OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIMES – MACEDONIA (AS OF 13 DECEMBER 2016)

CONTENTS

A. EXECUTIVE SUMMARY

Yugoslavia (which included present day Macedonia, Bosnia-Herzegovina, Croatia, Kosovo, Montenegro, Serbia, and Slovenia) was invaded by the Axis powers (Germany, Bulgaria, Hungary, Italy, and Romania) during World War II. Macedonia was chiefly annexed by the Kingdom of Bulgaria (with the Vardar part of Macedonia annexed by Bulgaria and the western part of Macedonia occupied by Italy). The occupation lasted from 1941-1944. After the war, Macedonia became one of the constituent republics of socialist Yugoslavia.

While the Kingdom of Bulgaria did not deport Jews from the main Bulgarian territory or from the older parts of the Kingdom, it did deport Jews living in Bulgaria-annexed regions, including the Vardar part of Macedonia. The occupying Axis powers also targeted Macedonians and Serbian Orthodox and Roma in Macedonia.

Roughly 8,000 Jews lived in Macedonia before World War II. By the end of the war, less than 10 percent had survived. Approximately 200 Jews, and 54,000 Roma (according to the 2002 census) live in Macedonia today.

Immediately after the war, in May 1945, Yugoslavia enacted **Law No. 36/45** (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators). The expansive restitution and compensation law addressed property confiscated during World War II where the owners had to leave the country and were deprived of their property against their will, or where property was transferred under the pressure of the occupier to third persons. The restitution measures were short-lived. As Yugoslavia fell under Communist rule, widespread nationalization – which this time occurred irrespective of race, religion or ethnicity – resulted in a second wave of property confiscations.

Macedonia, formally known as the Republic of Macedonia and referred in the United Nations and other world bodies as the Former Yugoslav Republic of Macedonia (FYROM) (to distinguish it from the Greek region of Macedonia), gained its independence in 1991 and is a parliamentary democracy. In 2000, Macedonia passed its primary denationalization law – the **2000 Denationalization Law –** which addresses private, communal and heirless property. The **2000 Denationalization Law** was the first law in any of the Balkan countries to address heirless property.

Private Property. Claims by some foreign citizens relating to wartime confiscations and subsequent nationalizations were settled in the post-World War II years through bilateral agreements with Yugoslavia and at least 12 foreign governments. Macedonian citizens however, had to wait until the early 2000s to seek return of confiscated property.

Macedonia passed its first denationalization law in 1998 – the **1998 Law on Denationalization**. The law was never implemented because of failures to create the required property claim form as well as the fact that the Macedonian Constitutional Court found a number of the law's provisions to contravene Macedonian constitutional protections. In 2000, a second denationalization law was passed, the **2000 Denationalization Law.** It addressed private, communal and heirless property. Property subject to restitution or compensation under the law included property confiscated *after* 2 August 1944. Restitution and compensation under the **2000 Denationalization Law** was limited to persons who were citizens of Macedonia on the date the law came into effect. While priority was originally given to restituting property *in rem* (versus compensation), a 2010 amendment to the law had the effect of deprioritizing restitution *in rem* for previous owners.

The restitution/compensation process under the **2000 Denationalization Law** has suffered from a number of issues, including: difficulties with obtaining necessary documents for claim applications; the slow pace with which decisions are made by the local restitution commissions, with the restitution process often lasting more than 10 years; inefficiencies in informing applicants of the status of their claims; and inconsistent restitution jurisprudence. The excessive length of domestic proceedings under the **2000 Denationalization Law** has been the subject of a number of applications to the **European Court of Human Rights**.

Communal Property. The **2000 Denationalization Law** also applied to the return of communal property. Communal property subject to denationalization included property confiscated *after* 2 August 1944. In 2002, the government and the **Jewish Community of Macedonia** settled all Jewish communal property claims. Four (4) properties have been returned and a EUR 3 million bond was paid to the Jewish community for communal property.

Heirless Property. The often-wholesale extermination of all Jewish families in Yugoslavia during the Holocaust had the effect of leaving substantial property without heirs to claim it. Principles enshrined in documents such as the 2009 Terezin Declaration, 2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the

International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property should be used to provide for the material needs of Holocaust survivors most in need of assistance.

Initially, **Law No. 36/45** provided that property not claimed within the one (1)-year statute of limitations period, became the property of the Committee for National Property (i.e., property of the Yugoslav state).

Macedonia addressed the issue of heirless Jewish property 55 years later in its **2000 Denationalization Law**. The law stipulated that compensation for heirless property would be paid to the **Holocaust Fund for the Jews of Macedonia**, a fund managed jointly by the Macedonian government and the Jewish community. However, the law also provided that if there was a successor to property, which was believed to be heirless, he/she could file a request for restitution/compensation of the property under the private property provisions of the law, so long as he/she was a Macedonian citizen. The main purposes of the fund are to manage formerly Jewish heirless property, including building and maintaining the **Holocaust Memorial Centre for the Jews of Macedonia** in Skopje**,** revitalizing Jewish monuments, and conducting research and education-related activities. The Macedonian government reported that as of September 2015, the fund has been designated as the property recipient of Jewish heirless property in Macedonia in the total amount of EUR 21,118,893.

