

REPUBLIC OF LITHUANIA

**LAW ON COMPENSATION FOR THE REAL
PROPERTY OF JEWISH RELIGIOUS
COMMUNITIES**

2010 No

Vilnius

The Seimas of the Republic of Lithuania,

Recognising a considerable contribution of the Jewish community of Lithuania to Lithuania's culture, industry, trade and finances,

Seeking to contribute to preservation in Lithuania of the cultural and material heritage of the Jewish community of Lithuania,

Having regard to the fact that the Jewish communities which existed in various Lithuanian cities before the Holocaust and which were active participants in the economy and business of independent Lithuania were practically destroyed, and new ones have not been established, which has given rise to the problem of absence of successors to the rights of ownership of Jewish religious communities of Lithuania,

Having regard to the fact that the absence of the successors to the rights of ownership invalidates the process of restitution under other laws of the Republic of Lithuania currently in force,

Seeking to restore historical justice and compensate in good faith for the real property of Jewish religious communities of Lithuania nationalised or otherwise unlawfully expropriated by the totalitarian regimes during the occupations of 1939-1990,

Adopts this Law on Compensation for the Real Property of Jewish Religious Communities.

Article 1. Purpose of the Law

1. This Law shall establish the amount of, time limits for the payment of, the procedure for paying and the purpose of use of compensation for the real property of Jewish religious communities of Lithuania.

2. The property of Jewish religious communities for the purpose of payment of the compensation as specified by this Law shall stand for the existing real property of Jewish religious communities, with the exception of land, which was nationalised or otherwise unlawfully expropriated by the totalitarian regimes during the occupations of 1939-1990.

3. The passing of this Law shall not affect restoration of the rights of ownership to the existing real property according to the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property.

Article 2. Amount of, Time Limits for the Payment of and the Procedure for Paying Compensation

1. The amount of the pecuniary compensation to be paid shall be LTL 128 million.

2. The pecuniary compensation shall be paid from the State budget to a foundation appointed by the Government of the Republic of Lithuania.

3. The real property of Jewish religious communities of Lithuania may be compensated for by transferring, in accordance with the procedure laid down by the Government of the Republic of Lithuania or an institution authorised by it and under a decision of the Government of the Republic of Lithuania or an institution authorised by it, into ownership of the foundation indicated in paragraph 2 of this Article the State-owned real property, namely, buildings or parts thereof. In such a case, the amount of the pecuniary compensation indicated in paragraph 1 of this Article shall be reduced by the value of the real property transferred into ownership, which has been calculated on the basis of the mass appraisal data available to the State Enterprise Center of Registers on the day of transfer of the property.

4. Payment of the pecuniary compensation under this Law shall, with the exception of the case provided for in paragraph 5 of this Article, be commenced on 1 January 2012 and shall finish by 1 March 2023. The pecuniary compensation shall be paid in instalments on an annual basis by 1 March each year, taking into consideration the financial possibilities of the State.

5. A part of the pecuniary compensation indicated in paragraph 1 of this Article, namely, LTL 3 million, shall be paid for the purpose indicated in subparagraph 2 of paragraph 1 of Article 3 of this Law by 1 March 2011.

6. Under paragraph 3 of this Article, the State-owned real property may be transferred to the foundation indicated in paragraph 2 of this Article as of 1 January 2012.

Article 3. Restrictions on the Use of Compensation

1. The pecuniary compensation paid under this Law may not be used for purposes other than the following:

1) for the religious, cultural, educational, scientific and charity goals pursued by Lithuanian Jews in Lithuania;

2) to support the persons of the Jewish nationality who resided in Lithuania during the Second World War and who suffered from the occupational totalitarian regimes during that period.

2. The real property transferred under this Law must be used solely for the religious, cultural, educational and scientific goals pursued by Lithuanian Jews.

Article 4. Proposal to the Government or an Institution Authorised by It

By 1 January 2011, the Government of the Republic of Lithuania or an institution authorised by it shall draft and adopt the legal acts required for implementation of this Law.

I promulgate this law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC

Translation from Lithuanian

**EXPLANATORY NOTE
TO THE DRAFT LAW OF THE REPUBLIC OF
LITHUANIA ON COMPENSATION FOR THE REAL
PROPERTY OF JEWISH RELIGIOUS
COMMUNITIES**

The aim of the draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Religious Communities (hereinafter referred to as the “draft Law”) is, upon evaluating the history of the Jewish community of Lithuania as well as issues of property nationalisation and expropriation, to compensate for the real property previously held by Jewish religious communities (with the exception of land) which was nationalised or otherwise unlawfully expropriated by the Nazi and Soviet totalitarian regimes.

