

# PROPERTY RESTITUTION IN LITHUANIA, AN REPARATORY TOOL IN THE PROCESS OF TRANSITIONAL JUSTICE?

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## Abstract

*In Lithuania, the 90s marked the beginnings of a transitional period toward the reconstruction of a democratic state. On the one hand, it emerged as the ideal model, a new societal and state project, a democratic society, with a state founded on respect for the law and for human rights. On the other hand, the past made its presence felt as a result of administrative and judicial heritage, but also of a pattern socially reproduced at the level of human interactions between those whose rights were violated and those who violated these rights. Among those whose rights were abusively violated in the old regime were those dispossessed of properties and of their right over them, during the communist period. The old regime's abusive seizing of properties was a prejudice brought to the dispossessed. The present paper intends to analyse whether property restitution in Lithuania was part of a more extensive process, entitled transitional justice in the literature. The first part of the paper describes the theoretical lens as well as conceptual aspects. The second part focuses on property legislation and on the function laws fulfilled in the reparations process. The paper has a heuristic value and constitutes itself as part of the research in the field of transitional justice and property restitution.*

**Keywords:** transitional justice, reparations, property, Lithuania, ECtHR.

## 1. Introduction

The main function of transitional justice is to ensure the basis for an early plan to move from one regime to the next, in order to prevent recurrence. In Central and Eastern Europe, the methods of transitional justice used to confront the past with the abuses committed by previous regimes differ from that of other regions of the globe. The countries chose to select and apply either laws of lustration or access to the files of the Securitate and less the tool represented by Truth and Reconciliation Commissions, the central mechanism of transitional justice. There were two Truth and Reconciliation Commissions created in Germany, two in Romania and three in former Baltic countries, one for each of the countries: Lithuania, Latvia and Estonia. „Transitional justice involves people coming together to address the legacies of horrendous atrocities, or to end recurring cycles of violent conflict, by developing a range of responses ... transitional justice is more like a map and network of roads that can bring you closer to where you want to go: a more peaceful, just, and inclusive society that has come to terms with its violent past and delivered justice to victims.”<sup>1</sup>

Property implies a complex system of rights and represents the product of a legal and social evolution; the property cannot exist outside the law.<sup>2</sup> On the other hand, we must not omit the fact that law is a social creation that is in a permanent and constructive connection with the interests of social structures.<sup>3</sup>

The intention of this paper to approach property restitution in the theoretical and methodological frame outlined by the process of transitional justice has, at its basis, a series of arguments that I will mention subsequently. When I mention the theoretical and methodological frame of the process of transitional justice, I refer to the fact that this process of transitional justice presupposes that reparations are part of a more ample, transitional process, which quantifies abuses and recognises them at the official level, so that it makes sense for future generations. *First of all*, these actions of dispossessing properties were not isolated but concerted, organised by the authorities of former totalitarian regimes and had a *systematic* and *generalised* character. *Second of all*, establishing a new regime foreshadowed, at least at a theoretical level, the dimension of *official recognition of prejudices and sufferings done to victims*. In this context, the restoration of legal rights would have represented both a correction of the injustices and a measure to legitimise the new form of society, the new type of government. In this sense, property restitution is considered a component of the rule of law ... that could

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<sup>1</sup> ICTJ, *What is transitional justice?* <https://www.ictj.org/what-transitional-justice>, accessed April 2024.

<sup>2</sup> N. Popa, *Teoria generală a dreptului*, 6<sup>th</sup> ed., C.H. Beck Publishing House, Bucharest, p. 63.

<sup>3</sup> *Idem*, p. 61.

lead to „public vindication and maintain the legitimacy of the new democracies by establishing moral principles through the identification of wrongdoing and the righting of wrong.”<sup>4</sup> *Third of all*, property restitution sets in motion processes such as establishing a legislative frame, the activity of the courts, which have the responsibility<sup>5</sup> to conceive reparatory programmes. Such an approach allows for the present research endeavour to reflect on the one hand on whether the legislation adopted facilitated or, respectively, hindered property restitution, compensatory measures, victim rehabilitation and, on the other hand, on whether the activity of national courts was in accordance with the interests of the victims, and whether the form and quantum of the reparations covered the suffered damages. *Fourth of all*, it is about the final result, namely the restitutions, reparations themselves. *The implementation* of reparatory measures/property restitutions is a result of a society's particularities at a given moment, being influenced by a series of factors of *legal configuration*, among which the *social and political frame*. Thus, the manner in which the transition to the new regime happened, the evolution of the post-dictatorship political life, political will, interests of actors belonging to civil society, the influence exercised by the international community, all have a determining role in the process of implementing a set of reparations for the victims or their descendants. A more encompassing perspective on reparations, within the more ample frame of transitional justice, allows for an articulated understanding of property restitutions, by taking into consideration the complexity of the factors that participate in this process.