The Republic of Macedonia endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. The Republic of Macedonia submitted a response in September 2015.

B. POST-WAR ARMISTICES, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY

On 6 April 1941, the Axis powers (Germany, Bulgaria, Hungary, Italy, and Romania) invaded Yugoslavia (which included present-day Macedonia, Bosnia-Herzegovina, Croatia, Kosovo, Montenegro, Serbia, and Slovenia). Macedonia was annexed chiefly by Bulgaria (the Vardar part), which assumed administrative control over the eastern territory of Macedonia. The western portion of Macedonia was annexed to Italian-controlled Albania. No Jews lived in western Macedonia before the Italian occupation, but after the occupation, a substantial number of Jewish refugees came to the region on their way to Albania. No anti-Jewish legislation was enacted in western Macedonia. The refugees however were not residents and hid using false Christian and Muslim names. The Bulgarian occupation of Macedonia lasted from 1941-1944.

Beginning in 1941, Bulgarians passed laws that restricted the freedoms of Macedonian Jews, including the 1941 **Law for the Protection of the Nation** (modeled after the

Nuremberg Laws from Nazi Germany). The Bulgarian government required Jewish families to turn over 20 percent of their assets to the government. Those who could not pay had their assets sold at auction. Bulgarian laws also permitted all residents of the Vardar part of Macedonia – except the Jews – to become citizens of Bulgaria.

While Bulgaria did not deport Jews from the main Bulgarian territory, it did deport Jews living in Bulgaria-annexed territory, including the Vardar part of Macedonia. According to delivery reports of German police guards at Nishka Banja, in March 1943, 7,144 Macedonian Jews were rounded up by Bulgarian police and army officers acting under the instruction of the Commisariat for Jewish Questions and placed into Monopol temporary camp in Skopje. Three train transports then took the Macedonian Jews to the Treblinka extermination camp in then-occupied Poland. None survived.

Macedonians and Serbian Orthodox and Roma in Macedonia were also targeted and deported.

Before World War II, the Jewish population in Macedonia numbered approximately **8,000**. By the end of the war, less than **10 percent** survived. Roughly **200** Jews live in Macedonia today, a majority of which live in Skopje. The 2002 census puts the Roma population in Macedonia at around **54,000.**

After World War II, Josip Broz Tito formed the Federal People's Republic of Yugoslavia (FPRY). Macedonia became one of six constituent republics in the FPRY (along with Bosnia-Herzegovina, Croatia, Montenegro, Serbia and Slovenia).

As a constituent republic in the FPRY, Macedonia was involved in the **1947 Treaty of Peace with Bulgaria,** the **1947 Treaty of Peace with Hungary**, and the **1947 Treaty of Peace with Italy**. Yugoslavia was not involved with the **1947 Treaty of Peace with Finland** or the **1947 Treaty of Peace with Romania**.

In 1963, the FRPY became the Social Federal Republic of Yugoslavia (SFRY). Communist rule in Yugoslavia continued thru the 1980s.

By the late 1980s, the centralized control of the constituent republics of Yugoslavia began to break down. On 8 September 1991, the Socialist Federative Republic of Macedonia held a referendum and established its independence. The country became the Republic of Macedonia (or the "Former Yugoslav Republic of Macedonia (FYROM)" in organizations such as the United Nations, Council of Europe, World Trade Organization – to distinguish it from the Greek region of Macedonia).

Unlike some of the other former Yugoslav republics, the establishment of the sovereign Republic of Macedonia occurred without campaigns of national violence. The Republic of Macedonia is a parliamentary democracy.

Macedonia ratified the European Convention on Human Rights and became a member of the Council of Europe in 1995. As a result, suits against Macedonia claiming violations

of the Convention are subject to appeal to the European Court of Human Rights (ECHR). As of December 2016, Macedonia is a candidate country to the European Union.

1. Claims Settlement with Other Countries

Following the war, Yugoslavia entered into at least 16 lump sum agreements or bilateral indemnification agreements with 12 countries. (*See* Richard B. Lillich and Burns H. Weston, *International Claims, Their Settlement by Lump Sum Agreements* (1975), pp. 328-334.) These agreements pertained to claims belonging to foreign nationals (natural and legal persons) arising from property that had been seized by the Yugoslavian state during and after WWII. As best as we are aware, claims settlements were reached with:

- **Switzerland** on 27 September 1948
- **United Kingdom** on 23 December 1948 and 26 December 1948
- **France** on 14 April 1951 and 2 August 1958 and 12 July 1963
- **Norway** on 31 May 1951
- **Italy** on 18 December 1954
- **Czechoslovakia** on 11 February 1956
- **Turkey** on 13 July 1956
- **Netherlands** on 22 July 1958
- **Greece** on 18 June 1959
- **Denmark** on 13 July 1959
- **Argentina** on 21 March 1964
- **United States** on 19 July 1948 and 5 November 1964

(*Id*.)