Under the laws currently in force, only houses of prayer (synagogues) have been returned to Jewish religious communities, and among them – only those which had an evident successor to the rights of ownership. In compliance with provisions of the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property, restitution in respect of another real property of Jewish religious communities may not be pursued, because as a result of historical circumstances (the Jewish communities which existed in various Lithuanian cities before the Holocaust and which were active participants in the economy and business of independent Lithuania were practically destroyed, and new ones have not been established), there are no remaining successors to the rights of ownership of these entities. Moreover, the laws currently in force do not take into consideration the specific features of Judaism, Jewish traditions, the use of the real property owned by Jewish religious communities before nationalisation. It should be pointed out that Lithuania is one of the last European countries which has not resolved the mentioned problems yet and as a result is constantly subject to criticism of the international community.

In order to resolve these problems, Prime Minister Ordinance No 9 of 22 January 2002 formed a working group, which decided to amend the Law of the Republic of Lithuania on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property. With regard to conclusions of the working group, the Ministry of Justice of the Republic of Lithuania drafted a Law Amending and Supplementing Articles 2, 5 and 7 of the Law of the Republic of

Lithuania on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property. Improvement and discussion of this draft has taken a considerable time. During a consideration of this draft at a meeting of the Government of the Republic of Lithuania of 12 November 2008, the possibility of submission of an alternative draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Religious Communities, which had been earlier proposed by representatives of the Jewish community, was discussed. Having considered alternatives at the mentioned meeting, the Government of the Republic of Lithuania approved submission of the latter draft, i.e., preference was given to the model of compensation rather than restitution.

With a view to ensuring legal clarity, the draft Law indicates that passing of this Law will not affect restoration of the rights of ownership to the existing real property according to the provisions of the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property, that is, if the latter law creates a legal ground for restoration of the rights of ownership to a certain real property (in the presence of successors to the rights of ownership), this Law will continue to apply. Moreover, the process of restoration of the rights of ownership which has already been completed in compliance with this Law will not be affected either.

The draft Law proposes to stipulate that a pecuniary compensation in the amount specified by the Law be paid for the entire mentioned property to a foundation assigned by the Government of the Republic of Lithuania. Upon adoption of the draft Law, a decision on assignment of the foundation would be taken by the Government after its co-ordination with the organisations concerned.

Taking into consideration of the financial possibilities of the State, the amount of the compensation as provided for by the draft Law is LTL 128 million. The amount of the compensation has been determined on the basis of the information provided in the Search List of the Documents Evidencing Ownership of the Existing Real Property of Jewish Communities in State Archives as compiled by the Lithuanian Archives Department under the Government of the Republic of Lithuania and the data on appraisal of this property provided by the State Enterprise Center of Registers.

It is noteworthy that presently, it is not possible to make an objective distinction between the Jewish communal property used before nationalisation for religious purposes and that used for other (cultural, educational, scientific, charity) purposes. This has been determined by peculiarities of Judaism. Therefore, it is the information presented in the Search List of the Documents Evidencing Ownership of the Existing Real Property of Jewish Communities in State Archives that calculations of the proposed amount of compensation are based upon.

Viewing the proposed provisions in the context of the constitutional principle of equality of all persons, non-discrimination of persons and not granting of privileges to them, attention should be given to the interpretation provided in the ruling of the Constitutional Court of 3 December 2003:

The constitutional principle of equality of persons before the law means an innate human right to be treated equally with the others.

*In its rulings the Constitutional Court has held for many a time that this principle must be followed both in passing of laws and in their application. The said principle obliges to assess the homogeneous facts in the same manner and prohibits to arbitrarily assess the facts which are the same in essence in a different manner. It also needs to be noted that **the principle of equality of all persons does not deny a possibility to provide in a law for a different legal regulation in respect of certain categories of persons who are in different situations**, that the constitutional principle of equality of all persons before the law would be violated if a certain group of persons which a legal norm is addressed to was treated in a different manner compared to other addressees of the same norm, though there exist no differences of such nature and scope between those two groups which would objectively justify this different treatment.*

