its citizens' rights for compensation from Germany. However, the question should remain whether such a waiver of rights is valid against Germany. When the Peace Treaty was signed, an independent Germany did not exist. The purpose of the waiver was to secure adequate German reparation for the Allied Powers, and not to block Hungarian Jewish efforts at compensation. Although Germany argued that as a result of the waiver Jews living in Hungary are not eligible for compensation, some countries having signed similar waivers, such as Italy, were successful in negotiating compensation.

The German *BEG* and *Final BEG* did not apply to Hungarian Jews, who lived in Hungary and stayed or had returned there. It only allowed compensation to be paid for citizens of countries, with which then-West Germany had diplomatic relations. Therefore, the *BEG* originally applied to Hungarian Jews who left Hungary before October 1, 1953, the deadline to file a claim under the *BEG*. However, after the 1956 revolution, many Hungarian Jews emigrated. Their plight was not overlooked by Germany, and the deadline to file for compensation under the *Final BEG* was extended to December 31, 1965. Jews who stayed in Hungary, therefore, were not eligible for indemnification from Germany for damage to life, health, and liberty, or for damage to vocational and economic pursuits, for losses suffered in jobs and professions, or for the loss to widows and orphans of their providers. The only exception were some types of property claims covered by the *BRÜG*.

In 1957, the WJC accepted the National Office of the Hungarian Jews (*Magyar Izraeliták Országos Irodája*) (the "*MIOI*") into its membership. Under their agreement, the *MIOI* was accepted as a member of the Claims Conference, but the WJC had the right to represent the *MIOI* at the Claims Conference. In the same year, the National Organization for the Protection of the Interests of Nazi Persecutees in Hungary, or as it was later called the Committee of Nazi Persecutees, (*Nácizmus Magyarországi Üldözötteinek Országos Érdekvédelmi Szervezete* or the *Nácizmus*

Üldözötteinek Bizottsága) (the "NÜB")⁹² was established to represent the interests of the Hungarian Jews to German authorities. From that year, the NÜB collected compensation claims for Hungarian victims of Nazism. However, the government did not allow the Jewish community or affiliated organizations to influence the negotiations. First, the authorities required the NÜB to send all information about the claims to the General Bank for Trade of Valuables (*Általános Értékforgalmi Bank*) (the "ÁÉ Bank"), then declared, that the Claims Conference established only cultural ties with the Hungarian Jewish community, and therefore, the Claims Conference could not represent Hungarian Jewish interests. Although, the Claims Conference sent money twice to help collect data for claims, the funds disappeared through the labyrinth of government bureaucracy.⁹³ After the Claims Conference realized that their financial contribution to the assessment of claims was "lost", and that the Hungarian government intentions were not objective, they ceased cooperating with the NÜB, who by then represented the interests of the Hungarian government and not of the Jewish community.⁹⁴

About 200,000 victims⁹⁵ filed approximated 66,000 claims before the deadline of April 1, 1959. Based on the collected information, in 1971 Hungary and Germany entered into a bilateral agreement.⁹⁶ The payment of DM 3 million

⁹² For the purpose of this thesis the abbreviation of NÜB will be used for both *Nácizmus Magyarországi Üldözötteinek Országos Érdekvédelmi Szervezete* or the *Nácizmus Üldözötteinek Bizottsága*.

⁹³ G. Ács, "Magyarország miért nem?" *Szombat* (October 1994) at 3.

⁹⁴ There is one more dark point in the compensation payments. There is a condition to the German compensation laws, under which only a German can represent a non-German in compensation proceedings. Under the claim forms distributed by the Hungarian government, the fee of the lawyer, Dr. Hermann Rheinboldt, was 10% for representing the Hungarian claims. The German government transferred 97 million DM in one instalment, and the lawyer received 10% of it. See Ács, *supra*, note 93 at 6.

⁹⁵ "Nézz vissza haraggal? A nácizmus magyarországi üldözötteinek kárpótlásáról" *Szombat* (Summer 1996) at 30 [hereinafter *Nézz vissza*].

⁹⁶ Government Decree 21/1971 (V.25.). See *supra*, note 7.

(approximately US\$ 1.5 million) under the agreement covered compensation for properties taken by the Germans. It did not compensate for claims covered by other German laws, like indemnification for the deprivation of freedom, for diminished health condition, for persecution, or for the loss of relatives. The German Ministry of Finance transferred the amount in three instalments between 1972 and 1974.

Persecuted Hungarian citizens or their heirs were eligible for compensation, if: (i) their property was taken during deportation, forced labour, or arrest; or (ii) their property was taken at the place of their residency by Germans or their assistants. The *NÜB* asserted that it would be impossible to assess the exact amount of damage suffered by the victims, and they opted to pay a fixed amount. Victims under category (i) received about HUF 13,000 (approx. US\$ 500), and if they were no longer alive, their heirs received half of that sum; and the victims under category (ii) received about HUF 3-4,000 (approx. US\$ 110-145)⁹⁷ The *ÁÉ Bank* was appointed to handle the financial aspects of the compensation. It is unclear whether the entire amount of the German compensation payments reached the Bank or not. However, the Bank exchanged the West German Deutch Marks (1 WG DM equalled approx. HUF 8.6) according to the exchange rate of the East German Mark (1 EG DM equalled approx. HUF 4.1), which resulted in a substantially lower compensation in Hungarian currency.

Hungary also entered into an agreement with Germany in 1965, on indemnification of victims of human experiments in concentration camps. At that time there was no diplomatic relationship between the two countries. Therefore, the Red Cross administered the implementation of the agreement. The agreement included that compensation was only to be given to claimants who could prove that s/he was subjected to pseudo-medical experiment. However, documentation was scarce. According to Dr. Pál Bács, who was the medical expert to the Hungarian

⁹⁷ See Nézz vissza, supra, note 95 at 30.

delegation⁹⁸, the German partners did not provide help in collecting proof of the experiments. They even denied the existence of sterilization experiments in Auschwitz. However, after the experiments were proved to be true, 320 individual received DM 20, 25, or 30,000 compensation, and another 850 individual received a total of DM 6,500,000 compensation, paid out in three years. Hungarian victims also received indemnification for phlegmon-, malaria-, and twin-experiments.⁹⁹

Hungarian victims of slave labor at German firms also received payments. The amount of compensation was calculated differently for survivors living in different countries as exchange rates and standard of living were considered. From the DM 27 million paid by I.G.Farben, DM 1,209,500 (with the unfavourable exchange rate used by the Hungarian banks, approx. US\$ 180,000) was allocated to 225 victims living in Hungary.¹⁰⁰ Hungarian Jewish ladies were also employed by Krupp. However, they were in a less favourable position, as Krupp offered less than I.G.Farben, and the Claims Conference, who were distributing the funds, also had to apply more strict standards. DM 355,800 (approx. US\$ 50,000) was distributed among 109 Hungarian claimants from the DM 10 million paid by Krupp.¹⁰¹ 296 of the 2,223 claimants lived in Hungary in 1960, when the agreement was reached with AEG/Telefunken. They received a total amount of DM 585,500 (approx. US\$ 86,500).¹⁰² When the Claims Conference secretly settled with Siemens, DM 1,562,900 (approx. US\$ 231,500) was allocated among 474 claimants in Hungary, including the survivors of Bor.¹⁰³ From the 1507 laborers receiving indemnification from Rheinmetall, 80 were living in Hungary in 1966. They received DM 136,000

⁹⁸ The Hungarian delegation included one representative from the Hungarian Red Cross, from the *ÁÉ Bank*, from the *NÜB*, and Dr. Pál Bács, who was the medical expert and the representative of the victims.

⁹⁹ See Bács, *supra*, note 28 at 5-6.

¹⁰⁰ See Ferencz, *supra*, note 86 at 66, 210.

¹⁰¹ See Ferencz, *supra*, note 86 at 70-103, 210.

¹⁰² See Ferencz, *supra*, note 86 at 116-117, 211.

¹⁰³ See Ferencz, *supra*, note 86 at 127, 211.

(approx. US\$ 20,200) in compensation for their labor.¹⁰⁴ A total of 1,184 victims of slave labor worked for German companies, and received the amount of DM 3,849,700 (approx. US\$ 570,400) in Hungary. Many more were exploited by companies who never paid indemnification to their victims.

Although the Claims Conference did not represent East European Jewish communities at the Luxembourg Agreement, and reserved its right to future negotiations, it channelled funds to Hungary through the JOINT. The JOINT was responsible in helping the Claims Conference allocate funds outside of Israel. The Claims Conference could not support cultural or other projects in Hungary, but through the JOINT, it was discretely able to contribute to the well-being of Nazi victims. In 1953, authorities of the then Communist Hungary, forbade relationships between the Hungarian Jewish community and any other community of non-Communist countries. Therefore, the so-called Relief in Transit program was invented. When the welfare needs of the Western and Central European Jews decreased, the JOINT increased spending on the Relief in Transit program, in Eastern Europe. The program was so concealed, that "(t)here has been no public accounting of the funds spent, nor is there ever likely to be" concluded R. Zweig.¹⁰⁵ The Germans knew about the Relief in Transit program, but it was not discussed according to the minutes of the Board meetings of the Claims Conference. Hungary received more from the JOINT than any other European country, in the following amounts:

Year	1945	1946	1947	1948	1949	1950	1951	1952
US\$ million	3.8	9.5	10.9	8.5	7.7	4.1	2.8	2.1

Food, clothing, and medicine were sent. According to one's need, one to three parcels were sent annually. Funds were also available for emigrants. In 1948, there

¹⁰⁴ See Ferencz, *supra*, note 86 at 130-154, 211.

¹⁰⁵ See Zweig, *supra*, note 76 at 158.

were about 160,000 displaced persons of Hungarian Jewish origin.¹⁰⁶ Between 1939 and 1952, a total of 21,432 Hungarian Jews immigrated to Israel.¹⁰⁷ Approximately the same number of Hungarian Jews emigrated during the 1956 uprising. The United Hias Service, who had a budget of US\$ 6.9 million between 1954-64, assisted close to 50,000 migrants of whom almost 50% were Hungarian Jews.¹⁰⁸

Despite the fact that Hungary was not a recipient country under the Luxembourg Agreement, German compensation payments were directed to Hungary through the above mentioned channels, with the knowledge of the German authorities. Therefore, the Hungarian's government position, that the German government has turned a deaf ear to the plight of Hungarian Holocaust survivors is unfounded.

Even though Germany entered into bilateral compensation agreements with Russia, Ukraine, Belarus, and Poland, the Hungarian government has been reluctant to ask for compensation in the name of its Jewish citizens. The 1956 Federal Compensation Law authorized the German State to negotiate with other states and communities and to provide compensation to them. According to Congressmen T. Schumann and I. Mécs¹⁰⁹, under the Federal Compensation Law, only citizens of states who had diplomatic relations with Germany by January 1, 1963, can initiate negotiations on behalf of their citizens for compensation. However, Hungary entered into an agreement with Germany in 1971, and the diplomatic relations were only established on December 11, 1973. The other argument against initiating talks with Germany is that the Hungarian State has to initiate the negotiations, but under art. 30, para. 4 of the Paris Peace Treaty, Hungary forfeited its right to compensation from Germany. However, this article should not apply to Hungarian Jews, because there

¹⁰⁶ See Zweig, *supra*, note 76 at 45.

¹⁰⁷ K. R. Grossman, *Germany's Moral Debt: The German-Israel Agreement* (Washington, DC: Public Affairs Press, 1954) at 58.

¹⁰⁸ See Zweig, *supra*, note 76 at 102.

¹⁰⁹ In their presentation at the Parliament on February 17, 1992 (Országgyűlési Jegyzőkönyv, 15062-15067). See Ács, *supra*, note 93 at 3.

were special provisions in the Peace Treaty dealing with them.

One of the political obstacles in reaching agreements with other former Communist countries is the issue of the German nationals expelled after WW II from these countries. Czechs forced the Sudeten Germans, and Hungary forced their German minority to move to Germany. According to some, the government does not want to initiate any compensation claims against Germany, worrying that they will have to face a counter-claim from the expelled German nationals. However, this argument is also questionable, as the Second Compensation Law, which covers property expropriated through laws enacted between May 1, 1939 and June 8, 1949, applies also to Hungarian citizens who are German nationals. In 1952, Germany adopted the TAG Lastenausgleichgesetz. Under this law, German nationals expatriated to Germany received compensation from Germany, instead of receiving it from the expelling country. Also, under this law, German nationals are not allowed to collect compensation from both Germany and the expelling country.¹¹⁰

Although none of the international Jewish organizations (Claims Conference, WJC, The World Jewish Restitution Organization) confirmed that any Jewish organization is negotiating with Germany with regard to compensation for Hungarian survivors of the Holocaust, claiming that publicity would hurt the cause, the managing director of the Jewish Community of Budapest and of the *MAZSIHISZ*, Gusztáv Zoltai, and the President of *MAZSIHISZ*, Dr. Péter Feldmayer both claimed that such negotiation is going on at present.¹¹¹ Despite the lack of information in Hungarian sources on the German-Hungarian negotiations, international news agencies regularly publish articles on the issue. Representatives of the Claims Conference started negotiations with the German Government in March 1995. The Claims Conference was seeking DM 300 million per year to pay compensation to those Holocaust survivors who never received any payment and to those who only received a one time

¹¹⁰ See Schwerin, *supra* 81 at 510.

¹¹¹ T.V., "Zoltai Gusztáv a kárpótlásról" *Új Élet* (1 June 1996) at 2; G. Zoltai, "Kárpótlás" (Address to the Oneg Shabbat Klub, 29 March 1997)[unpublished]; "Feldmayer a zsidó kárpótlásról" *Népszabadság* (22 August 1997) at 5.

payment but no pensions.¹¹² According to the latest developments, Germany is now willing to compensate Eastern Europeans, among them Hungarian Jews. The question is whether it would be a lump sum payment or a monthly pension as paid to non-Eastern European victims. The Government supported a four year payment of DM 20 million per year, while opposition members of parliament calculated that at least DM 48 million per year is needed to support monthly pension to the victims. Under the estimates of members of the opposition parties, there are about 18-20,000 survivors of Nazi camps currently alive in Eastern Europe, of which about 13,000 are of Jewish origin. Based on the lower living standards in Eastern Europe, they would receive about DM 200-250 per month which is about half of what Germany pays to victims living in the West today.¹¹³ Finally, at the end of 1996, the German Parliament approved that in 1998, DM 30 million, in 1999, DM 30 million, and in 2000, DM 20 million will be allocated to Holocaust survivors currently living in Albania, Slovakia, Romania, Bulgaria, Hungary, and in the territories of the former Yugoslavia.¹¹⁴ The German Parliament authorized the Government to start negotiations with the respective governments.

In the Spring of 1997, German President Roman Hertzog visited Hungary. When he approached the main synagogue and Jewish Museum on Dohány street, he was met by protesters organized by the National Association of Forced Laborers (*Munkaszolgálatosok Országos Egyesülete*) (the "MUSZOE"). After listening to their demands, to receive compensation from Germany, the German President gave his promise that Hungarian Holocaust survivors will also receive payments from Germany in the near future.¹¹⁵

¹¹² B. Tsur, "German politicians visit, discuss reparations with survivors" *The Jerusalem Post International Edition* (28 December 1996) at 24.

¹¹³ M. Henry, "Germany will offer DM 20 million a year to Nazi victims in E. Europe" *The Jerusalem Post International Edition* (30 November 1996) at 4.

¹¹⁴ "A külügyminiszter válaszol" *Új Élet* (15 April 1997) at 3.

¹¹⁵ "Tüntetők fogadták a német államfőt" *Erec* (March 1997) at 3.

In the strict sense, the following example does not fall within the notion of German compensation. However, it shows that there is a willingness from the German side to compensate for some of the damage inflicted upon the Jewish community during the Holocaust. The Hungarian Rabbinical College is one of the three most important Jewish libraries of Europe. The library was pilfered, among others, by Eichmann, and was partially destroyed in 1944. During Communism, the government did not support the library, and also prohibited that the library to receive any support from foreign sources. By the 1990's the library was in a disastrous condition. In January 1995, the then-German Ambassador to Hungary visited the library with the Culture Attaché of the Embassy. As a result of their visit, they have already raised DM 103,000 (approx. US\$ 70,000) for the restoration of some rare books. There is also a chance that another DM 1 million will be transferred to the library to renovate it.¹¹⁶

¹¹⁶ E. Várai, "Veszély és remény" *Szombat* (September 1996) at 8.

IV. COMPENSATION IN INTERNATIONAL LAW

A. AN INTRODUCTION TO THE THEORY OF COMPENSATION

"Compensation serves to right what would otherwise count as wrongful injuries to persons or their property."¹¹⁷

Compensation is not equal to restitution¹¹⁸. Restitution in its narrow sense means restoring something to its rightful owner. Compensation, on the other hand, could mean restoring the lost object if possible, or giving something else for the lost thing. Restitution can be full, if the lost object is intact. Substitutive compensation can never be full. It can be equal or just, but by the fact that the lost object cannot be returned or a situation of the past cannot be recreated, it cannot place someone back to the original situation. If compensation is achieved by money, then the restoration of the original situation materializes as far as money can achieve it.

Authorities on the theory of compensation distinguish two categories of substitutive compensation.¹¹⁹ One called 'means-replacing' or 'equivalence' compensation and the other 'ends-displacing' or 'substitute' compensation. In the first case compensation attempts to create a situation, where the victim would be able to pursue the same ends, as if the original injury had never happened. For example, one who lost jewellery could be given enough money to buy similar pieces. In the case of 'ends-displacing' compensation, the victim would only be able to pursue different ends, but pursuing different ends would put him subjectively in an equally enjoyable position. For example, one who was unlawfully detained, could receive funds to

¹¹⁷ R. Goodin, "Theories of Compensation", In: R.G. Frey & C.W. Morris, eds., *Liability and Responsibility: Essays in Law and Morals*, Chapter 7 (Cambridge: Cambridge University Press, 1990) at 257.

¹¹⁸ As it is stated in the Introduction, for the purpose of this thesis, the word "compensation" denotes all types of redress material and non-material, for victims of human rights violations.

¹¹⁹ See Goodin, *supra*, note 117 at 264.

travel.

While compensation for property rights violations could fall into both categories, compensation for the violation of a right of liberty or for other personal injury could only be compensated under the second. However, compensation for non-pecuniary losses cannot create a situation, as if the original injury had never happened. While compensation can be given for surviving family members or for the economic contribution of the deceased family member, substitute compensation for the lost loved one is impossible. Therefore, compensation for non-pecuniary losses can only be a symbolic, token amount. "Since identity is bound up with symbolism, a symbolic gesture may be as important to people as any material compensation."¹²⁰

If compensation for human rights violations, other than property rights violations, does not objectively "compensate" the victims, is there a need for such compensation at all? The answer is yes. Compensation serves a symbolic purpose, alleviating some of the humiliation suffered by the victims. Compensation may also provide for rehabilitation for the victims and help somewhat to restore their lives. Compensation can be used for commemorating the injustice. Compensation can serve an educative function for the offenders and may help the nation of the offenders restore its collective conscience. Consistently enforcing that all human rights violators pay compensation to their victims, could have a preventative function as well. Moreover, the willingness to compensate can rebuild a state's international reputation and it may encourage greater state responsibility.

At the end of World War II, there was a strong opposition to the German-Israel talks on compensation. The opponents argued, that the past cannot be changed, and no compensation would be enough for the injustices of the Holocaust.

To stand on the premise that the past cannot be changed is to ignore the fact that people and communities live whole lives, not just series

¹²⁰ J. Waldron, "Superseding Historic Injustice" (1992) 103:1 *Ethics* 4, at 7.

of momentary events, and that an injustice may blight, not just hurt, such a life. Individuals... build not only for themselves but for future generations... Why not therefore change the present so that it looks more like the present that would have obtained in the absence of the injustice?¹²¹

Having said that, we would like to raise a disturbing issue. Although, we believe that compensation eventually helps a nation to restore its collective conscience, part of that process is that the non-repenting violators, or their followers, will voice their disagreement and might go as far as acting out such feelings. To translate theory to actual events, one does not even have to look at the actions of citizens of traditionally anti-semitic countries. Avraham Burg, head of the Jewish Agency received a death threat in Switzerland after stating that he would not resume talks with Swiss authorities until the Swiss President apologized for his statement according to which Switzerland is being blackmailed to offer funds for Holocaust survivors.¹²² In Switzerland, shwastikas were painted on headstones of local Jewish cemeteries, acts which has not been seen for a long time. Under the survey published by a Swiss weekly, *L'Illustré*,¹²³ which asked: what is the motivation of Jews in wanting to reexamine the compensation issues, 52% of Swiss answered that the Jews only want money. 19% thought that the Jews want to make an example of Switzerland, and that way draw public attention to Switzerland away from their problems with the Palestinians. Only 42% thought that the Jews want Switzerland to admit that they made a mistake handling Jewish assets.

When a President of a generally moderate nations makes such a statement, what can one expect from the ordinary citizens? However, by raising the issue of compensation, Switzerland has to do some public soul searching. The Swiss

¹²¹ See Waldron, *supra*, note 120 at 7-8.

¹²² B. Tsur, "Burg receives death threat; Swiss agree to set up Holocaust fund" *The Jerusalem Post International Edition* (1 February 1997) 24.

¹²³ "Folytatódik a vita a rabolt aranyról" *Erec* (June 1997) 7.

government could not afford to stay silent after the President's statement, and after apologizing, choose to establish a public relation office which will supervise official releases about the compensation process. What was said in private for 50 years, became publicly unacceptable. That itself is an achievement. When an opinion is expressed only in private, no outsider can express counter opinions. When such discussion becomes public, the other side is able to present its argument as well. That way a dialogue starts, which could lead to greater justice.

The compensation process might cause anti-Jewish sentiment and attacks, but only in the short term. We do not believe that people who harbour anti-Jewish feelings for 50 years would abandon them as a result of the compensation process. However, we strongly believe that our only chance to ensure that such horrible things will never happen again is to insist that the younger generation know what happened. We have limited, or in some countries no means at all to forbid the dissemination of racist or otherwise anti-human ideas. Therefore, we have to make sure that the human side is also heard. The compensation process is an excellent opportunity to ensure that the next generation will hear the voices of the victims too.

B. COMPENSATION IN INTERNATIONAL LAW: THE LEGACY OF THE GERMAN COMPENSATION

The notion of compensation for property rights violations is not a new legal instrument. It has roots at least as far back as Roman law.¹²⁴ However, the legal concept of compensation for human rights violations resulting in non-pecuniary losses is a developing concept. By WW II, international law clearly governed violations committed by one state against another state or against citizens of another state. However, the question emerged during the Holocaust whether a state could be compelled by international law to compensate its own citizens.

¹²⁴ G. Weis, "Restitution Through the Ages" (Noah Barou Memorial Lecture 1962) (London: WJC, British Section, 1962) at 7.

There are historical precedents when a state made restitution to persons who were its own citizens at the time of confiscation of their property.¹²⁵ If one examines the period preceding the 20th century, one will find that in general, provisions for restitution of property were included in most treaties concluded between The Treaty of Westphalia, in 1648 and the Final Act of the Congress of Vienna, in 1815. However, the peace treaties between 1815 and WW I did not contain such a provision. In 1920, the Treaty of Sevres included provisions not only about the restitution of property, but it also ruled that the heirless properties of persons, mostly from the Armenian minority, who were exterminated by the Turks, should be transferred to the community of which such owners had been members.

Restitution of property confiscated on political grounds is not a measure of rare occurrence, and certainly not an event unique in history, as was believed in 1945. Restitution is claimed and effected whenever the political situation is such as to render it possible - sometimes even after a long lapse of time, as the example of the Huguenots has shown.¹²⁶

Restitution decades after the original injustices is not a new development of the 20th century. Restitution funds were also established before WW II to handle compensation claims as well. "In cases where the State assumes the burden of compensation, it often limits its liability to the amount of a fund specially appropriated for that purpose."¹²⁷ However, up to WW II, states were responsible only to injuries to aliens, not to their own citizens, based on the theory that an injury to an alien was an injury to the state of the alien's nationality. This left not only stateless

¹²⁵ George Weis, who was the Secretary-General of the Austrian Relief Fund after WW II, gives a short summary of such cases. See Weis, *supra*, note 124.

¹²⁶ Between 1790 and 1825, French law provided restitution of properties of Huguenots and other emigrants, whose properties were confiscated after 1666. See Weis, *supra*, note 124 at 10-17.

¹²⁷ G. Weis, "Restitution Throughout the Ages" *World Jewry* (January-February 1963) at 14-15.

persons, but also the nationals of an offending state, without protection.¹²⁸

During World War II, authors who tried to justify intervention on behalf of stateless persons and nationals, who were persecuted by their own state, based on the right to intervene on the so-called "general principles of law recognized by civilized nations" and on humanitarian law. It was argued that Germany should pay compensation under international law. Dr. Nehemiah Robinson, head of the Institute of Jewish Affairs of the WJC, argued that no country can confiscate property without just compensation under the common law of civilised nations.¹²⁹ Dr. Siegfried Moses, in his book, *The Compensation Claim of the Jews* (1943), asserted that compensation after World War II should be different from the Treaty of Versailles of 1919. Compensation and indemnification should be granted to all victims of injustice, not only citizens of the victorious powers. It should include citizens of Germany itself.¹³⁰ They both argued for compensation for not only individuals, but also for the Jewish communities. Dr. Moses also advocated for an international organization to handle compensation. There were two other experienced legal scholars who examined the issue of compensation from the international legal point of view. Seigfried Goldschmidt¹³¹ argued that the individual should be recognized as a subject in international law. Hugo Marx¹³² suggested that German Jews should be classified as minorities, and therefore be protected by international law. At the same time, as it was quoted above, George Weis, who was the Secretary-General of the Austrian Relief Fund after WW II, found historical precedents for compensation.

¹²⁸ T. Buerghthal, *International Human Rights* (St. Paul: West Publishing Co., 1988) at 11.

¹²⁹ Dr. N. Robinson, "Indemnification and Reparations: Jewish Aspects" (1944). See Schwerin, *supra*, note 81 at 487.

¹³⁰ N. Bentwich, "Nazi Spoliation and German Restitution: The Work of the United Restitution Office" 10 *Yearbook of the Leo Beack Institute* 204, at 207.

¹³¹ "Legal Claims against Germany: Compensation for Losses Resulting from Anti-Racial Measures" (1945). See Schwerin, *supra*, note 81 at 487.

¹³² "The Case of the German Jews: A Legal Basis for the Claims of the German Jews Against Germany" (1944). See Schwerin, *supra*, note 88 at 487.

As WW II was progressing, it was clear not only to the Jews, but also to the international legal community that to redress the violations carried out by Hitler's Germany would require substantially more effort than what the international legal community had to face after WW I. In 1943, Raphael Lemkin¹³³, proposed that the following was needed:

an administrative-judicial machinery for the restoration of the property to dispossessed persons of occupied countries, namely, one international property restitution agency, national property restitution agencies in each interested country, and property restitution tribunals, both national and international.¹³⁴

Lemkin also stipulated that German companies who exploited workers from the occupied countries, or the German State, should reimburse the exploited workers.

The intent of the international community to press for compensation was first expressed in the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control, issued in London, on January 5, 1943. The plan of compensation was made tangible by the Final Act of the Paris Conference on Reparation on December 21, 1945 (the "Final Act"). Under the Final Act, the Inter-Allied Reparation Agency should provide from seized German assets up to the amount of US\$ 25 million to assist Nazi victims. The funds were not to be used to compensate individual claims, but to rehabilitate and resettle victims. The Paris Reparation Agreement provided two more bases for refugee assistance: "non-monetary gold" (all gold and other valuables taken by the Nazis from individuals, mostly Jews) found in Germany, and heirless assets. Recognizing that most of the Holocaust survivors were of Jewish origin, under Paragraph A of the Five Power

¹³³ a "noted Polish scholar and attorney", who prepared his study for the Division of International Law of the Carnegie Endowment for International Peace. See R. Lemkin, *Axis Rule in Occupied Europe* (New York: Howard Fertig 1973).

¹³⁴ See Lemkin, *supra*, note 133 at Preface.

Agreement¹³⁵, they received 90% of the US\$ 25 million, 90% of non-monetary gold, and 95% of heirless accounts. The funds were transferred to the JOINT and to the Jewish Agency. The looted and heirless property was auctioned in Europe and in the United States. Over US\$ 3 million was received from the auctioned assets.¹³⁶

The Final Act and the Five Power Agreement established a precedent of returning Jewish assets to Jewish organizations, for the benefit of all Jewish survivors of Nazism. Organizations within the Allied controlled territories began to distribute restitute heirless Jewish assets after the war. In some countries, the local Jewish communities became the successor organization for heirless local Jewish assets. Besides Hungary, Italy, Greece, Holland and Poland followed that road.

In 1951, the plight of survivors of Nazi concentration camps who had been victims of scientific experiments received special attention in the United Nations. The Economic and Social Council appealed to the German government to consider making the fullest possible compensation for the injuries suffered, under the Holocaust, by persons subjected to the so-called scientific experiments in concentration camps.¹³⁷ The German authorities offered in their response assistance to the victims of experiments whose health had been permanently impaired, even if they were ineligible for compensation under the German compensation laws in force, whether because they lacked residential qualifications or because the time-limit for submission of applications had expired.

¹³⁵ To help implement the Final Act of the Paris Reparation Conference, five Allied powers, France, the United Kingdom, Czechoslovakia, and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees, worked out the plan of the Five Power Agreement on Reparations for the Non-Repatriable Victims of Nazism, (the "Five Power Agreement") of 14 June 1946. See S. Rubin, A. Schwartz, "Refugees and Reparations" 16 *Law and Contemporary Problems* 377, at 379.

¹³⁶ See Rubin, Schwartz, *supra*, note 136 at 379, 386.

¹³⁷ UN ECOSOC Res. 1951/353.

Although neither the United Nations, nor the international community put pressure on Germany to enter into an agreement with Israel, the Luxembourg Agreement was signed in 1952. The Luxembourg Agreement is a unique international agreement. It is *sui generis* in the history of diplomacy and public international law. At the signing of the agreement, there were no diplomatic relations between the parties. It is not a typical reparation agreement, because Israel was never at war with Germany. One of the other significant aspects of the Luxembourg Agreement is that it contains not only the treaty between Germany and Israel, but through Protocol I and II, the Luxembourg Agreement also governs payments given by Germany to the Claims Conference, and to individuals. In that sense, the Luxembourg Agreement, and its implementation through the German compensation laws, can serve in the future as a model for the protection of individual human rights on the international level.

There is another lesson to learn from the agreement between Germany and the Claims Conference. In a voluntary action, the German State recognized the Claims Conference, as a representative body of a group of individuals. Therefore, the German example also serves a model of recognizing group representation of individuals on the international level, which strengthens the individuals' position in seeking remedy. In the Luxembourg Agreement a group, representing the interest of individuals, was also a partner on the international level regarding human rights. When an individual stands against a state, his/her position is very weak. If we want a stronger defense of human rights, then we have to let groups advocate for the human rights of individuals.