2. Specific Claims Settlements Between Yugoslavia and Other Countries

a. Claims Settlement with the United States

On 19 July 1948, Yugoslavia and the United States concluded **Y-US Bilateral Agreement I** (Agreement Between the Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of the United States and its Nationals). In **Y-US Bilateral Agreement I**, Yugoslavia agreed to pay USD 17,000,000 " . . . in full settlement and discharge of all claims of nationals of the United States against the Government of Yugoslavia on account of the nationalization and other taking by Yugoslavia of property and rights and interests with respect to property, which occurred between September 1, 1939 and the date hereof" (**Article 1**). The United States, through its **Foreign Claims Settlement Commission ("FCSC")**, awarded nearly USD 18,500,000 to U.S. national claimants in the **First Yugoslavia Claims Program**. However, under the terms of **Y-US Bilateral Agreement I**, only USD 17,000,000 was available for payment. Successful claimants therefore received 91% of the principal of their awards.

On 5 November 1964, a second agreement, **Y-US Bilateral Agreement II**, was concluded between the two countries (Agreement between the Government of the United

States of America and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals). In **Y-US Bilateral Agreement II**, Yugoslavia agreed to pay USD 3,500,000 in full settlement of claims of nationals of the United States "on account of the nationalization and other taking of property and rights . . ." which occurred subsequent to the 19 July 1948 Y-**US Bilateral Agreement I** (*see* **US Bilateral Agreement II, Article 1**). The United States, again through the **FCSC**, awarded nearly USD 10 million to U.S. national claimants in the **Second Yugoslavia Claims Program**. Only USD 3,500,000 was available for payment based upon the terms of **Y-US Bilateral Agreement II**. The payments to successful claimants were thus only 36.1% of the principal of the awards.

For more information concerning the **First and Second Yugoslavia Claims Programs,** the **FCSC** maintains statistics and primary documents on its Yugoslavia: Program Overview webpage.

b. Claims Settlement with the United Kingdom

On 23 December 1948, Yugoslavia and the United Kingdom entered into a bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia regarding Compensation for British Property, Rights and Interests affected by Yugoslav Measures of Nationalisation, Expropriation, Dispossession and Liquidation (“Y-UK Bilateral Agreement I”)**. According to **Articles I** and **II**, Yugoslavia agreed to pay the United Kingdom GBP 4,500,000 (where payments were to be made in part after the conclusion of an Anglo-Yugoslav Money and Property Agreement and in part after the conclusion of a long-term trade agreement) in settlement of "all claims of British nationals arising, on or before the date of signature of the present Agreement, out of various Yugoslav measures affecting British property." Claimable "British property" under **Article II** included all property, rights and interests affected by "various Yugoslav measures" which on the date of such measure(s) were owned "directly or indirectly, in whole or in part, by British nationals, to the extent to which they were so owned" **(Article IV)**.

On 26 December 1948, Yugoslavia and the United Kingdom entered into a second bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Federal People's Republic of Yugoslavia regarding the Terms and Conditions of Payment of the Balance of Compensation for British Property, Rights and Interests affects by Yugoslav Measures of Nationalisation, Expropriation, Dispossession and Liquidation (“Y-UK Bilateral Agreement II”).** According to **Article I,** GBP 4,050,000 (the amount which was to be paid under the terms of **Y-UK Bilateral Agreement I** after the conclusion of a long-term trade agreement between Yugoslavia and the United Kingdom) would be paid installments between 1950 and 1957. The long-term trade agreement was concluded on the same day as **Y-UK Bilateral Agreement II,** 26 December 1948.

As far as we are aware, the claims processes established under **Y-UK Bilateral Agreements I** and **II** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful, or whether Yugoslavia paid the UK the full agreed-upon settlement amount.

The original text of the two (2) Agreements is available for download in English from the website of the Foreign Commonwealth Office, UK Treaties Online.

We do not have more detailed information for the remaining lump-sum settlements or bilateral indemnity agreements.

C. PRIVATE PROPERTY RESTITUTION

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II ("Terezin Best Practices") for the purpose of restitution, is:

> 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.

(Terezin Best Practices, para. b.)

Laws passed and practices adopted by the occupying forces in the Vardar part of Macedonia during World War II, stripped Jews, Roma and Macedonian and Serbian Orthodox from their rights, property and businesses.