## 2. Lithuania. Socio-historical and political context

Lithuania was under Soviet occupation during two periods, namely 1940-1941 and 1944-1990. It was annexed at the end of World War II becoming, together with Estonia and Latvia, one of the 15 USSR republics. Between the two periods of Soviet control, in 1941, Germany occupies Lithuania, which it incorporates in the Reichskommissariat Ostland, a civil German administration<sup>6</sup>. In 1990, Lithuania declared its independence and became the Republic of Lithuania, joining the European Union in 2004. In 1993, it became a member of the European Council and in 1995, it ratified the European Convention on Human Rights. As a result, violations of the Convention committed by Lithuania can be attacked at the ECtHR.

Starting with the 14<sup>th</sup> century, Jews settled in Lithuania and the Jewish community substantially developed throughout the centuries, the country being considered a centre for the Yiddish speaking civilization. Toward the end of 1941, Jews in German occupied Poland found refuge in Lithuania, thus the number of the Jewish Population settled in Lithuania rising to 250 000<sup>7</sup>. The decimation of the Jewish population started in 1939 and continued until the beginning of 1944, Nazi groups having Lithuanian support to this end. Thus, 90-95% of Jews were killed, and another 40 000 were sent to concentration camps.<sup>8</sup> It is estimated that around 4 000 Jews currently live in Lithuania.<sup>9</sup>

Snyder considers that Lithuania is one of the bloodiest countries in Europe, arguing that during the Soviet and German occupation periods 200 000 Lithuanian Jews were killed and a similar number of Lithuanian ethnics were deported or killed under the Stalinist regime.<sup>10</sup> The number of deported children rose to 39 000 and that of those arrested to 282 000, of which 200 000 were imprisoned.<sup>11</sup> By 1954, Lithuania had lost a sixth of its population.<sup>12</sup>

On 7 September 1998, president Valdas Adamkus -former member of the anti-Soviet resistance movement from World War II- established a Truth and Reconciliation Commission entitled the *International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania* (*Tarptautinė komisija Nacių ir Sovietinio okupacinių režimų nusikaltimams Lietuvoje ivertinti*) that was reconfirmed through a Presidential

<sup>4</sup> J. Borneman, 1997, apud L. Stan, The roof over our heads: Property restitution in Romania, in *Journal of Communist Studies and Transition Politics*, 22(2), p. 180-205.

<sup>5</sup> Regarding the concept of responsibility, see also E.E. Ștefan, *Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ*, Pro Universitaria Publishing House, Bucharest, 2013, pp. 11-16.

<sup>6</sup> For more details on public administration, see E.E. Ștefan, *Drept administrativ Partea I, Curs universitar*, 3<sup>rd</sup> ed., revised, supplemented and updated, Universul Juridic Publishing House, Bucharest, 2019, pp. 16-27.

<sup>7</sup> Institute for Jewish Policy Research, <https://www.jpr.org.uk/countries/how-many-jews-in-lithuania>, accessed April 2024.

<sup>8</sup> *Ibidem*.

<sup>9</sup> *Ibidem*.

<sup>10</sup> T. Snyder, *Bloodlands: Europe between Hitler and Stalin*, Vintage Book, London, 2011, p. xviii.

<sup>11</sup> D. Sagatiene, *The Transformation of Lithuanian Memories of Soviet Crimes to Genocide Recognition*, in *The International Journal of Transitional Justice*, 2022, 16, p. 396-405.

<sup>12</sup> Lithuanian Soviet Encyclopedia, vol. 6 (Vilnius: Leidykla 'Mokslas', 1980), 570. (3.1. millions in 1940, 2.6 million in 1953).

Decree in May 2005.<sup>13</sup> In order to fulfil its intended purpose, namely investigating the historical truth from the repressive period of the country, two sub-commissions were established with the purpose of investigating the abuses to which the two Nazi and Soviet occupation forces resorted.

Emanuelis Zingeris, signatory to Lithuania's independence from the Soviets in March 1991, coordinated the activity of the commission formed from 12 members. Together with historians, academics, the Roman-Catholic bishop Antanas Vaičius and Kestutis Girnius, the director of Radio Free Europe for the Baltic space, were also members. The international component of the commission was ensured, among others by a representative of the Yad Vashem Holocaust History Museum in Jerusalem, a German historian and a British one. The sub-commission, whose task was to investigate the abuses committed during the Nazi occupation, published three volumes for the 1941-1944 period (Truskas & Vareikis, 2004; Dieckmann, Toleikis & Zizas, 2005; Dieckmann & Suziedelis, 2006).<sup>14</sup> In turn, the commission who investigated the first Soviet occupation published three volumes regarding the first Soviet annexation from 1940-1941 (Jakubcionis, Knezys & Streikus, 2006; Anusauskas, 2006; Maslauskienė & Petravičiūtė, 2007).<sup>15</sup>

### 3. Lithuania: legislative frame for property restitution

Lithuania is a signatory of the Terezin Declaration from 2009<sup>16</sup> and of the Guidelines and best practices starting with 2010. Private property is defined in the Terezin Declaration and in the Guidelines and Best Practices as follows<sup>17</sup>: „property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties”.