*The principle of equality of all persons which is consolidated in Article 29 of the Constitution includes the prohibition both of discrimination and privileges. Discrimination is most often understood as restriction of human rights according to gender, race, nationality, language, origin, social status, religion, convictions, opinions or other indications. However, **a differentiated legal regulation when it is applied to certain groups of persons which are distinguished by certain identical features, and where one strives for positive and socially meaningful goals, is not regarded as discrimination or privileges**. Special requirements or certain conditions are not attributed to discriminative restrictions either if their establishment is related to peculiarities of regulated relations.'*

For the mentioned reasons, the property of Jewish religious communities (with the exception of some individual cases) could not be returned to the Jewish community in compliance with the Law on the Procedure for the Restoration of the Rights of Religious Communities to the Existing Real Property, under which the real property could be reclaimed solely by the currently active religious communities (or successors to their rights) which functioned in the Republic of Lithuania prior to 21 July 1940 and the property of which was expropriated by the State.

Neither has it been possible to return the mentioned property to the Jewish community according to the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property or other respective legal acts, because they deal solely with the issue of restoration of the right of individual (rather than communal) ownership.

This means that the Jewish religious community is essentially in a different position as compared with other religious communities functioning in the country. For objective reasons, restitution according to the general procedure applied to all religious organisations is not possible in respect of the Jewish community. Thus, with a view to meeting the justified interests of this community, a special legal regulation is necessary. Respectively, the draft Law does not provide for the process of restitution, but offers a fixed amount of compensation as an expression of the good will of the State.

It should also be noted that passing of the Law would not imply that Lithuania assumes a legal or political responsibility for the damage incurred by the occupations. Despite the fact that due to objective circumstances, the process of

restitution in respect of the Jewish community is in principle impossible, the Jewish community has justified interests for the State to provide to it, according to the financial possibilities of the former, a certain financial compensation. On the one hand, this would ensure that the Jewish religious community (just as other appropriate religious communities) is, at least in part, compensated for the damage incurred by the occupational regimes and, on the other, would demonstrate the State's good will and respect towards protection of the interests of a certain group of society. Therefore, it is evident that the legal regulation as proposed by the draft Law aims at achieving positive and publicly significant goals with regard to a specific group of society (identified according to the criterion of a confession).

Having regard to the abovementioned facts, the Jewish religious community is considered to conform to the criteria discussed in the mentioned ruling of the Constitutional Court, on the basis of which the legislator can establish a differentiated legal regulation. Furthermore, the prospective legal regulation would be applied to the entire group of society characterised by the same features, namely, the Jewish religious community. Moreover, the proposed regulation is also believed to comply with the criterion of positive goals and public significance stressed in the jurisprudence of the Constitutional Court. Therefore, the draft Law should be deemed to conform in essence to the constitutional principle of equality of all persons, non-discrimination of persons and not granting of privileges to them.

Moreover, it should be noted that, according to the information supplied by the Parliamentary Research Department of the Office of the Seimas (the letter of 12 February 2010), some other European countries applied a similar practice both in resolving the issues of return of the real property previously held by Jewish religious communities through adoption of a separate law (for example, in Poland) and in introducing a compensation model (for example, in Hungary).

The draft Law also provides for a possibility of compensation, in accordance with the procedure laid down by the Government of the Republic of Lithuania or an institution authorised by it, for the real property of Lithuania's Jewish religious communities by transferring the State-owned real property (buildings or parts thereof) into ownership of a foundation appointed by the Government of the Republic of Lithuania.

The draft Law stipulates legal safeguards designed to ensure that the pecuniary compensation paid under the Law be used according to its purpose and contribute to consolidation of the activities of the Jewish religious community in Lithuania. To this end, the draft Law provides that the compensation will have to be used solely to attain the religious, cultural, educational, scientific and charity goals pursued by Lithuanian Jews in Lithuania, also to support the persons of the Jewish nationality who were residing in Lithuania during the Second World War and suffered from the occupational totalitarian regimes during that period. The real property transferred under the Law will have to be used solely for religious, cultural, educational and scientific purposes of Lithuania's Jews.

The provision according to which a certain portion of the compensation paid would be allocated to support the persons of the Jewish nationality who were residing in Lithuania during the Second World War and suffered from the occupational

totalitarian regimes during that period should be viewed as a certain positive restriction imposed in order to attain the publicly beneficial goals of the use of compensation. As the passing of this Law would in principle be regarded as an act of good will of the State, the State is believed to have the right, in this specific case, to narrow the scope of the use of the compensation. It should be noted that, according to the information supplied by the Parliamentary Research Department of the Office of the Seimas (the letter of 12 February 2010), similar mechanisms of provision of support to the persons of the Jewish nationality who suffered during the Second World War have been created also in some other European countries (for example, in the Czech Republic and Slovakia, special foundations have been established to allocate funds both to support the mentioned persons and also to maintain the property of Jewish religious communities).