1. Law No. 36/45 on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators

Law No. 36/45 (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators**)** from 24 May 1945 was the first law enacted in Yugoslavia addressing property confiscated during World War II.[1]

[1] Another property-related law was the Decree on Transferring Enemy Property into State Property, on State Control over Property of Absent Persons and on Sequester of Property Seized by Occupying Authorities. It was passed by the presidency of the AVNOJ (Anti-Fascist Council for the National Liberation of Yugoslavia) on 21 November 1944. Scholar Ljiljana Dobrovšak describes the law as requiring

> all property of the German Reich and its citizens in the territory of Yugoslavia [] be transferred into state property, and the same applied to property of individuals

Amendments to **Law No. 36/45** were included in **Law No. 64/46** (on Confirmation and Changes to the Law on Handling Property Abandoned by its Owners during the Occupation and Property Seized by the Occupier and his Collaborators) (amended by **Law Nos. 105/46, 88/47** and **99/48**).

Law No. 36/45 has been described as granting restitution "in all cases of properties, whose owners had to leave the country during occupation, of which they were deprived against their will, or which were transferred under the pressure of the occupant to third persons, regardless of who is in their possession, or the basis of possession." (Nehemiah Robinson, "War Damage Compensation and Restitution in Foreign Countries", 16 *Law and Contemporary Problems* 347-376 (Summer 1951) ("*Robinson"*) (describing the terms of the law), p. 364.) The law provided for restitution *in rem*, except when restitution was contrary to interest of the economy, reconstruction or military security, in which case compensation would be paid. (*Id.*)

The law was expansive in its scope of property to be returned (it included real estate, businesses, securities and property rights) but a few provisions seriously marginalized the law's effect. (*See Robinson,* p. 364.) First, **Law No. 36/45** only applied to citizens of Yugoslavia. Moreover, the law denied restitution to all Yugoslavian citizens living abroad who refused to return. (*Id.*) The law permitted relatives of the former owner to recover property but a court could decide to assign the relatives only part of the total former owner's assets. (*Id.*)

All restitution claims were resolved through the courts. (*Id.*)

Within one (1) month of **Law No. 36/45** coming into effect, all properties coming within the provisions of the law had to be registered with and transferred to the **State Committee for National Property** (Državna Uprava narodnih dobara). (*Id.*, p. 365.) Until the court determined ownership, the state would administer the property. However, after one (1) year, if the property remained unclaimed, it would be transferred to state ownership. (*See* European Parliament – Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries –Study", April 2010 ("2010 European Parliament Study"), p. 48 (in "Bosnia" section of the report but describing laws of Yugoslavia at the time).) In

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> of German nationality. Excluded property was only the property of Germans who fought in National Liberation Army and Partisan units, and of those who were citizens of neutral stats and did not show hostility towards the liberation war. All property of war criminals also became state property, irrespective of their citizenship, and the same applied to all persons who were sentenced to have their property seized by military or civilian courts. The state also took the property of absent persons, i.e. those who were forcedly taken away by the enemy or emigrated on their own.

(Ljiljana Dobrovšak, "Restitution of Jewish Property in Croatia", Limes Plus Journal of Social Sciences and Humanities: Holocaust and Restitution, 2/2015, p. 69 n. 10.)

many instances, the state failed to register the unclaimed properties. This means former owners who did not make timely claims in the 1940s are still listed in property registers as owners even though the property was supposed to revert to state ownership. (*Id.*)

Whatever property was ever actually returned under **Law No. 36/45** was seized for a second time between the 1940s and late 1960s (via sequestration, confiscation, nationalization, expropriation or agrarian reform) by the Communist regime in Yugoslavia.

Researchers have estimated that over 40 nationalization laws were enacted in Yugoslavia during this period. (2010 European Parliament Study, p. 118.) Nationalization included movable and immovable properties and applied to all persons equally, regardless of race, religion or ethnicity.[2] Municipal and regional commissions carried out the nationalization processes. (*Id.*, p. 121.) Key nationalization laws included **Law Nos. 98/46** and **34/48** (on Nationalization of Private Commercial Enterprises (as amended)) and **Law No. 28/47** (Fundamental Law on Expropriation).

As part of Macedonia's transformation to a market economy in the early 1990s, the issue of restoring individual property rights returned to the forefront. A balance had to be struck between restituting property to former owners and protecting the rights of those who legally obtained the same property during the Communist period in Macedonia.

2. 1998 Law on Denationalization

Beginning in 1994, Macedonia began to entertain calls to enact denationalization legislation. However, efforts languished as different governments cycled in and out of power and it was not until 1998 that Macedonia's first denationalization law – the **1998 Law on Denationalization** (No. 20/1998) – was enacted.

Despite the passage of the **1998 Law on Denationalization**, the denationalization and restitution process was essentially frozen in place before it began. First, the law required all claimants to lodge their property claims using a specific form that was to be prepared by the Ministry of Finance. The form was never prepared.

Moreover, in 1999, the Constitutional Court of Macedonia examined the **1998 Law on Denationalization** and found that a number of the law's provisions contravened Macedonian constitutional protections. Chiefly, the Court took issue with the law only applying to persons whose property was taken pursuant to a select few laws – instead of all laws and regulations by which property was nationalized (**Article 2**); that the law too broadly categorized property of "general interest" when stating such property would not be restituted *in rem* and instead only compensation would be paid (**Article 9(1)**); that the law excluded claimants who became heirs to the property *after* the law came into force

[2] There was, however, a law that related specifically to the treatment of Germans and German property. It was also the case that many Jews were charged with collaboration in order to facilitate the seizure of their property by the state.

