OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – BULGARIA (AS OF 13 DECEMBER 2016)

CONTENTS

A. EXECUTIVE SUMMARY

For most of World War II, Bulgaria was an ally of Germany. Bulgaria passed a series of anti-Jewish laws in the early 1940s but they received less support in Bulgaria than did similar laws in other countries in Europe. Bulgaria also did not carry out mass exterminations of its nearly 50,000 Jews. A large proportion of the Jewish population was, however, temporarily relocated to the countryside during the war and their possessions sold. After the war ended, more than 35,000 Bulgarian Jews decided to relocate to Israel. Only approximately **3,900** Jews remain in Bulgaria today.

While Bulgaria saved the Jews residing in its core provinces from extermination, the Jews in Bulgarian-controlled territories (e.g., Macedonia, Thrace (area in current-day Greece and Bulgaria), and Pirot (area in current-day Serbia)) were not as fortunate. Most of the Jews in those areas were deported and murdered at the Treblinka killing center in German-occupied Poland.

Towards the end of World War II, Bulgarian anti-Jewish laws were abolished and there were efforts to restore Jewish confiscated property. A March 1945 **Rehabilitation Law** (which came into effect in November 1946) provided for the restitution or compensation of confiscated Jewish property. The measures were short-lived. The incoming Communist regime's antagonistic views towards religion and desire to collectivize land led to the eventual nationalization of Bulgarian property – which occurred irrespective of race, religion or ethnicity. In the early years after the end of Communism and the establishment of a parliamentary democracy in Bulgaria, the country made restitution *in rem* its main goal. However, the government's aggressive focus on returning the physical properties to their original owners resulted in political and economic complications – including insufficient land to return to claimants *in rem* as well as fragmentation of agricultural land amongst numerous owners. In addition to private property legislation, Bulgaria also passed a **1992 Decree** restoring ownership rights in Jewish communal property to the country's chief Jewish organization, **Organization of the Jews in Bulgaria "Shalom"**. No provisions for heirless property have been made.

Private Property. Bulgaria was one of the first Eastern European countries to pass private property restitution legislation after the fall of Communism in the early 1990s. Both Bulgarian citizens and non-Bulgarian citizens were eligible to seek restitution of property confiscated during the Fascist and Communist periods, but a successful claimant who was not a Bulgarian citizen had to sell any property restituted *in rem*. Moreover, only Bulgarian citizens could receive restituted forest and farmland.

The **1991 Law on Ownership and Use of Agricultural Land ("LOUAL")** provided for the restitution of agricultural land. The **1992 Law on the Restitution of Nationalized Immovable Property ("LRNIP")** provided for the restitution of immovable property from both the state and from third parties. Third parties whose land was taken from them and restored to the original, pre-nationalization owners through restitution proceedings under **LRNIP** have challenged the restitutions under **Article 1 of Protocol 1** of the **European Convention on Human Rights** (*see e.g.*, ***Velikovi and Others v. Bulgaria***). Other private property restitution issues were addressed with the **1997 Law on Restitution of Property over Forests and the Lands from the Forest Fund**, which dealt with the restitution of privately owned forest land, and **1997 Law on the Compensation of Owners of Nationalised Assets ("LCONA")** (also known as the **Luchnikov Law**, after the law's sponsor, Svetoslav Luchnikov) which provided compensation in the form of bonds whenever *in rem* restitution was impossible or unwanted. The bonds issued pursuant to the **Luchnikov Law** have been criticized for having little market value and offering only limited purchasing power to buy desirable property.

Communal Property. Bulgaria's **1992 Decree** on communal property restituted the rights all of the Jewish community's property owned by the State to **Shalom**, the umbrella organization of the Jews in Bulgaria. Obtaining physical possession of some of the properties proved to be a difficult and lengthy process but the matter of Jewish communal property restitution has largely been settled.

Heirless Property. Principles enshrined in documents as early as the 1947 Paris Peace Treaties and as recently 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. Bulgaria has not made any special provisions for heirless property from the Shoah era.

Bulgaria 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. As of 13 December 2016, no response from Bulgaria has been received.

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

For most of World War II, Bulgaria was an ally of Germany and a member of the Axis powers.

During the war, Jewish populations in Bulgarian-controlled territories (e.g., Macedonia, Thrace (area in current-day Greece and Bulgaria), and Pirot (area in current-day Serbia)) were rounded up by Bulgarian authorities and deported to concentration camps. Most were murdered at the Treblinka killing center in German-occupied Poland.

In contrast to the Bulgarian-controlled territories, protests and political pushback prevented deportations within the core provinces of Bulgaria. Even still, on 23 January 1941, Bulgaria passed the **Law for the Defense of the Nation** (modeled after Nazi Germany's Nuremberg Laws), which had the effect of limiting the rights and free movement of Bulgarian Jews. The law, *inter alia*, created special Jewish (forced) labor units, required Jews to report all immovable and movable properties, and prevented Jews from owning schools, theatres, cinemas, and publishing houses. (Kristyna Sieradzka & Nan Griefer, "Jewish Restitution and Compensation Claims in Eastern Europe and the Former USSR", Institute of Jewish Affairs, No. 2/1993 ("1993 IJA Report"), p. 16.) In 1942, further restrictions prohibited Jews from owning any businesses. There was, however, less support for these types of anti-Jewish laws in Bulgaria than in other countries in Europe during the war.