The Luxembourg Agreement was a contribution to soft law, which could be the beginning of customary international law. Although soft law has no legally binding effect, if it is followed, the norms can evolve to be part of customary international law. There are many instances in the past 45 years, when a country gave compensation to its own citizens, or to a group of its citizens, or negotiated with an organization representing the victims.

During World War II, Americans of Japanese ancestry were evacuated from

the West Coast for security purposes. Under the American-Japanese Evacuation Claims Act of 1948, evacuated persons received compensation for certain real or personal property, which was damaged or lost as a result of the evacuation. However, it took over 40 years for the U.S. Congress to offer the nation's apology and at least symbolic compensation to the victims for the deprivation of their freedom. Aboriginal claims were compensated in the United States, Canada and New Zealand. Compensation was also offered in Latin American countries.¹³⁸ Since the 1980's, several Latin American regimes with serious record of human rights abuses have collapsed. As a result of their reintegration into the world community of democratic states, these Latin American countries like Chile, Mexico, Nicaragua, and Argentina enacted legislation compensating their own citizens for human rights violations committed by the previous governments. In Chile, the National Commission for Truth and Reconciliation was established by the new government in 1990, and the National Corporation for Reparation and Reconciliation was created in 1992. An additional law also provides pension, medical and educational benefits to assist the relatives of the victims of human rights violations. In Argentina, the 1991 compensation law provides compensation for injuries and damages suffered by unlawfully detained persons. It took 45 years, but the German example was also followed in Europe. First former Communist countries legislated compensation laws, which will be discussed below. Then other European countries, such as France and Norway, offered some redress to their Holocaust survivors.

However, the problem with these efforts, is that most of the governments offering compensation deny their liability to do so. They offer *ex gratia* compensation. When a state would not want to admit any wrongdoing or negligence but would like to make, as a humanitarian gesture, compensation, then it opts for compensation *ex gratia*, compensation on a voluntary basis.¹³⁹ One can argue that even in cases, where clear culpability exist, *ex gratia* compensation could be a

¹³⁸ UN ECOSOC, E/CN.4/Sub.2/1993/8 at 46-47 [hereinafter UN ECOSOC 1993/8].

¹³⁹ L. Portmess, "Compensation *ex gratia* in the Vincennes incident" 6:4 Public Affairs Quarterly 401.

practical choice, e.g. legal proceedings would take too much time, and the victims would not live to see the result. However, *ex gratia* compensation deprives the victim of any *bona fide* redress, and gives a chance to the wrongdoer to disguise its responsibility. *Ex gratia* compensation is more a political performance, than a legal act. It does not address the underlying wrongdoing. "No facts are found, no conclusions of law are drawn, no judgement is entered, and no opinion is written...In other words we sacrifice justice for efficiency and peace"¹⁴⁰

Admission of guilt is often, just as important as the compensation itself. In some ways, it helps to close a dark chapter of history, it aids the reconciliation process, and it also helps the victims to come to term with their injury. An example of the usefulness of admitting liability is Switzerland. First, after World War II, Switzerland gave some funds for humanitarian aid (to the refugee organizations), without admitting its oppressive role. Later Switzerland gave more to settle international claims. Then offered *ex gratia* compensation without any admission of guilt. Recently, Switzerland has established committees to research its role during WW II, with the possible outcome of its admission of wrongdoing, as this may finally bring some peace to victims.¹⁴¹

Acknowledging legal liability might be politically unacceptable to the nations involved. However, "(a) practice does not become a rule of customary international law merely because it is widely followed. It must, in addition, be deemed by states to be obligatory as a matter of law."¹⁴² For that reason arguments can be made that compensation although widely followed, has not become an international legal norm. Moreover, there were no written rules on compensation in international law, only an evolving practice, and such practice is far from unified. There are only few

¹⁴⁰ J. Coleman, C. Silver, "Justice in Settlements" 4 *Social Philosophy and Policy* 106. See Portmess, *supra*, note 139 at 402.

¹⁴¹ See more about Switzerland below, at section IV.C.1. Claims Regarding Foreign Financial Institutions and Insurance Companies, Switzerland.

¹⁴² T. Burchenhal, H. Maier, *Public International Law* (St. Paul: West Publishing Co., 1990) at 23.

international norms, which could be applied in compensation cases. One of them is the norm of proportion. The compensation should be in proportion, involving human rights cases, to the loss of right it intends to repair. It is easier to decide the amount of compensation when a material right was violated. However, in cases of violation of freedom or life, when non-material rights are violated, the amount of redress is hard to decide. Although the entity whose right was violated has the right of compensation, the violator will decide how much it will give. Therefore, any measure of compensation is hard to impose on the violator. The whole issue comes down to the agreement between the violator and the victim. There are international sanctions which could be used to pressure the violator. However, who will decide whether the sanction imposed on the violator is in proportion to the violation?

At the end of the 1980's, realizing the importance of compensation, and the lack of appropriate attention to the importance of compensation, the issue of compensation became the subject of legal discussion at the United Nations. The question was raised whether compensation should be codified, or it is "already a general principle of law recognized by civilized nations".¹⁴³ Although international legal instruments call for compensation for those who are the victims of gross violations of Human Rights, they do not set the standard for such compensation. For example, the U.N. calls for "effective remedies" for injustices through Art. 8. of the Universal Declaration of Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." However, "effective remedies" could be interpreted many ways. Therefore, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted Mr. Theo van Boven to undertake a study "concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedom".

¹⁴³ J. Deller, Brief Discussion Paper, Conference of the Canadian Human Rights Foundation on Compensation to Victims of Human Rights Violations: A Canadian Initiative (Ottawa, 29-30 May 1989)[unpublished].

Mr. van Boven presented his study in 1993, at the U.N.¹⁴⁴ The study concluded that only infrequent and minimal attention is given to the issue of compensation of the victims of human rights abuses. The perspective of the victim is often overlooked. The authorities consider the issue of compensation too complicated and too inconvenient to implement it in real terms. Therefore, van Boven suggested that the United Nations should set the standard. After extensive consultation, the last revised set of basic principles and guidelines on the right to reparation¹⁴⁵ for victims of gross violations of human rights and humanitarian law was published in 1996.¹⁴⁶

Under the guidelines of the U. N., every state shall make sure that its legal system provides prompt and effective legal procedures of reparation for victims of human rights abuses. Applicants for compensation may include individual victims or a group of victims, the immediate family or the dependants of victims, even "groups of persons connected with the direct victims". The measure of reparation should be expeditious and fully effective. Such reparation should remove or redress the consequences of violations, and may serve the purpose of prevention. Reparation shall be in proportion to the violation. No statute of limitation should apply for human rights violations as long as effective remedy is unavailable. The possibility and procedure of reparation should be widely publicized, and the applications for reparation should be diligently dealt with within an appropriate time period. Reparation shall include restitution: the re-establishment of the situation that existed before the violation; compensation: redress for economically assessable damage; rehabilitation: medical, psychological, legal and social services; and "satisfaction and

¹⁴⁴ See UN ECOSOC 1993/8, *supra*, note 138.

¹⁴⁵ In connection to the U.N. guidelines on reparation for gross human rights violations, reparation includes: restitution, compensation, and rehabilitation. Restitution means: the re-establishment of the situation existed before the violation; compensation means: redress for economically assessable damage; and rehabilitation means: medical, psychological, legal and also social services. See UN ECOSOC, 48th Sess., E/CN.4./Sub.2/1996/17 at 4 [hereinafter UN ECOSOC 1996/17].

¹⁴⁶ See UN ECOSOC 1996/17, *supra*, note 145 at 3-5.

guarantees of non-repetition".

The U.N. guidelines and principles of compensation clearly follow the norms established by the German Compensation Laws, as a result of the Luxembourg Agreement, and the international practice since. However, it could not answer some questions raised as far back as 1989.¹⁴⁷ If the statute of limitation does not apply for human rights violations as long as effective remedy is not available, could claims of ancient injustices be brought to attention? How would the international community force an offender State to pay compensation without considering the offender's current and future ability to pay? Should the compensation take the form of collective or individual settlements? If individual settlements are chosen, should there be a blanket amount given to each survivor or should each case be settled on its own merits? Probably the most controversial issue is, has been, and will be the appropriate amount. Ideally, the compensation should be sufficient to allow the victim to become compensated and rehabilitated. While it is notoriously difficult to measure non-pecuniary losses, like pain, suffering and emotional distress, property restitution could produce equally numerous problems. What right has the bona fide third party holder against the wrongdoer? What about the bona fide creditor who's rights are secured by that property? What if the property is not in the original form? What to do with special property rights, which have a time period, like patent, copyrights, and licences? While these questions will really decide whether a compensation scheme served its purpose or not, they cannot be answered in a global manner. They must be answered in every individual cases of compensation.

The feasibility of the United Nations principles and guidelines of compensation will depend upon the social, political, economic, and other circumstances of the parties to each case. Full repossession are unlikely in any situation. Compensation for property is extremely difficult to assess, and in a wide scale violation it is not possible to deal with every case separately. Therefore, global funds are a better option. The amount of any global fund should relate to how much was actually lost,

¹⁴⁷ See Deller, *supra*, note 143.

but each individual settlement should be more like rehabilitation, taking into consideration the current needs of the victim and his\her family. And a representative entity should deal with the collection of claims and with distribution.

Despite shortcomings of the German compensation process, and the fact that no full compensation can ever be accomplished, a very important notion had been established. The moral rule of compensation, which was rarely fulfilled by legal means in history, resulted in the first comprehensive legal system of compensation, enacted as a response to the horrible deeds of the Holocaust. "What has been accomplished marks an historic milestone in international morality" said Dr. Israel Goldstein, president of the American Jewish Congress.¹⁴⁸ However, almost fifty years after the Luxembourg Agreement, the international community should take the next step, and make sure that the rule of compensation becomes available to all victims of human rights abuses as an international legal norm.

1. The World Jewish Restitution Organization

After 1989, when the former Communist block governments had to reexamine property rights, many came to the conclusion that they first had to deal with the question of restitution of property confiscated or nationalized without compensation by the Communist governments. It gave an opportunity to reactivate efforts to reclaim Jewish properties. Jewish properties were confiscated by the Nazis and most of them were never returned to the survivors or to the representative body of heirless property. If restitution took place right after the WW II, then most of these properties were later nationalized by the Communist governments. The post-Communist governments soon realized that it would be impossible to redress only nationalization by the former Communist governments and not confiscations by the Nazis. However, the lack of real intention to compensate Jews, the shortage of time, and of any in depth research, meant that the former Communist countries reached solutions often

¹⁴⁸ B. Ferencz, "Restitution to Nazi Victims - A Milestone in International Morality" In: H. Schneiderman, *Two Generations in Perspective: Notable Events and Trends 1896-1956* (New York: Monde Publishers, Inc., 1957) at 310.

discriminating against Jews. The new legislation was often in violation of the constitution of the enacting countries, it violated basic laws of ownership, and was often in breach of existing international legal obligations.

From the beginning, international Jewish organizations, were following the legislative works of the East European governments. They soon realized, that the local Jewish communities need help to adequately represent their claims in negotiating with their governments. They captured the importance of fast action and established an organization, the World Jewish Restitution Organization to aid and coordinate the negotiation process between East European governments and representatives of local Jewish communities.

The World Jewish Restitution Organization (the "WJRO") was established as a non-profit organization in Israel, on July 29, 1992. The Founding Members of the WJRO (the "Members") are: the Jewish Agency; The World Zionist Organization; the World Jewish Congress; The American Joint Distribution Committee; the Claims Conference; B'nai Brith International; The American Gathering of Jewish Holocaust Survivors; and the Center of Organizations of Holocaust Survivors in Israel. The president of the WJRO is Edgar Bronfman, the president of the WJC. The WJRO head office is in Jerusalem, however, New York and Vienna host representative offices. The original aims of WJRO were:

To create a voluntary international Jewish organization which will centralize and coordinate the efforts of the Members in their attempts to help recover individual, communal and organizational Jewish assets in... [The countries in the territory of the former U.S.S.R., Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Former Eastern Poland and Romanian Areas which were ceded to the USSR under the 1939 Hitler Stalin Pact, Romania, Yugoslavia]... and to arrange for compensation for personal suffering of Holocaust survivors residing in

or originating from those areas.¹⁴⁹

However, when the issue of compensation exploded, and affected many countries, the WJRO expanded its objectives pursuing the fate of the Swiss bank accounts of deceased Jewish victims of the Holocaust, and of the heirless properties stolen by the Nazis and allegedly deposited at Swiss banks, and in other locations. In light of recent discoveries, the WJRO also undertook the task of reclaiming abandoned and looted properties, and most of the cases of heirless properties of Jews, not only in the former Communist countries, but also in Western Europe, including Belgium, France, Holland and Norway.

The WJRO has assigned tasks by the Rules of Association, according to which the WJC assists the WJRO with the coordination of communications both with the local Jewish communities and with the governments at issue. The JOINT helps the Research Committee. The Jewish Agency administers the activities of WJRO. The Claims Conference puts at WJRO's disposal its expertise in restitution and indemnification, especially in the negotiating process with the Federal Republic of Germany and the governments of Eastern Europe.

The WJRO signed an agreement with the State of Israel concerning cooperation and coordination between the WJRO and Israel.

The State considers itself to be the natural and principal heir to Jewish public property and, where there is no other heir, to Jewish private property, together with the local Jewish communities and the Jewish People.¹⁵⁰

The WJRO was established to be the legal representative of world Jewry in

¹⁴⁹ Rules of Association, Art. Two, and Appendix A.

¹⁵⁰ L. Weinbaum, *Righting an Historic Wrong. Restitution of Jewish Property in Central and East Europe* (Jerusalem: Institute of the World Jewish Congress, Policy Study No.1., 1995) at 12.

regard to claims of Jewish properties. Its *locus standi* is based on Art. 3 of Protocol No. 2 of the Luxembourg Agreement, between the Federal Republic of Germany and the Claims Conference. Moreover, the WJRO is recognized by all major international Jewish organizations, and is also recognized by the governments and local representatives of the East European countries, by the European Parliament, and by the United States of America. Although, some of the Hungarian Jewish organizations were not eager to recognize the WJRO as their representative body, after reconciling their different views as to the goal of the WJRO, they all came to an agreement. The only Jewish group, so far, who is unwilling to accept the representation of the WJRO is the Satmar hassid community of Williamsburg, New York. The Satmar hassid community frequently takes positions contrary to other Jewish groups and organizations. In the fall of 1996, they decided to launch a class action suit against the Swiss banks at U.S. Federal Court, instead of expecting indirect compensation from the WJRO. This lawsuit will be discussed in connection with Switzerland below.

The WJRO is active and has signed cooperation agreements with the representatives of Jewish communities in Hungary, Poland, the Czech Republic, Slovakia, Romania, Bulgaria, Belarus, Latvia, Lithuania, Moldova, Russia, and the Ukraine¹⁵¹. The WJRO has organized a network of local activists in some of these countries to do research, and the Institute of Jewish Affairs, which is a research institute based in London, prepares studies on enacted and drafted East European legislation.

However, the progress made by WJRO is inevitably slow. Restitution is not in the interest of the former Communist governments. Most of them try to keep good relations with the WJRO, being afraid of international reaction. The former Communist countries have no adequate financial means to back an actual compensation package. Moreover, most of the citizens of these countries would not

¹⁵¹ L. Weinbaum, "Righting an Historic Wrong" *Jerusalem Post* (1 January 1993) at 12; and according to Mr. Lavie of the WJRO.

support full scale compensation for Jews.

The activities of the WJRO are acknowledged world wide. The European Parliament expressed its support of the organization, and the United States Government even established the Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe, dealing with compensation matters, headed by U.S. Under Secretary of Foreign Trade, Stuart Eizenstat. However, the WJRO relationships with East European Jewish communities are not without trouble. The local Jewish communities are arguing that they know their government and the financial possibilities of their country, and they do not wish to pressure for full scale compensation. The WJRO argues that the local communities cannot forfeit the right of compensation of Jews not living in their country, not to mention the inheritance of those, who perished in the Holocaust. We agree with the position taken by the WJRO. However the representatives of the local communities and the WJRO have to work together. Once all organizations representing Jewish interest unite, they can represent more effectively Jewish claims, as it happened in Hungary.

C. OUTSTANDING CLAIMS OF HUNGARIAN HOLOCAUST SURVIVORS

1. Claims regarding foreign financial institutions and insurance companies

Switzerland is only one of the "neutral" countries, who profited from the Nazi killing machine. There were other countries, like Portugal, Argentina and Sweden, who indirectly aided the German war effort, and who helped the Nazis in laundering their looted wealth. Our research concentrates on Switzerland because it was the place where most of the Jewish and Nazi foreign accounts were opened, due to the famous bank secrecy law of the country. Switzerland is also the country which had the most to lose, when, since 1995, international pressure forced banks to examine their role during and since WW II regarding Jewish and Nazi accounts.

Switzerland : Secret Bank Accounts

There are four separate issues regarding Swiss bank accounts:

1. There are accounts and other financial investments at Swiss banks, which were opened by Holocaust victims having legal heirs. These accounts should be returned to the rightful owners.
2. There are heirless accounts at Swiss banks, which were opened by Holocaust victims. These accounts should be returned to the appropriate organizations.
3. Nazis transferred gold and other assets to Switzerland which were taken from Jews during the war. The value of the gold and these assets should be returned to the appropriate Jewish organizations.
4. Nazis looted gold reserves of countries which they occupied and transferred them to Switzerland. That gold should be returned to the countries it was taken from.

Most of these assets were originally brought to Switzerland for safekeeping or were transferred there during the war. Switzerland was recently accused of hiding accounts of Holocaust victims, and profiting, more than the Swiss banks were willing to admit to after the war, from Nazi gold.¹⁵² To unveil the truth, different approaches were taken. Part of the efforts were directed into looking for the assets themselves. For example, looking for closed and existing Swiss bank accounts, examining gold reserves of countries, looking into land registries and art collections. The other part is researching documents, trying to discover the history of the Nazi loot, and assessing the amounts of looted assets.

After World War II, the Tripartite Gold Commission (the "Gold Commission") was established by the Paris Agreement of 14 January 1946. The Gold Commission was authorized to distribute the so-called "monetary gold" among countries, whose

¹⁵² See for example: R. Ernsberger Jr., "Banking: The Hunt for Nazi Gold" *Newsweek* (23 September 1996) at 40, and J. Blitz, W. Hall, "Swiss face pressure over \$4bn Nazi gold" *Financial Times* (11 September 1996) at 1.

gold reserve were looted by the Nazis. Under the Gold Commission, monetary gold is:

all gold which... was carried as part of a claimant country's monetary reserve, either in the accounts of the claimant government itself, or in the accounts of the claimant country's central bank or other monetary authority at home or abroad.¹⁵³

Of the roughly US\$ 625 million worth of monetary gold taken by the Nazis, about US\$ 295 million remained in the banks of the neutral countries, especially in Switzerland. Most of these funds belong to the former Communist countries. However, not even a small part of it belongs to Hungary. As the Allied powers "found" Hungary's gold reserves in Austria, it was not included in the pool of monetary gold of the Tripartite Commission. Rather the Commission made an exception and directly returned the monetary gold in the amount of US\$ 35 million to Hungary.¹⁵⁴ At the end of the war, the Allies found large amounts of non-monetary gold as well. Some of the non-monetary gold finds were auctioned by the Allies, and the proceeds were given to the Intergovernmental Committee on Refugees. However, knowingly or not, some of it was transferred to the Gold Commission. The Gold Commission still has assets, and the Jewish organizations are currently trying to block further distribution by the Gold Commission.¹⁵⁵

Not only did the German government launder money through Swiss banks, the Wiesenthal Center has a list of 334 Germans who are believed to have hid money abroad during WW II. Some of that money was deposited in Switzerland. Switzerland claimed until 1996 that they already looked for all Nazi assets under a 1962 law. After WW II, Jewish organizations were asking the Swiss government to

¹⁵³ D. Wolfson, "Nazi Gold: The Legal Dimension" 11 Justice 23, at 23.

¹⁵⁴ See Smith, *supra*, note 65 at 147.

¹⁵⁵ J. Lapid, "A harmadik birodalom aranyának rejtélye" *Erec* (December 1996) at 7.

release information on accounts held by Jews. The estimated amount of total deposits by Jews perished in the Holocaust was one SFR 1 billion, or about US\$ 235 million. After the war, Switzerland returned Jewish assets to heirs in an amount of about US\$ 13 million. This was much less than expected. Therefore a bill was introduced at the parliament to deal with the issue. "There is a human obligation for Switzerland to remove any suspicion that she would profit from assets left behind by these victims" argued the sponsor of the bill at the parliamentary debate.¹⁵⁶ Under Federal Decree of 20 December 1962 (on assets in Switzerland of foreigners or stateless persons persecuted for reasons of race, religion or political belief), the "secrecy law" was partly amended. All banks and financial institutions had to report by the end of February 1964 to the government about funds deposited by foreigners at their institutions, if the account had not been touched since May 9, 1945. After compiling a list, the Office for Assets of Vanished Foreigners conducted the final audit of accounts possibly held by deceased Jews. The Swiss Ministry of Justice also established a special body to look into safety deposit boxes. The Swiss government wanted to avoid the suspicion that they had profited from Nazi deposits, therefore the law of 1962 was also applied to accounts of Nazi officials, and to anybody else who had served the Nazis. However, the entire investigation turned up less than US\$ 8 million, which was transferred to charity.

After the 1962 law expired, individuals retained the possibility of asking the Swiss banks to conduct a special search for a fee of US\$ 80-800 per search. However, most of these efforts were in vain. It was virtually impossible to have the Swiss banks search for such assets, claiming lack of proper documentation, banking secrecy, etc. Although Jewish claimants had never given up their quest to reclaim their assets, for thirty years nothing much happened. Memories of what happened to the looted assets were vague and most of the relevant documents were classified. When Communism collapsed, issues long buried suddenly surfaced. Former communist countries' archives were opened. Moreover, since fifty years had passed,

¹⁵⁶ O. Anderson, "The Secret Bank Accounts. New Swiss Law That Will Aid Heirs of Jewish Survivors" *Jewish Digest* (June 1965) at 70.

Allied documents about the Holocaust were declassified. What was known in the 1940's by many, made headlines as new discoveries in the 1990's. From documents kept in European countries and in the United States, one can learn that the Allies followed the route of the Nazi loot and laundering machine, and knew exactly what was happening.¹⁵⁷ However, political considerations were more important than serving justice. In the wake of the cold war it was easy to forget the sins committed by European countries and concentrate on the "big threat" of Communism.

Questioning the Swiss position at the beginning of the 1990's, that they held no more heirless Jewish assets and Nazi gold, led to the research which proved that the Swiss were laundering assets for Nazi Germany. Between 1939 and 1945, German "imports" to Switzerland amounted to SFR 1 billion.¹⁵⁸ Once Pandora's box had opened then came the news that not only Switzerland, but Sweden, Portugal, Spain, and Turkey were also involved in laundering millions in looted gold for the Nazi killing machine making a nice profit for themselves.

In 1995, at the 50th anniversary of the Holocaust, the survivors successfully raised public awareness of their fight. After the first reports on the Swiss banks' role in WW II and the allegations that Switzerland did not disclose all information about heirless Jewish accounts in 1962, international pressure mounted on Switzerland. The WJRO and the WJC were followed by U.S. Senator Alphonse D'Amato's efforts to bring public attention to the matter. Since 1995, "Switzerland" and "Nazi gold" are in the headlines of most major publications. The attack left Swiss officials breathless. After the first shock, Swiss officials charged the foreign media of blackmailing Switzerland over the issue of compensation, by threatening an international boycott

¹⁵⁷ J. Blitz, W. Hall, "Swiss face pressure over \$4bn Nazi gold" *Financial Times* (11 September 1996) at 1. See more about the Allies position on Nazi gold laundered in Switzerland: Smith, *supra*, note 65.

¹⁵⁸ Gy. V., "Egy lépéssel közelebb a svájci széfekhez" *Szombat* (November 1996) 19.

of Swiss banks.¹⁵⁹ However, after no one came to the aid of the Swiss, the Swiss Bankers Association and the WJC restarted negotiations. At first, it looked as if the Swiss banks would not let anybody look into their files and would only be willing to give a certain amount to close a questionable chapter in the history of Swiss banking, and to clear Swiss conscious. In 1995, Swiss banks announced that they had found about 744 accounts and were willing to transfer US\$ 38,7 million to representatives of the Jewish communities. The number and the value of the accounts seemed much smaller than was expected, and the Jewish organizations could not accept such a proposal. After months of long negotiations, the Swiss parties finally accepted the establishment of an independent body, which will examine the Swiss financial records. A description of the Volcker Committee follows later.

In the meantime, the Jewish Telegraphic Agency disclosed¹⁶⁰ that there are files kept on Swiss Jewish accounts even in the United States. They were transferred there as part of the Project "Safehaven" plan¹⁶¹. The files are dated July 12, 1945, and they list Bulgarian, Croatian, Danish, Dutch, French, Hungarian, Romanian and Slovak owners of Swiss numbered-accounts, with the amounts of their deposits, e.g. Ágai and Landau Co. of Budapest deposited SRF 900,000. In light of all these, the Schweizerische Banken started to collect files of claims originating from the listed countries.

Although Switzerland claimed that they have no knowledge of Jewish heirless accounts, the appearance of certain documents, such as a one-time list of private accounts with the amount deposited refutes that claim. A list of Hungarian citizens whose accounts were unclaimed after WW II was handed over by Swiss officials to

¹⁵⁹ US rejects Swiss official's complaint on Nazi assets *The Jerusalem Post International Edition* (11 January 1997) 5. B. Tsur, "'Blackmail' remark halts talks with Swiss" *The Jerusalem Post International Edition* (18 January 1997) 24.

¹⁶⁰ V.Gy. "Már nevek is vannak, Nyílnak-e a szépek?" *Szombat* (Summer 1996) at 14.

¹⁶¹ The "Safehaven" project aimed at preventing the Axis from having access to its foreign assets, irrespective of the origin of those assets.

the Hungarian Foreign Ministry on January 27, 1997. A similar list of 53 names was handed over to the Polish authorities also in January, 1997. Under Act No. LXIII of 1992 on data-protection, the Hungarian Foreign Ministry could not publicize the list in Hungary. In the meantime, the Office of the Swiss Banking Ombudsman is comparing the names of all depositors with the names on the list, to discover if, after all this time, the accounts can be located.

The Banking Ombudsman's Central Contact Office (the "Contact Office") was created by the Swiss Bankers Association in 1992.¹⁶² The Contact Office was not created to handle Jewish claims. The Swiss Bankers Association requested the Banking ombudsman only in August 1995, to search for dormant accounts, and at the same time, a new Banking Ombudsman was appointed. The Contact Office has been accepting applications since January 1, 1996, and no time limit is given for the application period.

Under the September 8, 1995 Guidelines of the Swiss Bankers Association, a proceeding is started when an individual is able to make a case that s/he is the legal successor of a bank customer who, without the bank's knowledge, either died or disappeared more than 10 years ago. After a petitioner contacts the Contact Office, s/he receives a questionnaire with instruction. After the questionnaire is received by the Contact Office, the Contact Office passes it to the specified bank, or in lack of specification to the over 400 Swiss banks. The bank(s) are then responsible for searching their own database with due diligence. If the bank(s) finds positive results, it informs the Contact Office and the petitioner. Under Swiss law, the bank(s) are not

¹⁶² It is supported by the Swiss Banking Ombudsman Foundation, which is an independent and neutral body. A 5-member Foundation Council assists the Foundation. The first Banking Ombudsman took office on April 1, 1993. The independent and neutral Banking Ombudsman handles claims from banking customers about matters concerning banks or institutes similar to banks established in Switzerland. The Banking Ombudsman suggested solutions are not binding upon the parties. He may recommend consulting legal authorities or instigating proceedings. He cannot act on general questions, in cases relating to offshore branches of Swiss banks, in business and pricing questions, or in a case, where a court or other authority is already involved.

permitted to confirm that someone is not a customer. Therefore, if the Contact Office do not receive a reply from the bank(s) within two months, the petitioner is informed about the negative results.¹⁶³

Contrary to popular opinion, bank secrecy, under Art. 47 of the Federal Law on Banks and Savings Banks, is not violated during the process. Only after the applicant proved that s/he is the legal owner or heir to the account(s), can the Contact Office release any information about the account. In this way the banking confidentiality is preserved.

Anybody could be a petitioner without any limitations. Not only bank accounts are searched but also custody accounts and safe-deposit boxes. There is a processing fee of SFR 100 (approx. US\$ 67), for the purpose of eliminating frivolous claims.¹⁶⁴ However, the fee can be waved on account of the petitioner's circumstances. The questionnaire, which was developed with the help of the Swiss Jewish Society, has three parts: (i) personal data and questions, (ii) information about the relationship between the applicants and the assumed bank customer, and (iii) material questions relating to the assumed bank account. The provided data has to be supported by copies of documents, e.g. birth certificate, death certificate, will, bank documents. All materials have to be submitted in English, French, German or Italian. Even incomplete questionnaires are processed as long as the following information is supplied: (i) an account, custody account or safe-deposit boxes could exist in Switzerland; (ii) the name of the original account, custody account, or safe-deposit box holder; (iii) the fact that the account holder is deceased or presumed dead for at least 10 years; (iv) the petitioner has the right to the account.

Most of the applicants cannot provide the requisite documents. Therefore,

¹⁶³ H. Häni, Swiss Banking Ombudsman, "Heirless Jewish assets" (Address to the Conference on Banking Secrecy, Zurich, 15-17 November 1996) [unpublished].

¹⁶⁴ Moreover, the Contact Office reserves the right to charge extra fees in case "special enquiries become necessary in connection with your identification or authorization".

substitute documents or personal statements can be submitted with appropriate explanation. The Contact Office accepted statements such as: "My uncle told me he had received money from my father and had given it to a courier in Budapest, who was to deposit it in Switzerland." Or "I recall that my father set up bank accounts; I don't know where but probably in Switzerland." As long as the Contact Office considers the application as justified, questionnaires are processed.¹⁶⁵

There are several problems related to these accounts. First, many of the accounts were numbered accounts, when only the depositor and the bank clerk knew the identity of the account holder. In this case the bank has to find its original list of the names of the owners of such accounts. Then, depositors often used aliases or codewords to identify their account. Jews living in Germany or Nazi-occupied territories were risking their lives when they illegally sent funds to Switzerland. They not only requested numbered accounts, but frequently used intermediaries to set them up. Before 1996, when a request was made to search for a dormant account, banks only searched under the depositor's name, and found nothing most of the time. Now, after the applicant proves that s/he is the legal owner or heir to the account(s), s/he may produce a list of names under which s/he suspects an account was held. The banks are also doing root searches, e.g. M! Weiss for Moses Weiss. Second, most of the petitioners assume that large amount of funds will be found for them. Until September 1996, only 1% of claims were successful and two-third of those accounts held less than SFR 10,000 (approx. US\$ 6,700). Third, the banks usually destroy documents relating to accounts closed for ten years. It means that after ten years, it is impossible to find out if an account was closed properly or not. The bank could have closed a dormant account on its own; lawyers or accountants who managed the accounts under power of attorney could have withdraw the funds assuming that the owner and the owner's family perished in the Holocaust. There are endless theories of what could have happened. However, regardless what happened, information about these accounts will not be found. Fourth, since WW II, many banks have moved,

¹⁶⁵ H. Häni, Address (Banking Ombudsman Press Conference, 12 November 1996)[unpublished] at 5.

merged, were divided, or were reorganized. Archives were moved, flooded, burned down, documents were misplaced or lost. Therefore, many documents simply do not exist. Fifth, not everything deposited at Swiss banks has a current value. There were deposits which have lost all their value since the 1930's, e.g. papers of German Imperial Railways, or bonds from the Kingdom of Rumania. Sixth, there were assets of depositors living then in occupied countries, whose assets were discovered by the Nazis and were transferred to Germany. Seventh, one of the problems in searching for bank accounts could be that passbook accounts are not technically included. Even if a Swiss-banks-wide search should turn up numerous dormant accounts, given all these factors not much in reality can be expected.

