

Restitution issue of Lithuania's Jewish religious community's property

Identifying the problem.

Under the Republic of Lithuania's existing Law on the Procedure for the Restoration of the Rights of Religious Associations to Existing Real Property¹, the Jewish religious community is entitled to reclaim their existing real property which was nationalised or otherwise expropriated by the State, except for the limits provided in this Act. For the Property that was not recovered in kind, the Jewish religious community must be paid compensation in cash, accordingly to the Republic of Lithuania's Law on the compensation for Jewish religious community property² (further Project). However, in practice, recovery of the property for these communities is problematic. In particular, the lack of evidence that the property was actually owned by these religious communities is an issue. Also, there are problems in identifying the successors to the property, because the legal status of a person is granted in the newly formed or reinstated religious communities and public communities. It should be noted that the project doesn't resolve any problems and only creates new ones, since it is unclear which community should be the beneficiary of that compensation, and what is the purpose of the compensation.

Relevance of the problem.

For these reasons, in the future, acceptance of this Project may deny or further complicate the Jewish religious community's rights to receive their lawfully promised compensation. Deficiencies in the project violate the legitimate expectations of the people and undermine their confidence in the Lithuanian legal system and justice. It is appropriate to remove the shortcomings of the Project before implementation of the law, therefore it is necessary to start a discussion on the ambiguous provisions of the draft, which could be in violation of Jewish religious rights.

¹ Republic of Lithuania Law on the Procedure for the Restoration of the Rights of Religious Associations to the existing Real Property. Žin., 1995, No I-822.

² Republic of Lithuania's Law on the compensation for Jewish religious communities' property. 2010, Project.

Analysis of the problem.

By beginning to analyze the problem, we should start from the situation that arose before implementation of the Project. As I mentioned in the introduction to the problem, one of the practical problems is to prove to the Jewish religious communities that the assets were their actual property, and to prove that the community is the successor of the property. As an example, consider the Lithuanian Supreme Court civil cases No. 3K-3-68/2007³, No. 3K-3-97/2009⁴ where the applicant—Kaunas' Jewish religious community—asked the court to determine the ownership of a building's management. Summarizing these cases in conjunction with the first and the appellate instances in the courts, it can be concluded that the declarants lacked evidence to base their ownership of the asset. In addition, it is unclear whether this religious community is a successor and if it is the only one. As noted in the 2008 September 17 Kaunas City District Court ruling, the Lithuanian Ministry of Justice has granted a legal identity to the Kaunas Jewish religious community, Kaunas Hassidic synagogues religious community and Kaunas Region Jewish Religious Community. The Ministry of Justice does not have any information that the Kaunas Jewish Religious Community is recognized as the only successor of the Kaunas Jewish communities affected by the war. Accordingly, the court estimates that the applicants' explanations are unfounded and unsubstantiated regarding whether they are the transferee of property rights. Although, previously, in 2006 June 20, the Kaunas district court held that the applicants are the successors of the property rights, but have not proved that they owned the assets.

The preamble of this legal Project consists of two concepts—the Lithuanian Jewish community and the Lithuanian Jewish religious community. The title of the project seems to indicate clearly that the rights of succession given to and hence the beneficiaries of compensation should be the Lithuanian Jewish religious communities. However, accordingly, in the preamble of the Project it is indicated that there could possibly be no beneficiary of the compensation, because the Jewish community involved in Lithuania's economy and businesses was virtually

³ Supreme Court of Lithuania Republic, Section of civil cases, 2007, No.3K-3-68;

⁴ Supreme Court of Lithuania Republic, Section of civil cases, 2009, No. 3K-3-97;

destroyed during the war. The question remains—who is the successor, the religious or social community, and whether these communities should be considered equivalent to the successors in the title? The law in this case gives an ambiguous answer. As mentioned above, beneficiaries of the compensation should be the Jewish religious communities, but, on the other hand, this indicates the possible absence of receivers of compensation, due to the destruction of Jewish communities. So, if we assume that there was no difference between the Jewish religious community and the Jewish community as a whole, the Lithuanian Jewish religious communities are not the successors of the property. On the other hand, enforcement of this law remains problematic if we assume that the religious Jewish community and Jewish communities are equal. The Project's explanatory note states that it is not possible to objectively distinguish which assets were managed by the religious community and which were public. So, religious communities still can't be beneficiaries of the compensation.

But is it possible that there are no Lithuanian Jewish religious community ownership successors? Let us note another statement in the bill's explanatory note: “Under the current laws Jewish religious communities have received only houses of worship (synagogues) and only those that had a clear successor. Restitution of other Jewish religious community real estate, according to the Law on the Procedure for the Restoration of the Rights of Religious Associations to the Existing Real Property will not be conducted because of the historical context.” In other words, successors to houses of worship appeared, but for other real estate there are no successors? This position is rather controversial, especially since the Project doesn't cover some other property (non-religious) rights of succession. In this case, perhaps it is impossible to distinguish whether the assets were used on religious grounds.

If we agree with the conclusion that compensation for Jewish religious property should be paid to the Jewish religious communities, then the purpose of the compensation payment should be disputed. Part of the compensation amount—125 million LTL—is used for Lithuanian Jewish religious, cultural, educational, scientific and charitable purposes in Lithuania. At this point, I will cite another idea expressed in the Project notes: “Despite the fact that the objective circumstances of the restitution process, in respect to the Jewish community, is basically impossible, since the Jewish community has a legitimate interest in the state according to their financial capabilities, enabling it to some financial compensation. On the one hand, this is to ensure that the Jewish religious community (as well as other religious

communities) would be at least partially compensated for damage caused by the occupation regime.” The question now is, what, in this case, is a religious community? In the provisions of the Act it is clear that the general Jewish community is the focus, rather than the Jewish religious community. The Project notes set out the reasons, which lead to greater ambiguity as to who the compensation recipients are and the purpose for which the recipients have to use it? On the one hand, this must offset the Jewish community's interests. Therefore, it has to be used in the Jewish community by community-based organizations to meet their needs, despite the fact that religion is singled out as a priority. On the other hand, the compensation has to at least partially offset the injury done to the Jewish religious community during the occupational regime of the war. Does this mean that the occupying regime's damage to religious communities should be compensated from the estate of the religious community? Unfortunately, other than a positive answer, it is difficult to discern anything, since the compensation is paid after assessment of existing Jewish religious property, excluding land, and can be reduced by the fund transferring the ownership of real estate value.

The law stipulates that a 3 million LTL compensation must be paid to support the Jewish people who have lived in Lithuania since the occupational regime, and who, during this period of the Second World War, were negatively affected. This goal is even more questionable, because the Jewish religious community is a victim whose assets were expropriated and which must be compensated, but has generally disappeared. What's more, using the religious communities' property, there is an attempt to compensate those injured by the occupational government and assisting parties. In this case, it is not clear what the state law seeks to do—to reimburse religious communities or individuals personally affected by the occupation? However, the purpose of the law is to show that the compensation should be paid to legal entities—the Jewish religious communities.

Tackling and solving the problem.

1. The law must specify the recipient of the compensation. And the government must explain which communities can be regarded as the successors of the property entitled to the Lithuanian Jewish religious communities.
2. Identify which assets belong to the Jewish religious communities, taking into account the fact that for the Jewish religious communities, proving the fact of ownership has been problematic.
3. Reconsider the use of compensation targets, because it is unfair to compensate the victims from their own assets.