Moreover, the Declaration states that: „Where restitutions and/or compensations for the Jewish population did not materialised, this should be rectified, through fair and non-discriminatory process and tools, according to current national laws and regulations, as well as international agreements.”

Laws that articulate the legal frame for restitutions/compensations for private properties.

In 1991 the Law on Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property, also called the 1991 Restitution Law was voted, while in 1997 the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, also called the 1997 Restitution Law was voted.

The 1991 Restitution Law stipulates both, the restitutions in kind and also compensations, where restitution in kind is not possible. The compensation offered as properties whose value is equal to the initial property or vouchers -monetary compensations-. The types of properties that can be reimbursed under this law are: agricultural and forest lands, houses, residential and commercial buildings, as well as land around buildings and houses. Applicants were offered the possibility to submit requests at the *Service for land reform* together with documents that show the size and location of the asset as well as paperwork that proves their heir status.<sup>18</sup> In the case of owners of agricultural lands there is, according to art. 4, a need to prove that they worked that land or that they will recover it with the purpose of conducting agricultural activities. Land records from the 40s were valid when the law came into effect, reason for which most applicants did not encounter any issues in bringing proof regarding their former ownership.<sup>19</sup>

In the cases in which the proof was lost or land records were never made (for instance in Vilnius) the task of presenting evidence proved more difficult. The records comprised of sale contracts -buying, mortgage loans or documents from archives. In the cases where no proof of document could be made, the chosen path was that

<sup>13</sup> International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania, <https://www.komisija.lt/en/body.php?m=1194863084>, accessed April 2024.

<sup>14</sup> E.-C. Pettai, V. Pettai, *Transitional and Retrospective Justice in the Baltic States*, Oxford University Press Publishing House, Oxford, 2015, p. 48.

<sup>15</sup> International Commission for the Evaluation of the Crimes of the Nazi and Soviet Occupation Regimes in Lithuania, <https://www.komisija.lt/en/body.php?m=1194863084>, accessed April 2024; L. Stan, *Truth Commission in Post-Communism: The Overlooked Solution?*, in *The Open Political Science Journal*, 2009, 2, p. 1-13.

<sup>16</sup> Tezerin Declaration, <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>, accessed April 2024.

<sup>17</sup> Tezerin best practices, <https://www.state.gov/2010-terezin-guidelines-and-best-practices/>, accessed April 2024.

<sup>18</sup> Commission on Security and Cooperation in Europe, *Property Restitution and Compensation in Post-Communist Europe: A Status Update*, pp. 23-25, <https://www.csce.gov/briefings/property-restitution-and-compensation-post-communist-europe-status/>, accessed April 2024.

<sup>19</sup> W. Valetta, *Completing the Transition: Lithuania Nears the End Of Its Land Restitution and Reform Programme*, [https://www.fao.org/fileadmin/user\\_upload/legal/docs/lpo11.pdf](https://www.fao.org/fileadmin/user_upload/legal/docs/lpo11.pdf), accessed April 2024.



returned to the two brothers, which determined the latter to consider the occupation of the unreturned parts illegal and to address the courts on 16.08.2001. The Kalpokas brothers' legal action was partially accepted by the Kaunas Court in September, 2002 that decided that within three months property rights should be returned over the parts of land that had not been occupied. On the other hand, the court decided that the parts of land that are occupied by other private individuals could not be recovered under the 1991 Restitution Law. The Supreme Court maintained this decision so that it remained definitive in October, 2022.

The competent authorities resorted to carrying out the decision so that, in March 2004, the brothers received the property title as follows: Jonas Kalpokas, 6,86 hectares from the given land and 4,85 hectares of forest area; Vaclovas Kalpokas 7,09 hectares of land and 4,86 hectares of forest area.<sup>28</sup> However, in 2004, the regional administration reduced the plots given to the applicants who, being dissatisfied, reclaimed in the court the entire land, in the initial form owned by their father. Their request was rejected by the Kaunas Court in 2004 and partially accepted in 2005 by the Supreme Court, which established the March 2004 decision as defective.

The ECtHR established that the September 2002 decision guaranteed the Kalpokas brothers the restitution of the land that had not been occupied by other individuals. In order to implement the decision, the authorities had to measure, delimit the lands and to offer land plots in exchange to the individuals who occupied the parts from the initial property owned by the applicants' father. The two brothers did not attend any of the actions organised to this end. Similarly, in the case of *Užkurėlienė et al v. Lithuania*, no. 62988/00, April 2005,<sup>29</sup> the initial land owned by the father had to be measured, delimited and evaluated, which needed time and complex actions. The Court considered that there was no intentional delay meant to undermine the essence of the applicants' right. For instance, in Case 41510/98 *Jasiūnienė v. Lithuania*, state authorities did not take no appropriate executive decision for nearly seven years, which goes against art. 6. In this regard, the Court found that the execution of the decision from September 2002 did not represent a violation of the applicants' right based on art. 6. The Court found that there is no interference in the applicants' assets in the sense of art. 1 of Protocol nr.1 regarding the execution of the decision. To this end, the Kalpokas brothers' request is unfounded under art. 35 para. 3 and 4 ECHR. The ECtHR found that the state authorities took the steps to implement the court decision from when it went into effect in October 2002 until March 2005, when the decisions for implementation were quashed. To this end, the applicants benefitted, due to a writ of execution, from *possession* in the sense from art. 1 from Protocol no. 1, being no interference with the applicants' goods.