By the end of September 1996, of 2229 requests filed at the Contact Office, 1055 petitioners returned the questionnaire, and many were still inquiring about the procedure. Only 70% of applications came from, or from relatives, of Holocaust victims. From Eastern Europe 58 questionnaires were sent to the Contact Office by the end of September 1996. Of the 1055, only 11 accounts have been found. The value of dormant accounts is around SFR 1.6 million (approx. US\$ 1.07 million). Of the 11 accounts, three belonged to victims murdered by the Nazis, and two belonged to Romanian Jews who could not claim their funds under Communism. Although Hungarian claimants have also filed, until the end of September 1996, no accounts were found of Hungarian petitioners.¹⁶⁶

Mr. Hans-Peter Häni, the Swiss Banking Ombudsman, believes that the result is encouraging, because something has been found. In 1962, the Swiss banks had to hand over dormant accounts, which supposedly belonged to Holocaust victims. It was and is an unrealistic expectation of the Jewish organizations that vast sums of money will be found at Swiss banks after 1962. According to Mr. Häni, no one can say that the search is meaningless. Even when it brings no result, it gives a peace of mind to many applicants, that they finally know they have no assets at Swiss banks.¹⁶⁷

¹⁶⁶ See Häni, *supra*, note 163.

¹⁶⁷ See Häni, *supra*, note 163.

Switzerland has not admitted that it committed any wrongdoing in relation to the dormant accounts. Banks have no legal duty under Swiss law to look for owners of dormant accounts. The Banks cannot make public any list of account holders without breaching banking confidentiality. After an account is closed for 10 years, the banks are entitled to close such an account and donate the amount to a charity. The Contact Office "does not have to concern itself with the Washington Agreement of 1946, with the Agreement with Poland of 1949, with the Federal Decree of 1962, with the search for stolen gold and other stolen goods, or with the historical research and the political debate" stressed the President of the Swiss Banking Ombudsman Foundation.¹⁶⁸ Having stated that, the Contact Office has the support and cooperation of the Swiss banks. However, there is a positive discrepancy between what Switzerland is willing to admit publicly, and do privately. "(E)verything that can be returned to the legal owners must be returned. And I would never have taken on this task if I had not been convinced that all the institutions involved were totally unanimous on this point" said Mr. Häni.¹⁶⁹

As part of the official inquiries into Nazi gold and other looted assets, Switzerland set up a task force on heirless assets of victims of Nazism at the Swiss Federal Department of Foreign Affairs, headed by Thomas Borer. Various actions have been taken. The WJC, the WJRO, and the Swiss Bankers Association signed a Memorandum of Understanding on May 2, 1996. Then the International Committee of Eminent Persons (the "Volcker Committee")¹⁷⁰ was established to oversee the

¹⁶⁸ L. Schlumpf, Address (Banking Ombudsman Press Conference, 12 November 1996)[unpublished] at 4.

¹⁶⁹ See Häni, *supra*, note 165 at 1.

¹⁷⁰ It is headed by Paul Volcker, former chairman of the U.S. Federal Reserve Board. Members are: Klaus Jacoby, former Swiss state secretary; Curt Gasteyger, professor of international politics, Geneva; Professor Alan Hirsch, former vice-president of the Swiss Banking Commission; Hans Bär, private banker; Peider Mengiardi, a leading Swiss accountant; Abraham Burg, chairman of the Jewish Agency; Reuben Beraja, chairman of the Latin American Jewish Congress; Ronald Lauder, treasurer of the WJC; Zvi Barak, chairman of the WJRO; and Israel Singer general secretary of the WJC.

technical-financial aspects of the Swiss effort of identifying Jewish assets. The Volcker Committee prepared, with the help of three audit firms, a report after examining all relevant files and the methodology used by Swiss banks tracing Jewish accounts. As a first step, the Volcker Committee published in all major newspapers a 1,756 name list of World War II-era dormant accounts. The total amount of these accounts is around US\$ 42 million. The list contains the names of the owners, the city and country where the owners had resided, and the names of people who hold power of attorney over the relevant accounts. Under the estimate of Efraim Zuroff of the Simon Wiesenthal Center in Jerusalem, "(p)robably fewer than 20 percent of the names on the list are Jewish".¹⁷¹ There are 6 account owners on the list, who had resided in Hungary. The Swiss hoped to gain from publishing the list of the dormant accounts. However, their action has backfired. Their previous position that they thoroughly implemented the 1962 law on dormant accounts collapsed. Jews claim that there must be many more Jewish accounts, and that the current list contains names of Nazi account holders as well.¹⁷²

The accountant firm of Ernst & Young has been receiving claims to these accounts at their offices in New York, Tel Aviv, Basel, Budapest, and Sydney. By August 19, 1997, Ernst & Young offices received inquiries world wide about 24,000, and 1081 calls at their Budapest Office. Of that 1081 calls, 493 originated in Hungary, and 555 application forms were requested.¹⁷³ Claimants have six month from the publishing of the list on July 23, 1997, to file. The accounting firms will examine the claims. If their finding is unacceptable by the claimants and the claimants has a claim against a specific Swiss bank, than they can elect that the claim is adjudicated by arbitration. However, the decision of the Arbitrating Court, consisting of international legal advisors, is final. The claimant also has the choice to file at Swiss courts.

¹⁷¹ M. Hirsh, "A Tally of Pain" *Newsweek* (4 August 1997) at 37.

¹⁷² M. Hirsh, "A Tally of Pain" *Newsweek* (4 August 1997) at 36-37.

¹⁷³ Information given by Dr. Tamás Szabó of Ernst & Young Budapest office, on August 21, 1997.

The other part of the official inquiries into Nazi gold and other looted assets is directed at the Swiss political level. Under the law adopted on December 13, 1996, Swiss banking secrecy was lifted for a maximum of five years for the purpose of a global investigation to establish what happened to the assets deposited in Switzerland in connection with Nazi Germany. An independent commission of experts (the "Bergier Commission")¹⁷⁴ was established under the Federal Decree of March 1, 1997. Members of the Bergier Commission are bound to the same secrecy rules as civil servants. The Commission has nine members. The members are specialists in history, international law, and finance. Four of the nine members are foreigners and three of them are Jewish. They are assisted by 20 researchers. To assist the work of the Bergier Commission, there is an obligation to permit consultation of documents regardless of any legal obligation to maintain secrecy. Moreover, anyone who does not permit the consultation of documents or does not preserve any and all relevant documents could be punishable under penal law.

The aim of the Commission is to clarify the role of Swiss banks during and around of the war era. They will not only examine the 400 plus Swiss banks, and the Swiss National Bank, but also insurance companies, lawyers, notaries, fiduciaries, and portfolio managers as well as other individuals or legal persons. The Commission will reexamine the 1962 Federal Decree, and also the Washington Agreement of 25 May 1946, in which Switzerland undertook to partially liquidate German assets in Switzerland. If the Commission finds any assets belonging to Holocaust victims, they will be returned to the owners, and in case of heirless assets made available to relevant charities. To aid the research, the original requirements of keeping documents of closed bank accounts for only 10 years were reversed. The government banned banks from destroying any documents that could be helpful in the research.

¹⁷⁴ Members are: Wladyslaw Bartoszewski, former Polish Foreign Minister; Saul Friedlander, Israeli historian; Harold James, U.S. historian; Sybil Milton, director of the Holocaust Museum in Washington; Greorg Kreis, Swiss historian; Jacques Picard, Swiss historian; Jacob Tanner Swiss historian; Joseph Voyame, former Swiss Minister of Justice; Jean-Francois Bergier, Swiss economic historian, who is the president of the Commission.

Simultaneous with the Swiss efforts, the U.S. State Department prepared a report on Nazi gold in Swiss banks, which was made public in May 1997. It concluded that gold taken from teeth, jewellery, and watches of Holocaust victims, was melted down and deposited in foreign banks. Gold seized from banks of Nazi-occupied countries was also transferred. Most of the gold and looted assets were deposited in Swiss banks. Large amounts were also sent to Portugal, Argentina, Sweden, and Turkey. However, the report is short on making anybody accountable even by moral standards. It claims that there is no proof that the Swiss knew the origin of the gold they were receiving from Germany.

Rarely is a receiver of stolen goods unaware of the origin of such goods. It does not matter whether the goods are of everyday use, like a camera or an automobile, or special things, like artworks or gold ingots. Without the knowledgeable middle man, no stolen goods would be able to reenter the market. Therefore, the middle man gets a large stake for his services. Swiss citizens claim that they had no knowledge of the role of their banks during World War II. However, how could they fail to notice that during and after the war, when Europe's wealth was greatly diminished, they lived better after the war than before the war.¹⁷⁵

Even if one accepts that they did not know the origin of the gold they received from Nazi Germany, they should still have considered that without their help, Germany would not have been able to buy the quantity of arms, and the war could have ended earlier, saving the life of millions of soldiers and Jews. If the Swiss argument is sincere that they had to help the Germans, otherwise they would have run over Switzerland too, then what is their excuse for not returning the money they received for their services from the Germans to the rightful owners right after the war? What is their excuse for not making a diligent search for Jewish accounts, and not returning all the gold seized by the Nazis from occupied country's treasures, or trying to make a deal with both the Allies and with anybody who claims to be rightful

¹⁷⁵ M. Sanbar, "Dishonest brokers" *The Jerusalem Post International Edition* (17 May 1997) at 12.

owner of assets they possess?

While the Swiss banks cannot explain their actions during the war and especially after the war, they are trying to right the wrongs they have committed. In February 1997, Credit Suisse, Swiss Bank Corp., and Union Bank of Switzerland, the three largest Swiss banks announced that they are establishing a fund called The Humanitarian Fund for the Victims of the Holocaust. The move was initiated by the World Jewish Congress and U.S. Senator Alphonse D'Amato. An initial amount of SFR 100 million (approx. US\$ 67 million) was deposited into an escrow account at the Swiss National Bank, and the Bank is waiting for government guidance on how to allocate the sum. According to statements made by the president of Credit Suisse, others, such the Swiss government, banks and insurance companies are also expected to donate to the fund. In March, the Swiss government formally established the Humanitarian Fund. Under the decree of the Swiss Federal Council, an executive body of seven will manage the Humanitarian Fund. The Swiss will delegate four, and the WJRO will delegate three of the seven members. At least one of the three WJRO appointee will be Israeli and one will be a representative of survivor's organizations.¹⁷⁶

The decree establishing the Humanitarian Fund did not describe who will be the beneficiaries. Beside Jews, Gypsies, homosexuals and other Nazi persecutees could be eligible for financial help. Nor did the decree clarify the process of application, or any other procedural issue. The government has not decided whether it will join the fund or set up its own separately from the banks. In May 1997, the Swiss President asked the Parliament to establish the so-called Swiss Foundation for Solidarity, to help "victims of poverty and catastrophes, of genocide and other severe breeches of human rights such as, of course, victims of the Holocaust". The Swiss gold reserves surplus would be the basis of the US\$ 5 billion fund. Although the language stops short of publicly admitting Switzerland's role in laundering Nazi gold,

¹⁷⁶ M. Henry, "Survivors prominent on Swiss fund board" *The Jerusalem Post International Edition* (8 March 1997) at 24.

it might be a compromise the Jewish community can accept.

The Contact Office was set up in Switzerland to trace Nazi money and accounts of Holocaust victims. Funds were established for aiding the survivors. One set of issues, which determines the fate of all efforts is unclear. Who will distribute these funds, under what criteria, and who is eligible to receive the payments? The Swiss would not want to give up their right to distribute payments. The WJRO, who represents the Jewish communities and individuals understandably would like to distribute the funds itself. Holocaust survivors would like to receive their compensation as soon as possible, as their number is diminishing.

After the war, the Hungarian Government made a secret pact with Switzerland. At first, both governments denied the existence of the agreement. However, a 145-page report by Peter Hug and Marc Perrenoud, Swiss historians appointed by the Swiss Federal Council to examine the agreements between Switzerland and East European countries, proved that the allegations were true.¹⁷⁷ Under documents found in the Swiss National Archives, Hungary and Switzerland agreed in 1950 that the Hungarian government would compensate Swiss citizens for property lost. The agreement was finalized on March 26, 1973. Hungary agreed to compensate Swiss citizens in the amount of SFR 1.4 million for properties nationalized by the Hungarian government. In a secret amendment, Hungary agreed that the actual amount would be higher, and this difference would be paid from heirless accounts of Hungarian Holocaust victims. The difference of SFR 325,000, was transferred to Switzerland from the Swiss Fund set up in 1962.¹⁷⁸ In return, the Hungarian government had the obligation to reimburse the heirs of those accounts. However, no document can be found about the whereabouts of that SFR 325,000. Nor did Hungarian account holders receive any compensation for their savings from the Hungarian government.

¹⁷⁷ Gy.V., "Egy lépéssel közelebb a svájci széfekhez" *Szombat* (November 1996) at 20.

¹⁷⁸ See V., *supra*, note 177 at 20.

In the meantime, after 1962, the Swiss government acknowledged the existence of 1117 Hungarian heirless accounts. The Swiss National Bank transferred SFR 460,000 to the Hungarian National Bank from the Swiss Fund set up in 1962. However, that amount was never transferred to the rightful owners in Hungary. In 1997, the Swiss authorities offered a list of heirless accounts, that they claim was the basis of the 1973 negotiations. However, that list contains only 33 names and the funds deposited on these accounts amount to only SFR 280,000. Even if one does not believe the American official who estimated that Hungarian heirless accounts at Swiss banks amounts to SFR 15 million at the end of the war, the SFR 280,000 acknowledged by the Swiss seems too little.¹⁷⁹

Some Holocaust survivors felt that their time was running out, and they did not trust the Swiss efforts to trace their money at their institutions. Their feeling was supported when the Union Bank of Switzerland was discovered shredding documents related to Jewish claims¹⁸⁰. In October 1996, a US\$ 20 billion class action lawsuit was filed against Swiss banks and others on behalf of Holocaust survivors and heirs before the District Court for the Eastern District of New York. The leading plaintiff is a Hungarian Holocaust survivor, Gizella Weissshaus. Regardless of the outcome of the case, it has already put more pressure on the Swiss banks to answer Jewish claims. The lawsuit filed in New York is connected to the Satmar hasid community, which as noted above, does not accept the representation of the WJRO. They are seeking the disclosure of all assets deposited by Holocaust victims in Swiss banks. They also ask compensation for Holocaust survivors claiming that Nazis stole Jewish assets, laundered them at Swiss banks, and used the proceeds to finance the war effort. In case the lawsuit is successful, Mr. Fagan, the plaintiff's lawyer, would like Switzerland to transfer money directly to the victims. There is another lawsuit, represented by attorney Michael Hausfeld, who is associated with the Simon Wiesenthal Center. Under Mr. Hausfeld's claim, the U.S. District Court in

¹⁷⁹ E. Várai, "A svájciból magyar titok lett?" *Szombat* (December 1996) 8-9. E. Várai, "Elsikkasztott örökség" *Szombat* (March 1997) 17-18.

¹⁸⁰ Reuters, The PointCast Network, CNN market news, Swiss banker seeks probe (11 April 1997). "Dirty Nazi Deeds?" *Newsweek* (18 August 1997) at 3.

Washington, D.C. shall be the intermediary between the Swiss and the Holocaust survivors. First, lawyers for the Swiss banks asked the court to suspend the proceedings to allow Switzerland to "produce a successful result"¹⁸¹. After their request was turned down by the Court, the Swiss applied again for a suspension until the Bergier Commission publishes its findings, which could take up to ten years. Just before the court was to rule on their request, the dormant account list (mentioned above) was published to show "good faith" from the Swiss party. Deciding on the court cases will be even more difficult, since Paul Volcker expressed his opinion that the lawsuits and the work of his Commission to audit and later distribute the account funds "will run into conflicting claims, no doubt".¹⁸² Although all arguments hold merit, the differences between Jewish organizations and individuals, and between Jewish and Swiss interests about distribution can further complicate and slow the process.

In addition to not being able to collect from the Swiss banks, Holocaust survivors were also unable to collect their funds from other banks, and insurance companies. A case¹⁸³, concerning Assicurazioni Generali, which was one of the largest insurance companies in pre-WW II Europe, illustrates the situation well. The father of a Holocaust survivor son, purchased a life insurance policy at a local office of the insurance company in Eastern Europe. In 1945, the surviving son made a claim, but was unable to show a death certificate of his father, who was deported to Auschwitz and has never been seen afterwards. Soon after, the insurance company's local assets in Hungary were nationalized. Most of the insurance companies and financial institutions received some compensation for the nationalized assets up to 1990. However, none of them seem to be eager to pay even to the few who can still show evidence for their claims. A spokesperson of Generali stated that they feel no moral obligation to pay. However, when Generali announced plans to invest in Israel,

¹⁸¹ "Nazi Gold: Waiting Game?" *Newsweek* (19 May 1997) at 5.

¹⁸² See Hirsh, *supra*, note 171 at 37.

¹⁸³ D. Harris, "Generali won't pay claim to Holocaust victim's family" *The Jerusalem Post International Edition* (21 December 1996) 24.

their position was widely publicized. As a result, a US\$ 12 million fund was established by Generali to compensate families of Holocaust victims that held policies during World War II.¹⁸⁴ Currently, in Hungary, there are several individuals looking into possibilities of recovering some funds from foreign financial institutions and insurance companies.

2. Claims regarding foreign countries

Holocaust survivors claimed that there is still monetary gold of Nazi origin left in some Allied countries. The U.S. effort to negotiate reparations and examine whether there is any gold left in the U.S. reserve vaults of Nazi origin, already established that the New York Federal Reserve Bank holds two tons of Nazi gold.¹⁸⁵ Under a report prepared in England, Switzerland paid SFR 250 million (then US\$ 60 million) in 1946 to settle claims connected with Nazi gold. According to their reports, there was 10 times more Nazi gold in Swiss banks at the end of WW II. Today it could amount to between US\$ 4-6.5 billion. The Bank of England still possesses about 4,000 kg of such gold, at the present value of about US\$ 40 million. Although England fell sort of deciding the fate of the gold in a parliamentary debate on the issue, there are suggestions that the money should be transferred to the WJRO.¹⁸⁶ Research did not stop in Europe. Argentina, being under heavy pressure, recently opened its archives. Documents found include a list of fund transfers from banks in Switzerland to Spain and Portugal between 1939-1949.¹⁸⁷ In addition to Switzerland, Norway, Sweden, Brazil, and Canada have set up their own special committees to investigate the possibility that Nazi money was transferred

¹⁸⁴ D. Harris, "Generali offers \$12m. for Holocaust victims" *The Jerusalem Post International Edition* (28 June 1997) 19.

¹⁸⁵ M. Hirsh, "The Holocaust in the Dock" *Newsweek* (17 February 1997) 30.

¹⁸⁶ J. Blitz, W. Hall, "Swiss face pressure over \$4bn Nazi gold" *Financial Times* (11 September 1996) 1, 13. "Heirless Jewish Assets" *The Eurodin Courier* (February 1997) 1-2.

¹⁸⁷ D. Haskil, "Argentina Opens Central Bank Accounts to Jewish Probe" *Reuter News Service* (27 November 1996) [<http://www.wiesenthal.com/itn/argarts.html>].

to their financial institutions.

The above mentioned claims will not directly benefit Hungarian Holocaust survivors. However, when any of these governments do decide to make good as a result of their participation in Nazi money laundering, or in the case of England and the U.S., the governments decide the fate of Nazi gold stored at their institutions, Hungarian Holocaust survivors may benefit indirectly. Most likely these countries will either turn over money to Jewish organizations or to their own humanitarian funds. These funds will be used to further Jewish interest, and will probably aid needy Holocaust survivors.

In addition to the issue of Nazi gold, the fate of looted artworks, and historic or archaeologic property, interests the Hungarian Jewish community and individuals, even more. Under the provisions of the peace treaties after World War II, two categories of property were singled out regarding restitution: (a) monetary gold, and (b) artworks, and historic or archaeologic property. Under the peace treaties, properties were only compensated for if they were actually discovered. If the removed property were not discovered, then no duty of substitution or compensation rested on the State which removed the property. However, the removal of artworks, and historic or archaeologic properties constitutes war crimes, for which art. 56 of the Hague Convention¹⁸⁸ provides legal redress. Therefore, in the case of artworks and historic or archaeologic properties, if *in integrum restitution* is not possible, than restitution in kind should have been followed.

After WW II, the Allies found about 20,000 piece of stolen artwork in Austria. Soon, they returned about half of the pieces to the rightful owners. Under the 1955 Vienna Treaty, Austria was under legal obligation to return the rest of the stolen artworks. However, Austria made little effort to comply with this law. Finally, in 1984, an article appeared in the Austrian news about the stolen objects housed in a monastery near Vienna. It took two years, but the story was followed in the

¹⁸⁸ See Hague, *supra*, note 59.

Hungarian press as well. A list of the artworks was also published. That is how a Hungarian Holocaust survivor learned about his family's treasure and was able to obtain 2 of the objects back. Due to international pressure since the early 1990's, Austria returned 420 of the 8,422 artworks to the owners by 1996. The remaining objects were part of an auction in October, 1996, in Vienna. The amount received benefited the Federation of Austrian Jewish Communities, who will in turn support different Jewish causes.¹⁸⁹

In addition to the research conducted in Switzerland, Norway and Sweden, the ongoing discovery process of France's war time role and the fate of looted artworks and nationalized buildings shows the willingness of European countries to deal with the issue of compensation.¹⁹⁰ South American countries like Brazil and Argentina are also participating in the process of searching for Jewish assets, and discovering the fate of the Nazi gold. However, some countries would like to be left alone. Turkey, Spain and Portugal so far have refused to open their archives. Russia would also prefer if the international media would not monitor the legislation process concerning artwork seized by the Russian army.¹⁹¹

At the beginning of the war, and again in 1944, after the German occupation of Hungary, many Jews thought that their valued possessions would be better protected in a bank deposit. Therefore, they voluntarily deposited them. Most of their works survived the Nazi occupation, and were taken by the retrieving Red Army. Most of these works are well documented by the banks. Some of these valuable pieces later turned up at the Grabar Restaurateur Institute, at the Pushkin Museum, and at the Kreml Museum in Moscow. First, in 1971, the Hungarian Embassy in Moscow learned about the fate of some of the Hungarian art objects. Since then,

¹⁸⁹ E. Richard, "Stolen art auction raises dark past" *Budapest Week* (24-30 October 1996) 4.

¹⁹⁰ "Kártérítés Franciaországban" *Szombat* (March 1996) at 17-18.

¹⁹¹ E. Várai, "Újabb "hadifogoly" műkincsekre bukkantak" *Szombat* (February 1997) at 8.

many more have surfaced at different locations. In the 1970's, in connection with the visit of President Breznev, some of the artworks were returned. They were placed at the National Gallery and at the Museum of Fine Arts in Budapest, and the owners were most likely not notified. In 1997, the Hungarian Jewish monthly Szombat published a list of the returned paintings with a list of their original owners.¹⁹²

In 1992, a Russian-Hungarian Restitution Committee was established to investigate within 5 years the Hungarian claims. László Mrávik, an art historian, is a member of the committee, and he has collected vast amounts of evidence about paintings, sculptures, porcelain since 1979. On a computerized list, one can observe a list with detailed descriptions of art objects taken by the Red Army. Different sources talk about 100,000 deposits, which according Mr. Mrávik, means about 10 objects each, but only about 25-33% are valued as art, not including libraries. According to his research, approximately 95% of the about 300,000 artworks used to belong to Jews. He estimates the total current value at US\$ 3-6 billion.¹⁹³

The Hungarian delegation to Russia is very pessimistic about the possibilities of receiving any of the valuable objects back. Their concern is not without basis. The Russian Co-President of the Russian-Hungarian Restitution Committee does not favour the Hungarian position on returning the artworks. Under her theory, these works belong to the common heritage of humanity; therefore, they could be kept anywhere. Moreover, she implied in an interview given to the French magazine *Express*, that Hungarian Jews bought their freedom from the Nazis by these artworks. Russia confiscated them from the Germans, and kept them as part of their war reparation. Therefore, they are legally in Russian possession.¹⁹⁴

In addition to the opinion of Russian officials, in May 18, 1996, the Russian lower parliament passed a bill precluding the return of anything. On March 18, 1997,

¹⁹² See Várai, *supra*, note 191 at 8.

¹⁹³ See Várai, *supra*, note 191 at 7.

¹⁹⁴ See Várai, *supra*, note 191 at 8.

the President vetoed the bill, which was passed in the meantime by the Duma. The Duma again approved the bill by a two-thirds majority, and it thus became the law of the land. Since the second approval by the Duma, the President vetoed the bill a second time, based on some technicalities. At the moment, the future of the bill is uncertain. Under the original bill, art objects belonging to religious organizations and persecutees would not be appropriated, but the bill does not clarify who is a persecutee, therefore leaving the decision to the Russian courts. The bill also grants only 18 months to file for the artworks, which might prove to be too short to collect all relevant information about Hungarian artworks.¹⁹⁵

The artworks and other property taken from Jews by the Russian army raises several issues. First, according to research conducted by Jehuda Don, Israeli historian, "(m)uch of the moveable property, especially artwork, was scattered to the U.S. and the Soviet Union following the war. What little was returned to Hungary became the property of the Hungarian National Bank."¹⁹⁶ Hungary did not even return artworks, which were returned, to their owners, but gave them to Hungarian museums. Second, as it is earlier stated, under international law it is forbidden to take art objects as reparation. Therefore, in the case of artworks and historic or archaeologic properties, they should have been returned to the original owners. If the return of the artwork was not possible, than restitution in kind should have been followed.

Also, under art.29, paras (1) and (5) of the Paris Peace Treaty, "artistic property" should not have been included in properties which were seized, retained, and liquidated in order to satisfy Hungary's debt to the Allies. The property of Holocaust victims was also under the protection of art.26. Under the provisions of art.26., Hungarian Holocaust victims were deemed to be United Nations citizens, therefore, Hungary has the obligation to restitute "all" properties belonging to them.

¹⁹⁵ Vá., "Oroszországból csak 80 "hadifogoly" mukincs tér haza?" *Szombat* (April 1997) 13.

¹⁹⁶ C. Condon "The complexities of compensation" *Budapest Week* (25 April - 1 May 1996) at 5.

If this is not possible, then Hungary has to pay two-thirds of the amount necessary to purchase similar objects at the time of the payment or "make good the loss suffered". It is our position that first, Russia has to give back all Jewish property it acquired in an unlawful manner. Second, if Hungary is unable to secure that Russia returns Jewish property, then Hungary is under the obligation to compensate Jewish claimants under the Paris Peace Treaty.

D. ONCE COMPENSATION IS AVAILABLE: THE DIFFICULTY OF DISTRIBUTION

At the beginning of the co-operation between the WJRO and the Hungarian Jewish community, three committees were established for: (i) examining the issues of calculating the amount of money and tangible properties which were taken by Hungarian authorities due to the Jewish Laws; (ii) establishing which delegation represents Hungarian Jewry in negotiations with the Hungarian government; and (iii) developing a workable strategy for the distribution method of the compensation given by the Hungarian government. The third committee did not start developing its strategy for distribution, because everybody was certain that the negotiations with the Hungarian government would be successful, but they should have realized, that planning a workable distribution takes just as much time as the negotiations themselves. If compensation will be available, they have to start distribution without wasting precious time, due to the fact that all of the Holocaust survivors are close to or at retirement age. Therefore, discussing distribution for compensation secured from Switzerland and other countries in the future is not without merit now.

In the few cases, where it is possible, money should be returned to the rightful owners. What should be done with the funds from the heirless accounts? When the WJRO was established in 1992, no-one realistically expected that the Swiss government and financial institutions would give billions or even millions of U.S. dollars to Holocaust survivors. Their efforts primarily targeted East European countries. Although the main international Jewish organizations had never given up

their hope to recover more funds from Switzerland, until 1995 that hope did not have much basis.

It is important to stress that money should not be used for unnecessary bureaucracy. The Claims Conference, which still administers the German individual compensation payments and conducts negotiations for more compensation, has a current staff of 40. Today, the Memorial Foundation employs about 10, and is able to manage all cultural and educational projects inherited from the Claims Conference. The informal method by which the Claims Conference has conducted its business had two main advantages: it was able to react fast to the needs of individuals and communities, and was also cost-effective. The possible drawback of informality of mishandling funds was alien to the people who had spent their life on helping Holocaust survivors. However, such informality will be impossible under today's circumstances. First of all, donating countries will most likely keep the amount of compensation within the control of their own distributing mechanism. Even if they agree that a Jewish organization manage the fund, they would need assurances that the money was channelled to the appropriate beneficiaries. Despite all the above, bureaucracy should be limited in the management of compensation funds.

Everyone seems to agree that the main priority of compensation payments is helping any Holocaust survivor who is still alive. Especially people who never received any prior compensation or received only a nominal amount. These victims live in former Communist countries or emigrated from a former Communist Country after 1965. Besides one-time or regular payments, day centers for the aged and old-age homes should be built, and hospitals' geriatric units should be expanded. Funds should also be used for commemorating the victims of the Holocaust, for fighting anti-Semitism and Holocaust denial, and for helping revitalize the Jewish communities by education and cultural activities. However, the order of and the amount to spend on these activities is subject to debate.

The Yad Vashem and other Holocaust museums could be funded world-wide. Museums at former concentration camp sites could be improved or established. The

land next to Auschwitz, where a shopping mall is under construction, could be bought. Funds could be divided among institutions fighting anti-Semitism and Holocaust denial. Institutions helping survivors and second-, even third-generation survivors can be supported. Nor should education be neglected. Educational centers in the Diaspora, especially in Eastern Europe, are underfunded.

Once one moves beyond agreements on helping the aged survivors, there is a great deal of discussion about other projects. As an example, the Agudat Israel, one of the Israeli parties of the haredim, would like to secure compensation for the "heir-communities" of the East European rabbinical courts, currently living in North America and Israel. Others, like the representatives of the Simon Wiesenthal Center, would oppose the use of funds received in Eastern Europe to support haredi institutions in the United States. The final amount of compensation will influence the projects financed by the compensation payments. However, if the projected funds are forthcoming from Switzerland and possibly from England, the U.S., and other countries, they should be sufficient to significantly ease the life of Holocaust survivors, support projects commemorating the Holocaust, and help educational and cultural activities as well.