(**Article 11)**; that the law required former owners of land (arable, forest, mountainous, pastureland and meadows) used by the state for agro-industrial purposes to become co-owners of the property with the state (**Article 22(2)**); that the law limited restitution *in rem* to people already actually in possession of the property (**Article 23**); that the law unduly limited restitution rights of former owners whose property was part of the premises of a state enterprise undergoing bankruptcy (**Article 29**); and that the law did not provide for interest to be paid on compensation bonds and that compensation payments via certain bonds were limited to 60% of the compensation value or a maximum of DEM 100,000 (**Articles 34** and **38**). (For a more detailed description of the stricken portions of the law and the Constitutional Court reasoning, *see* Bekim Nuhija, "Legislative Analysis on property restoration in the Republic of Macedonia", 4 International Journal of Scientific & Engineering Research 958 (August 2013) ("*Nuhija I*").)

Notwithstanding the lack of a specific restitution law in the late 1990s, it has been noted that many claimants filed administrative and civil actions in Macedonian courts seeking return of their property. (*Nuhija I*, p. 961.) Most actions were rejected early on in the proceedings due to a lack of regulations. (*Id.*)

3. 2000 Denationalization Law

In 2000, a much expanded and revised **2000 Denationalization Law** (No. 43/2000) (as amended in 2003, 2007, 2010 and 2015) was enacted. The **2000 Denationalization Law** covered private, communal, and heirless property.

Former owners or their successors in interest were eligible so long as the applicant was a citizen of the Republic of Macedonia on the date the **2000 Denationalization Law** came into force **(Article 13)**. The effect of this provision was that those who had emigrated from Macedonia prior to 2000 were ineligible to seek restitution or compensation for property confiscated during the Communist period.

Articles 2-5 described the type of property subject to restitution or compensation. It included a broad list of property including property *confiscated after 2 August 1944*: (1) on the basis of laws pursuant to which confiscation and limitation of the property had been made; (2) for public benefit; and (3) without legal basis (**Article 2)**. Certain property that acceded to the state under the **1945 Restitution Law** and its amendment was also subject to denationalization (**Article 5**). In addition, property taken in connection with certain criminal offenses was subject to denationalization (**Article 5**).

Claimants had **five (5) years** from when the **2000 Denationalization Law** came into force to lodge restitution/compensation claims, so by **28 April 2005** (**Articles 6** and **51**). After the expiry of **five (5) years**, applications could only be submitted only if they did not present factual or legal issues that would hinder the denationalization process, but no later than **seven (7) years** from when the **2000 Denationalization Law** came into force. After the expiry of **seven (7) years,** compensation for confiscated property could only be

requested via civil action and return of property would only occur if there are no legal and factual obstacles **(Article 51)**.

Property excluded from denationalization under the law included: property taken pursuant to the Law on Revision for Granting Land to Colonists and Farms in the People's Republic of Macedonia and the Autonomous Region of Kosovo & Metohija; property taken due to loss of citizenship or a valid judgment; property subject to an interstate agreement for indemnification of confiscated property; and property of substantial historical and cultural significance or natural rarity (**Article 7**). Property for which compensation had already been paid or granted was also not subject to denationalization (but if the property still existed, the former owner could seek restitution *in rem* but was obliged to return the compensation amount) (**Article 8**).

Compensation in lieu of restitution *in rem* was required where the confiscated property: had become public property (e.g., squares, streets, highways, other facilities of public utility infrastructure); was used for the defense and security of the country; or was planned to or was being used for premises of public interest (**Article 10).** Where another person or legal entity obtained an ownership right over the property, until the day the **2000 Denationalization Law** came into force, compensation would be paid to the former owner.

Denationalization Body(ies) formed by the Minister of Finance (i.e., local restitution commissions) decided requests for denationalization (**Article 15**).

In instances where the former owner's property increased in value after it was confiscated, the former owner had to be offered: restitution of the property if the former owner paid the difference in the increased value of the property; an ownership share up to the initial value of the property; or compensation **(Article 21**). In instances where the value of the property had been reduced after confiscation, the former owner was to receive the property plus compensation for the difference in the reduced value of the property (**Article 22**).

Compensation in lieu of restitution in *in rem* took the form of in-kind property (substitute property), shares and equity portions owned by the state, or bonds (**Article 38**). Compensation bonds are paid in Macedonian Denars and payment of the bonds was to commence in 2003 (**Article 42**). According to statements from the Ministry of Finance, as of June 2015, **14 issues of denationalization bonds have been made**, amounting to **EUR 333.5 million**. We do not have information as to how many successful claimants received compensation in bonds or what the average payment has been.

Article 52 originally stated that priority was given to restitution *in rem* (unless applicants had a choice between restitution or compensation and chose compensation) (**Article 52**).