In regards the non-restitution of the original land in kind in its entirety, the Court established that the applicants are not the owners of *any possession*, especially if their request does not have a basis in internal law. The Lithuanian Constitutional Court argued, as previously mentioned -considering the contextual realities generated by social and political conditions-, that the land plots were not available for restitution in their initial form. This can only be applied to available, free and unoccupied land plots, which did not generate new property relations. The unconditional and full restitution in kind is not in agreement with *ratione materiae*, with the dispositions from art. 1 from Protocol no. 1 (art. 35 para. 3).

Another internal law that regulates private property restitution is the *1997 Restitution Law*<sup>30</sup> that repealed the previous 1991 law. The law's preamble emphasises that: *the rights of ownership acquired by the citizens of the Republic of Lithuania before the occupation are not revoked and have continuity*<sup>31</sup> In accordance with article 1, the law applies to goods that were nationalised under the USSR law ... including land, forests, water bodies, structures used for economic and commercial purposes and residential properties (art. 3) up to 150 hectares (art. 4-6).

The compensations for properties that could not be returned by the state could be done under art. 12-16. The compensations were paid as stock in state-owned companies. Under para. 1 from art. 9, the applicants could prove their ownership status based on land registries, heir certificates, court decisions, archive documents, certificates of transmission, authorization documents from the government etc. If documented evidence through

<sup>28</sup> *Ibidem*.

<sup>29</sup> ECtHR, Case *Užkurėlienė and Others v. Lithuania*, app. no. 62988/00, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-68739%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68739%22]}), accessed April 2024.

<sup>30</sup> Republic of Lithuania, *Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property*, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.44404?jfwid=rivwzvpvg>, accessed April 2024, *Lithuania: Law no. VIII-359 of 1997 on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property*, 01.07.1997, <https://www.refworld.org/legal/legislation/natlegbod/1997/en/14506>, accessed April 2024.

<sup>31</sup> *Ibidem*.

which the right of reclaiming the goods could be reconstituted were not available, the applicants had the right, under para. 2 art. 9, to regain their ownership or heir status according to Civil Code procedure.

The law covered the restitution requests that had been formulated under the 1991 law and that were, thus, on hold. Moreover, under art. 10, it offered the possibility to submit requests to people who did not fulfil the eligibility conditions under the previous law or who missed the deadline. A new deadline for submitting restitution requests was established under the new law for 31.12.2001. The subsequent changes in the law allowed the applicants who had not presented proof that attested their status as Lithuanian citizens or that as former owners, to do this until 31.12.2003.

The 1997 Restitution Law represented the legal basis for owners and their heirs to reclaim the properties. However, according to art. 2, the recovery was limited to Lithuanian citizens, a condition included in the old 1991 law as well. Unlike the 91 law, the 97 one eliminated the permanent residence and citizenship criteria.

Under these conditions, even if the law's preamble mentions that property rights from before the occupation continued, this is not valid in the case of the Jewish population. The former Lithuanian citizens of Jewish ethnicity who survived the policy of systemic decimation had to leave the country after the war. Thus, in this case, there is no continuity of property rights since the former Lithuanian citizens of Jewish ethnicity do not fulfil the criteria regarding citizenship, based on objective reasons.

A series of amendments and Court decisions facilitated the process for foreign citizens to reclaim their Lithuanian citizenship. Despite this, former Lithuanian citizens of Jewish ethnicity have continued to be excluded from requesting the restitution of confiscated private properties from Lithuania.

*The 1995 Amendment*<sup>32</sup> regarding citizenship law in the Republic of Lithuania revised the restrictions imposed by restitution laws, restrictions owed to the imposed condition for applicants to be Lithuanian citizens. Based on the changes, only those individuals who were *repatriated from Lithuania* to their native country were excluded from reacquiring citizenship. Another important legislative aspect was the introduction of certain compensation mechanisms for the situations where restitution in kind was not possible.<sup>33</sup> These mechanisms included financial compensations or offering other types of properties as substitute.

In the cases where land restitutions were not possible, for instance because of subsequent infrastructural or urban developments, compensation mechanisms were implemented such as: alternative lands, financial compensations or, in certain cases, stock in state-owned companies. Although pragmatic, this approach did not lack criticism, since not all compensations were considered equitable by everyone involved.