V. DESCRIPTION OF RECENT COMPENSATION LAWS OF HUNGARY

A. STATUS OF NATIONALIZATION LAWS IN POST-COMMUNIST HUNGARY

Because Hungary has several legal measures that have the effect of legislation, it is important to note the difference between the various measures.¹⁹⁷ Art. 1 of Act No. XI of 1987 on Legislation¹⁹⁸ sets out the hierarchy of this legislation. An Act (*törvény*) is the supreme Hungarian law. It is passed by the Parliament and to be enacted, must be signed by the President and published in the *Magyar Közlöny*, the official law journal. A Government Decree (*kormány rendelet*) is second in importance and is a measure passed by the Government. A Ministerial Decree is passed by the Prime Minister, or one or more of the Ministers pursuant to authorization in an Act or Government Decree, in areas falling within the Prime Minister's or a Ministry's scope of responsibility. Finally, a Local Decree is a legal measure passed by the municipal or county level government.¹⁹⁹

In 1990, Hungary's first free elections were won by the Hungarian Democratic Forum, which formed a coalition government with the Independent Smallholders' Party and the National Christian Democratic Party. However, the previous government, with members from the Communist Party, realized that it had to give

¹⁹⁷ Since 1949, Hungarian legislations, including Decisions of the Constitutional Court, are published in the yearly volume of: *Törvények és Rendeletek Hivatalos Gyűjteménye* (Budapest: Közgazdasági és Jogi Könyvkiadó published until 1993, from then: Közlöny és Lapkiadó Vállalat).

¹⁹⁸ as amended by Act No. XXXI of 1989, Act No. XL of 1989, Act No. XXIX of 1990, Act No. XL of 1990, Act No. LXV of 1990, Act No. LXVIII of 1990, Act No. LXXXVII of 1990, Act No. LIX of 1991, Act No. XXII of 1992, Act No. XXXVIII of 1992, Act No. I of 1994, Act No. XXVIII of 1995, Act No. CXII of 1996, and Act No. CXXIX of 1996.

¹⁹⁹ In addition to all these measures, Hungary's legislative record contains other forms of law, now considered obsolete. A Law Decree (*törvény erejű rendelet*) was a decree of the Presidential Council (functioning until 1990), being active when the Parliament had no sessions. The other measure, the Decree of the Council of Ministers (*Minisztertanács rendelet*), is the forerunner of today's Government Decree. Both these measures appear in the Footnotes and Appendices to this thesis.

some form of redress for victims of the Communist regime. The first laws which provided for partial compensation²⁰⁰ for the wrongdoing of the Communist government, were passed in 1989 and dealt with the "political rehabilitation" of political criminals who had been convicted between 1945 and 1962.²⁰¹ At the same time, the Hungarian Parliament issued two decrees, one regarding the need for similar legislation to compensate persons resettled, relocated or unlawfully convicted during the same time period,²⁰² and another on the political rehabilitation of such persons.²⁰³

The next step of the compensation process included restitution for properties of Churches²⁰⁴. In 1989, the Roman Catholic Church initiated negotiations with the government for compensation, resulting in Act No. XXXII of 1991, which provides for the partial restitution of Church properties. Although the above laws regarding political rehabilitation and the return of Church property provided some redress to Hungary's populace, real compensation for past expropriation or nationalization of individual property was provided by Act No. XXV of 1991²⁰⁵, the "First Compensation Law", Act No. XXIV of 1992, the "Second Compensation Law", and

²⁰⁰ Compensation under the Compensation Laws means partial compensation only. Therefore, compensation in the context of the Compensation Laws always means partial compensation.

²⁰¹ Act No. XXXVI of 1989 on Amnesty to Persons Convicted in Relation to the 1956 Revolution; and Decrees Nos. 72/1989, 104/1989, 108/1989 of the Council of Ministers. Political rehabilitation entails having a conviction annulled and removed from the convicted person's record.

²⁰² Decree No. 19/1989 (XI.1.) of Parliament.

²⁰³ Decree No. 20/1989 (XI.1.) of Parliament.

²⁰⁴ For the purpose of this thesis, when not a specific community of worshippers are at issue, any and every types of community of worshippers will be referred to as Church.

²⁰⁵ As amended by Act No. L of 1991, Act No. XCI of 1991, Act No. XXIV of 1992, Act No. IL of 1992, Act No. I of 1993, Act No. II of 1993, Act No. II of 1994, Act No. XXXII of 1994, Act No. XXXVIII of 1995, Act No. LVIII of 1995, Act No. XXXIII of 1997; Decision No. 4/1996 (II.23.) of the Constitutional Court.

Act No. XXXIII of 1992²⁰⁶, the "Third Compensation Law" (the First, Second and Third Compensation Laws, the "Compensation Laws").

The Compensation Laws currently in effect are the result of compromises among the various political parties in Hungary. The Independent Smallholders' Party, historically the peasants' party, based its campaign platform on the promise to return land to former owners. In 1991, the Hungarian Democratic Forum, the majority ruling party, needing the backing of the Independent Smallholders' Party in order to solidify the coalition government, supported the enactment of compensation legislation. From the opposition parties, the Alliance of Free Democrats argued, that the compensation process should be connected with privatization, therefore, not only victims of human rights violations, but every citizen should receive vouchers worth a minimum of HUF 20,000 (approx. US\$ 270). The aim of the Independent Smallholders' Party was to achieve reprivatization (restitution) of all properties nationalized or confiscated between 1945 and 1989. The Hungarian Socialist Party, and the Christian Democratic Peoples' Party generally supported the concept of compensation. While the Alliance of Young Democrats opposed it on both legal and economic ground. They supported compensation based on the current situation of victims, and a separate privatization program. The resulting compromise was a system of partial compensation which intended to correct the wrongs of the previous Communist regime, while at the same time eliminating uncertainty in the area of property ownership and encouraging new investment.

The first draft of the First Compensation Law, prepared in 1990, was never submitted to Parliament because the prime minister, Mr. József Antall, asked the Court for an advisory opinion on whether compensating only certain people based on the nature of the property expropriated would constitute discrimination under art. 70/A of the Constitution. He also questioned whether the government could constitutionally use land cooperative property to compensate claimants without

²⁰⁶ As amended by Act No. XII of 1994, Act No. LX of 1995, and Act No. XXIX of 1997.

compensating the various land cooperatives. In Compensation Case I²⁰⁷, the Court held it unconstitutional to differentiate between claimants on the basis of the nature or property confiscated and that due compensation had to be paid to the land cooperatives before such land could be applied to a national Compensation Scheme. A revised draft of the First Compensation Law was passed by Parliament in May 1991. Before enacting it however, the President submitted the First Compensation Law to the Constitutional Court, which ruled it unconstitutional.²⁰⁸ As a result, a third version of the First Compensation Law was passed by the Parliament on June 26, 1991. Since then, both the Second and Third Compensation Laws have been enacted, each relating to a different type of damage suffered for which compensation is due. Although, additional compensation laws were expected to be enacted²⁰⁹, due to the questionable acceptance of the existing Compensation Laws and to the change in the government no additional compensation law was passed until 1997.

The primary issue confronting Hungary's Constitutional Court in determining the validity of the Compensation Scheme is whether the government is legally obligated to pay any compensation at all. The Constitutional Court has determined, under Compensation Case IV, that Hungary is under a moral obligation to compensate those whose property was taken or rights were violated pursuant to a nationalization law declared unconstitutional by the Court for contravening the Constitution existing at the time of the nationalization.²¹⁰ The Court arrived at the constitutionality of *ex gratia* compensation through reinventing the legal instrument of novation. According to the Court, the current government has no legal only moral obligation to compensate for human rights violations committed by a previous government. "The system of novation excludes the references to older legal titles... the novation is constitutionally

²⁰⁷ Decision No. 21/1990. (X.4.) of the Constitutional Court.

²⁰⁸ Decision No. 28/1991. (VI.3.) of the Constitutional Court.

²⁰⁹ For example, there was a plan to compensate individuals for property lost in connection with Hungary entering into international treaties, like the Hungarian Czechoslovakian population exchange treaties.

²¹⁰ Decision No. 28/1991. (VI.3.) of the Constitutional Court.

permissible..." Therefore, the legal obligation of compensation under the Compensation Laws created a new, independent source of legal obligation. Giving the State discretion in deciding the method and measure of compensation spurred a debate on the amount of compensation to be given. The Court held that under *ex gratia* compensation, the government need not limit compensation to some nominal "moral" amount, as was suggested by a study from the opposition party to the Court.²¹¹

The Court also declared in Compensation Case IV, that the provision arbitrarily setting the start date for expropriation claims at June 8, 1949 was unconstitutional.²¹² This decision was also the basis of not accepting Jewish claims to extend the starting date of compensation to an even earlier date than 1939. With the present arrangement, victims suffered as a consequence of the *numerus clausus* laws and the First Jewish Law, are not eligible for compensation, because those legal instruments "only" limited Jewish participation in the economic and social life of Hungary, but did not deprive any of their property. The Constitutional Court found constitutional in and of itself that the First Compensation Law does not provide for the compensation of those who suffered not loss of property ownership, but pecuniary loss. Compensation could have been given in addition to compensation for the loss of life, liberty, and property. For example, non-pecuniary loss, or the loss of education could have been compensated for.²¹³

However, the Court found unconstitutional the provisions allowing for different compensations and damage calculations based on differing types of property. The Court rejected provisions that would allow 100% compensation or even full restitution of land in certain instances and only partial monetary compensation in others. The

²¹¹ The study was published before the Court's decision. See, J. Eörsi, J. Kis, "Az Alkotmányellenes diszkrimináció fogalma és a kárpótlási törvény" *Beszédo* (8 June 1991).

²¹² Decision No. 28/1991. (VI.3.) of the Constitutional Court.

²¹³ Decision No. 15/1993 (III.12.) of the Constitutional Court.

Court also determined that the First Compensation Law must provide for future legislation to compensate for injuries left uncompensated by the current law. Moreover, the Court concluded that the First Compensation Law must include a list of Hungarian laws that formed the basis for violations, and must set a deadline for the enactment of further compensation laws that would remedy such violations. The Court refused to decide on the constitutionality of the entire First Compensation Law in general. However, the entire Compensation Scheme was declared Constitutional by the Court due to it providing an overall social justice.²¹⁴

The Constitutional Court received challenges regarding Hungary's legal obligation to compensate individuals under the Paris Peace Treaty. Under Constitutional Case V, the Court argued first, that in general, they do not favor positive discrimination in the Compensation Scheme, as it was stated in the earlier Compensation Cases. Second, art. 27, para (1) of the Paris Peace Treaty offers, "fair compensation" for individuals, which could be understood as partial compensation.²¹⁵ The petitioners should have based their argument for full compensation not on art. 27, but on art. 26 of the Paris Peace Treaty. Under art. 26, para (1), Hungarian Jews are deemed to be citizens of the United Nations, and Hungary is under the obligation to "restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property..." Moreover, art. 26, para (4) regulates the situation when property cannot be returned:

"(A) United Nations national... shall receive from the Hungarian government compensation in Hungarian currency to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered."

²¹⁴ Decision No. 15/1993 (III.12.) of the Constitutional Court.

²¹⁵ The original proposal of the Allies read "full compensation", but it was changed to "fair compensation" after the Soviets insisted on it.

As it is clearly demonstrated under art. 26, the Hungarian State has a clear obligation to return "all" property taken from Jews, and in cases where it is impossible to return the property, compensation shall be given in the amount of two-thirds of the sum necessary to purchase similar property today.

Hungary's obligation under the Paris Peace Treaty is also the subject of Compensation Case VI²¹⁶. The Court held that under both the Paris Peace Treaty and Act No. XXV of 1946, partial compensation for the 1944 Jewish bailments is constitutional. However, the Court also examined Hungary's obligation regarding Jewish heirless property under the Paris Peace Treaty, and held that the State did not fulfil its obligation under both international and domestic law. The Court acknowledged that the State cannot satisfy anymore its obligation under the Peace Treaty and Act. No. XXV of 1946. Moreover, it is a recognized fact, that so far the Compensation Laws have not positively discriminated for the benefit of Jewish Holocaust victims, although they clearly suffered on a different level than the other claimants. The Court found the method of compensating Jewish community claims to achieve positive discrimination for Jewish claimants constitutional. Although the compensation will be paid to the Jewish community, the funds could be used to ease the hardship of Holocaust survivors. Therefore, the Court did not find it constitutional to favor Jewish claims twice, both on the individual and on the community level. Although the Court instructed the Parliament to enact legislation to execute the decision of the Court by December 31, 1993, such legislation was only enacted in 1997.

Since 1993, the aim of the government has been to enact a piece of legislation to which would conclude the Compensation Scheme. After numerous bills failing to get Parliamentary approval, Act No. XXIX of 1997 was enacted on the amendment of the Third Compensation Law; and Act No. XXXIII of 1997 was passed on "some issues" related to the conclusion of property compensation proceedings. Although they fall short of concluding the Compensation Scheme, some discrimination under

²¹⁶ Decision No. 16/1993 (III.12.) of the Constitutional Court.

the Compensation Laws, which were annulled by the Constitutional Court earlier, was corrected. Besides redressing issues relating to individual compensation, 1997 is also the year when legislation was passed to return heirless property to the Hungarian Jewish community.

The history of the Compensation cases reveals that the Constitutional Court attempted to translate highly political questions into legal ones and give them correct legal answers. That history also illustrates the limited possibility of such efforts. These cases created a complicated task for the Court because too many different interests and rationales were involved in them...As far as it was possible, the Court avoided the political pitfalls, and the rulings were correctly justified by legal arguments.²¹⁷

B. DESCRIPTION OF COMPENSATION LAWS FOR INDIVIDUAL CLAIMS

1. General Overview

The First Compensation Law, implemented by Government Decree No. 104/1991 (VIII.3.)²¹⁸, has been enacted to compensate persons whose property had been confiscated or nationalized by the Communist regime. The Second Compensation Law, implemented by Government Decree No. 92/1992 (VI.10.)²¹⁹, has extended the coverage of the First Compensation Law to property which had been

²¹⁷ P. Paczolay, "Judicial Review of the Compensation Law of Hungary" 13 *Michigan Journal of International Law* 806, at 830-831.

²¹⁸ As amended by Government Decrees Nos of 114/1991 (IX.4.), 92/1992 (VI.10.), 50/1993 (III.27.), 58/1993 (IV.7.), 163/1993 (XI.30.), 56/1995 (V.17.), 124/1995 (X.18.), 149/1995 (XII.7.), 161/1995 (XII.26.), 124/1995 (X.18.), and Decision No. 64/1995 (XI.1.) of the Constitutional Court.

²¹⁹ As amended by Government Decree No. 104/1991 (VIII.3.), and Government Decree No. 163/1993 (XI.30.).

expropriated through regulations which came into force during the period from May 1, 1939 to June 8, 1949. Therefore, the First and Second Compensation Laws cover compensation for property damages. The Third Compensation Law, implemented by Government Decree No. 111/1992 (VII.1.)²²⁰, has provided monetary compensation to persons who had been deprived of their freedom or life for political reasons. All of the above Compensation Laws are intended to form a comprehensive legislative scheme for compensating aggrieved parties.

To avoid increasing inflation, the Compensation Laws provide for compensation in the form of transferrable securities, or vouchers, rather than in cash. The Compensation Laws are supplemented by legislation governing the use of vouchers, the establishment of compensation offices, and non-voucher forms of compensation like adjustments made to pension plans and disability benefits for victims as well as their spouses. Concurrent with the Compensation Laws, Parliament has passed laws which grant amnesty to certain political criminals and provide redress for damages related to their unlawful convictions. A list of the Compensation Laws and related legislation is attached hereto as Appendix C.

Although the Second Compensation Law covers compensation for damages suffered earlier than damages covered by the First Compensation Law, the later one was enacted first. When the Second Compensation Law was enacted, the First Compensation Law was amended to include references to the Second Compensation Law. Therefore, the provisions under the First Compensation Law also apply for compensation under the Second Compensation Law, to the extent that no provisions of the Second Compensation Law is inconsistent with provisions of the First Compensation Law. As a result of the above mentioned structure of the Compensation Laws, first we discuss compensation under the First and the Second Compensation Laws. Describing the First and Second Compensation Laws together also gives us the opportunity to compare compensation given for human rights violations committed by the Nazi and by the Communist governments.

²²⁰ As amended by Government Decree No. 95/1997 (VI.5.).

2. The First and Second Compensation Laws

a. *Eligible Individuals*

Any individual whose property was nationalized or expropriated under the various laws listed in Supplement Nos 1 and 2 of the First Compensation Law has a prima facie right to compensation. However, the legislators divided these laws, and only the ones enacted during the Communist regime fall under the scope of the First Compensation Law.²²¹ A list of these laws enacted between June 8, 1949 and July 30, 1987, pursuant to which property was nationalized or confiscated by the Communist government is attached hereto as Appendix B. The Second Compensation Law extends the coverage of the First Compensation Law to property expropriated through laws enacted between May 1, 1939 and June 8, 1949.²²² A list of these laws, pursuant to which property was nationalized or confiscated during the Holocaust or by the National Provisional Government is attached hereto as Appendix A.

Those individuals who suffered expropriation or nationalization under any other law are not guaranteed compensation, but must rather file a claim with the Constitutional Court and if the Court finds the nationalization law at issue unconstitutional, the Supplement of the First Compensation Law is amended and right to compensation arises thereunder.

Parties entitled to compensation under the First and Second Compensation Laws include: (i) persons who were Hungarian citizens at the time the First Compensation Law came into force; (ii) persons who were Hungarian citizens at the time of the actionable injury; (iii) persons who suffered damages in connection to the deprivation of their Hungarian citizenship; or (iv) non-Hungarian citizens who could claim primary residence in Hungary on December 31, 1990. The Second

²²¹ First Compensation Law (the "F.C.L.") § 1.

²²² Second Compensation Law (the "S.C.L.") § 1.

Compensation Law covers damages suffered inside the borders of Hungary, as defined in the 1947 Paris Peace Treaty²²³. If the injured party is deceased, descendants, or in the absence of descendants, a surviving spouse (who lived together in marriage with the deceased eligible individual at the time of the eligible individual's death and also at the time the injury was incurred), are entitled to compensation. The act compensates only natural persons.²²⁴ Parties who have had claims settled through any compensation legislation, through international conventions, or by other measures are not eligible for further compensation²²⁵. Moreover, any person, whose property was confiscated in connection with that person's final conviction of war crimes or crimes against humanity, is not eligible to file for compensation²²⁶.

b. *Procedure*²²⁷

Under the First Compensation Law, former owners and their direct descendants had 90 days from the date of effectiveness²²⁸ of the law in which to file a claim. Claimants under the Second Compensation Law had 120 days from the date of effectiveness²²⁹ of the law in which to file. This deadline was later extended, and then a new filing period was granted between February 15, 1994 and March 15, 1994. If the claimant filed the petition on time, supporting documentation could be

²²³ See Treaty, *supra*, note 58.

²²⁴ F.C.L. § 2(1)-(4) and Government Decree No. 104/1991 (VII.3.) (the "F.G.D.") § 1.

²²⁵ F.C.L. § 2(5), and S.C.L. § 1, 2, 4.

²²⁶ S.C.L. § 2(2). Any person, who's final conviction of war crimes or crimes against humanity is annulled, will become eligible to file for compensation under the Second Compensation Law, for 120 days from the day of the final judgement of annulment (Government Decree No. 92/1992 (VI.10) § 3.).

²²⁷ Act No. I of 1957 on Administrative Procedure is applicable in cases not governed by the F.C.L. or by the S.C.L. [F.C.L. § 12 (5)].

²²⁸ The First Compensation Law came into effect on August 10, 1991.

²²⁹ The Second Compensation Law came into effect on June 7, 1992.

filed thereafter. Claimants are notified only twice if their petition requires supplemental documentation and if the claimant fails to provide such documentation, the petition will be judged without the supporting evidence. No governmental body has any obligation to notify prospective claimants of their right to file a claim under this or any of the Compensation Laws.²³⁰

To handle claims, compensation offices were established in each county and in Budapest, in addition to an appellate office located in the capital, the National Restitution and Compensation Office (the "Compensation Office").²³¹ Claimants must file with the office located in the county in which the confiscated property was located. Foreigners must file at the compensation office located in Budapest. Claimants who owned property located in different counties are entitled to file in any one, but only one, county office where property was located.²³²

The executing decrees of the First and Second Compensation Laws mandate the use of certain forms in the claim proceedings. The claimant must file along with the standard forms, documents proving ownership of the taken property or eligibility to claim under someone else's right (ie. spouse, descendant). The filing must be done either in person or by certified mail to the compensation office having jurisdiction over the case. The burden of proving ownership of the property rests on the claimant. Evidence of ownership includes, but is not limited to, (i) title documents, e.g., land registry record forms, (ii) witness testimony, expert or otherwise, and (iii) the owner's testimony. If the compensation office believes the evidence sufficient, the claim is approved.

The procedure is complete when the regional or Budapest compensation office either (i) affirms the damages suffered and sets the amount of compensation to be

²³⁰ F.C.L. § 11.12 and F.G.D. § 16.

²³¹ Government Decree No. 101/1991 (VII.27.) on the establishment of the National Indemnification and Compensation Office.

²³² F.C.L. § 11.

received for that damage or (ii) denies the petition with an explanation for the denial. The compensation office decision also contains a general explanation of how the amount of compensation was calculated and a general interpretation of the Compensation Laws. In practice, however, if the office grants only part of the compensation requested, it rarely explains the reasons therefor.

The decision of the regional or Budapest compensation office may be appealed to the Compensation Office within 15 days of the date of the decision. The appellate decision of the Compensation Office may be reviewed by a designated Budapest civil court, which has the authority to overrule that decision.²³³ As of the end of 1993, there have been over 200 claims that proceeded to trial.²³⁴

According to the First Compensation Law, the claim procedure must be resolved within six months, but this deadline may be extended for another three months if special circumstances warrant.²³⁵ In practice, however, the various compensation offices fail to meet their deadlines and routinely extend the procedure for periods often lasting over 2 years.

c. *Scope of Damages*

All claimants are entitled to full compensation in the form of vouchers for claims of up to HUF 200,000 (approximately US\$ 2,700 in 1991, and US\$ 1,000 in 1997). For claims ranging from HUF 200,000 to HUF 300,000, claimants are entitled to an additional 50% of the amount exceeding HUF 200,000. If damages range between HUF 300,000 and HUF 500,000, a flat sum of HUF 250,000 is paid plus an additional 30% of the damages exceeding HUF 300,000, and if damages exceed HUF 500,000, a flat sum of HUF 310,000 is paid plus an additional 10% of the damages exceeding 500,000. Co-owners receive compensation in proportion to

²³³ F.C.L. § 10 (3).

²³⁴ "Kárpótlás'93" *HVG* (November 1993) at 9.

²³⁵ F.C.L. § 12.

their shares in the property.²³⁶ The aggregate amount of compensation which can be received per former owner and per piece of property is limited to HUF 5,000,000 (approximately US\$ 67,500 in 1991, and US\$ 25,000 in 1997).²³⁷ If claimants file under both the First and the Second Compensation Laws, the amount of compensation must be consolidated.

The First Compensation Law differentiates between real property, commercial property, and agricultural land.²³⁸ Compensation for real property ranges from HUF 200 to HUF 2,000 per square meter. For commercial property, compensation ranges from HUF 150,000 to HUF 5,000,000, depending upon the number of employees employed with respect to such property. Compensation for agricultural property is set at HUF 1,000 for 1 *Arany Korona* ("AK") of profit.²³⁹

The Second Compensation Law further distinguishes between properties, and sets the guideline, under which special properties, which were (a) deposited under the law on compulsory bailments, or were (b) confiscated under Communist laws governing foreign currencies and debts, inventories of gold and platinum assets, and museum pieces, are compensated for. The guideline sets a marginal average amount for these valuable pieces. For example, the average amount payable for a men's wedding ring is 300 HUF (the 1997 equivalent of US\$ 1.50).

d. *Form of Compensation: Compensation Vouchers*

Compensation is provided in the form of interest-bearing transferrable securities, called compensation "vouchers" or "coupons", which are issued by the Compensation Office. They are deemed to be securities as a matter of law and can

²³⁶ F.C.L. § 4.

²³⁷ F.C.L. § 4 (3).

²³⁸ Commercial property includes ownership of companies.

²³⁹ The measure of "*Arany Korona*" translates to "Gold Korona" and relates to profits earned from the land.

be traded on the Budapest Stock Exchange. They cannot be directly exchanged for cash.²⁴⁰ Compensation vouchers bear interest equal to 75% of the central bank's prime rate, which in 1991 had averaged 18% for the preceding three years. Interest on the vouchers accrued from August 10, 1991, the date the First Compensation Law became effective, until December 31, 1994.²⁴¹ The accumulated value of the vouchers rose to 174,2%.

Initially, compensation vouchers were traded as a security, or used to purchase state owned assets, agricultural land, or government owned apartments or to obtain Existence Loans (defined below in paragraph iv). Market forces demanded trade of the vouchers in smaller quantities, first about 70% of face value, then, by 1994 frequently only at 50% of face value. The vouchers hit bottom in 1996, below 20% of face value. In the meantime, however, a new private market developed for the vouchers. Set forth below are the various uses for which compensation vouchers may be employed:

(i). Compensation vouchers entitle the bearer to purchase state owned assets, whether such assets are being sold through a (i) public tenders for selling state property against vouchers; (ii) public offering of shares; (iii) investment companies (portfolio management companies); or (iv) other ways of selling state property against vouchers (closed tenders).²⁴²

(ii). Claimants may purchase agricultural land, if their voucher was received as compensation and not through the secondary market (such claimant, a "Primary Voucher Holder").²⁴³ Claimants can purchase such land through a system of auctions conducted by land cooperatives. If the land to be

²⁴⁰ F.C.L. § 5-7.

²⁴¹ Act No. II of 1994 § 2, and F.C.L. § 5.

²⁴² F.C.L. § 7(1)a.

²⁴³ F.C.L. § 7(1)b.

auctioned belonged entirely to members of the cooperative who contributed their shares to the cooperative during the Communist era, then only those claimants who had belonged to the cooperative have the right to bid.²⁴⁴ In order to bid in this process, claimants must have (i) previously owned land in the area, (ii) been members of the cooperative auctioning the agricultural land as of January 1, 1991, (iii) be members at the time of auction and (iv) have had their permanent domicile in the town or village where the cooperative is auctioning the land as of June 1, 1991.²⁴⁵ If the land to be auctioned consists of land belonging to the government, then any Primary Voucher Holder may bid.²⁴⁶

(iii). Primary Voucher Holders may purchase apartments owned by the national and local governments.²⁴⁷ Only persons currently occupying an apartment are entitled to purchase the property according to a set priority list²⁴⁸. Tenants, co-tenants, tenants sharing a designated part of the apartment (only for his/her designated part) have first priority. Their descendants, natural or adopted, as well as the tenant's parents have second priority. The apartment can be purchased by any one or all of the above parties.²⁴⁹

(iv). Under Government Decree No. 28/1991 on the Existence Loan and Preference Partial Payment, compensation vouchers may also be used as

²⁴⁴ F.C.L. § 15(1).

²⁴⁵ F.C.L. § 21.

²⁴⁶ F.C.L. § 19.

²⁴⁷ F.C.L. § 7(2).

²⁴⁸ The priority was first regulated under a 1969 Government Decree governing the purchase of apartments. Since 1993, it is governed by Art. 45 of Act No. LXXVIII of 1993.

²⁴⁹ Dr. A. Szabady, "Vásárolható önkormányzati lakás kárpótlási jegyért?" *Kápe* (6 January 1994).

collateral to obtain certain types of loans, specifically loans related to the privatization of state owned enterprises.²⁵⁰

(v). Compensation vouchers may be exchanged for an annuity if the voucher holder is either at retirement age or incapacitated in some way. If the Primary Voucher Holder was over the age of sixty-five as of December 31, 1991, then the annuity is provided for life. The amount of life-annuity varies, depending on the age and gender of the voucher holder and the amount of vouchers exchanged for the annuity. If the voucher holder has lost at least 67% of his or her income earning potential through some physical incapacity, then the annuity is for a limited period of twelve years for men and fifteen years for women.²⁵¹

Foreign claimants can receive their annuity according to the relevant Hungarian pension laws.²⁵² Annuities are increased annually every March 1st at a rate equal to at least 30% of any increases in pensions. None of the annuities are inheritable and they are tax exempt. The original deadline for exchanging vouchers for annuities was 90 days from receipt of the vouchers for those vouchers obtained under the First or Second Compensation Laws. However, that deadline was extended, and the final date on which a request for exchange of vouchers for annuities can be filed is December 31, 1997.²⁵³ If vouchers were obtained under the Third Compensation Law, then claimants had to notify the compensation office of their intent to obtain annuities at the time of application. The exchange of vouchers for annuities is final.

²⁵⁰ F.C.L. § 7(3).

²⁵¹ Act No. XXXI of 1992 on the exchange of compensation vouchers for life-annuities, as amended, and F.C.L. § 7(4).

²⁵² Government Decree No. 18/1994 (II.9.).

²⁵³ Art. 4 of Act No. XXXIII of 1997.

(vi). Vouchers can be traded on the Budapest Stock Exchange.²⁵⁴

(vii). Beginning in the Spring of 1994, vouchers may be used under the Small Investors' Share Purchase Program to obtain loans for the purchase of shares of previously held companies. The vouchers may serve as collateral for the loan and may be used to repay the loan up to an amount of HUF 100,000. Any voucher holder may access loans from this program, but Primary Voucher Holders have priority and may forego the registration fee of HUF 2,000.²⁵⁵

(viii). Several retail shops accepted vouchers as payment. Vouchers have variable daily rates and are exchanged at the value then in effect. However, as the exchange rate plummets, and there is a smaller chance to use the vouchers in the privatization process, less and less stores are willing to accept vouchers as payment. By 1996, stores were no longer accepting vouchers.

Vouchers obtained in the secondary market cannot be used to purchase state owned apartments or to purchase land, nor can they be exchanged for annuities.²⁵⁶ During the privatization of a state owned enterprise or the sale of state owned assets, the state must accept compensation vouchers as payment for at least 10%, or with respect to state owned food processing companies at least 20% of the value of the assets being sold. Restrictions in force until 1996, on the purchase of real property by foreigners which required permission from the Ministry of Finance, did not apply if such property was bought with compensation vouchers issued to the foreign party.²⁵⁷ The State Property Agency (*Állami Vagyongyökség*), retained the right to propose that the government suspend the use of all or a series of vouchers for the

²⁵⁴ Decree No. 38/1992 (VII.3.) of the Exchange Commission.

²⁵⁵ "Kárpótlás" *Kápe* (13 January 1994).

²⁵⁶ F.C.L. § 7, 21, 27.