A 2010 amendment to the **2000 Denationalization Law** revised the grounds for restitution *in rem*. Previous owners were generally no longer allowed to received restitution *in rem* and were only offered securities as compensation for their property.

Restitution *in rem* under the 2010 amendment was conditioned upon having preregistered the denationalization request on the property at the cadastral office beginning in 1998. (*See Nuhija II,* p. 962.) The 2010 amendment applied to cases then pending with the restitution commissions. Because applicants were not previously aware of the need to preregister denationalization claims in order to obtain restitution *in rem*, there was a feeling that property rights had been infringed upon. (*Id.*) We do not have information as to how many properties have been restituted *in rem*.

Applications for the return of immovable property were to be filed with the organ of denationalization (local restitution commissions) in the territory where the property was located at the time of confiscation (**Article 48**). The application had to be completed on an Application Form and had to contain details of the property sought to be returned, exchanged, compensated for, etc. The application also had to contain a copy of the act which confiscated the property, a certificate confirming the Macedonian nationality of the applicant obtained by the date the **2000 Denationalization Law** came into force; and the ownership deed to the property (original or certified copy) (**Article 49**).

Studies of the restitution process have shown that it was difficult to obtain a number of the required documents for applications. One obstacle is that land registry books and acts of nationalization or confiscation were hard to obtain. Despite formal requests to do so, state institutions often did not provide former owners with the requested documents. (*See Nuhija I,* p. 45.) The restitution process was also slowed because it was taking local cadastral offices between six (6) and ten months to issue certificates of ownership for properties (*Id.*) In September 2015, the Government of the Republic of Macedonia stated, however, that "[i]n accordance with the Law on Archival Materials of 2012 the access to all archival documents, including those related to Jews in Macedonia, is free and unrestricted. The responsible institution is the State Archives of the Republic of Macedonia. On the basis of a prior demand each researcher is given a written permission for his research activities." (Government of Macedonia Response to ESLI Immovable Property Questionnaire, 29 September 2015, p. 7.)

The organ of denationalization (restitution commissions) is obliged to issue a decision (on denationalization) of a claimant's application within **six (6) months** of when the application was submitted (**Article 53).** Decisions on denationalization include details of *inter alia:* the previous owner; the property taken away and the grounds for doing so (i.e., the act of confiscation); the property to be returned or compensation to be given; persons entitled to the property/compensation and the manner in which it will be received; any obligation of the former owner or the state to pay difference for increased or decreased value; the time by which the property in question must be delivered (**Article 54**).

Studies have found that the restitution commissions' work varied between areas. Some commissions were issuing decisions for 100-120 applications a month, while others only issued 1 or 2 during the same time period. (*Nuhija*, p. 45.) Additional complaints have been that applications are not considered in the order in which they were received by the restitution commission. Even when decisions are issued, they are often difficult to enforce (*Id.,* at 44). Moreover, even where claimants filed applications for the return of

their property, there have been reported instances where the property in issue was sold to another person or entity while the restitution application was still pending. (*Id.*, p. 45.)

Applicants can file a complaint appealing the decision on denationalization from an administrative agency or court, to the government of Macedonia **(Article 59)**. A 2010 Amendment changed this provision and vested administrative agencies/courts with the competence to hear the appeal complaints instead of the government. (*See Nuhija I,* at p. 961.)

Macedonia's Ombudsman, Ihxet Memeti, said in 2013 that much of Macedonia's lingering denationalization problems come from the inefficiency of the judiciary. Mr. Memeti added that the restitution/compensation resolution process lasts more than 10 years, applicants are insufficiently informed of the processes, and there is not consistent jurisprudence. Moreover, between 2009 and the middle of 2014, his office had received more than 650 denationalization-related complaints. ("Macedonia: More Efficient Court Administration to Tackle Denationalization Problems", 24 June 2014, Independent.mk – The Macedonian English Language News Agency.)

4. Notable European Court of Human Rights Decisions Relating to Denationalization Claims in Macedonia

A number of Macedonian restitution cases have been filed with the **European Court of Human Rights ("ECHR")** concerning the **2000 Denationalization Law**. These pertain chiefly to the alleged excessive length of domestic restitution proceedings in violation of **Article 6 § 1** of the **European Convention on Human Rights** ("In the determination of his civil rights and obligations . . . , everyone is entitled to a . . . hearing within a reasonable time by [a] . . . tribunal . . . .").