In 2004, there were changes brought to the 1997 Restitution Law. Seemingly, the changes had as a purpose unlocking restitution processes, so that the courts would have the possibility to accept the requests submitted by individuals who before 31.12.2001 -the established deadline for submissions- were not eligible. However, the Supreme Court in Lithuania finally decided that the 2004 amendment, introduced with the purpose of making the reparation process more flexible, should not apply to citizens who at the deadline for submission of restitution case-files were not Lithuanian citizens. As a result, Lithuania remains without a clear mechanism that would allow individuals who did not *reclaim* their citizenship after 2001 to have access to the process of restitution of goods that were expropriated illegally by previous regimes.<sup>34</sup>

In May 2015 however, the state established a commission with the purpose of resolving the blockages that arose as a result of former Lithuanian owners reclaiming Lithuanian citizenship. A part of the 2011 Law on Good Will Compensation for the Immovable Property of Jewish Religious Communities stipulates symbolic payments to Lithuanian victims of totalitarian regimes. These sums came from a common property fund. Thus, what appears is a situation where the true problem was not dealt with, namely the restitution of overdue sums corresponding to the value of unreturned *private* properties from throughout the country.<sup>35</sup>

<sup>32</sup> Lithuania: Law no. I-1004 of 1995 on Refugee Status, 04.07.1995, <https://www.refworld.org/legal/legislation/natlegbod/1995/en/18205>, accessed April 2024.

<sup>33</sup> US Department of State, Property Restitution in Central and Eastern Europe, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>, accessed April 2024.

<sup>34</sup> C.E. Stovall, *Former-Citizenship Restitution: A Proposal for an Equitable Resolution of Confiscated Lithuanian Property*, in Chicago-Kent Journal of International and Comparative Law, <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1071&context=ckjicl>, accessed April 2023.

<sup>35</sup> Faina Kukliansky, "Works in Progress: Examples from Communities – The Case of Lithuania", available at [https://www.mzv.cz/public/65/e7/87/4810880\\_2934377\\_PublicationPragueConferenceProceedings\\_2009.pdf](https://www.mzv.cz/public/65/e7/87/4810880_2934377_PublicationPragueConferenceProceedings_2009.pdf), accessed April 2024.

Legislation adopted with the purpose of recovering common properties: the Law on the Procedure for the Restoration of the Rights of Religious Associations to the Existing Real Property (1995) and the Law on Good Will Compensation for the Immovable Property of Jewish Religious Communities (2011).

Law on the Procedure for the Restoration of the Rights of Religious Associations to the Existing Real Property - May 1995<sup>36</sup>

This law's art. 2 stipulates that religious associations that functioned starting with 1 January 1940 in Lithuania *have the right to request the return of goods confiscated by the state*. The restitution is applicable only for religious properties, which represents a limitation if considered that before the war the common Jewish properties were not limited just to synagogues, but also included hospitals, libraries, theatres, public baths etc. Moreover, under the same article, the community successors established by religious authorities also had a right to restitution. Establishing successors was a true challenge, especially for Jewish communities who found it difficult to prove that they were legitimate successors of some communities that had been completely decimated. The government did not intervene to this end. Religious communities were offered the possibility of restitution of the actual property or, under article 3, the possibility to buy the property, the equivalent value being chosen by the beneficiary from the four options provided by the law: another property of the same value, cash, financial support for repairing cult monuments, renting the land without auction.

The deadline for the submissions of requests was limited to the end of 2001. Only the Orthodox Jewish communities (which represented 5% of all religious communities) fulfilled the conditions to request restitution. One-time payments were also distributed to 1550 individuals residing in various parts of the globe until 2014.<sup>37</sup>

In 2002, blockages were analysed by a governmental commission made up of officials from the Government and representatives of local communities, local and international Jewish organisations. Rabi Baker was the representative of the Jewish community who carried out the discussions on common properties with the Lithuanian government.<sup>38</sup>

As a result of these debates, there were amendments introduced in the law on religious associations. Under these amendments, on the one hand changes were made regarding the definition of communal properties, while on the other hand a fund was created for paying compensations where the properties/goods could not be returned. A list of 438 buildings was compiled by the Jewish community, but only 152 were retained by the Lithuanian government as being eligible for compensation/restitution.<sup>39</sup>

The following example emphasises the relevance of the May 1995 Law on Religious Associations in the process of property restitution. In Case 44548/98, *the Synod College of the Evangelical Reformed Church v. Lithuania*<sup>40</sup> it can be noticed how the religious association -the plaintiff- did not exhaust internal appeals.

The Evangelical Reformed Church of Lithuania owned a residential building -an apartment building- which was nationalised after the Soviet invasion. During 1992-1993, after Lithuania became independent, the Vilnius Municipal Council transferred the property rights over 12 apartments to the renters under the law on privatising apartments. At the end of 1993 however, the Local Council adopted the decision to return the property to the Evangelical Reformed Church. The renters introduce an appeal to the courts to annul this decision; in turn, the Evangelical community request the court to annul the contracts to privatise the apartments.