²⁵⁷ F.G.D. § 13.

purchase of state owned property, however, it did not exercise that right.²⁵⁸

e. *Special Rules Governing the Purchase of Agricultural Land and First Option to Purchase Property during Privatization*

As discussed, Primary Voucher Holders may purchase agricultural land through a system of auctions, if they commit to cultivate the land, rather than sell it. In order to guarantee the availability of agricultural land for compensation purposes, the Hungarian government mandated that land cooperatives (or their legal successors) designate certain portions of their property towards compensating claimants. The farmland to be made available cannot include protected nature preserves, national parks, lands protected by international treaties or land appurtenant to architecturally protected non-farm buildings. If the area of the cooperative's farmland is insufficient to meet compensation demands because it is protected land, then certain portions of the protected area (fieldland, garden, orchard, vineyard, forestry) may also be designated towards compensation with the consent of the Nature Conservation Authority.²⁵⁹

The original deadline for agricultural auctions was first set at March 31, 1993. The government imposed this deadline to help stabilize, and to rapidly create new forms of land ownership. However, the government repeatedly extended this deadline. The latest non-forfeiting deadline is September 30, 1997.

Under Hungary's privatization laws, former owners of real property have a first option to purchase such property except in limited circumstances. There is no first option (i) in the privatization of domestic retail and public catering companies, (ii) if the property is an apartment and the current occupant chooses to purchase the apartment, (iii) if the property is a partial interest in a business enterprise, or (iv) if

²⁵⁸ F.C.L. § 8(1).

²⁵⁹ F.C.L. § 15, 18.

the property consists of shares in a company.²⁶⁰

Claimants are notified in writing of their right of first purchase. If the identity of the original owner is unknown, then 30 days prior to the sale of property, notice is published in two national journals or the notice board of the local government having jurisdiction over the property. Announcements of the original owner's option are also made on the premises of the property, as is customary locally. Such announcement remains affixed to the premises until the property is sold.²⁶¹

Owners of farms also have the right of first purchase to neighbouring farmland being auctioned. Such purchasers must, however, commit to cultivate the farmland and not cease agricultural production thereon for five years. If the owner breaches this commitment, the farmland automatically reverts to state ownership, a new auction is held and the breaching owner receives no compensation. If the owner suspends agricultural production but sees to the protection of the farmland and its maintenance in farming condition, then there is no breach of the obligation to utilize.²⁶²

g. *Financial and Tax Considerations*

Filing claims with the compensation office is free of charge. With regard to agricultural land purchased through vouchers, the Hungarian government bears all costs related to the designation of such land, formation of detached estates and registration. In addition, property so purchased is exempt from property acquisition taxes. The nominal value of the voucher, interest received on the voucher, annuities obtained in exchange for vouchers, and Agricultural Enterprise Support are exempt from individual income tax.²⁶³

²⁶⁰ F.C.L. § 9.

²⁶¹ F.G.D. § 15.

²⁶² F.C.L. § 22(2), 23.

²⁶³ F.G.D. § 10.

If vouchers are exchanged for cash which is then used to purchase stocks, bonds, funds, and all other portfolio products then capital gains from those investments are deductible from gross income to the extent of 30% of one's income.

3. The Third Compensation Law

The Third Compensation Law provides redress for violations of the right to freedom and the right to life. However, several provisions of the Third Compensation Law were discriminatory against Jewish victims, therefore, it was successfully challenged at the Constitutional Court. The amending legislation was only passed recently, in June 1997, after numerous Parliamentary debates.

a. *Eligible Individuals*

Any individual whose freedom or life was deprived for political reasons between March 11, 1939 and October 23, 1989, has a prima facie right to compensation. Parties entitled to compensation under the Third Compensation Law include (i) persons who were Hungarian citizens at the time the Third Compensation Law came into force; (ii) persons who were Hungarian citizens at the time of the actionable injury; or (iii) non-Hungarian citizens who could claim primary residence when the Third Compensation Law came into force, or who's primary residence was in Hungary prior to that person's death.²⁶⁴

If the injured party is deceased, the surviving spouse (who lived together in marriage with the deceased eligible individual at the time of the eligible individual's death and (i) also at the time the injury was incurred, or (ii) who is the first spouse of the eligible individual after that person's freedom was deprived for political reasons), is entitled to compensation. Parties are not eligible under the Third Compensation Law, if they (i) have had claims settled by the Hungarian or any foreign government; (ii) were a professional member of the State security agencies;

²⁶⁴ Third Compensation Law (in the footnotes, the "T.C.L.") § 1, 4.

(iii) after 1956, volunteered to be a member of the special armed force ("karhatalmista"); (iv) were awarded for participating in the fight against the 1956 uprising; (v) volunteered to fight against the 1956 uprising; (vi) violated the principles of the International Declaration on Civil and Political Rights²⁶⁵, except if that person can prove, that he or she suffered as a result of criminal proceeding initiated against him or her, on the basis of activities for furthering democracy; (vii) have had claims settled as part of any international treaty.²⁶⁶

b. *Procedure*²⁶⁷

The procedural rules under the First Compensation Law also apply for compensation under the Third Compensation Law, to the extent that no provisions of the Third Compensation Law is inconsistent with provisions of the First Compensation Law. Procedural rules affecting only the Third Compensation Law are the following.

Claimants had four months (i) from the date of effectiveness²⁶⁸ of the law, or (ii) after a court rendered its decision that the claimant's prior conviction was unlawful and/or has been nullified. The original filing period, just as in the case of the First and Second Compensation Laws, was extended to March 15, 1994. Under decisions of the Constitutional Court, certain provisions of the Third Compensation Law was found unconstitutional. Therefore, under the amendment of 1997, an additional time period of four months was granted to file claims for individuals, who became eligible to file under the new rules. Claimants, whose petition was dismissed under a provision which was amended need not file again. Rather their case will be reopened by the compensation office. Claimants entitled to file with the office located in the county according to the claimants permanent residence or directly with the

²⁶⁵ As enacted by Law Decree No. 8/1976.

²⁶⁶ T.C.L. § 5, 12.

²⁶⁷ Act No. I of 1957 on Administrative Procedure is applicable in cases not governed by the T.C.L. or by its executive government decree.

²⁶⁸ The Third Compensation Law came into effect on July 2, 1992.

Compensation Office. The Compensation Office is the court of first instance.²⁶⁹

c. *Scope of Damages*

Provisions falling under the scope of damages were the most controversial provisions before the amendment of the Third Compensation Law. The original Law differentiated among several groups of victims. It provided for different amounts or no compensation at all if (i) death suffered as a result of a judgement rendered by a Hungarian courts; (ii) death suffered during criminal proceeding or during the execution of a court sentence in a way, that it is beyond reasonable doubt that the death occurred due to the deliberate action of the Hungarian authorities; or (iii) death suffered due to the deliberate action of the Hungarian authorities, but without any type of legal action. The Law further differentiated among claimants whose liberty was deprived as a result of (i) a prison sentence by the Hungarian courts; (ii) compulsory medical treatment based on certain criminal acts; (iii) serving in the forced labor service of the Soviet Union; (iv) a Hungarian court sentence or administrative authority's decision, when one's liberty was deprived by confinement to a closed camp-type location, or by placing one under police surveillance, or by controlling the location of one's choice of residency; or (v) deportation during World War II.

In addition to allocating different amounts of compensation payable to claimants who suffered in different ways, there was a distinction between how far removed relatives are entitled to compensation. For example, if a person suffered death during criminal proceeding or during the execution of a court sentence in a way, that it is beyond reasonable doubt that the death occurred due to the deliberate action of the Hungarian authorities, the person's surviving spouse, or living children and living parents were entitled to HUF 1 million. In case there is no surviving spouse, nor children or parents, the surviving sibling is entitled to 50% of that amount. On the other hand surviving siblings were not eligible for any compensation if the deceased died in a concentration camp. If a person suffered death due to the

²⁶⁹ T.C.L. § 14.

deliberate action of the Hungarian authorities, but without any type of legal action, e.g. a person who was shot into the Danube, there was no compensation granted. Another example is that, if a person served in the Hungarian labor service system, and his unit was aiding a fighting army unit, that person was entitled to compensation. While, the person, whose unit did not aid a fighting army unit was not eligible to file for compensation. Last but not least, the spouse of a deceased person who died as a result of the Communist autocracy received double the amount of the spouse of a Holocaust victim.

After relevant Constitutional Court decisions²⁷⁰, the amendments to the Third Compensation Law eliminated these discriminations. Compensation is now due if an individual (i) was executed under unlawful or annulled decision of Hungarian authorities; (ii) suffered death during criminal proceeding or during the execution of a court sentence in a way, that it is beyond reasonable doubt that the death occurred due to the deliberate action of the Hungarian authorities; (iii) suffered death due to the deliberate action of the Hungarian authorities, but without any type of legal action; (iv) died during deportation or force labour service. In all the above cases, the surviving spouse, children or parents are eligible to file under the Third Compensation Law. In case there are no surviving spouse, children or parents, the siblings, or in case of a priest of a church enforcing celibacy, his church, are eligible to claim 50% of the amount of compensation. The amount of compensation will be determined by the government, who has to introduce its offer to the Parliament no later than January 7, 1998. It means that by the time the government has to decide the amount of compensation given, it will know the number of applicants.²⁷¹

The original offer under the Third Compensation Law was HUF 1 million for victims of Communism, and HUF 500,000 for victims of the Holocaust. However, under Decision No. 22/1996 (VI.25.) of the Constitutional Court, the Third

²⁷⁰ Decisions Nos 1/1995. (II.8.), and 22/1996 (VI.25.) of the Constitutional Court.

²⁷¹ T.C.L. § 2, 2/A, 2/B, 3, 6.

Compensation Law cannot offer less money for Jews who died, than to non-Jews. The Court held that equal compensation is not a question of moral obligation or adequate funds, therefore, discrimination in the amount of compensation is not justified. However, in the meantime, the expected amount under the new provision decreased to about HUF 300,000 (approx. US\$ 1,500 in 1997). Moreover, after Decision No. 1/1995 (II.8.) of the Constitutional Court, legislators had to take into consideration that serving a prison sentence in Hungary was not equivalent with deportation by the Nazis. Comparing the hardship of detention in Hungary and deportation, the Third Compensation Law awards an extra 10% compensation for deportees. If the claimant has already received compensation for illegal confinement, such as deportation, forced labor service, detention, and the like, and the victim died during such confinement, the claimant has to choose whether he/she would like to receive compensation under the rules applicable to illegal confinement, or under the rules regarding the death of the victim.²⁷²

Compensation is also offered for the loss of liberty. Loss of liberty under the Third Compensation law is (i) a prison sentence by the Hungarian courts; (ii) compulsory medical treatment based on certain criminal acts; (iii) serving in the forced labor service of the Soviet Union; (iv) a Hungarian court sentence or administrative authority's decision, when one's liberty was deprived by confinement to a closed camp-type location, or by placing one under police surveillance, or by controlling the location of one's choice of residency; or (v) deportation during World War II.²⁷³

d. *Forms of Compensation: Compensation Vouchers and Annuities*

Compensation is paid either in the form of vouchers or life annuities. Separate legislation has been enacted for the adjustment of social security benefits for those persons disabled in connection with their deprivation of liberty. All vouchers are

²⁷² T.C.L. 2, 2/A.

²⁷³ T.C.L. 2/A, 2/B, 3.

governed by the same rules regardless when and under which Compensation Law they were issued.

The amount of the annuities granted is calculated in a rather particular way. First the Law sets the life expectancy of males and females in months. Then the calculation is done by dividing the number of months during which one was deprived of one's freedom with the number of months that person is expected to live after December 1, 1991; and then that dividend number, has to be multiplied by a nominal amount²⁷⁴. If the claimants chose compensation in the form of vouchers, then the amount is calculated by multiplying the nominal amount by the number of months during which one's freedom was deprived. As an example, if one was deported to Auschwitz, and spent there 8 months, that person would receive about HUF 88.000 (which equals to US\$ 440 in 1997).²⁷⁵

4. The Fourth Compensation Law Bill

Under Decision No. 37/1996. (IX.4.) of the Constitutional Court, the Hungarian legislative body was instructed to remedy Hungary's non-compliance with art. 29 of the Paris Peace Treaty. Under art.29, the "Allied and Associated Powers" were entitled to take any action with properties of Hungarian nationals and of Hungary found within their territories, and to apply the proceeds of such property against the claims of their nationals and their States. Exceptions to this rule were: (i) property used for diplomatic purposes; (ii) property of religious bodies or private charitable institutions; (iii) property of Hungarian nationals who were residing with permission in the country in which the property has located, except Hungarian property which were subjected to measures generally not applicable to property of Hungarian nationals resident in the same country; (iv) property rights arising since the armistice or the resumption of economic relations; and (v) literary and artistic property. At the same time, Hungary was placed under an obligation to "compensate

²⁷⁴ The nominal amount is increased annually.

²⁷⁵ T.C.L. 6, 7, 8, 9.

Hungarian nationals whose property is taken..." Hungary has not satisfied its obligation of compensation yet. As early as 1993, the Fourth Compensation Law bill was introduced to the Parliament on the compensation of individuals whose property rights were violated in connection with Hungary entering into international treaties with foreign countries. The bill did not even reach the floor of the Parliament, and has not been reintroduced since. Under the Court's decision, the Fourth Compensation Law bill will have to be revitalized.

Hungary entered into bilateral property treaties with 17 countries. In two such treaties, Hungary explicitly gave up its citizens' right to properties found on the other state's territory. There are additional countries which did not enter into a special agreement with Hungary, but under the Paris Peace Treaty had the right to seize Hungarian property located on their territory. In all of the above cases, Hungary is under legal obligation to compensate its citizens for their property lost in connection with the international obligations of the Hungarian State. The only questionable properties are the ones taken by the Soviet Union and the Ukrainian Soviet Socialist Republic. With the knowledge of the Hungarian Foreign Minister, these two countries applied national laws under which they placed the seized property under State ownership. Therefore, Hungary may not have a legal obligation to compensate for properties taken by the two countries mentioned above.

The Fourth Compensation Law could also have connection to Jewish claims. Under arts 26 and 27 of the Paris Peace Treaty, the interest of Holocaust survivors were represented as long as their lost or damaged property was found in the territory of Hungary. Under the laws of Allied powers, Hungarian Jewish property found outside of Hungary should not have been considered enemy property and therefore open for confiscation. However, rules protecting Jewish property were left out of art. 29 of the Peace Treaty dealing with the seizure of Hungarian property within Allied territory. Therefore, it is unclear whether Hungarian Jewish property, other than the property generally excluded from reparation, could have been taken in connection with art. 29. One can only assume from the text of arts 26 and 27, that the Allies did not intend to apply double standards. While Hungary was required to return or

compensate for Jewish property, the Allies did not seek reparation for Jewish property. One explanation of the situation could be based on the political struggle between the Western Allied Powers and the Soviet Union. As stated earlier, the Soviets were interested in collective reparation, while the Western Powers emphasized individual compensation. Articles of the Paris Peace Treaty were drafted in accordance with which interest certain provisions primarily affected. Art. 29 on collective reparation could have followed the Soviet proposal, and therefore would not contain any reference to individuals' interests. Although this may answer the question why was Jewish property not included in the list of properties exempted from reparation, it should not leave Jewish property un-compensated. Rather, the duty of compensation would shift to the Hungarian government. If this argument is upheld, the Public Foundation (see a description of the Hungarian Jewish Heritage Public Foundation below) should receive additional compensation payments from the State.

C. DESCRIPTION OF COMPENSATION LAWS FOR PROPERTY CLAIMS OF COMMUNITY PROPERTY

1. Church Properties Reprivatization

In 1989, like in other East European countries, the Roman Catholic Church initiated negotiations with the Government to end limitations put on its activities by the communist regime. In 1990, Act No. IV on the Churches and on Freedom of Religion and Conscience was enacted. This act entitled the Churches to fulfil certain functions in society, which are not exclusively reserved for the government by law. Such functions are education, social service, sport, health, child and youth protection. However, the churches were not in the position to fulfil their role in society due to the lack of immoveable properties and funding. Previous to 1990, Churches received funding from the State. The State had no means and no intention to give more funds to the expected growing needs of the newly "freed" churches. Churches also preferred to get back their religious institutions, their schools, their hospitals, their homes for the elderly, their places of worship, their cemeteries. It was also

economical for the State, who could pull out from financing and the maintenance of these places, and, in the long term, would be able to stop funding the Churches altogether. Therefore, negotiations resulted in Act No. XXXII of 1991, which provides for the partial restitution of Church property (the "Ch.C.L.").

The Ch.C.L. applies to immoveable properties, which had been built on, and were expropriated without compensation after 1948 Jan.1. Additional conditions are that

- 1) the claimed property is currently in the ownership of the central or local government; and
- 2)
 - a) the property was and will be used for the purpose of, or
 - b) the use of the property, was given by the central or local government in exchange for property which was used for the purpose of
 - facilitating religious activities (place of worship, housing of religious personnel, etc.);
 - activities of an order, deacons or deaconess;
 - education and learning;
 - health, social, child- and youth-protection ;
 - culture (community center, museum etc.);
 - cemetery.²⁷⁶

The detailed explanation²⁷⁷ of the Ch.C.L. also adds that the State is allowed to expropriate properties, which are not in state or local government ownership for the purpose of returning the property to the Churches.

The Ch.C.L. also applies to Church properties, which are still owned by the Church, but which are used by a third person because of a measure of the Government, without the written consent of the Church. However, in this case, the

²⁷⁶ Ch.C.L. § 1-2.

²⁷⁷ The basic Hungarian acts include a short explanation at the beginning of the text of the act, and a larger, detailed one after the text.

Church has the right to negotiate directly with the user or file its claim at Court. A further situation governed by the Ch.C.L. is when the property is no longer under the ownership of the State, but it serves a special function (sacred) of the Church. In this case the Church could, from the Minister of Culture and Education, request sufficient funds to reacquire the property, or could request that the State expropriate the property and then transfer ownership to the Church. These requests are determined by the Government.

The Churches have established special bodies who deal with the issue of restitution. The Government and the Churches organized separate negotiating committees (the "Special Committees") for every Church. These Special Committees are headed by representatives of the Under-Secretary of the Office of the Prime Minister and of the Church. Members of the Special Committees are representatives of the Minister of Culture, Minister of Interior, Justice Minister, Minister of Social Affairs, Minister of Finance, the Office of the Prime Minister, and representatives of the Church in equal number to the representatives of the Government. If the property is under the ownership of a local government, then additional representatives of that local government and the Church are also members of the Special Committee.²⁷⁸

The claims can be resolved in three ways: (i) through direct negotiations between the Church and the local government or the administrator of the claimed property, initiated by the Church; (ii) through direct negotiations between the Church and the local government or the administrator of the claimed property, initiated by the Minister of Culture and Education, based on the claims submitted by the Churches; or (iii) in case the above mentioned negotiations have failed, through the Special Committees.

- (i) The Government encourages direct negotiations between the Churches and the local government, who owns the claimed property, or between the Churches and the administrator of the claimed property, if it is under state

²⁷⁸ Ch.C.L. § 2,3.

ownership.²⁷⁹ If the parties reach an agreement on the transfer of property claimed by a Church, they have to notify the Ministry of Culture and Education about the details of their agreement. If there is a disagreement between the consignor and the user of the property, the consignor can terminate the right of use according to the applicable law, and then compensate the user. The Government has to allocate funds for such a compensation.²⁸⁰

(ii) The Churches had to prepare a list of properties they have claimed, and submit it to the Minister of Culture and Education, within 90 days after the Ch.C.L. was enacted²⁸¹. The Minister then informed the local government or the administrator of the property of the claim of the Church, and encouraged direct negotiations. If the parties could not agree, then they had to inform the Minister and send all documents concerning the property to the Minister.²⁸²

(iii) It is the task of the Special Committees to prepare the lists of properties where negotiations between the Churches and the local government or the administrator have failed. The lists, prepared by the Churches can be amended by them. However, the Special Committees will only deal with

²⁷⁹ Property, which was nationalized and are still under state ownership could be owned by a local government, or owned directly by the State. In the later case, the State has appointed an administrator to manage the property.

²⁸⁰ Ch.C.L. § 14.

²⁸¹ The Ch.C.L. was announced on July 22, 1991, and was enacted 8 days later. However, the government notified the Churches in January 1990, to start to draft their list of claimed properties. They had to investigate not only their record of what was taken 40 years ago, but also what was sold in the last 40 years. The different land registries also had to be researched, which imposed large difficulties, as they tend to be kept in a rather archaic way in most localities. All these searches provided ample surprise for all involved parties. Due to the difficulties of resolving all outstanding issues brought up by the searches before the deadline of the filling of claims, and also to the assumption that the Churches current need may vary by time, there is a possibility to amend the list of claimed properties as mentioned thereafter.

²⁸² Ch.C.L. § 5.

additional claims after they have dealt with the original claims. The Special Committee also has to conclude how much the restitution of the property will cost, which property is available in exchange if restitution is not possible, and who is responsible for giving a property in exchange.²⁸³ Based on the presentation of the Special Committees, the Government had to approve the list of properties restituted to the Churches in a period of 10 years. That list can be amended in special circumstances. Every calendar year, the Government has been transferring properties to the Churches based on their request for that calendar year. The Parliament has to approve yearly the financial means for the restitution based on the presentation of the Government. If the Parliament will not approve the financial budget needed for the transfer of properties, the Government after consultation with the Church and if necessary with the Special Committee, could modify the deadline for transferring the property.²⁸⁴ By 1995 July, both the government and the Churches realized that the original period of 10 years will not be sufficient to return all the properties. Therefore, it was decided, that the deadline will be extended to 20 years, and the necessary legislation will be enacted by the Fall of 1995. However, such an act has not even discussed at the Parliament to date (August 1997).²⁸⁵

If the decision of the Minister of Culture and Education is inconsistent with the conclusion of the Government, or if the Minister did not render his decision before the deadline, the Church, the owner, the administrator or the user of the claimed property, or anybody whose interest would be effected by the decision could turn to the Government for judgement. If the decision of the Minister of Culture and Education is against the law, the effected parties could file their claim directly at

²⁸³ Ch.C.L. § 4, 6, 11.

²⁸⁴ Ch.C.L. § 7-8.

²⁸⁵ K.K., "Újabb tárgyalási forduló" *Magyar Hírlap* (15 July 1995).

The Churches can only claim properties in their current condition. However, the Government has the option to initiate monetary compensation for the claimed property. If the Church agrees, then compensation is paid instead of the return of the claimed property. If the property is returned in kind, then the Government has to compensate, according to the law on expropriation, the local government or the administrator of the property, the user of the property, and everyone who has any right to the property according to the land registry.²⁸⁷ It is the responsibility of the Minister of Culture and Education to initiate a ban on the claimed property against alienation or mortgage at the land registry.²⁸⁸

According to the detailed explanation of the Ch.C.L., the main intention of the legislator was not the restitution of the Church property, but to secure property and funding for the Churches to carry out their activities, most of which was previously financed by the government. That is the reason why art. 2 of the Ch.C.L. states that only properties which were and will be used for the purpose of facilitating religious activities; education and learning; health, social, child- and youth-protection; culture; or cemetery; are subject to compensation. This article means that only property which will be used by the Churches according to their current needs are subject to restitution. Therefore, the Ch.C.L. is by no means favourable to the Jewish Community. Since the Jewish community was in large percentage annihilated by the help of the Hungarian government and Hungarian citizens, its current needs cannot justify the restitution of confiscated properties.

Similar arguments of restitution according to current needs have been presented

²⁸⁶ Ch.C.L. § 13.

²⁸⁷ Ch.C.L. § 9-10.

²⁸⁸ Ch.C.L. § 12.

in relation to aboriginal land claims.²⁸⁹ Decades after the original injustice, the difficulties of restitution are based not only on the problems of establishing evidence, but also on the effects of the changed social and economic background. The requirements of justice can be "sensitive to circumstances such as the size of the population". There are other Hungarian examples of problems arising from a change of circumstance. When the Roman Catholic Church extensively advocated for restitution of church property, among them schools, people challenged the constitutionality of the Church Compensation Law, if restitutions under the Ch.C.L. would leave no other choice of education than Roman Catholic citizens for many. Historically, the majority of elementary schools, especially in small communities, were schools associated with the Roman Catholic Churches. However, it would have been unjust to return all formerly owned schools to the Roman Catholic Church and leave atheists with no choice of education. Therefore, the Court found²⁹⁰ the Ch.C.L. constitutional as it did not offer restitution in cases where there was no need for the activity planned to be carried out in the restituted building. In the same way, restituting all previously owned property to the Jewish community would create no greater social justice.

The issue of compensation according to a Church's current need raises another question: what constitutes current need and who will decide the legality of the claims based on current need? Neither the state, nor any of its bodies could realistically investigate how large is one Church's current need. However, the Ch.C.L. requires the Churches and the government to return properties over the duration of 10 years (planned to be extended to 20), to plan in 3 and 1 year periods, and it leaves space for corrections.²⁹¹ After the collapse of Communism, many religious institutions experienced a renaissance of religious life. However, after 5 years it became evident that on one hand there were many, who only came once or twice, on the other hand there are young people who became involved in religious life. Churches also gained

²⁸⁹ See Waldron, *supra*, note 120 at 16.

²⁹⁰ Decision No. 4/1993 (II.12.) of the Constitutional Court.

²⁹¹ Ch.C.L. § 4, 7-8.

some experience of running schools and other educational, social or health institutions. In light of their experience, the Churches are in a better position today to assess their needs than they were 5-6 years ago.

There were two issues raised on the constitutional level. The first, whether the fact that the government only returned properties of Churches and not other social institutions is discriminatory, therefore unconstitutional. The second, whether the fact that the government places only Churches which existed in 1945 into the position that they are able to carry out their functions is discriminatory against recently established Churches in Hungary, which will receive no special funding to function. In the first case the Constitutional Court held²⁹² that if a constitutional right or a social scheme can only be fulfilled with positive discrimination, that positive discrimination is constitutional. The right of freedom of religion is a right protected by the constitution, therefore the state should at least re-establish the position in which the Churches existed before government confiscations. Therefore positive discrimination in favor of Churches as against other social institutions is not unconstitutional. There were three articles under the Ch.C.L. which were related to this issue. Arts 1 and 2 deal with properties which could be claimed for return. But art. 15 included the provision that the Churches will receive partial compensation for properties which would not be returned under the Ch.C.L. That provision was found unconstitutional as it discriminated against other social institutions, and therefore was annulled by the Constitutional Court. As far as the second issue, the government had the intention to help the Churches against which the Communist state carried out unjust measures. Because the newly established Churches did not suffer similar damages, the government therefore decided, that it does not discriminate against new Churches.

The Church property compensation is partial not only because the Churches could only claim properties currently needed for their activities, but also because they cannot claim agricultural properties and other properties which had business functions, which were not used for religious purposes but rather for earning profit. This means

²⁹² Decision No. 21/1990 (X.4.) of the Constitutional Court.

that the agricultural lands of the Roman Catholic Church, which was one of the largest landowners before 1945 in Hungary, will not be returned nor will it be compensated for.

In the first filling period, claims amounted to more than 7000 properties of which about 1500 could not be validated. In the first 3 years, about 500 claims were resolved by the decision of the Government, and about 1000 by direct negotiations between the Churches and the local governments. For the claims resolved by the Government, compensation was paid mostly to local governments. They, in exchange, returned properties in deplorable condition to the Churches, and financed new projects that carry out the social functions which were previously carried out in the returned property. The ones who really gained by these property transfers are the local governments.

After the first 3 years, the Government exhausted most of its reserves for financing the execution of the Ch.C.L., therefore, the rhythm of the returns slowed down. According to Endre Gyulay, vice chairman of the Hungarian Conference of Catholic Bishops, only 15% of church property was returned between 1991 and 1994, and they did not receive anything in 1995 and in 1996. The value of their claimed property is about US\$ 1 billion - according to Gyulay. The Catholic Church is also reluctant to enter into negotiations for monetary compensation for their claimed property, not wanting to surrender property too easily. An additional problem is the financial accounting with the local government bodies. At the beginning, they did not ask to be compensated for the properties they were forced to return to the Churches. However, local governments started to ask for compensation and the government has not allocated substantial amount of funds for that purpose. As the government funding for Churches decreases, the Churches are hard pressed to operate schools without the return of their property which was to be a substitute for government assistance.²⁹³

²⁹³ A. Donceev "Church wants land back now" *The Budapest Sun* (6-12 June 1996) at 1-2.

Regarding Jewish property, until 1995 the Government agreed to the transfer of the ownership of 20 buildings. By the end of 1996, representatives applied for 88 property in kind and they were negotiating for monetary compensation for an additional 64 properties. To satisfy the claims of the Jewish community, the government would have to transfer HUF 8.8 billion (about US\$ 44 million in 1997), and spend an additional HUF 5.5 billion (about US\$ 27.5 million in 1997) to compensate owners and tenants who have rights to the buildings they will give back in kind. So far, the Jewish community has received HUF 516 million.²⁹⁴

However, the Jewish community is expecting to receive buildings, funds, and other assets in addition to the buildings and compensation it has been receiving under the Ch.C.L. The Ch.C.L. does not fulfil Hungary's international obligation under the Paris Peace Treaty. Under art. 27, para. (2), Hungary is obliged to return all properties, rights and interests of Jewish organizations and Jewish communities. Therefore, Hungary had to enact a separate law on Jewish communal property.

2. Compensation for the Jewish Community

One of the basic principles of the Compensation Scheme are the principles of partial compensation and compensation of only individuals. Both partial and individual compensation could be justified, if compensation is based on moral and not on legal obligations. There could be arguments made for and against partial and individual compensation for violations committed by the Communist governments. However, as far as the legal responsibility of Hungary stands for violations committed during World War II, Hungary signed the Paris Peace Treaty, which clearly singles out Hungary's legal responsibilities. Under art. 27 of the Paris Peace Treaty, Hungary is obliged to turn over all heirless property to a representative body of the Jewish community. Moreover, under art. 2 of Act No. XXV of 1946, which is still in effect, the government undertook that all Jewish heirless property would be turned

²⁹⁴ E. Várai, "Késlekedik az államosított ingatlanok visszaadása" *Szombat* (November 1996) 9-10.

over to a representative body of the Jewish community. Although, the Jewish community has been and will stay divided on the issue whether pressing compensation claims will advance or endanger the Jewish community of Hungary, some representatives petitioned the Constitutional Court on behalf of the Jewish community for full compensation for the properties of the Jewish community. The petitions resulted in Decision No. 16/1993 (III.12.) of the Constitutional Court, in which decision the Court held that Hungary has a legal obligation to return all heirless properties once belonging to the Jewish community.

The deadline to submit a new draft, based on the decision of the Constitutional Court, expired September 31, 1993. In the meantime, the WJRO came to the help of the representatives of the Hungarian Jewish community. Although there was no consensus on any issue, negotiations have started.

The Restitution Fund

As described earlier, governed by Act No. XXV. of 1946, the Restitution Fund was the legal heir of the heirless Jewish property. Under art. 2 of the above mentioned Act, the government undertook that it would transfer all heirless properties of people who were persecuted based on their Jewish origin or religion to the Restitution Fund, regardless whether the property has been or will be acquired by the government. Although, Act No. XXV. of 1946 is still in force, the Restitution Fund was not re-established. Members to the Restitution Fund included the appointees of the neolog²⁹⁵ and the orthodox communities. However, it was not the interest of any parties to the negotiations to leave out the representatives of the secular Jewish organizations. The aim was to reach an agreement which would not be attacked later. Therefore, all interested parties received at least limited power in forming the agreement.