Therefore, the provisions of the draft Law relating to the purposes of the use of the compensation should be viewed as certain limits of the use of the compensation rather than privileges in respect of other religious communities. Implementation of these restrictions will be ensured by the common legal means stipulated in legal acts. For instance, in the event of non-compliance with the mentioned provisions regarding the purposes of the use of the compensation, the persons concerned would be entitled to initiate judicial proceedings challenging the respective transactions financed with the funds of the compensation.

The prepared draft Law is not in contravention of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and requirements of the European Union law.

The draft Law has been prepared in compliance with the requirements of the Law on the State Language and the Law on Procedure of Drafting Republic of Lithuania Laws and Other Regulatory Enactments and conforms to the norms of the standard Lithuanian language.

Adoption of the draft Law will not influence a criminogenic situation and corruption.

Upon adoption of the draft Law, no impact is anticipated on business conditions and its development.

A possible detrimental consequence of adoption of the draft Law is the likely temporary rise of anti-Semitism. Positive consequences of adoption of the draft Law include demonstration of good will in restoring historical justice, improvement of relations between the Lithuanian and Jewish nations, also showing of respect to human rights and the commitments assumed in respect of the Jewish world community and international organisations. Moreover, upon paying the pecuniary compensation and, where possible, upon transferring the appropriate real property, the State will resolve the issue of compensation for the property of Jewish religious communities which was unlawfully expropriated, because no compensation will be offered to the Jewish community or to other communities for other property previously held (for example, bank deposits, securities, etc.). It should also be mentioned that payment of the compensation and, where possible, transfer of the appropriate real property will provide Lithuania with politically stronger positions in

negotiating with Russia on compensation for the damage incurred by the totalitarian regime.

Upon adoption of the draft Law, the Government of the Republic of Lithuania will need to adopt a resolution assigning an entity to which the compensation will be paid. The procedure for transferring the State-owned real property to a foundation appointed by the resolution of the Government of the Republic of Lithuania will also have to be approved.

Implementation of the Law will require allocation of LTL 128 million from the State budget. The draft Law provides that payment of the compensation will commence on 1 January 2012 and finish on 1 March 2023. The compensation will be paid in installments on an annual basis taking into consideration the financial possibilities of the State. A part of the compensation to be paid will be determined by the Seimas of the Republic of Lithuania when approving the State budget for each year. Taking into consideration the age of the persons of the Jewish nationality who were residing in Lithuania during the Second World War and suffered from the occupational totalitarian regimes during that period, the draft Law provides for the payment of a part of the amount of the compensation (i.e., LTL 3 million) until 1 March 2011.

If a foundation appointed by a resolution of the Government of the Republic of Lithuania is transferred the State-owned real property, the amount of the pecuniary compensation will be reduced by the value of the real property transferred into ownership, which will be calculated on the basis of the mass appraisal data available to the State Enterprise Center of Registers.

The draft Law has been prepared by the Ministry of Justice of the Republic of Lithuania.

The key words of the draft Law required for the draft Law to be included in a computer search system: “compensation”, “property”.

Minister of Justice
Remigijus Šimašius

Translation from Lithuanian

Draft Law on Compensation for the Real Property of
Jewish Religious Communities

COVERING LETTER

22-06-2010 No 35 - 3873

To the Seimas of the Republic of Lithuania

The Government of the Republic of Lithuania is hereby sending the Draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Communities approved at the meeting of the Government of the Republic of Lithuania of 21 June 2010.

In the course of presentation and consideration of the issue at the Seimas, the Government of the Republic of Lithuania will be represented by Minister of Justice Remigijus Šimašius, and in the event of his absence – by Vice-Minister of Justice Tomas Vaitkevičius.

ENCLOSED:

1. Explanatory note the Draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Communities, 4 pages.
2. Draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Communities, 2 pages.
3. Resolution of the Government of the Republic of Lithuania on Submission on the Draft Law of the Republic of Lithuania on Compensation for the Real Property of Jewish Communities to the Seimas of the Republic of Lithuania, 1 page.

Minister of Finance,
Acting Prime Minister
Ingrida Šimonytė