Under the 1990 Law on the restitution of church property<sup>41</sup>, which stipulated that renters should be offered housing when property rights are re-established for religious communities, the Vilnius district court annulled the December 1993 decisions and the renters won the case. In 1996, the Church of the Evangelical community transferred the right and the claims over the building to the Synod College of the Evangelical Reformed Church of Lithuania. In August 1996, the renters rights were again annulled by the regional court, so that the privatisation contracts were considered invalid.

In 1997 the Appeals Court maintained the decision of the first court arguing that the nationalisation of the building was made under a Soviet regulation from the 40s, so that the 1990 Law could not be applied in the given

<sup>36</sup> Republic of Lithuania, *Law on the Procedure for the Restoration of the Rights of Religious Associations to the Existing Real Property*, Nri.-822, amendment 04.07.2002, no. IX-1035, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.387010?jfwid=>, accessed April 2004.

<sup>37</sup> Good Will Foundation, <https://gvf.lt/en/payments/>, accessed April 2024.

<sup>38</sup> AJC, Andrew Baker, <https://www.ajc.org/bio/andrew-baker>, accessed April 2024.

<sup>39</sup> European Shoah Legacy Institute, *Immovable Property Restitution Study*, <https://wjro.org.il/wp-content/uploads/2019/05/immovable.pdf>, accessed April 2024.

<sup>40</sup> ECtHR, app. no.44548/98, Case *The Synod College Of The Evangelical Reformed Church Of Lithuania v. Lithuania*, <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22001-22917%22%5D%7D>, accessed April 2024.

<sup>41</sup> *Ibidem*.

situation. The Court's decision was that the right of the Evangelical Reformed community over the building is restored once the renters had bought their apartments, especially since the law regarding the privatisation of apartments did not forbid acquisition from nationalised houses.

Under art. 1 from Protocol I, together with art. 14 from the Convention, the church claimed that its right to recover the entire building in kind, the right to be adequately compensated for this prejudice was jeopardised. Moreover, it accused that it could not claim compensations from the Government for the damages brought in the restitution case and it cannot pay the various expenses such as legal fees, expenses with the building's heating and maintenance.

Regarding the first charge, namely the restitution of the entire building, in kind, it should be mentioned that art. 1 from Protocol no. 1 states the following: „Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

However, these dispositions do not affect a state's right to enforce these laws in accordance with the general interest. To this end, the Court re-iterated that under the Convention the right to property restitution is not guaranteed as such. Even if the decisions of the district court from December 1993 temporarily created certain rights and obligations, the church cannot count on these. Moreover, the Appeal Court did not invalidate the church's right to property regarding the building. It, however, mentioned that according to the 1995 Law on Restoration of Church Property restitutions in full are not possible.<sup>42</sup> In terms of the adequate property compensation, the Court re-iterates that in accordance with the 1995 Law on Restoration of Church Property, the Evangelical Reformed Church has the legal means to address national courts to recover compensations for the 12 apartments and the restitution in kind of the rest of the building. The Court thus invites the Evangelical Reformed Church to exhaust all internal appeals. In terms of the inability to access means of appeal against the government for the alleged inadequate action in the case, the Court mentions that under the 1995 Law on Restoration of Church Property it can demand compensation. The Court concludes that the request is unfounded under art. 35 para. 3 ECHR. The last charge brought by the Church before the ECtHR regards taxes for heating the building and legal fees. The Court determined that the church did not appeal the decision of the regional court and, as a result, it did not exhaust all internal appeals to this end, according to art. 35 para. 1 ECHR.

The 2011 Law on Good Will Compensation for the Immovable Property of Jewish Religious Communities<sup>43</sup> is the second law adopted for the recovery of communal properties. Under article 2 from this law, any future restitution request from the Jewish community is null and void. Moreover, it approves, starting with 2013 and over a 10-year period, the payment of approximately 128 million LTL/53 million Euro, a sum that represents 30% of the official value of the 128 properties considered eligible by the Lithuanian governmental authorities.<sup>44</sup> The sums of money are distributed by the Good Will foundation that, under the present law, had the obligation to function as a governmental agency.

The Good Will Foundation has two other central missions as well. The first consists in making single symbolic payments of approximately 870.000 EUR for the Jews who resided in Lithuania and who were submitted to abuses during totalitarian periods. In order to benefit from these payments, the potential beneficiaries had as an obligation to submit casefiles with the documents that were requested until 30 June 2013. According to Good Will, payments toward 1550 individuals were made until 31 December 2014.<sup>45</sup> Another mission of the foundation consists in the support for cultural and religious projects, so that 5,75 million LTL were allocated to this end, for Lithuanian Jews residing in Lithuania.

Another object of restitutions and/or compensations is represented by *heirless properties*. The disappearance without a trace of Jewish communities produced a void in terms of property heirs, especially since legislative regulations are inconclusive to this end. Although according to the 2009 *Terezin Declaration* this type of property should be materialised in service of the community of Holocaust survivors, Lithuania did not propose any coherent measure to this end.