²⁹⁵ Hungary has two main Jewish religious communities, the orthodox, and the neolog community. The neolog community is close to the American conservative movement.

Decision No. 16/1993 (III.12.) of the Constitutional Court, called upon the government to turn over the heirless Jewish properties to the Jewish community. After it became clear that the Restitution Fund would be re-established, the government and representatives of the Jewish community started negotiations with regard to a possible structure, under which compensation can take place. By 1993, the WJRO was established, and they took an active role assisting the Hungarian Jewish community and the government in establishing a new body, which could act as the "legal heir" of the Restitution Fund.

First, the WJRO and the representatives of Hungarian Jewish organizations formed three committees. The first committee has been examining the issues of calculating the amount of money and tangible properties which were taken by Hungarian authorities due to the Jewish Laws. The second committee helped to establish the delegation, which delegation represents the Hungarian Jewry in negotiations with the Hungarian government. The third committee has been developing a workable strategy for the distribution method of the compensation given by the Hungarian government.²⁹⁶

The calculation of the monetary amount of compensation was done by Jehuda Don, an Israeli Historian. He estimated that the heirless property of Jews, which should have been turned over to the Jewish community after the war, amounts to approximately US\$ 2.1 billion. His assessment is based on data collected during WW II about the financial situation of the Hungarian Jewish communities. For example, in the Spring of 1944, on the eve of the deportation of the Jews from the villages, the Jewish Council of Budapest gave detailed data about the financial situation of local Jewish councils and their members. A computer database was created from the collected data to determine the monetary damage. This amount, minus any compensation given shortly after 1945, was the basis for negotiations between the

²⁹⁶ "Hazai hírek: Zsidó-zsidó jóvátételi tárgyalások" *Szombat* (November 1994) at 18.

representatives of the Hungarian Jewry and the Hungarian government.²⁹⁷

It has to be noted that, in addition to what the government offers to the Jewish community during the negotiations, under the Ch.C.L., properties have and are being transferred to the Jewish community. It was an issue whether the properties falling under the Ch.C.L. should be transferred to the Restitution Fund as well, or kept separate by the community it was transferred to. The WJRO expressed their opinion that the entire issue should be dealt with together. However, most of the representatives of the Hungarian Jewish communities would have liked to keep these properties under their ownership and not to transfer them to the Restitution Fund. Under the latest agreement, Jewish communities will not transfer the properties to the Public Foundation. Although, there are some overlapping functions of the Public Foundation and the Jewish communities, the Public Foundation's main goal is to assist Holocaust survivors, and the Jewish communities' most important role is maintaining religious life in Hungary.

Establishing the representative body was the most problematic issue. Without establishing a credible body representing the Hungarian Jewish community, no negotiated agreement will be accepted in the future. There was tension both inside the Hungarian Jewish community and between the Hungarian Jewish community and the WJRO. The disagreement in the Jewish community was based on the issue, whether one can accept partial compensation or not. The view of only one of the Hungarian Jewish organization, the *MUSZOE* has been that only full compensation is acceptable based on the Paris Peace Treaty.²⁹⁸ The opinion of the other Jewish organizations is that although under the Paris Peace Treaty the government owns full compensation, it would be an unrealistic expectation. Therefore they are willing to negotiate for less, and at least get something while needy Holocaust survivors are still alive. The tension between representatives of the Hungarian Jewish community and the WJRO was based on the issue of distribution of the compensation given by the

²⁹⁷ See "Statisztika az elrabolt zsidó vagyronról" *Szombat* (November 1994) at 5.

²⁹⁸ B.I.E., "Zsidókárpótlás" körülötte csend" *Magyarország* (19 May 1995) at 7.

Hungarian government. Most of the Hungarian representatives felt that they did not need the help of the WJRO in the negotiations with the Hungarian government, but they also feared that the WJRO would try to channel part of the compensation payments outside of Hungary. As none of the parties discussed openly their plans, their communication was filled with misunderstandings which only aided the government, who was delaying compensation, claiming that there is no consensus on the other side. It took two years for the parties to establish the negotiating committee.²⁹⁹

The issue of distribution of the expected compensation given by the Hungarian government surfaced right at the beginning of the negotiations. The aim of the representatives of the Hungarian Jewry, except the Zionists and the *MUSZOE*, was to keep as much of the compensation payments as possible in Hungary.³⁰⁰ At the beginning, the WJRO would have liked to channel parts of the compensation payments outside of Hungary to aid Jews of Hungarian origin who do not live in current Hungary anymore, especially Israelis of Hungarian origin. The WJRO signed an agreement with the government of Israel that they would try to secure funds for Holocaust survivors living in Israel. However, as the negotiation proceeded, it became clear that the expected funds would not be enough to cover expected projects in Hungary, not to mention aiding goals in Israel. Also, by successfully negotiating with Switzerland, the WJRO will not need money for its Israeli plans, but might even be able to transfer money into the Restitution Fund.

As a result of the negotiations, the government issued Government Decision

²⁹⁹ The Negotiating Committee (the "Committee") included the representatives of (i) the government: the Under-Secretary of the Ministry of Justice, the Under-Secretary of the Ministry of Foreign Affairs, the Under-Secretary of the Ministry of Finance, and the Director of the Compensation Office; (ii) the representatives of the WJRO; and (iii) from the Hungarian Jewish community, representatives of the Sub-Committee. The Sub-Committee, represented at the negotiations by the *MAZSIHISZ*, was only a temporary body, with no legal standing, based on a cooperation agreement among the parties.

³⁰⁰ J. Gadó, "Megfelelőbb és legmegfelelőbb kárpótás" *Szombat* (September 1995) at 7.

No. 2079/1996. (III.29.), in which the intention to fulfil Hungary's obligation under art. 27, para. (2) of the Paris Peace Treaty was expressed. The decision also instructed the Political Under-Secretary of the Ministry of Finance to submit his proposal by May 31, 1996, which deadline was missed.

The Hungarian Jewish Heritage Public Foundation (*Magyarországi Zsidó Örökség Közalapítvány*) (the "Public Foundation") was established under Act No. X of 1997, by the Government, in April, 1997. The establishment of a public foundation by the Government does not require Parliamentary approval.³⁰¹ However, for political consideration, the issue of the Public Foundation was presented and approved at the Parliament. By the establishment of the Public Foundation, the Restitution Fund was terminated without successor, and its assets were transferred to the Public Foundation. The legislators followed the rationale of the Compensation Cases of the Constitutional Court. In respect of partial compensation for individual properties, the Court argued that by enacting the Compensation Laws, the underlying legal obligations for compensation ceased to exist. Instead of the original obligations, the Compensation Laws are the new basis for compensation, which compensation is only partial compensation under the Compensation Laws. Following the same argument, by enacting act No. X of 1997 (the "Community Compensation Law"), Hungary has the legal obligation to compensate the Jewish community under the Community Compensation Law, and not under the Paris Peace Treaty. Transferring the funds of the Restitution Fund was empty rhetoric, as the Restitution Fund had no assets left in 1997. Moreover, the Public Foundation is not a successor of the Restitution Fund, therefore, rights and obligations of the Restitution Fund under the Paris Peace Treaty were not transferred to the Public Foundation.

It is unclear what will constitute the assets of the Public Foundation. So far, the government contributed one voucher in the amount of HUF 4 billion (approx. US\$ 20 million in 1997), which will be exchanged for annuities. Under the Community Compensation Law, annuities shall be given to any person who is entitled to receive

³⁰¹ Art. 74/G of Act No. IV. of 1959, the Civil Code.

assistance under art. 27 para. (2) of the Peace Treaty. Therefore, under the decision of the Board, annuities will be given to everybody of Jewish origin, who was persecuted under any racial, religious, or other fascist legislation or regulation. Other conditions are: (i) the claimant was born in Hungary before May 9, 1945; (ii) the claimant is permanently residing in Hungary today; and (iii) the claimants are over 60 years old. Younger victims will also receive pension once they reached age 60. Claimants were urged to apply at the Public Foundation by June 15, 1997, however, there are no final deadlines to submit applications. The Foundation supplied application forms, but informal applications are also accepted. The exact amount of the annuities will depend on the number of application received. The original plan was to reflect the age of the applicant in the amount of annuities granted. However, due to the large number of claims received by the end of August 1997, the Public Foundation decided to give equal amount of annuities to every applicant. The amount will be around HUF 5-6,000 (approx. US\$ 25-30) per month. The annuities are tax-exempt, and it is given retroactive from the date the Foundation was established, April 1997. The government approved a budget of HUF 1.2 billion for 1997. Of the anticipated 30-35,000 applications, the Foundation expected to distribute pension for 16-17,000 applicants.

Annuities should also be granted to Gypsies and to other non-Jewish victims of the Holocaust. However, the Community Compensation Law designates the Public Foundation to handle the process of distributing the annuities and empowers the Public Foundation to decide on its by-laws. Therefore, it is up to the Public Foundation, who will be the beneficiaries of the annuities and how much the annuities are worth. Unfortunately, the Public Foundation decided to assist only Holocaust survivors of Jewish origin, and the Righteous Gentiles³⁰². Representatives of Gypsies and other non-Jewish victims are not members to the Public Foundation, and will not receive support from them. In August 1997, the Government and both the Public Foundation and the WJRO made some vague promise of securing and distributing compensation for Gipsy Holocaust victims as well.

³⁰² Righteous Gentiles are people who saved Jews during the Holocaust.

In addition to the voucher, the government intends to transfer ten valued paintings and seven buildings to the assets of the Foundation. The buildings are valued at HUF 1.5 billion, while the paintings are valued around HUF 12-13 million. Nor all paintings nor all buildings were previously owned by Jews. The HUF 4 billion voucher, the paintings, and the buildings are the so-called starting-assets of the Foundation. The Foundation will need substantially more funds to cover its expected projects. However, there is no legal definition of the concept of starting-assets. Whether it means that the government will give no more, or that the government will continue to contribute at a later date is unclear. The Government position is, that:

Hungary's present economic situation does not enable us to ensure an immediate satisfactory settlement of these justified claims, and we do not have the resources for full compensation in the near future. We are, however, ready to render as much help as we can for the moral restitution of the Jewish community in Hungary, and help them maintain their identity...³⁰³

Additionally, it has not been decided whether the government will transfer funds, which it will receive from Germany or Switzerland or more artworks it will receive from Russia, to the Foundation. Under the Community Compensation Law, any heirless property which will be returned to the Hungarian government will be subjected to a separate legislation under which legislation it will be turned over to the Public Foundation. It is expected by the Hungarian members of the Public Foundation, that the WJRO will also transfer funds to the Public Foundation. One can only hope that the assets of the Public Foundation will grow by assistance received from Hungary, Switzerland, Germany, and by offers of wealthy Jews, and the fate of fundraising for the Public Foundation will not be similar to the Memorial Foundation's.

³⁰³ Letter from Gyula Horn, Prime Minister of Hungary, to Yitzhak Rabin, Prime Minister of Israel (January 1995) Budapest, Hungary.

In April 1997, the Board of Trustees (the "Board") held its first meeting. Members of the Board are working without compensation or expense accounts. The Public Foundation received an office from the Jewish Agency, where they only have to pay the utility bills. Besides the obvious financial advantage, having a separate location helps the Public Foundation to maintain its integrity.

The more important issue is what projects will be financed from the compensation payments. The Claims Conference, which should be a model for any organization distributing compensation for victims of human rights abuses, allocated funds to four major functional divisions: welfare, commemoration, culture and capital investment allocation. Unfortunately, spending on welfare is most urgent. In Hungary, many aged Holocaust survivors live under serious hardship. Survivors could be helped by supplementing their pension or giving them a one time payment³⁰⁴; old age homes could be built for them; a geriatric wing could be added to the Jewish hospital; cultural activities could be financed for them. Once the daily needs of the survivors were met, memorials could be built for the ones who perished. Lectures and other educational projects could also be funded. Many of the cemeteries of the country are in decay. Synagogues and other communal buildings, if they still exist, are falling apart especially in communities where no Jews survived the Holocaust. Instead of expecting wealthy emigrants of America to fund such projects, the Public Foundation could also keep up at least a few of them.

To think about the future, not only of the past, Jewish community life could be revitalized from adequate funding, or at least an attempt could be made. Educational, community, cultural and religious activities could be funded. All three Jewish schools of Budapest need more money to operate. Grants could be given to financially disadvantaged students to learn at such institutions. The library of the Rabbinical School might be renovated from outside sources. However, it has not been

³⁰⁴ Survivors of the Holocaust are already eligible for some payments under the Second and Third Compensation Law. However, the amounts are incredibly small. For example, if a child spent 1 year in an Austrian labor camp, upon retiring she would receive about US\$ 6 a month in pension supplement starting in 1992.

able to continuously purchase modern relevant Jewish books, journals and other publications. The library of the Balint Jewish Community Center could also be enlarged. The recently started Jewish Theatre could also be helped. The list of possible projects is endless.

Projects connected to Hungarian Jewry should also be funded outside of Hungary, if not by the Public Foundation, than with the help of the WJRO. There are elderly Holocaust survivors of Hungarian origin living in several countries. They could also receive a pension supplement or a one time payment. Old age homes could also be build, as they were build for survivors of German origin in Israel. Institutes, who collect and keep information about the Hungarian Jewry could also be funded. For example, there is a Hungarian Jewish Museum in Zefat, Israel, not to mention the large Holocaust Museums and research institutes in Israel and in the United States.

Concluding the description of the community compensation of Hungary, we cannot stress enough that the Public Foundation should not operate according to how Jewish and non-Jewish organizations operated in Hungary for the past 50 years. It is a fact that there are very few younger generation leaders at the head of Hungarian Jewish organizations. It is our opinion, an organization such as the Public Foundation should be run by professionals, with consultation of the representatives of the Jewish organizations. While informality made the Claims Conference more able to adapt to the changing needs of Jewish survivors and their families, the decisions and actions of the Public Foundation should be transparent. However, the work of the Claims Conference and the Memorial Foundation should not be lost from sight. In the past 40 years, the Claims Conference, through international Jewish organizations, distributed vast amount of funds first for social then for cultural needs of the Jewish communities. The policy of the Claims Conference could be a good starting point, to examine how they have tried to rebuild Jewish communities around the world.

D. ANALYSIS OF COMPENSATION LAWS OF HUNGARY

I. Current Status

Compensation has been on the national agenda since 1989, with the first applications filed at the compensation offices in 1991. Although most of the claims have already been filed and processed, compensation offices are still accepting applications under the Third Compensation Law. Land auctions originally planned to be completed by March 1993, are still in process to this date. Moreover, the Public Foundation has just started accepting claims for annuities granted to Holocaust survivors. The Fourth Compensation Law has not even been introduced in Parliament, and to conclude the Compensation Scheme a final act is also to be expected.

A bill to amend the Ch.C.L. will be introduced in Parliament in the Fall of 1997, which if accepted, will set a shorter deadline for applications under the Ch.C.L.³⁰⁵ There are approximately 3,500 outstanding claims by Churches of which fifty percent are for monetary compensation. Churches intend to use such funds to help carry out religious activities. The Hungarian State budget is not in a position to set aside the required amount needed by the Churches. Therefore, it proposes, that the buildings for which a Church is asking for monetary compensation, be placed in an imaginary fund of that Church, and the Government will pay a four to five percent annuity based on the total amount of such fund for an unlimited time. Therefore the buildings will be freed from any claims by the Churches, the Churches will receive funds for carrying out their activities, and by reducing the current financial burden on the Government it will be able to fulfil its obligation under the Ch.C.L. The basis for this structure is a recent agreement between the Vatican and the Hungarian State, governing the claims of the Catholic Church under the Ch.C.L. The Jewish community would welcome such an agreement.

³⁰⁵ The current deadline under the Ch.C.L. is 2001.

The deadline to exchange vouchers for annuities has continuously been extended, because that is the most favourable method the government has for withdrawing vouchers from circulation. However, the government will have to provide more assets to be privatized against the outstanding vouchers. The total value of outstanding vouchers as of August 1997 is HUF 24.7 billion (which is 18.76% of all issued vouchers), and more vouchers will still be issued under the Third Compensation Law.

2. The Hungarian Compensation Scheme

The final Hungarian Compensation Scheme will undoubtedly serve as an example in compensation. However, we can only hope that the bumpy road leading to the hundred amendments to the current system will not be followed. As stated earlier, the Hungarian Compensation Scheme is a product of national political compromise and international pressure. The Compensation Scheme is deficient in its foundational principles as evidenced by the decisions of the Constitutional Court in the Compensation Cases, where the compensation process was heavily modified. The key concepts as set down by the Court, were:

- (i) no Hungarian group should be discriminated for or against, based on their "special" suffering;
- (ii) compensation is partial compensation;
- (iii) compensation is partial, but equal;
- (iv) compensation is given equally for property, regardless whether the property was taken under existing laws or illegally; and
- (v) compensation must relate to the reality of Hungary's financial situation.

Although the Constitutional Court declared from the beginning, when the First Compensation Law Bill favoured previous land owners, that all groups of victims should be treated equally, in a recent decision the Court awarded 10% more compensation for individuals who were deported compared to individuals who: (i) served prison sentence in Hungary; (ii) suffered compulsory medical treatment based on certain criminal acts; (iii) served in the forced labor service of the Soviet Union;

or (iv) were confined to a closed camp-type location, were under police surveillance, or were detained in some other manner.

The second and fundamental concept is the concept of partial compensation. However, even that has not always been followed. All claimants are entitled to full compensation in the form of vouchers for claims of up to HUF 200,000 (due to declining exchange rate, approximately US\$ 2,700 in 1991 and US\$ 1,000 in 1997). Then the percentage of the awarded amount of compensation depends on the amount of the total claim, up to the aggregate amount of compensation, which can be received per former owner and per piece of property, consolidated under the First and Second Compensation Laws, and which is limited to HUF 5,000,000 (again due to the declining exchange rate, approximately US\$ 67,500 in 1991 and US\$ 25,000 in 1997).

The issue whether compensation should be given equally for property, which was seized under the then-existing legislation, and for property which was illegally taken, surfaces in several Constitutional Court decisions. According to the dissenting opinion of Dr. János Zlinszky in Compensation Case V³⁰⁶, ownership of property can only be acquired through a legal act. By illegal acquiring, property ownership does not change, the illegal taker becomes the possessor of the property but not its owner. Therefore, the Compensation Scheme should have differentiated between the two forms of acquisition.

Mr. Ivan Somers raised the same issue in his claim against Hungary at the UN Human Rights Committee.³⁰⁷ Mr. Somers complained that the Hungarian State breached its obligation under the International Covenant on Civil and Political Rights when the Compensation Scheme failed to distinguish on the basis of whether private

³⁰⁶ Decision No. 15/1993 (III.12.) of the Constitutional Court.

³⁰⁷ "Claims relating to confiscation of property of former political prisoners during the Communist period / Alleged discriminatory nature of the compensation legislation / No breach of Art.26 CCPR / Somers v. Hungary, Communication, UN-HRCee (23 July 1996)" 17:1-2 Human Rights Law Journal 412 [hereinafter Claims Case].

property was nationalized or were expropriated by "extra-legal" or illegal means. Mr. Somers' opinion was that only restitution is acceptable in the second case. Under the Optional Protocol,³⁰⁸ which is a separate instrument to the International Covenant on Civil and Political Rights, private parties claiming to be victims of a violation of the Covenant, are entitled to file a complaint with the UN Human Rights Committee. However, the Committee found admissible only one part of the complaint: whether the Hungarian Compensation Scheme is in violation of Art. 26 of the Covenant, on the right to equality before the law and on equal protection of the law. The Covenant contains no provision on the right to property. The Committee held that the criteria of partial compensation of the Compensation Scheme is "applied equally and without discrimination..." and went on: "If a State party to the Covenant provides compensation for nationalization or expropriation on equal terms, it does not discriminate against those whose property was expropriated or nationalized."³⁰⁹

However, to continue with the abovementioned reasoning of by Dr. Zlinszky, one comes to the conclusion that the State cannot decide to give *ex gratia* compensation for property illegally taken because it did not acquire ownership of such property. While in the case where property was nationalized or seized under Hungarian law, the State acquired ownership, and it is the State's discretion to offer compensation for such property based on moral grounds. To translate this legal norm to the situation of Jewish claimants, one can conclude that the State has no right to offer partial compensation for: (i) Jewish property taken by extra-legal or illegal means; (ii) bailments; and (iii) for a part of heirless Jewish property because the State had no law under which it could have acquired ownership of such property.

The issue of bailments surfaced in every discussion with regard to compensation granted for Jewish victims.³¹⁰ In 1992, nobody knew whether some

³⁰⁸ The Optional Protocol entered into force for Hungary in 1988.

³⁰⁹ See Claims Case, *supra*, note 307 at 416.

³¹⁰ J. Gáti, "A létét a lét" *HVG* (6 May 1995) at 44.; E.V. "A zsidó arany sorsa 1944-től 1956-ig" *Szombat* (May 1992) at 7.

of the bailments are still kept in the vaults of the Hungarian National Bank, or were sold during the Communist era. However research conducted by the Jewish community discovered that no bailment item remained at the bank. The Jewish community argued that for the bailments of deceased Holocaust victims the community should receive full compensation. Individuals claimed that owners who still possess bailment bonds should be able to receive full compensation under the applicable articles of the Civil Code on bailments, and filed lawsuits for full compensation. One of the plaintiffs who owns such bailment bonds is Gábor Székely, who is currently the vice-major of the City of Budapest. The defendant was the Ministry of Finance. However, his and other lawsuits for bailments were dismissed when the Second Compensation Law regulated the issue of bailments by bringing them under the scope of the Compensation Laws. The relevant articles pertaining to bailments of the Second Compensation Law, were attacked at the Constitutional Court. However, the Court found constitutional giving partial compensation for bailments under the principles of the Compensation Scheme.³¹¹

3. The Compensation Laws' Effect on the Legal System and on the Economy

It is too early to say if *kárpótlás* (compensation) will stay as a unique instrument in the Hungarian legal system and will be applied only in relation to the Compensation Scheme or will be implemented in future situations as well. However, the Compensation Scheme was the most important deed of the 1990-94 government. It affected many areas of the legal system, such as: (i) Amnesty Laws, Compensation Laws, and laws on the compensation offices were enacted; (ii) legislation on pension, and labour and social security benefits were amended; (iii) the privatization rules, the land law, the law on agricultural cooperatives, on local governments, and on tax issues were tailored to fit the Compensation Scheme; (iv) rules governing Church and State relations were completely revised; (v) the Hungarian Jewish Heritage Public Foundation was established; and (vi) the Constitutional Court rendered over twenty judgements concerning the Compensation Scheme. The Compensation Scheme has

³¹¹ Decision 16/1993 (III.12.) of the Constitutional Court.

even effected the exercise of criminal jurisdiction. When the exchange rate of compensation vouchers plummeted, unscrupulous companies emerged promising favourable returns for vouchers. Today, several of these companies face criminal prosecution.³¹²

Although the Compensation Scheme greatly effected the legal system, it has had an even greater impact on the economy, on privatization, on monetary supply, and on the stock exchange. Privatization was an inevitable consequence of the collapse of Communism and the communist property ownership system. The introduction of vouchers circumvented the immense economic, legal, and political burdens of possible reprivatization in kind. Soon after the vouchers were introduced in the Stock Exchange their price dropped to 40%, then to 30%, until they hit an all time low of less than 20%. Vouchers are counted at their nominal value when buying state property, therefore, they became a worthwhile investment. State properties which were not marketable, could have been sold, relying on the interest of voucher holders to liquidate these assets.

The Compensation Scheme became extremely costly, yet there is no data on just how much Hungary spent in implementing the Compensation Laws. It will be a long time, if ever, before the direct cost of compensation can be accounted for with all these elements, such as: (i) setting aside property to be privatized for vouchers; (ii) paying annuities; (iii) paying compensation in relation to the Ch.C.L.; and (iv) providing funds and assets for the Public Foundation. In addition, the indirect cost of: (i) maintaining the compensation offices, where at the peak about 1700 people worked and around 500 are still employed³¹³; (ii) supplementing the funds of the land registries nation-wide, to carry on the increased workload; (iii) maintaining the government committee coordinating the Compensation Scheme, and later on its successor committee at the Ministry of Agriculture; (iv) information on, and forms

³¹² The abuse of vouchers generated some legal problems. See for example: Dr. L. Fázsi, "A kárpótlási jegyek felvásárlásával megvalósított csalással okozott kár megállapításáról" VI:3-4 Bírak Lapja 216.

³¹³ After the laying off of August 1997.

covering compensation applications distributed world-wide; (v) conducting land auctions. All will need to be assessed. To demonstrate the vast amount spent directly in implementing the Compensation Scheme, without being able to assess all financial consequences, we present the following statistics:

By the end of 1996, the total amount of compensation payments including interest amounted to HUF 230 billion (about US\$ 1.2 billion).³¹⁴ About 1.1 million bidders³¹⁵ entered the 26,174 land auctions by August 3, 1997. Close to 700,000 buyers purchased land. There are about 7000 claims filed by the Churches under the Ch.C.L., of which 1046 claims were decided favourably by the Government by May 1997. About 1500 claims were found not in the scope of the Ch.C.L., and approximately 1000 claims were settled between Churches and local governments. Therefore, there are about 3500 claims waiting to be decided on. Up to 1997 the Government has already paid HUF 4.95 billion (approx. US\$ 25 million in 1997) to the Churches for properties not restituted. An additional HUF 8.99 billion (approx. US\$ 45 million in 1997) to the local governments, and HUF 2.05 billion (approx. US\$ 10 million) to others were paid for properties returned to the Churches under the Ch.C.L. The total value of property returned under the Ch.C.L. is not known. Although both the former owner, usually local governments, and the Church who negotiated directly with the owner for a return of a property is obliged to notify the government, thus far they have failed to do so.

Up to August 1997, the direct cost of compensation was over HUF 250 billion (approx. US\$ 1.15 billion in 1997). Vouchers issued, including interest, are valued at over HUF 200 billion (approx. US\$ 1.1 billion). The State Property Company (*Állami Vagyongkezelő Rt.*), the organization responsible for privatizing state owned enterprises, the State Property Agency, the organization that manages the state owned enterprises and targets those companies for privatization, and the Treasury Assets

³¹⁴ E. Várkonyi, "Egyéni kárpótlás Magyarországon" *Szombat* (February 1997) 6.

³¹⁵ The total population of Hungary is approx. 10 million.

Company (*Kincstári Vagyonkezelő Rt*) offered to privatize state property in the amount of HUF 210 billion, in 1994. However, they have not fulfilled that promise. At the beginning, voucher holders bought shares offered in connection with privatization in several companies. In 1994 and in 1995 there were almost no companies offered for privatization for vouchers. By 1995 only about 15% of the vouchers already exchanged were allocated to privatization. By August 1997, of all issued vouchers, there are still approximately 20% outstanding.

Although without the use of the voucher the Compensation Scheme could not have been carried out, it was also one of the main reasons for dissatisfaction with the system. The compensation voucher was invented without any precedent. Therefore, little could have been calculated about its future as a financial instrument. Since their introduction, compensation vouchers have formed the greatest portion of securities traded on the stock market. When the first vouchers were issued, they were eagerly purchased by brokers who traded them well below their underlying asset value. However, the scheme has been criticized for failing to engage Hungarians in significant numbers in privatization. Because of the negligible size of the vouchers (they are limited to HUF 5,000,000 [approximately US\$ 25,000 in 1997] per person), few Hungarians have enough voucher capital to contribute to the privatization scheme.

Besides the fact that the voucher was a new instrument, compensated claimants had no practice in participating in the economy. Most of them did not know what to do with their vouchers and therefore made no decision. By waiting to learn more about their options, they missed some possibilities of a more profitable exchange. Also, voucher holders who trusted the government's promise that an adequate amount of state properties would be privatized, and therefore held their vouchers longer, were undermined by the government. By not fulfilling its promise of privatization, the Government impeded voucher holders from participating in the privatization process, and deprived them of exchanging their voucher on the security exchange for a more decent price. As privatization lagged, vouchers were traded at a lower and lower amount. As a result, options for voucher usage narrowed. Therefore, the unsatisfied compensation voucher holders established their representative body, the Association

of Compensation Claimants for the Safeguarding of their Interest (Kárpótlásra Jogosultak Érdekvédelmi Szövetsége). The main aim of the Association is not the modification of the Compensation Scheme, but the effective implementation of the compensation legislation. According to their claim, the State, who in the privatization process is responsible in setting aside state property at least in the amount of outstanding vouchers, defaulted on its legal obligation by not doing so. When the State Property Agency in early 1997 announced that it would offer more adequate investment options for voucher holders, the stock market reacted favourably.

The government actually reduced the total amount of its obligation by issuing vouchers.³¹⁶ The vouchers bore interest from 1991 until the end of 1994, but even in that 3 year period, they could not retain their face value. Vouchers accumulated interest of 74,2%, but the official inflation for the same period amounted to 93,5%. When the last voucher issued comes due in 1998, they will be worth less than half of their real value.

As a summary one can say about the [vouchers]'s multifunctional privatization role that these functions, which were in themselves basically positive, could have been realised through other techniques in a clearly penetrable and checkable way without involving the [voucher]. The unthroughseeable [non transparent] nature of mixing these functions was after all suitable for hiding the fact that the state commitment to an amount approaching [HUF 200-220 billion]... undertaken in the Compensation Acts could not be carried out with the frames of economic rationality. Through the [voucher]'s function as a participant in a multifunctional market, the political responsibility could be shifted over to the market.³¹⁷

³¹⁶ E.J. "Az állam egyre jobban jár" *Világgazdaság* (11 February 1995) at 12.

³¹⁷ Dr. B. Galgóczi, "The Role of Compensation Vouchers in Privatization in Hungary" (Property Foundation Institute for Privatization Studies, Budapest, February 1995)[unpublished] at 16-17.

One of the main aims of the Compensation Scheme was to redistribute land ownership and to reorganize agricultural cooperatives. A major problem facing Hungary's Compensation Scheme was the fact that 97% of all agricultural land belonged to cooperatives which produced the nation's food supply. However, the change of land ownership only caused a short period in lost food production. The original aim of the Smallholders Party was to create a situation through land redistribution that farmers could work on their own land, similar to the period after the 1945 land redistribution. Therefore, under existing laws a person can own up to 300 ha (approx. 741 acres) of agricultural land. However, not individual farmers, but companies rented more than 50% of all land, and one company is allowed to utilize more than 300 ha. Between 1945 and 1947, about 50,000 small and middle size farms were registered, while in 1995 only 20,000, and on less than 50% of those 20,000 do the farmers work on their land full time³¹⁸. These numbers are similar to the ones in Western Europe. Many voucher holder opted to purchase land even as they were not interested to work it, due to the fact that this was one of the most favourable ways to exchange vouchers. Investors and companies used voucher holders as their front men and bought land for investment. Agricultural cooperatives (the "cooperatives") had to auction large parts of their land after 1991. Therefore, in 1997 the Government proposed to change the law which permits only individuals to purchase agricultural land in Hungary, in a way which allows cooperatives to expand their remaining land property. However, the opposition is upset fearing that foreign owned companies would buy up most of the agricultural land of Hungary, because such land is substantially more expensive in West European countries.