For example, in ***Veljanovski v. the former Republic of Macedonia,*** the applicant complained about the length of his restitution proceedings, which lasted nearly five (5) years. (*Veljanovski v. the former Republic of Macedonia*, ECHR, Application No. 11190/07, Decision of 13 March 2012.) The government offered via unilateral declaration – and the **ECHR** deemed acceptable for the applicant in ***Veljanovski*** – a global settlement acknowledging that the length of proceedings was not reasonable and payment of EUR 1,260 to the applicant as compensation for the excessive length. The case was thereafter struck from the **ECHR**'s docket. Other **ECHR** cases relating to excessive length of domestic restitution proceedings and resulting in a pecuniary settlement include: *Brajevik v. the former Yugoslav Republic of Macedonia*, ECHR, Application No. 58408/10, Decision of 18 September 2012 (settlement for EUR 700 for non-pecuniary damage and costs and expenses); *Mitevska and Ristova v. the former Yugoslav Republic of Macedonia*, ECHR, Application No. 6526/14, Decision of 6 October 2015 (settlement for EUR 2,050 (first applicant) and EUR 1,900 (second applicant) for non-pecuniary damage and costs and expenses); *Nelčeska and others v. the former Yugoslav Republic of Macedonia*, ECHR, Application Nos. 20988/05, 20599/08, 29830/08, 57088/08, 60140/08, 43713/09, 57948/09, Decision of 19 March 2013 (settlements of between EUR 1,120 and EUR 2,800 for each of the seven (7) applicants

for pecuniary and non-pecuniary damages and costs and expenses); and *Velevska and others v. the former Yugoslav Republic of Macedonia*, ECHR, Application No. 42886/07, Decision of 6 May 2014 (settlement EUR 770 jointly to the applicants for pecuniary and non-pecuniary damage and costs and expenses). We do no have information as to whether the applicants were eventually compensated by the Republic of Macedonia as per the terms of these settlement agreements.

Adži-Spirkoska and others v. former Yugoslav Republic of Macedonia

The **ECHR** has also examined the domestic process in the Republic of Macedonia by which claimants can file a complaint with the Supreme Court over the excessive length of domestic judicial proceedings in *Adži-Spirkoska and others v. former Yugoslav Republic of Macedonia*, ECHR, Application No. 38914/05, Decision of 3 November 2011.

In ***Adži-Spirkoska,*** applicants complained that their rights under **Article 6 § 1** of the **European Convention on Human Rights** had been violated because the domestic proceedings had lasted an unreasonably long time. In 2000, applicants had filed for restitution of property that had been confiscated in the city of Bitola in 1956. As of the date of the ECHR's decision in 2011, 10 domestic decisions had been issued in the case and the domestic proceedings were still pending. At issue was whether applicants were obligated to avail themselves of a domestic procedure to determine whether there had been a breach by the competent lower courts of a right to a hearing within a reasonable time.

According to the Macedonia **Courts Act of 2006** (and subsequent amendments to it by the **Law of 2008** and **Law of 2010**), the Supreme Court of Macedonia has exclusive competence to determine length of proceedings cases. The **Courts Act of 2006**, the amendments to the Act, and recommendations adopted by the Supreme Court's "length of proceedings" department, state that these proceedings before the Supreme Court shall take less than six (6) months, and that just satisfaction for any damage sustained as a result of the inordinate length of proceedings must be rewarded and in an amount not less than 66 percent of the sum awarded in other similar cases. The ECHR also noted statistics offered by the government which reported that as of 2011, 828 length cases had been brought before the Supreme Court, 657 had been examined, and in 218 cases, a violation of the "reasonable time" requirement had been found. (*Adži-Spirkoska*, Law, B.2.(d), B.2.(a).)

Applicants asserted that since they filed their action with the ECHR *before* the passage of the **Courts Act of 2006** (and amendments), they were not required to file a domestic length of proceedings complaint with the Supreme Court of Macedonia before the ECHR heard their case. While the issue of exhaustion of remedies is normally decided on the date the application is lodged with the ECHR, exceptions can be made based on the circumstances of each case. In this case, the ECHR found it appropriate to require applicants to avail themselves of the domestic length of proceeding complaint procedure because "the restitution proceedings are still pending before the domestic authorities, and the length remedy thus remains open to these applicants, who can not only claim

compensation but can also ask the Supreme Court to set a time-limit for deciding their case on the merits." (*Adži-Spirkoska*, Law, B.2.(d).) As a result, the complaints were rejected for non-exhaustion of domestic remedies.

D. COMMUNAL PROPERTY RESTITUTION

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

During the Communist regime, communal property (as well as private property) was nationalized in Yugoslavia. Almost all property owned by the almost completely decimated Macedonian Jewish community was nationalized. By law, these properties became "socially-owned property" and were "given" to the state so that they could be used for other purposes.

1. 2000 Denationalization Law

The **2000 Denationalization Law** (No. 43/2000) (as amended in 2003, 2007, 2010 and 2015) (**Law No. 3)**, which was applicable to private property, also addressed restitution of communal property.

According to **Articles 2** and **3,** property was to be returned or compensation paid to claimants who were physical persons or religious temples (Christian Church and Praying House, Islamic Mosque and Jewish Synagogue), monasteries and vakavs (inalienable property intended for religious and human goals).