<sup>42</sup> Republic of Lithuania, *Law on the Procedure for the Restoration of the Rights of Religious Associations to the Existing Real Property*, *op. cit.*

<sup>43</sup> Republic of Lithuania, *Law On Good Will Compensation For The Immovable Property Of Jewish Religious Communities*, <https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=bkyibn3o6&documentId=TAIS.406297&category=TAD>, accessed April 2024.

<sup>44</sup> D. Sprintzer, *On restitution, a rundown of where they stand in Eastern Europe*, <https://www.jta.org/2012/12/03/global/on-restitution-a-rundown-of-where-they-stand-in-eastern-europe>, accessed April 2024.

<sup>45</sup> Good Will Foundation, *Payments*, <https://gvf.lt/en/payments/>, accessed April 2024.

#### 4. Property restitution as reparatory measure

Even though there is no standard frame for property restitution in international law, one cannot deny the existence of states' obligation to repair the abuses of previous regimes. Moreover, the general principles of international law invoke the request for actual compensations for the cases where properties were abusively seized. The situation becomes more complicated as the procedures that were at the basis of the seizures and nationalisations are controversial. Property nationalisations/seizures did not respect the legal demands of those periods. As the Lithuanian Constitutional Court determined: „nationalisation and other illegal acts regarding property were initiated by the Soviet Union”.<sup>46</sup> However, even if the post-communist government cannot be held responsible for the actions of the occupation forces, it cannot withdraw from re-establishing for people the rights that had been violated.

Lithuania is one of the few European countries that adopted legislation on property restitution the moment the *Terezin Declaration* came into effect in 2009. Despite this, in 2011, private and heirless property restitutions recorded no progress. In comparison to Estonia and Latvia, the restitution process was blocked because of the demand for eligible applicants to be Lithuanian citizens at the moment when restitution laws came into effect.

In terms of private property, according to information provided by the Lithuanian government, since 2011 there have been made restitutions or compensations for 98% of the individuals who submitted request at the rural level and 72% at the urban level.<sup>47</sup> These restitutions had as a judicial basis the two laws from 1991 and 1997, respectively, whose object was the restitution or compensations from the Holocaust and subsequent seizures. However, these percentages do not reflect reality since individuals who did not hold Lithuanian citizenship at the moment when these laws came into effect were not allowed to submit restitution requests. Around the 2000s, changes were made in citizenship laws so that former Lithuanian citizens were allowed the possibility to reclaim their Lithuanian citizenship and to also maintain their citizenship from the country where they had settled.

In terms of *communal property restitutions*, the situation was protracted for over 10 years. As a result of debates between political elites (in a 10-year period three different governments came to power) and representatives from Jewish communities, they finally agreed on Law on Good Will Compensations from 2011. There was no question of in kind property restitution. The value of compensations amounted to 38 million Euro, money that the Jewish community received, as previously mentioned. The law also stipulated the impossibility of the Jewish community to formulate possible restitution or compensation requests after the former came into effect. This new law was needed since the *1995 Law on Religious Associations* had substantial shortcomings in terms of reparations given to both Jewish communities and Jews as individual entities.

#### 5. Conclusions

It can be ascertained that property restitution in Lithuania only partially fulfilled the characteristics of reparatory measures. A *first characteristic* of property restitution in Lithuania is the overlap between this procedure and programmes for economic development and collective structural reform. *The restitutions were directed toward social desiderata*. The Lithuanian Court emphasises the social purpose of reparations as follows: *reinstating rights to those who were abusively dispossessed by the previous regimes means nothing more than agrarian reform. The two stages are inseparable*.<sup>48</sup> The *second characteristic* of property restitution is related to certain aspects regarding the interpretation of European/national legislation, especially to the manner in which they were *speculated* by the Lithuanian government. Property is always uncertain in internal law due to the government having the right to regulate it at any moment.<sup>49</sup> The *third characteristic* is related to a series of limitations in the restitution process, limitations imposed by the Lithuanian government itself. Among these limitations there are: having citizenship at the moment of filing the submission, imposing thresholds; the manner in which competent authorities defined the past, namely the period covered by the reparation programme; the lack of agreement regarding the types of goods -moveable/immoveable-; unrealistic deadlines for submission of

<sup>46</sup> The Lithuanian Constitutional Court, LiCC, Ruling of 27.05.1994, and Ruling of 20.06.1995, [https://lrkt.lt/data/public/uploads/2015/03/1995-06-20\\_n\\_ruling.pdf](https://lrkt.lt/data/public/uploads/2015/03/1995-06-20_n_ruling.pdf), accessed April 2024.

<sup>47</sup> D. Sprintzer, *On restitutio, a rundown of where they stand in Eastern Europe*, <https://www.jta.org/2012/12/03/global/on-restitution-a-rundown-of-where-they-stand-in-eastern-europe>, accessed April 2024; W. Valetta, *Completing the Transition*, op. cit.