Only about 250-300,000 people (less than fifteen percent of total recipients) were able to use their vouchers to obtain land at favourable prices through auctions, buying their apartment rented from the local government, or exchanging them for company shares which performed well. People who chose annuities did not lose much, but everybody else did. As one can see, most recipients felt that only investors

³¹⁸ K. Dobos, "Hol tart ma a visszarendeződés?" *Demokrata* (21 August 1997) at 34.

were successful. In 1994, substantially fewer people voted for parties of the government that enacted the Compensation Laws, than the number of people who received compensation. After 1994, the new government's promises to continue implementing the Compensation Scheme remained empty and the exchange rate of vouchers plummeted.

The Compensation Scheme did not fulfil expectations, not only on an economic level, but also on a political and ethical level. The mixing of rehabilitation and compensation, and the economic reality, did not leave much space for political and moral compensation. Most of the victims are disillusioned. The amount of compensation helped only the most destitute, while some individuals not under the scope of the Compensation Scheme gained by the compensation process. Many victims experienced the compensation process as another humiliation. Although the government introduced an additional filing period just before the election, the disapproval was shown in the 1994 election.

The Compensation Scheme was not successful in redressing human rights violations committed against Hungarians, Jews and non-Jews alike. The reason for the failure does not lie in the final Compensation Scheme, but is a result of the reasons for and means by which it was carried out. There were no real intention on the part of the government to enact the first laws to redress such violations, and the current government inherited a system it had not entirely approved. To design and implement the Compensation Scheme would have been an enormous task even for those who wanted it. By half-willingly enacting and executing it, failure was predestined.

The principal institutions of the Compensation Scheme are the compensation offices. The compensation offices faced numerous problems, such as: finding qualified employees; the claims came in periodically, therefore there was a shortage of employees most of the time; and the overworked employees committed a lot of mistakes. There were no clear logistics governing the handling of claims. The claims were not dealt with in filing order, and if there was missing data, the whole procedure

restarted from the beginning. Therefore, letters for information went unanswered, some claimants had to wait years for a decision and vouchers were handed out late. One of the largest problem has been that the Compensation Office not only dealt with deciding the claims, but also organized the agricultural land auctions. At the beginning, the Compensation Office was not responsible for coordinating the Compensation Scheme, nor for analyzing the compensation process. However, when the government committee coordinating the Compensation Scheme was terminated and the task of compensation was placed under the Minister of Agriculture, the Compensation Office was also required to help with the coordination and analysis of the Compensation Scheme. There were problems also with printing and distributing vouchers. There is no reliable data on the amount of vouchers returned to the State and destroyed.

The other main reason for the failure of the Compensation Scheme, was the lack of planning. There were no serious projections on the number of claims, nor on the amount of total compensation. The total amount was estimated at first to be HUF 100 billion, but it had already reached over HUF 200 billion by 1994, and valued privatized property were not set aside by the State. The Compensation Scheme was not finished, as originally planned, at the end of 1994. The earliest it could terminate is at the end of 1998. This is the reason that the vouchers bore interest only until 1994.

The other consequence of the lack of planning was that eligible persons living abroad were not adequately informed and were not given sufficient time to file claims. At foreign Hungarian representative offices, there was a constant lack of compensation forms, which were necessary to file claims. Although there was information available in Hungary, it took a long time for claimants to decide to file. During the 1994 extension period, the Hungarian Government expected an additional 50,000 claimants to file for compensation. In reality, however, over 537.000 claims were filed under the First and Second Compensation Laws, and an additional 70.000 claimants applied

under the Third Compensation Law.³¹⁹

Compensation under the Ch.C.L. and for the Jewish community was not organized any better. Every claim was met with the reality of a lack of adequate funding. The Hungarian Constitutional Court is entitled to argue that under the present financial circumstances the country cannot endure full scale compensation. But that would not preclude partial compensation for the present and full compensation for the future. The Luxembourg Agreement should be an example to be used, especially in agreements relating to the Holocaust. It states that Germany is determined, "within the limits of their capacity, to make good the material damage" they have caused "against the Jewish people during the National-Socialist regime of terror". At the beginning, Germany agreed to pay US\$ 820 million of the US\$ 1.5 billion asked. However, by 1995 Germany had paid an estimated US\$ 66 billion. It means that once responsibility was admitted by Germany, it could not successfully limit the amount of compensation it has been paying to Holocaust survivors, based on its financial situation after World War II.

Why should the Jewish community still accept the Hungarian government's offer? There are about 10-15,000 Jewish pensioners living under difficult circumstances. The Jewish community already distributes funds to the elderly to help them buy their needed medications. About 2,500 people receive lunch from the community and the most needy 500 receive packages four times a year.³²⁰ Under the agreement reached with the government, all these individuals will receive instant help. The buildings belonging to the Public Foundation can be rented (most of them currently are), and projects could be financed from the proceeds. Moreover, the State committed itself to deliver Jewish assets which will be returned from other countries. The international support for Hungarian Jews is decreasing and Hungarian Jewry should be able to support itself. The Public Foundation, and the properties and funds

³¹⁹ Dr. T. Sepsey, "Kárpótlás" *Új Élet* (15 May 1994) at 2.

³²⁰ G. Zoltai, "Hogy is állunk a kárpótlással" (Address to the Oneg Shabbat Klub, 29 March 1997)[unpublished].

that are and will be received under the Church Compensation Law should be a good start.

4. Comparison of the contemporary compensation schemes of Hungary and other countries

Compensation legislation provides a mixed picture in the former Communist countries. Although many countries enacted such legislation after the Holocaust, it was rarely implemented. Then, as a result of the mass scale of nationalization carried out by the Communist governments, there was very little left for the Jewish communities or for individuals. After the collapse of the Soviet Union, together with the need for privatization, the issue of compensation reemerged in all former Communist countries. In some countries, the compensation process was even tied to the privatization process. The compensation depended not only on current means and wishes of the governments, but also on historical circumstances. Some of these countries were part of the Allied forces, some of them were part of the Axis forces during World War II. Therefore the injustices done to Jewish individuals and to the Jewish community were different. Although Jews lived in all of these countries, some of them still had substantially larger Jewish communities, such as Poland. There are countries where Jews survived and returned in larger numbers, as in Hungary, and others, where almost the entire Jewish community was annihilated, as in Poland.

Critics of compensation have claimed that the existing small communities in East European countries should not inherit properties which they cannot use, while they are depriving current occupants of those assets. These claims are without merit. East European countries are homes to a vast number of unkept cemeteries, and ruined synagogues, but do not have and may not have a future Jewish community, which could keep those up. Where larger numbers of Jews survived they have no means to restart a Jewish community life. One can argue for full compensation in countries which were allies to Nazi Germany and therefore, actively took Jewish property away from the owners, or even aided the annihilation of the Jewish community. Hungary, Bulgaria, and Romania are bound to pay compensation under the Paris Peace Treaty.

Croatia and Slovakia were associated with Germany and actively participated in the persecution of their Jewish populations. These countries under no circumstances should be allowed to keep heirless Jewish property. Countries, which were occupied by Germany, should not benefit from the annihilation of Jews either. Heirless property of Holocaust victims should not be deemed State property under civil law. Advocates for full compensation of heirless property can follow the argument based on "rational choice prediction".³²¹ Under rational choice prediction it is assumed, that if the individual, who fell victim to Nazi terror, could have disposed of his\her property, s\he would have bequeathed it to his\her community. Although decisions assumed under rational choice prediction are hypothetical, "hypothetical rational choice is essential to our normative thinking about justice."³²²

The enacted compensation laws of the former Communist countries cover different group of claimants, properties, and forms of compensation. Choosing restitution of property or some form of monetary compensation for properties was often subject to heated discussions. Former owners argued for *in integrum restitution*, both because they are attached to their property, and also because that way compensation could have not been partial. In Hungary, four opinion polls conducted by the government between 1989 and 1990, revealed that the general population preferred the return of land over monetary compensation to former owners who intended to cultivate such land.³²³ However, the Constitutional Court found unconstitutional restituting only agricultural land to former owners, but not other property. Therefore, Hungary followed compensation in the form of vouchers. *In integrum restitution* of private property was offered when it was possible in Bulgaria, Germany, and in the former Czechoslovakia.³²⁴ Other countries opted for monetary

³²¹ See Waldron, *supra*, note 120 at 13.

³²² See Waldron, *supra*, note 120 at 13.

³²³ Sáriné Dr. Á. Simkó, Dr. Z. Mikó: *Föld, Ingatlan Kárpótlás '91* (Budapest: Mentor Mont, 1991) at 131-137.

³²⁴ L. Weinbaum, "Righting Historic Wrong. Restitution of Jewish Property in Central and East Europe" (Jerusalem: Institute of the World Jewish Congress Policy

compensation. Regarding community property, monetary compensation was rarely a possibility. The religious communities wanted the government to return their places of worship, their schools, social institutions, and cemeteries. Some countries applied similar standards as the Hungarian Compensation Scheme, and returned community property according to the current needs of such community. Full restitution, or *in integrum restitution* especially fifty years late, could have lead to another kind of social injustice, as was discussed in relation to the Church Compensation Law.

Another important element of the compensation process is establishing previous ownership. It is often difficult to produce documents after fifty years. Therefore, the number of successful claimants depend on the evidentiary requirements. In Hungary the requirements were relatively easily met. In most cases oral evidence of two witnesses, or in some cases by the victim, was acceptable. However, in the Czech Republic, ownership could not be established by witnesses, which greatly reduced the number of claimants.

Bulgaria has enacted, after the Hungarian Compensation Scheme, the most comprehensive compensation legislation.³²⁵ The uniqueness of the Hungarian Compensation Scheme is that it covers a wide variety of compensation claims. Victims of injustices also received some compensation for non-pecuniary losses. Countries on the other end of the scale are Lithuania, Russia, and Ukraine, who decided not to enact compensation laws. On the other hand, Hungary lags behind other countries in its effort to secure compensation for its own citizens from Germany. Russia, Ukraine, Belarus, and Poland have already successfully negotiated such an agreement with Germany.³²⁶ Estonia, Lithuania, and the Czech Republic are also receiving lump sum compensation payments from Germany in the amount of

Study, No.1. 1995) at 16, 18. H. Küpper, "A zsidóknak járó kárpótlás, jóvátétel Magyarországon és Németországban" 44:7 Magyar Jog 385, at 390.

³²⁵ See Weinbaum, *supra* 324, at 16.

³²⁶ R. Atkinson "For East Europe's Holocaust Survivors, Reparations Never Came" *International Herald Tribune* (30 May 1995) at 7.

DM 2-400 million, to maintain social institutions, old age homes, and hospitals primarily for Jewish Holocaust victims.³²⁷

Regarding compensation for Jewish community properties, Bulgaria, the Czech Republic, and Hungary took some parts of the compensation laws enacted shortly after the Holocaust. As Hungarian Jewry tried to re-establish the Restitution Fund, the Shalom organization of Bulgarian Jewry has sought to re-establish the pre-war Geula Bank and reclaim its assets.³²⁸ Similar in all countries, the governments are only willing to grant compensation as long as it enriches the Jewish communities inside the territories of the granting country. Understandably, the WJRO is pressuring the claims of emigrated Jewish citizens of these countries, with no success so far. In addition to Hungary, in Bulgaria, the Czech Republic, Estonia, Latvia, and the Ukraine, some Jewish community buildings have already been given back to their Jewish community.³²⁹

Compensation for the heirless properties of Nazi victims is also being discussed in several countries. Slovakia is planning to turn over at least some property previously belonging to Holocaust victims.³³⁰ As a result of the negotiations between the Latvian government, who opposes compensation, and the WJRO, some community functions such as one Jewish kindergarten may be partially funded by the government. Romania has also been a signatory of the Paris Peace Treaty and the same rules apply for Romania as for Hungary. Article 25 of the Peace Treaty imposes the obligation on Romania to restore all Jewish properties to survivors or representative organizations of survivors in the case of unclaimed or heirless property. However, the Romanian government expressed willingness to return only 250

³²⁷ See Küpper, *supra*, note 324 at 391.

³²⁸ See Weinbaum, *supra* 324 at 16.

³²⁹ See Weinbaum, *supra*, note 324 at 16, 19, 33, 34, 37.

³³⁰ See Weinbaum, *supra*, note 324 at 32.

cemeteries and synagogues.³³¹

³³¹ P. Feher, "Restitution of Jewish Private Property in Eastern Europe" 1995 *Justice* 4 (Winter) at 22.

VI. CONCLUSION

The human rights violations committed against Hungarian Jewry were of such a large scale that a comprehensive legal system was needed to redress the damages suffered as a result of those violations. Such extensive legislation was enacted in Hungary after World War II, however, it proved impossible to implement. Although Germany was willing to compensate Holocaust victims, large scale individual compensation was not possible under the Communist system. In addition to those failure to compensate many Hungarian Jews suffered further under Communist rulers. Whatever was left of their wealth after the Holocaust was taken by nationalization legislation, or extra-legal and illegal means.

Although the final Compensation Scheme is comprehensive, it does not provide adequate remedies for people who have suffered. By the use of compensation vouchers, the government further reduced its limited obligation and the real amount of compensation received at the end helped only the most destitute. The amount given thus far to the Hungarian Jewish Heritage Public Foundation is only enough to supplement the compensation already granted to Holocaust victims. However, with the planned restructuring of government financing for Churches, the Jewish community may be placed in a situation it should be able to live with. The Hungarian Jewish community might also be able to recover more when: agreement with Germany for compensation is reached; aid from Swiss humanitarian funds is transferred; and the Russian Parliament decides favourably on the artworks confiscated. The amount of compensation that has been received and the amount that may be received in the future, should offset any current aid received from abroad. After foreign Jewish help for fifty years, the Hungarian Jewish community might be able to stand on its own feet and that will be a most important achievement.

Having said that, we have to accept the reality that although international norms are important for giving guidance to States undertaking the responsibility of compensation, every case will be decided on the financial liquidity of the compensating State and the strength of the representatives of the victims. Although

it could be argued that compensation should not be carried out by redistribution of wealth, and therefore, compensation should be given based only on past injustices. No compensation can fully restore every victim. The compensation schemes should therefore help the most needy. The practical impossibility of securing full compensation should not prohibit the victims to claim full compensation, with the help of the international community. The feasibility of the United Nations principles and guidelines of compensation will depend upon the social, political, economic, and other circumstances of the case concerned. Full repossession is the least likely possibility in any situation. Compensation for property is extremely difficult to assess, and when facing wide scale violations it is difficult to deal with each case separately. Therefore, global funds are better option. The amount of global funds should relate to how much was actually lost. However, each individual settlement should be more in the nature of rehabilitation, taking into consideration the current needs of the victim and his\her family. A representative entity of the victims should be charged with making such assessments.

Accepting partial compensation should not mean accepting inadequate compensation. In regard to the issue of heirless property, further compensation is due to the Hungarian Jewish community. It is our opinion that compensation for the Jewish community should have been given under the terms of the Paris Peace Treaty and not under the new Compensation Laws.

Although the initial public response to the Compensation Scheme was favourable, many Hungarians have grown sceptical of the system's merits. Those who view the system with the greatest disfavour tend to be those who lost the greatest amount of property under the Communist regime and have received comparatively little compensation. Most of the Jewish victims of the Holocaust either do not want any type of compensation, believing that for their sufferings there is no adequate compensation, or they want to see full scale compensation for both private and community properties which they are not entitled to under the Compensation Laws. Even those who accepted the compensation in vouchers often lack the market-oriented education and knowledge to use the vouchers wisely, which is a problem plaguing the

entire Compensation Scheme.

Although the Compensation Scheme remedies past wrongs, it also contributes to the instability of property rights, a significant characteristic of post-Communist societies. Critics of the Compensation Scheme who argued that justice would never be achieved due to the complexity inherent in compensating an entire population, now see their predictions coming true. As Hungary enacts more and more legislation to compensate new classes of claimants, the process promises to grow more unwieldy. What is undeniable, however, is that the Compensation Scheme has become the single biggest issue in modern Hungarian politics. It has directly effected roughly one fourth of the population.¹³²

The Luxembourg Agreement should have served the Hungarian legislators, and the Constitutional Court, as an example. By signing an understanding between Germany and Israel, it was a first step in reconciliation between the two nations. Through the implementation of the Luxembourg Agreement, Jews not only received financial aid but, as a consequence, Israelis and Germans accepted each other's existence and formed a basis for future relations. That is what is missing in Hungary. As long as Hungarians feel that Jews are demanding too much money for their losses, they do not accept the horrors of the Holocaust, and Hungary's role in World War II. As long as Jews feel that they will not receive adequate compensation for what was taken from them, they will not feel welcomed in Hungarian society. The partial Hungarian Compensation Scheme therefore, serves nobody. It is too much for one side and too little for the other.

None of the former Communist countries have enacted a compensation scheme which is entirely satisfactory. Most of the governments prefer to give promises of compensation due to international pressure, but many of them do not implement their promises. In some cases, where detailed laws were enacted, the government is unable

¹³² - according to Dr. Nagy Ferenc, Director of the National Office of Compensation in 1995. The Office produced files reaching to more then 10 km by September 1995.

to enforce its own decisions. It is clearly visible in the cases where the central government has to order the local government to return properties. These properties were allocated to the local government by the central government at the collapse of the Communist governments when the state property holdings were reorganized. In most cases, the central government has no power to enforce, and has no adequate financial means to give incentives to the local governments who are more interested in property rights received from their central government than in the obligations which descended on them with those rights. Although most countries tried to connect the privatization process with compensation efforts, in many cases the property to be privatized is inadequate to provide appropriate compensation. No one can expect the governments to redeem their obligation to return properties by means of monetary compensation, based on the economic realities of the former communist countries.

The Hungarian Constitutional Court invented a legal scheme which largely depends on political considerations. A state can pay no compensation, or only *ex gratia* compensation without admitting to any wrongdoing. However, once responsibility is admitted, it carries higher obligations of redress. Current financial liquidity can justify limited compensation only at present. However, a State's financial situation can change favourably, as the German example showed it. Therefore, a State should not limit its liability, based on present circumstances. The act establishing the Hungarian Jewish Heritage Public Foundation contains provisions on the possibility of transferring additional funds and assets by the Hungarian State to the Public Foundation in the future. Such transfer will be based on political considerations, and the Hungarian Jewish community will have to actively participate in creating such situation.

Having said that, we came back to the issue this thesis started with: the subject of future institutional accommodation for Hungarian Jewry. The debates of the past eight years on what position should the Jewish community take in the compensation process first divided the representatives, then unified them. Old and new Jewish organizations fought to be part of the Public Foundation. People who had to be silent for fifty years during Communism could finally voice their opinion. The Hungarian

Compensation Scheme could be criticised easily. It offered financial help in real terms to only a few victims of past regimes. It even humiliated many by the faulty process of the Compensation Scheme. However, it provided an opportunity of rehabilitation. The Compensation Scheme falls short on restitution and compensation of victims according to the U.N. guidelines on compensation³³³, however it provided satisfaction and guarantees of non-repetition, such as: (i) public disclosure of truth; (ii) official declaration and judicial decision restoring dignity and reputation of the victims; (iii) public acknowledgement of the facts and acceptance of responsibility; (iv) commemorations and paying tribute to the victims; and, most importantly (v) employing means to prevent the recurrence of violations.

Every coin has two sides. People who argue that the Hungarian Compensation Scheme inadequately redresses past injustices, ask the question what example is the Hungarian Compensation Scheme, when a country who assisted in the extermination of its citizens and took their possessions, under enormous international pressure, acknowledges some wrongdoing and gives back fractions of the looted property decades after the original injustice? People who favour the Compensation Scheme can argue, that it provided help at least for the most needy, it will provide enough for the Jewish community to manage without foreign financial help, and it contributed to the start of a national reconciliation process.

History cannot be changed. No compensation is ever full and just. However, it should not stop any human being from searching for truth. The ones who pressure for justice, such as The Simon Wiesenthal Center, are not doing it for the sake of revenge. Nor is the purpose of the World Jewish Restitution Organization in collecting money for the sake of money. They are the conscience of humanity. Their work is to make sure that no one would choose to be a Nazi at the beginning of World War II, and no one would want to serve in an ethnic cleansing unit in the former Yugoslavia, or in any country.

³³³ See UN ECOSOC 1996/17, *supra*, note 145, at 3-5.

VII. BIBLIOGRAPHY

BOOKS:

- S. Balogh, *A népi demokratikus Magyarország külpolitikája 1945-1947* (Budapest: Kossuth Könyvkiadó, 1982).
- R. Braham, *The Hungarian Labor service System 1939-1945* (New York: Boulder, 1977).
- R.L. Braham, *The politics of Genocide. The Holocaust in Hungary* (New York: Columbia University Press, 1981), *A Magyar Holocaust* (Budapest: Gondolat, 1988).
- E. Déry et al., *A fasiszmus üldözötteit védő jogszabályok, 1945-46* (Budapest: American Joint Distribution Committee, 1946).
- B. Ferencz, *Less than slaves* (Cambridge: Harvard U. Press, 1979).
- H. Schneiderman, *Two Generations in Perspective: Notable Events and Trends 1896-1956* (New York: Monde Publishers, Inc., 1957) at 300.
- R.G. Frey & C.W. Morris, eds., *Liability and Responsibility. Essays in Law and Morals* (Cambridge: Cambridge University Press, 1990).
- H. Infield ed., *Essays in Jewish Sociology Labor and Cooperation in the Memory of Dr. Noah Barou* (London, New York: T. Joseloff, c1962).
- K. R. Grossman, *Germany's Moral Debt. The German-Israel Agreement* (Washington, DC: Public Affairs Press, 1954).
- T. Kun, *A Kárpótlásról* (Budapest: Aura Kiadó, 1991).

- R. Lemkin, *Axis Rule in Occupied Europe* (New York: Howard Fertig, 1973).
- N. Sagi, *German Reparations, A History of the Negotiations* (Jerusalem: The Magnes Press, The Hebrew University, 1980).
- Sáriné Dr. Á. Simkó & Dr. Z. Mikó, *Föld, Ingatlan Kárpótlás '91* (Budapest: Mentor Mont, 1991).
- A. L. Smith, *Hitler's gold. The Story of the Nazi War Loot* (Oxford, New York, Munich: Berg, 1989).
- M. Süveges, ed., *Eloadások az agrárjog köréből* (Budapest: TK, 1992).
- Dr. L. Tóth & Dr. G. Ribáry, *A zsidók egyenjogúsítására és külön jogrend alá helyezésére vonatkozó jogszabályok* (Budapest: Hungária Könyvkiadó, 1939).
- *Törvények és Rendeletek Hivatalos Gyűjteménye 1949-current* (Budapest: Közgazdasági és Jogi Könyvkiadó until 1993, from then: Közlöny és Lapkiadó Vállalat).
- F. Váli, *A békeszerződés jóvátételi és gazdasági rendelkezései* (Budapest: Különlenyomat A, Jogtudományi Közlöny, 5 March 1947).
- I. Vásárhelyi, *Restitution in International Law* (Budapest: Akadémia Kiadó, 1964).
- R. Zweig, *German Reparations and the Jewish World: A History of the Claims Conference* (Boulder: Westview Press, 1987).

JOURNALS:

- N. Bentwich, "Nazi Spoliation and German Restitution: The Work of the United Restitution Office." 10 Yearbook of the Leo Beack Institute 204.
- N. Bentwich, "International Aspects of Restitution and Compensation for victims of the Nazis" 32 The British Year Book of International Law 204.
- "Claims relating to confiscation of property of former political prisoners during the Communist period / Alleged discriminatory nature of the compensation legislation / No breach of Art.26 CCPR / Somers v. Hungary, Communication, UN-HRCee (23 July 1996)" 17:1-2 Human Rights Law Journal 412.
- L. Dawidowitz, "German Collective Indemnity to Israel and the Conference on Jewish Material Claims Against Germany 54 American Jewish Year Book 471.
- Dr. L. Fázsi, "A kárpótlási jegyek felvásárlásával megvalósított csalással okozott kár megállapításáról" VI:3-4 Bírak Lapja 216.
- P. Feher, "Restitution of Jewish Private Property in Eastern Europe" 4 Justice 21.
- I. Ferto, K. Mohácsi, "A politikai kárpótlás folyamata és következményei" VI:2 Európa Fórum 85.
- "Final Act of and Annex of the Paris Conference on Reparation, Paris, 1945." 40 American Journal of International Law, Supplement 117.
- P.Grumbach, "Heirless Jewish Assets In Swiss Banks Balance Sheet for 1996" 11 Justice 20-22.
- "Heirless Jewish Assets" *The Eurodin Courier* (February 1997).

- M. Himmelfarb, "Peace Treaties" 49 American Jewish Year Book 562.

- F. Honig, "The Reparations Agreement Between Israel and the Federal Republic of Germany" 48 American Journal of International Law 564.

- "Hungary" 49 American Jewish Year Book 416.

- "Hungary" 50 American Jewish Year Book 360.

- "Hungary" 51 American Jewish Year Book 361.

- "Hungary" 52 American Jewish Year Book 363.

- E. Klingsberg, "Judicial Review and Hungary's Transition from Communism to Democracy: The Constitutional Court, the Continuity of Law, and the Redefinition of Property Rights" 1992:1 Brigham Young University Law Review 41.

- H. Küpper, "A zsidóknak járó kárpótlás, jóvátétel Magyarországon és Németországban" 44:7 Magyar Jog 385.

- D. Lack, "Nazi Gold and Neutral Countries: The Role of Switzerland and the Swiss National Bank" 12 Justice 41-47.

- E. Nathan, "Claims for Restitution of Jewish Property in Eastern Europe" 5 Justice 31.

- P. Paczolay, "Judicial Review of the Compensation Law of Hungary" 13 Michigan Journal of International Law 806.

- L. Portmess, "Compensation *ex gratia* in the Vincennes incident" 6:4 Public Affairs Quarterly 401.

- M. Radnai, "A kárpótlási jegy a magyar tőkepiac Jolly Jokere" XVII Közgazdasági Szemle 279.
- "Reclaiming Jewish Property in Eastern Europe" 1 Justice 41.
- N. Robinson, "War Damange Compensation and Restitution in Foreign Countries" 16 Law and Contemporary Problems 347.
- S. Rubin, A. Schwartz, "Refugees and Reparations" 16 Law and Contemporary Problems 377.
- K. Schwerin, "German Compensation for Victims of Nazi Persecution" 67:4 Northwestern University Law Review 479.
- D. Silvers, "The Future of International Law as Seen Through the Jewish Material Claims Conference Against Germany" 42:3-4 Jewish Social Studies 215.
- "Treaty of Peace with Hungary, 1947" 42 American Journal of International Law, Supplement 225.
- J. Waldron, "Superseeding Historic Injustice" 103:1 Ethics 4.
- D. Wolfson, "Nazi Gold: The Legal Dimension" 11 Justice 23-24.

ARTICLES:

- G. Ács, "A helyre nem állított alap" *Szombat* (September 1995).
- G. Ács, "Magyarország miért nem?" *Szombat* (October 1994).
- "Agency demands return of Nazi loot" *The Jerusalem Post International Edition* (17 May 1997).
- "A külügyminiszter válaszol" *Új Élet* (15 April 1997).
- O. Anderson, "The Secret Bank Accounts. New Swiss Law That Will Aid Heirs of Jewish Survivors" *Jewish Digest* (June 1965).
- "A Siemens nem akar több támogatást adni a Nácizmus áldozatainak" *Erec* (June 1997).
- E.V. "A zsidó arany sorsa 1944-től 1956-ig" *Szombat* (May 1992).
- R. Atkinson "For East Europe's Holocaust Survivors, Reparations Never Came" *International Herald Tribune* (30 May 1995).
- B.I.E., "Zsidókárpótlás" körülötte csend" *Magyarország* (19 May 1995).
- Dr. P. Bács, "Az állorvosi kísérletek magyar vonatkozásai" *Szombat* (December 1994).
- J. Blitz, W. Hall, "Swiss face pressure over \$4bn Nazi gold" *Financial Times* (11 September 1996).
- Á. Bohm, "Fizetett-e a magyar kormány a svájci letétek örököseinek?" *Népszabadság* (4 November 1996).

- T. Borer, "No stone unturned" *The Jerusalem Post International Edition* (18 January 1997).
- N. Cohen, W. Hall, "Way clear for Swiss bank records probe" *Financial Times* (30 May 1997).
- "Coming to Terms With the Past" *Newsweek* (24 February 1997).
- C. Dickey, et al., "Who Was to Blame" *Newsweek* (24 February 1997).
- "Dirty Nazi Deeds?" *Newsweek* (18 August 1997).
- K. Dobos, "Hol tart ma a visszarendeződés?" *Demokrata* (21 August 1997).
- A. Doncsev "Church wants land back now" *The Budapest Sun* (6-12 June 1996).
- J. Eörsi, J. Kis, "Az Alkotmányellenes diszkrimináció fogalma és a kárpótlási törvény" *Beszélok* (8 June 1991).
- R. Ernsberger Jr., "Banking: The Hunt for Nazi Gold" *Newsweek* (23 September 1996).
- "Feldmayer a zsidó kárpótlásról" *Népszabadság* (22 August 1997)
- "Felhívás" *Új Élet* (1 May 1997).
- "Folytatódik a vita a rabolt aranyról" *Erec* (June 1997).
- J. Gadó, "Megfelelőbb és legmegfelelőbb kárpótlás" *Szombat* (September 1995).
- J. Gadó, "Statisztika az elrabolt zsidó vagyonról" *Szombat* (November 1994).

- F. Gáspár, "Mire ad engedélyt Auschwitz?" *Szombat* (March 1992).
- W. Hall, "An uncomfortable job" *Financial Times* (28 October 1996).
- D. Harris, "Generali offers \$12m. for Holocaust victims" *The Jerusalem Post International Edition* (28 June 1997).
- D. Harris, "Generali won't pay claim to Holocaust victim's family" *The Jerusalem Post International Edition* (21 December 1996).
- "Hazai hírek: Zsidó-zsidó jóvátételi tárgyalások" *Szombat* (November 1994).
- M. Henry, "Germany will offer DM 20m. a year to Nazi victims in E. Europe" *The Jerusalem Post International Edition* (30 November 1996).
- M. Henry, "Survivors prominent on Swiss fund board" *The Jerusalem Post International Edition* (8 March 1997).
- M. Henry, "Swiss banks set up Holocaust survivors fund" *The Jerusalem Post International Edition* (15 February 1997).
- M. Henry, "Swiss leader proposes 2nd 'humanitarian' fund" *The Jerusalem Post International Edition* (15 March 1997).
- M. Hirsh, "The Holocaust in the Dock" *Newsweek* (17 February 1997).
- M. Hirsh, "A Tally of Pain" *Newsweek* (4 August 1997).
- "Inquiries Get Closer to Truth About Third Reich Money Trail" *The Wall Street Journal (Europe)* (24 April 1997).
- E.J. "Az állam egyre jobban jár" *Világgazdaság* (11 February 1995).