Articles 2-5 described the type of property subject to restitution or compensation. It included a broad list of property **confiscated after 2 August 1944**: (1) on the basis of laws pursuant to which confiscation and limitation of the property had been made; (2) for public benefit; and (3) without legal basis (**Article 2)**. Certain property that acceded to the state under the **1945 Restitution Law** and its amendment was also subject to denationalization (**Article 5**). In addition, property taken in connection with certain criminal offenses was subject to denationalization (**Article 5**).

The umbrella organization for the Jewish community in the Republic of Macedonia is the **Jewish Community in the Republic of Macedonia** **("Jewish Community of Macedonia")**. After Macedonia gained its independence from Yugoslavia in 1991, the **Jewish Community of Macedonia** became the only Jewish community in the country.

In 1997, prior to the enactment of the **2000 Denationalization Law**, the **Jewish Community of Macedonia** transmitted a list of 40 former Jewish communal properties to the government. In 2002, the government and the **Jewish Community of Macedonia** settled all remaining Jewish communal property claims.

According to the Macedonian government in September 2015, the following properties have been returned to the Jewish community: a 10,221 m^2 Jewish cemetery, and three (3) premises (residential, residential-business, and business) in Bitola. The **World Jewish Restitution Organization** has stated that none of these properties yield much income. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 6 (Macedonia).) In addition to the four (4) properties, the Jewish community also received a EUR 3 million government bond (paid in installments between 2004 and 2013) meant to cover general community needs. (*Id.*)

Since the Republic of Macedonia endorsed the Terezin Declaration, no new laws have been passed relating to the restitution/compensation of communal property confiscated during the Holocaust era or Communist regime.

E. HEIRLESS PROPERTY RESTITUTION

The Terezin Declaration states "that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences." (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

1. Law No. 36/45 (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators)

According to the terms of **Law No. 36/45**, property not claimed within the one (1)-year statute of limitations period became the property of the **State Committee for National Property** (i.e., property of the Yugoslav state).

2. 2000 Denationalization Law

The **2000 Denationalization Law** (No. 43/2000) (as amended in 2003, 2007, 2010 and 2015) specifically addressed the issue of heirless property in a section entitled "Special Provisions" (*see* **Articles 66** through **69**). Specifically, **Article 66** stated that "[s]ubject to denationalization shall be the properties of Jews from Macedonia who have left their properties after the forceful deportation in fascist camps, and who have not survived the pogrom and do not have any successors." The **2000 Denationalization Law** was the first law in any Balkan country to address heirless property.

According to **Article 68**, compensation for the heirless Jewish property was to be paid to the **Holocaust Fund for the Jews of Macedonia ("Holocaust Fund")**. The **Holocaust Fund** was established in 2002 **(Government Resolution No. 23-2112/1)**. The **Holocaust Fund** is managed by an equal number of members of the Government of the Republic of Macedonia and the Jewish Community in the Republic of Macedonia.

The main purposes of the **Holocaust Fund** are to manage formerly Jewish heirless property including building and maintaining the **Holocaust Memorial Centre for the Jews of Macedonia ("Holocaust Memorial Centre")** in Skopje, revitalize Jewish monuments, and conduct research and education-related activities. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 7 (Macedonia).) The **Holocaust Memorial Centre** opened in 2011 and is comprised of a museum, research centre, and art gallery. (*See* Michael Petrou, "Honouring Macedonia's lost Jewish community", 19 January 2012, *Macleans.ca* (last accessed 14 December 2015).) The **Holocaust Memorial Centre** is located on the northeastern bank of the Vardar River in Skopje – the site of Skopje's old Jewish quarter.

By the terms of **Article 67**, compensation would be paid to the **Holocaust Fund** after the organ of denationalization (restitution commissions) received information about the heirless property.

Article 67 also states that if a successor to the property, which is believed to be heirless, appears, and if he/she is a Macedonian citizen, he/she can file a request for restitution/compensation of the property under the private property provisions of the law **(Articles 47-63)**.

According to the **World Jewish Restitution Organization**, the **Jewish Community of Macedonia** identified 1,700 heirless Jewish properties. (World Jewish Restitution

Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 7 (Macedonia).) Initially, the heirless property restitution was slow, mainly on account of the copious documentation required to demonstrate that there were no heirs to the property. In 2005, the government transferred EUR 500,000 and 35 pieces of land to the **Holocaust Fund** in settlement of 450 of the heirless property claims. (*Id.*) Later, in December 2007, the Government of the Republic of Macedonia and the Jewish community reached a global agreement that settled all remaining claims. (*Id.*) In total, the government has asserted that it provided compensation for 687 cadastral parcels (houses with yards) (of which 344 are located in Skopje, 305 in Bitola, and 38 in Štip). The government allocated EUR 17 million in state bonds to the building and initial operation of the **Macedonian Memorial Centre of the Holocaust of the Jews from Macedonia.** The Macedonian government reported that as of September 2015, the **Holocaust Fund** has been designated as the proper recipient of Jewish heirless property in Macedonia in the total amount of EUR 21,118,893. (2015 Government of Macedonia Response to ESLI Immovable Property Questionnaire.)

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