<sup>48</sup> The Lithuanian Constitutional Court, dec. no. 8.03.1995, *On restoration of citizens' ownership rights to land*, <https://lrkt.lt/en/court-acts/search/170/ta1175/content>, accessed April 2023.

<sup>49</sup> E.A. Posner, A. Vermeule, *Transitional Justice as Ordinary Justice*, in *Harvard Law Review*, 2003, 117(3), p. 761-825.

case-files. Lithuanian experts in the field agreed that the imposed deadlines were unconstitutional.<sup>50</sup> In this regard, the professor Nicolae Popa emphasised that, as time passes, a right can be extinguished.<sup>51</sup>

As a result of what has been presented in the current research endeavour, it can be concluded that property restitution in Lithuania was not part of the process of transitional justice, meaning of a process to uncover the truth and to officially recognise it at the national level. Although a Truth and Reconciliation Commission was formed to this end, property restitution was not stipulated in the reports as a priority. The logic behind these reparation programmes is that the sums of money/restitutions themselves satisfy the needs of those who were dispossessed/abused by the former regime. The perspective of connecting the reforms with property restitutions would target on the one hand the reparation of injustices individuals were submitted to in the previous regime but also a reset of property relations. The reset of property relations means that the possession of property re-becomes a precondition of reforms, of the reconfiguring of the modern economic and of democratic states.

## References

### Books, chapter, scientific articles, and studies

- Commission on Security and Cooperation in Europe, Property Restitution and Compensation in Post-Communist Europe: A Status Updated, <https://www.csce.gov/briefings/property-restitution-and-compensation-post-communist-europe-status/>;
- Kukliansky, F., Works in Progress: Examples from Communities - The Case of Lithuania, [https://www.mzv.cz/public/65/e7/87/4810880\\_2934377\\_PublicationPragueConferenceProceedings\\_2009.pdf](https://www.mzv.cz/public/65/e7/87/4810880_2934377_PublicationPragueConferenceProceedings_2009.pdf);
- Lithuanian Soviet Encyclopedia, vol. 6, Vilnius: Leidykla 'Mokslas', 1980;
- Pettai, E.-C., Pettai, V., Transitional and Retrospective Justice in the Baltic States, Oxford: Oxford University Press Publishing House, 2015;
- Popa, N., Teoria generală a dreptului, 6<sup>th</sup> ed., C.H. Beck Publishing House, Bucharest;
- Sagatiene, D., The Transformation of Lithuanian Memories of Soviet Crimes to Genocide Recognition, in The International Journal of Transitional Justice, 2022, 16;
- Snyder, T., Bloodlands: Europe between Hitler and Stalin, London: Vintage Book, 2011;
- Sprintzer, D., On restitution, a rundown of where they stand in Eastern Europe, <https://www.jta.org/2012/12/03/global/on-restitution-a-rundown-of-where-they-stand-in-eastern-europe>;
- Stan, L., The Roof over Our Heads: Property Restitution in Romania, in Journal of Communist Studies and Transition Politics, 2006, 22 (2);
- Stan, L., Truth Commissions in Post-Communism: The Overlooked Solution?, in The Open Political Science Journal 2009, 2;
- Stovall, C.E., Former-Citizenship Restitution: A Proposal for an Equitable Resolution of Confiscated Lithuanian Property, in Chicago-Kent Journal of International and Comparative Law, <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1071&context=ckjicl>, accessed April 2024;
- Ștefan, E.E., Răspunderea juridică. Privire specială asupra răspunderii în dreptul administrativ, Pro Universitaria Publishing House, Bucharest, 2013;
- Ștefan, E.E., Drept administrativ Partea I, Curs universitar, 3<sup>rd</sup> ed., revised, supplemented and updated, Universul Juridic Publishing House, Bucharest 2019;
- Ștefan, E.E., Legality and morality in the activity of public authorities, in Revista de Drept Public no. 4/2017;
- Tezerin best practices, <https://www.state.gov/2010-terezin-guidelines-and-best-practices/>;
- US Department of State, Property Restitution in Central and Eastern Europe, <https://2001-2009.state.gov/p/eur/rls/or/93062.htm>;
- Valetta, W., Completing the Transition: Lithuania Nears the End Of Its Land Restitution and Reform Programme, [https://www.fao.org/fileadmin/user\\_upload/legal/docs/lpo11.pdf](https://www.fao.org/fileadmin/user_upload/legal/docs/lpo11.pdf).

### Official documents, decisions, laws

- AJC, Andrew Baker, <https://www.ajc.org/bio/andrew-baker>;
- European Shoah Legacy Institute, Immoveable Property Restitution Study, <https://wjro.org.il/wp-content/uploads/2019/05/immoveable.pdf>;

<sup>50</sup> K. Ksongor, *Post-Communist Property Reparations: Fulfilling the Promises of the Rule of Law*, in *Acta Juridica Hungarica*, 2007, 48(2), p. 169-188.

<sup>51</sup> N.e Popa, *Teoria generală a dreptului*, op. cit., p. 61.

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