- C. Jones, "Survivor Leads Fight for Holocaust Money" *The New York Times* (12 November 1996).
- K.K. "Újabb tárgyalási forduló" *Magyar Hírlap* (15 July 1995).
- "Kárpótlás'93" *HVG* (November 1993).
- "Kárpótlás" *Kápe* (13 January 1994).
- "Kártérítés Franciaországban" *Szombat* (March 1996) at 17-18.
- Gy. Kerényi, "Roma kárpótlás, végso elszámolás" *Magyar Narancs* (7 August 1997)
- J. Korn, "A közösségi kárpótlásról" *Új Élet* (1 May 1996).
- J. Korn, "Mit kell tudni a Magyarországi Zsidó Örökség Közalapítványról?" *Új Élet* (1 April 1997).
- "A külügyminiszter válaszol" *Új Élet* (15 April 1997).
- J. Lapid, "A harmadik birodalom aranyának rejtélye" *Erec* (December 1996).
- "Lesz-e német kártérítés" *Szombat* (March 1993).
- "Nazi Gold: Waiting Game?" *Newsweek* (19 May 1997).
- B.Nelan, "Swiss banks may finally be loosening their hold on deposits of Holocaust victims-as well as tainted Nazi gold shipped from Germany during World War II" *Time* (4 November 1996).
- "Német nyugdíj volt SS-eknek" *Erec* (February 1997).

- "Nézz vissza haraggal? A nácizmus magyarországi üldözötteinek kárpótlásáról" *Szombat* (Summer 1996).
- Official inquiries into Nazi gold *Financial Times* (28 October 1996).
- "Polish-Swiss secret deal" *Budapest Week* (24-30 October 1996).
- E. Richard, "Stolen art auction raises dark past" *Budapest Week* (24-30 October 1996).
- M. Sanbar, "Dishonest brokers" *The Jerusalem Post International Edition* (17 May 1997).
- Dr. T. Sepsey, "Kárpótlás" *Új Élet* (15 May 1994).
- A. Sereg, "Az eltűnt zsidó vagyon nyomában" *Reform* (30 June 1995).
- G. Steinberg, "New beginnings" *The Jerusalem Post International Edition* (15 March 1997).
- "Svájc nyomoz az elrabolt aranyak után" *Erec* (January 1997).
- Swiss Bankers Association, "Swiss Banks Commence Global Claims Process to Identify Owners of Dormant World War II-Era Accounts" *The Jerusalem Post International Edition* (26 July 1997).
- Dr. A. Szabady, "Ki fizeti az adót az eladott föld után?" *Kápe* (20 January 1994).
- Dr. A. Szabady, "Vásárolható önkormányzati lakás kárpótlási jegyért?" *Kápe* (6 January 1994).
- Dr. A. Szabady, "Ki fizeti az adót az eladott föld után?" *Kápe* (20 January 1994).

- "Számvetés" *Szombat* (April 1997).
- "This Week" *The Budapest Sun* (23-29 January 1997).
- B. Tsur, "'Blackmail' remark halts talks with Swiss" *The Jerusalem Post International Edition* (18 January 1997).
- B. Tsur, "Burg recives death threat; Swiss agree to set up Holocaust fund" *The Jerusalem Post International Edition* (1 February 1997).
- B. Tsur, "German politicians visit, discuss reparations with survivors" *The Jerusalem Post International Edition* (28 December 1996).
- B. Tsur and S. Rodan, "Poland supports claims for return of lost funds" *The Jerusalem Post International Edition* (25 January 1997).
- "Tüntetok fogadták a német államfot" *Erec* (March 1997).
- "US rejects Swiss official's complaint on Nazi assets" *The Jerusalem Post International Edition* (11 January 1997).
- Gy.V., "Egy lépéssel közelebb a svájci széfekhez" *Szombat* (November 1996).
- Gy.V. "Már nevek is vannak, Nyílnak-e a széfek?" *Szombat* (Summer 1996).
- "Van (tíz) képünk hozzá!" *Szombat* (April 1997).
- E. Várai, "A svájciból magyar titok lett?" *Szombat* (December 1996).
- E. Várai, "A 320 ezer miért 280 ezer?" *Szombat* (March 1997).
- E. Várai, "Elsikkasztott örökség" *Szombat* (March 1997).

- E. Várai, "Hol az arany" *Szombat* (December 1990).
- E. Várai, "Késlekedik az államosított ingatlanok visszaadása" *Szombat* (November 1996).
- E. Várai, "Oroszországból csak 80 "hadifogoly" mukincs tér haza?" *Szombat* (April 1997).
- E. Várai, "Újabb "hadifogoly" mukincsekre bukkantak" *Szombat* (February 1997).
- E. Várai, "Veszély és remény" *Szombat* (September 1996).
- E. Várkonyi, "Egyéni kárpótlás Magyarországon" *Szombat* (February 1997).
- T.V., "Zoltai Gusztáv a kárpótlásról" *Új Élet* (1 June 1996).
- "'Victim Gold'" *Newsweek* (1997).
- L. Weinbaum, "Righting an Historic Wrong" *The Jerusalem Post International Edition* (1 January 1993).
- G. Weis, "Restitution Throughout the Ages" *World Jewry* (January-February 1963).

OTHER MATERIALS:

- Advisory Opinion [1950] I.C.J. Rep. 221.
- A kárpótlási törvény, az alapját képező és a kapcsolódó jogszabályok gyűjteménye, vol.1-2, Magyar Közlöny Különszám (1991-1992).
- ÁPV Rt., A feldolgozások alapján az ÁPV Rt.-nél 1997.08.21-ig "felhasznált", ill. önkormányzatoknál kiadott kárpótlási jegy mennyisége (21 August 1997).
- Dr. Gy. Bérci, ed., "Kárpótlási módszerek" Tanulmánykötet a Magyar Privatizációs Társaság 1994.II.8-i konferenciájáról (MTESZ Házinyomdája).
- "Data Sheet" Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (November 1996).
- J. Deller, "Brief Discussion Paper, Conference of the Canadian Human Rights Foundation on Compensation to Victims of Human Rights Violations: A Canadian Initiative" (Ottawa, 29-30 May 1989) [unpublished]
- "Extract of the Guidelines of the Swiss Bankers Association" Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (8 September 1995).
- "Fact Sheet" Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (November 1996).
- Dr. B. Galgóczi, "The Role of Compensation Vouchers in Privatization in Hungary" (Property Foundation Institute for Privatization Studies, Budapest, February 1995)[unpublished].
- Dr. L. Gyurkó, Address (Hungarian Parliament, 30 March 1992) In: Országgyűlés (30 March 1992) at 16249.

- H. Hāni, Swiss Banking Ombudsman, "Heirless Jewish assets" (Address to the Conference on Banking Secrecy, Zurich, 15-17 November 1996) [unpublished].
- H. Hāni, Address (Banking Ombudsman Press Conference, 12 November 1996)[unpublished].
- D. Haskil, "Argentina Opens Central Bank Accounts to Jewish Probe" Reuter News Service (27 November 1996) [<http://www.wiesenthal.com/itn/argarts.html>].
- W. Heath, "Central Banks Turns Over WW II Gold Transfer Records to Jewish Group" The Associated Press (27 November 1996) [<http://www.wiesenthal.com/itn/argarts.html>].
- Jewish Restitution and Compensation Claims in Eastern Europe (Jerusalem: WJC IJA, February 1992).
- Jewish Restitution and Compensation Claims in Eastern Europe and the Former USSR (London: WJC IJA, November 1992).
- Letter from Gyula Horn, Prime Minister of Hungary, to Yitzhak Rabin, Prime Minister of Israel (January 1995) Budapest, Hungary.
- Letter from Jean-Luc Meier, Contact Office of the Swiss Banks, to Agnes Peresztegi (22 February 1997) Zurich.
- Letter from Yitzhak Rabin, Prime Minister of Israel, to Gyula Horn, Prime Minister of Hungary (13 November 1994) Jerusalem, Israel.
- Magyarországi egyházak, felekezetek, vallási közösségek 1994 (Budapest: Művelődésügyi és Köznevelési Minisztérium Egyházi Kapcsolatok Főosztálya, 1994, 1995-96).

- MTV News TV1 (19 March 1997).
- OKKH, Tájékoztató az OKKH tevékenységéről (8 August 1997).
- "Press Conference Programme. Position of Dormant Accounts on Processing" Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (12 November 1996, 3.30pm).
- "Questionnaire" Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (November 1996).
- Reuters, The PointCast Network, CNN market news, Swiss banker seeks probe (11 April 1997).
- Rules of Association of The World Jewish Restitution Organization. A Not For Profit Society 1993.
- L. Schlumpf, Address (Banking Ombudsman Press Conference, 12 November 1996)[unpublished]
- Dr. T. Sepsey, "Kártérítés-kárpótlás a mezőgazdasági és élelmiszer-ipari privatizáció szolgálatában" (Address to the MTESZ Conference, 5 October 1992) In: L. Pelikán, ed., "A mezőgazdasági és élelmiszer-ipari privatizálás időszerű kérdései" (Szolnok: MTESZ, 1992).
- K. Sieradzka & A. Lerman, Jewish Property in Central and Eastern Europe: New Developments in Restitution and Compensation Claims (London: Institute of Jewish Affairs Research Reports no.5, March 1994).
- K. Sieradzka, Jewish Restitution and Compensation Claims in Eastern Europe and the Former USSR (London: Institute of Jewish Affairs Research Reports, No.2, May 1993).

- I. Sneh, *Morality, Public International Law, and the Formation of the 1952 Shilumim Agreement Between the State of Israel and the Federal Republic of Germany* (Faculty of Law, McGill University, 1991)[unpublished].
- M. Stern, Assistant Secretary General of the World Jewish Congress, "Heirless Jewish assets" (Address to the Conference on Banking Secrecy, Zurich, 15-17 November 1996) [unpublished].
- "Swiss banker seeks probe" Reuters, The PointCast Network, CNN market news (11 April 1997).
- "Swiss Banked Gold from Holocaust Victims" Reuters, The PointCast Network, News International (7 May 1997).
- "The problem of reparations" Bulletin No. 135 of the Institute of International Finance of New York University (New York, 18 December 1944).
- Time Inc. on Compuserve, TIME Daily: Forced Generosity (3 May 1997) [<http://themenu.compuserve.com/new/index/time.html>]
- UN GA Resolution 385 (V) of November 3, 1950, on "Observance in Bulgaria, Hungary, and Rumania of Human Rights and Fundamental Freedoms".
- U.S. Department of State, Coordinated by Stuart E. Eizenstat, Under Secretary of Commerce for International Trade, Special Envoy of the Department of State on Property Restitution in Central and Eastern Europe "U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II" (7 May 1997) [<http://www.state.gov/www/regions/eur/holocausthp.html>].

- L. Weinbaum, "Righting Historic Wrong. Restitution of Jewish Property in Central and East Europe" (Jerusalem: Institute of the World Jewish Congress Policy Study, No.1. 1995).
- G. Weis, "Restitution Through the Ages" (Noah Barou Memorial Lecture 1962) (London: WJC, British Section, 1962).
- Dr. H. Winter, "Heirless Jewish assets from the point of view of a legal adviser" (Address to the Conference on Banking Secrecy, Zurich, 15-17 November 1996) [unpublished].
- G. Zoltai, "Hogy is állunk a kárpótlással" (Address to the Oneg Shabbat Klub, 29 March 1997)[unpublished].
- See also the list of the Compensation Laws and related legislation which is attached hereto as Appendix C.

**Nationalization Laws Enacted between
May 1, 1939 and June 8, 1949¹**

1. Act No. IV of 1939 on restricting Jews of public and economic expansion.
2. Government Decree No. 3350/1940 on supplementing the regulations relating to the implementation of the provisions of Act No. IV of 1939 on real property.
3. Act No. XV of 1942 on agricultural and forest real property owned by Jews and Government Decree 3600/1943 on the implementation of the Act.
4. Decree No. 550.000/1942 of the Minister of Agriculture on relinquishing minor real estate owned by Jews.
5. Government Decree No. 4070/1943 on restricting the marketing of livestock and farm implements and buildings forming part of real property falling under the effect of Act No. XV. of 1942 on agricultural land and forest real property owned by Jews.
6. Government Decree No. 1600/1944 on declaring and sequestering Jewish properties.
7. Government Decree No. 1830/1944 on taking possession of and preserving the sequestered art objects belonging to Jews.
8. Government Decree No. 2650/1944 on regulating certain questions related to property owned by Jews.
9. Decree No. 50.550/1944 of the Minister of Trade and Transportation on sequestering inventories and business installations forming part of business of Jewish traders.
10. Act No. VI of 1945 on the bringing into force Government Decree No. 600/1945 on abolishing large estates and allocating land to agricultural workers.

¹ Appendix No.1. to the First Compensation Law (as amended by the Second Compensation Law)

11. Government Decree No. 12.330/1945 on resettling Hungary's German population to Germany.
12. Government Decree No. 5410/1945 on sequestering certain factory equipment and inventory by the Minister of Industry, as amended and supplemented by Government Decree No. 147/1950 (V.24.).
13. Decree No. 2.400/1945 of the Agriculture Minister on allocating land parcels and public parcels.
14. Decree No. 5.600/1945 of the Agriculture Minister on the subject of the implementation of Government Decree No. 600/1945 on abolishing the large estate system and allocating land to agricultural workers.
15. Government Decree No. 7590/1945 on reversal of legislation discriminating against Jews and restitution of confiscated stores, equipment, and inventory, confiscated on the basis of leftist activity.
16. Government Decree No. 3630/1945 on monetary compensation for equipment and restoration in connection to the restitution of liquor licenses.
17. Government Decree No. 10.480/1945 on the redress of personal licenses of pharmacies confiscated on the basis of legislation discriminating against Jews.
18. Act No. IX of 1946 on land parcels and promoting the conclusion of the land reform.
19. Act No. XIII of 1946 on the nationalization of coal mining.
20. Act No. XX of 1946 on transferring certain electric works power stations and transmission lines to state ownership and electrical management to state control.
21. Government Decree No. 300/1946 on lost moveable properties, lost on the basis of legislation discriminating against Jews.
22. Government Decree No. 12.530/1946 on the cancellation of state ownership registration of certain immoveable properties.

23. Government Decree No. 8.400/1946 on regulation of foreign exchange, foreign securities and gold, as well as export payments.
24. Act No. V of 1947 on regulations for concluding the land reform.
25. Act No. XIX of 1947 on the maintenance of Soviet-Russian military memorials and cemeteries for those killed in action.
26. Act No. XXX of 1947 on transferring to state ownership Hungarian owned shares of banks functioning as joint stock companies and falling under the authority of the Hungarian National Bank and the Central Corporation of Banking Companies.
27. Government Decree No. 12.000/1947 on Government Decree No. 12.330/1945 on resettling the German Population of Hungary to Germany, modification, supplementation and summarizing of other relevant decrees.
28. Government Decree No. 6400/1947 on lost farm equipment, lost on the basis of legislation discriminating against Jews.
29. Government Decree No. 5280/1947 on the control of restitution of cold-storing plants and poultry processing plants, confiscated on the basis of legislation discriminating against Jews or anti-Communist activity.
30. Section 4 (2) of Government Decree No. 13.160/1947 on the administration of abandoned Jewish property.
31. Act No. XIII of 1948 on nationalizing bauxite mining and aluminum production.
32. Act No. XXV of 1948 on transferring some industrial companies to state ownership.
33. Act No. XXVI of 1948 on depriving certain persons residing abroad of their Hungarian citizenship and confiscating their property.
34. Act No. XXVIII of 1948 on issues relating to abandoned property

35. Act No. XXXIII of 1948 on the subject of taking over the administration of non-state schools by the State, on the transfer of related assets to State ownership and on using the personnel in the service of the state.
36. Act No. LX of 1948 on Hungarian citizenship.
37. Government Decree No. 10.010/1948 on the use of agricultural industrial plants forming part of real estate bought or confiscated in the course of the real property reform.
38. Government Decree No. 12.770/1948 on the subject of abolishing the special status of land plots granted to recipients of the title of "vitéz", military plots, family property and protected property.
39. Decree No. 22.140/1948 of the Agriculture Minister on the subject of regulating certain inquiries connected with the implementation of real property reform.
40. Decree No. 22.900/1948 of the Agricultural Minister on the implementation of provisions relating to ownership rights of Government Decree No. 12.200/1947 on the resettlement of the German population of Hungary into Germany.
41. Government Decree No. 13.390/1948 (1949.I. 5.) on nationalizing public and limited public narrow-gauge railways.
42. Act No. XXVIII of 1948 on the settlement of the abandoned properties.
43. Act No. I of 1949 on taking into (village) town ownership Soviet military memorials and real estate serving as cemeteries for those killed in action.
44. Act No. VII of 1949 on abolishing entailed property, and Decree No. 33.000/1949 (IV.23.) of the Justice Minister on the implementation of Act No. VII of 1949.
45. Government Decree No. 450/1949 (I.15.) on transferring certain industrial railways to State treasury ownership.

46. Government Decree No. 690/1949 (I.22.) on laying claim to forestry industrial plants on real estate altered or confiscated in the course of implementing land reform.
47. Government Decree No. 1.130/1949 (II.12.) on the subject of registering individuals who have left the country's territory without a permit and on handling their abandoned property.
48. Government Decree No. 2.050/1949 (III.5.) on reviewing the technical state of threshing machines and on laying claim to certain threshers.

**Nationalization Laws Enacted between
June 8, 1949 and September 1, 1987¹**

1. Act No. XXIV of 1949 on resolving some issues connected with the completion of land reform and resettlement.
2. Law Decree No. 3/1949 on partial redistribution of agricultural and forestry plants.
3. Law Decree No. 20/1949 on nationalizing some industrial and transport companies.
4. Government Decree No. 4091/1949 (VI.16.) on contributing agricultural properties and related assets.
5. Government Decree No. 4096/1949 (VI.18.) on performance of funeral tasks in some towns and villages by village companies.
6. Government Decree No. 4153/1949 (VII.29.) on supervising and designating wood-mills, and amending Government Decree No. 470/1949 (I.15.), provided that on the basis of the provision contained in Para 4 (4) of Act No. XXV. of 1991 plants shut down where subsequently transferred to state ownership without compensation.
7. Government Decree No. 4162/1949 (VII.26.) on promoting greater restrictions on the illegal border crossing and smuggling of goods at some border stretches, if on the basis of provisions contained in Para 1 (2) of Act No. XXV. of 1991 real estate transferred to the State use was subsequently registered as state property without compensation.
8. Decree No. 4314/1949 (XI.13.) of the Council of Ministers on facilitating the merger of some cooperatives.
9. Decree No. 326.400/1949 (XII.30.) of the Minister of Finance on the deposit of gold and platinum supply falling under industrial and commercial activity.

¹ Appendix No.2. to the First Compensation Law (as amended by the Second Compensation Law)

10. Law Decree No. 25/1950 on transferring general pharmacies to State ownership.
11. Decree No. 284/1950 (XII.10.) of the Council of Ministers on contributions of real estate by industrial workers, miners and transport employees for the State.
12. Decree No. 16100/1950 (VIII.23.) of the Minister of Agriculture on implementing Law Decree No. 3/1949 on partial regrouping of agricultural and forestry plots in 1950.
13. Government Decree No. 5410/1945 as amended and supplemented by Decree No. 147/1950 (V.24.) of the Council of Ministers on the authorization for requisition of factory equipment and inventory.
14. Decree No. 4247/1950 (IX.22.) of the Council of Ministers as amended and supplemented by Government Decree 113/1950 (IV.18.) on the liquidation of certain companies.
15. Decree 94/1951 (IV.17.) of the Council of Ministers on new rules of procedure related to the confiscation of property.
16. Decree No. 101/1951 (IV.29.) of the Council of Ministers on declaring and transferring rooms fit for dwelling but used for other purposes, and Government Decree No. 165/1951 (IX.7.) on supplementing and amending it, if rooms used were subsequently transferred to state ownership without compensation.
17. Decree No. 145/1951 (VII.24.) of the Council of Ministers on regrouping of agricultural and forestry plots in villages with cooperative farms.
18. Law Decree No. 4/1952 on transferring some buildings into state ownership, except those which had been exempted from transfer into state ownership on the basis of Law Decree 28/1957.
19. Law Decree No. 13/1949, as amended by Law Decree 13/1954 on museums and monuments.

20. Laws on nationalisation, or other laws in connection with withdrawals of industrial or commercial permits, or in connection with forcing citizens to gave up their permits and therefore close down their businesses, between 1949 and 1953.
21. Law Decree No. 15/1956 on measures relating to land and regrouping of land.
22. Act No. V of 1957 on citizenship.
23. Law Decree No. 32/1957 on settling the property situation of persons who left the country illegally following October 23, 1956, except those assets whose ownership had been transferred to family members entitled to inheriting them according to Para 3 of Act No. XXV of 1991.
24. Law Decree No. 52/1957 on supplementing Law Decree No. 10/1957 on the ownership and utilization relations of agricultural plots.
25. Law Decree No. 13/1958 on amending Law Decree No. 28/1957 on settling some issues related to buildings transferred into state ownership.
26. Law Decree No. 24/1959 on developing areas fit for large-scale agricultural production.
27. Section 674 (2) of the Civil Code, Act No. IV of 1959, providing for the State's succession in the case of rejection of inheritance.
28. Law Decree No. 22/1960 on supplementing and amending Law Decree No. 24/1959 on developing areas suitable for large-scale agricultural production.
29. Section 8 (1), and (2) of Act No. VII of 1961 on forests and management of wild life.
30. Law Decree No. 20/1965 on amending the regulations of pledging land.
31. Law Decree No. 21/1965 on supplementing Law Decree No. 22/1960.
32. Act No. IV of 1967 on further developing land property and land use.
33. Government Decree No. 31/1971 (X.5.) on some issues of land plots owned by citizens.

34. Government Decree No. 32/1971 (X.5.) on some issues affecting flats and holiday homes owned by citizens.
35. Section 13 of Law Decree No. 31/1972, as amended by Law Decree 35/1976 on land registry.
36. Paras 30-32 and Para 39 (4) of Act No. I of 1987 on land.

Compensation Laws

1. Act No. XXXVI of 1989 (First Amnesty Law) on amnesty to persons convicted in relation to the 1956 revolution.
2. Decree No. 72/1989 (VII.4.) of the Council of Ministers on the labor and social security status adjustment for interned persons.
3. Decree No. 104/1989 (X.4.) of the Council of Ministers on compensation for persons whose personal freedom was limited.
4. Decree No. 108/1989 (XI.1.) of the Council of Ministers on correcting the reduction of pensions for 1956 political prisoners.
5. Parliament Decree No. 19/1989 (XI.1.) on the compensation of victims of unlawful convictions, relocations and resettlements.
6. Parliament Decree No. 20/1989 (XI.1.) on the redress of damages suffered by relocated and resettled persons.
7. Act No. XXVI of 1990 (Second Amnesty Law) on the annulment of unlawful convictions between 1945-1963.
8. Parliament Decree No. 34/1990 (III.28.) on the redress of deportation or of any disadvantages suffered by persons on the basis of their race, nationality or their resistance to nazism between 1938 and 1945.
9. Parliament Decree No. 35/1990 (III.28.) on the redress for the Hungarian German minority's collective injury.
10. Parliament Decree No. 36/1990 (III.28.) on the redress for the injury suffered by Hungarian citizens in relation to forced labor in the Soviet Union, and to their convictions and internment in the Soviet Union.
11. Decree No. 37/1990 (III.28.) of the Parliament on compensation of persons unlawfully limited in their personal freedom between 1945 and 1963.
12. Government Decree No. 93/1990 (XI.1.) on the readjustment of labor and social security status of individuals who were unlawfully convicted between 1945-1963, as amendment by Decree No. 51/1992 (III.18.) of the Council of Ministers.

13. Government Decree No. 1052/1990 (III.23.) on certain matters regarding the readjustment of labor and social security benefits of individuals who were deprived of their personal freedom.
14. Act No. XXV of 1991 (**First Compensation Law**) on partial compensation for damages unlawfully caused by the State to properties owned by citizens in the interest of settling ownership relations, as amended by Act No. L of 1991, Act No. XCI of 1991, Act No. XXIV of 1992, Act No. IL of 1992, Act No. I of 1993, Act No. II of 1993, Act No. II of 1994, Act No. XXXII of 1994, Act No. XXXVIII of 1995, Act No. LVIII of 1995, Act No. XXXIII of 1997; and Constitutional Court Decision 4/1996 (II.23.).

Executive decree:

Government Decree 104/1991 (VIII.3.) in the interest of settling ownership relations, and on the execution of Act No. XXV of 1991 on partial compensation for damages unlawfully caused by the State, as amended by Government Decree of 114/1991 (IX.4.), Government Decree 92/1992 (VI.10.), Government Decree 50/1993 (III.27.), Government Decree 58/1993 (IV.7.), Government Decree 163/1993 (XI.30.), Government Decree 56/1995 (V.17.), Government Decree 124/1995 (X.18.), Government Decree 149/1995 (XII.7.) Government Decree 161/1995 (XII.26.), Government Decree 124/1995 (X.18.), and Constitutional Court Decision 64/1995 (XI.1.).

15. Act No. XXXII of 1991 (**Church Compensation Law**) on the ownership status of the Churches' real estate, as amended by Section 95 (5) of Act No. LXXVIII of 1993.

Executive decree:

Government Decree No. 51/1992 (III.18.) on the execution of Act No. XXXII of 1991 on the ownership status of the Churches' real estate.

16. Government Decree No. 28/1991 (II.21) on the Existential Loan and on the preferential partial payment, as amended by Government Decree 59/1992 (III.26.), Government Decree 36/1993 (II.23.), and Government Decree 121/1993 (IX.9.).
17. Government Decree of 74/1991 (VI.10.) on the settlement of social security and labor law entitlement of persons deported, conscripted for forced labor service, inmates of ghettos, or persons, who were limited in their personal freedom, due to their ethnicity, nationality or to their resistance to nazism

between 1939 and 1945, as amended by Government Decree 51/1992 (III.18.).

18. Government Decree No. 101/1991 (VII.27.) on the establishment of the National Office for Compensation and the county (Budapest) offices for compensation.
19. Government Decree No. 112/1991 (IX.2.) on the redress for public employees for their pension discrimination.
20. Act No. XI of 1992 (Third Amnesty Law) on the annulment of convictions based on certain crimes against the State and the public between 1963 and 1989.
21. Act No. XXIV of 1992 (**Second Compensation Law**) on partial compensation for damages unlawfully caused by the state between May 1, 1939 and June 8, 1949, to properties owned by citizens.

Executive decree:

Government Decree 92/1992 (VI.10.) in the interest of settling ownership relations, and on the execution of Act No. XXIV of 1992 on partial compensation for damages unlawfully caused by the state between May 1, 1939 and June 8, 1949, as amended by Government Decree 104/1991 (VIII.3.), and Government Decree 163/1993 (XI.30.).

22. Act No. XXXI of 1992 on the exchange of compensation vouchers for life-annuities, as amended by Act No. LXXX of 1992, Act No. XIV of 1995, and Act No. XXIX of 1997; and as supplemented by Act No. LXXX of 1992, Act No. CXI of 1993, Act No. CIV of 1994, Act No. CXXI of 1995, Act No. CXXIV of 1996.

Executive decree:

Government Decree of 87/1992 (V.29.) on the execution of Act No. XXXI of 1992 on the exchange of compensation vouchers for life-annuities, as amended by Government Decree 18/1994 (II.9.).

23. Act No. XXXII of 1992 (**Third Compensation Law**) on the compensation of persons deprived of their freedom and life for political reasons, as amended by Act No. XII of 1994, Act No. LX of 1995, and Act No. XXIX of 1997.

Executive decrees:

Government Decree No. 111/1992 (VII.1.) on the execution of Act No. XXXII of 1992 on the compensation of persons deprived of their freedom and life for political reasons, as amended by Government Decree No. 95/1997 (VI.5.).

Government Decrees Nos. 172/1992 (XII.23.); 109/1993 (VII.29.); 59/1994 (IV.20.); 74/1995 (VI.22.); 110/1996 (VII.16.); and 103/1997 (VI.13.) on the execution of Art.17 Paragraph (2) of Act No. XXXII of 1992 on the compensation of persons deprived of their freedom and life for political reasons.

- 24. Act No. IL of 1992 on certain issues related to the use of compensation vouchers to obtain agricultural land, as amended by Act No. II of 1993, and Act No. XXXIII of 1997.**
- 25. Act No. LII of 1992 on the National Welfare Allowance.**
- 26. Government Decree No. 6/1992 (I.16.) on the supplemental relief of disabled servicemen and deceased servicemen's relatives, as amended by Government Decree 105/1993 (VII.16.).**
- 27. Government Decree No. 51/1992 (III.18.) on the pension supplement and other monetary claims based on the debit vouchers of Western prisoners of war.**
- 28. Government Decree of 86/1992 (V.22.) on the assistance from the budget of the execution of Act No. XXV of 1991 on partial compensation for damages unlawfully caused by the state to properties owned by citizens in the interest of settling ownership relations, and of Act No. II of 1992 on entering Act No. I of 1992 on agricultural-cooperatives into force and its temporary provisions.**
- 29. Act No. II of 1993 on the estate re-allocation and land distribution commissions, as amended by Act No. XL of 1993, and Act No. CXVI of 1993.**
- 30. Act No. II of 1994 on the extension of deadline for filing for compensation.**
- 31. Government Decision No. 89/1996 (X.30.)**

32. Government Decision No. 2079/1996 (III.29.)
33. Act No. X of 1997 on the implementation of Art.27 Paragraph 2 of the Paris Peace Treaty of 1947.
34. Act No. XXXIII of 1997 on certain issues related to the conclusion of property compensation proceedings.
35. Government Decree 1035/1997 (IV.10.) on establishing The Hungarian Jewish Heritage Public Foundation.

Related Constitutional Court Decisions and Orders:

1. Decision 16/1990. (VII.31.)
2. Decision 21/1990. (X.4.) (Compensation Case I)
3. Decision 22/1990. (X.16.)
4. Decision 16/1991. (IV.20.) (Compensation Case II)
5. Decision 27/1991. (V.20.) (Compensation Case III)
6. Decision 28/1991. (VI.03.) (Compensation Case IV)
7. Decision 1140/B/1991.
8. Decision 66/1992. (XII.17.)
9. Decision 1043/B/1992.
10. Decision 4/1993. (II.12.)
11. Decision 15/1993. (III.12.) (Compensation Case V)
12. Decision 16/1993. (III.12.)
13. Decision 28/1993. (IV.30.)
14. Order 270/B/1993.
15. Decision 381/E/1993/8.
16. Decision 597/B/1993.
17. Order 53/1994. (XI.4.)
18. Decision 437/B/1994.
19. Decision 1/1995. (II.08.)
20. Decision 64/1995. (XI.1.)
21. Decision 4/1996. (II.23.)
22. Decision 13/1996. (IV.12.)
23. Decision 22/1996. (VI.25.)
24. Decision 37/1996. (IX.4.)
25. Decision 55/1996. (XI.30.)