In 1943, 20,000 of Sofia's 25,000 prewar Jews were temporarily relocated to the Bulgarian countryside and males were interned at forced labor camps. In the end, no program of mass deportation or extermination of Jews was conducted in Bulgaria (excluding the Bulgarian-occupied territories). After 1941 many Bulgarian Jews actively participated in the Partisan-led resistance against the pro-German Bulgarian government, while many Bulgarian Jews also took part in the campaign of the Bulgarian army against Germany (after September 1944).

In late summer 1944, the Soviet Union declared war on Bulgaria. On 6 September 1944, Bulgaria switched allegiances and declared war on Germany.

The post-World War II Jewish population in Bulgaria was the same as its pre-war population, roughly **50,000**. (United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Bulgaria".) However, between 1945 and 1950, more than 35,000 Bulgarian Jews emigrated to British Mandate Palestine (that became Israel in 1948). (*Id.*) There are roughly **3,900** Jews in Bulgaria today. (World Jewish Congress, "Communities – Bulgaria".)

During World War II, the Roma (Gypsies) in Bulgaria were not sent to concentration camps or subjected to mass extermination. (Elena Marušhiakova & Vesselin Popov, "The Bulgarian Gypsies – Searching their Place in Society", *Balkanologie*, Vol. IV, No. 2, December 2000, ¶ 18.) However, many Roma were gathered for compulsory labor and their free movement in towns was restricted because of the belief that Roma were spreading contagious diseases. Some Roma joined the anti-Fascist struggle. (*Id.*, ¶ 19.) However, their participation did not affect the war in a meaningful way. According to census reports, there were somewhere between **150,000** and **170,000** Roma in Bulgaria during World War II. According to a 2011 census report, there

are now approximately **325,000** Roma in Bulgaria. (Bulgaria Census Report (last accessed 26 January 2016).)

1. 28 October 1944 Armistice Agreement

On 28 October 1944, Bulgaria concluded an **Armistice Agreement** with the Allied Powers (**Agreement Between the Governments of United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, on the One Hand, and the Government of Bulgaria, on the Other Hand, Concerning an Armistice**).

Article 5 of the **Armistice Agreement** stipulated that Bulgaria must free all the people detained on racial or religious grounds (e.g., Jews and Roma) and cancel all discriminatory (i.e., anti-Semitic) laws. It demanded that "[t]he Government of Bulgaria will immediately release, regardless of citizenship or nationality, all persons held in confinement in connection with their activities in favor of the United Nations or because of their sympathies with the United Nations cause or for racial or religious reasons, and will repeal all discriminatory legislations and disabilities arising therefrom."

Article 9 of the **Armistice Agreement** required that "[t]he Government of Bulgaria will restore all property of the United Nations and their nationals, including Greek and Yugoslav property, and will make such reparation for loss and damage caused by the war to the United Nations, including Greece and Yugoslavia, as may be determined later."

Article 10 of the **Armistice Agreement** required that "[t]he Government of Bulgaria will restore all rights and interests of the United Nations and their nationals in Bulgaria."

2. 10 February 1947 Treaty of Peace with Bulgaria

During the conference deliberations (summer 1946) that preceded the signing of the **Treaty of Peace with Bulgaria** on 10 February 1947, the **Jewish Consistory of Bulgaria** sent a letter of support for Bulgaria, insisting that the text of the peace agreement should not include any special provisions concerning the rights of Jews in Bulgaria, as there was no Holocaust in Bulgaria.

Ultimately, the Treaty did address immovable property restitution and compensation and also confirmed Bulgaria's previous obligations from the **Armistice Agreement**.

Article 23 of the Treaty related to the restoration of property (movable, immovable, tangible or intangible, as well as all rights or interests of any kind in property) in Bulgaria belonging to the United Nations and their nationals. All property, rights, and interests were to be restored free of encumbrances, taxes, and charges, and the Bulgarian government would bear all reasonable expenses in establishing claims. The Bulgarian government was also required to nullify all measures taken against United Nations property from 24 April 1941 to the date the **Treaty** came into force and was required to invalidate transfers of property involving force or duress from the Axis governments or their agents. If property was not returned within six (6) months from the enforcement of the **Treaty**, a claim could be brought to the Bulgarian authorities within 12 months from the enforcement of the **Treaty**. Where the property could not be restored, the

Bulgarian government was obligated to pay two-thirds of the amount necessary at the date of payment to purchase similar property or make good the loss suffered. We do no have information as to how successful property restoration was under the terms of the **Treaty of Peace with Bulgaria**.

3. Claims Settlements with Other Countries

Following the war, Bulgaria entered into at least 11 lump sum agreements or bilateral indemnification agreements with 11 different 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 out of war damages or property that had been seized during or after WWII. As best as we are aware, claims settlements were reached with:

- **Switzerland** on 26 November 1954
- **France** on 28 July 1955
- **United Kingdom of Great Britain** on 22 September 1955
- **Norway** on 2 December 1955
- **Soviet Union** on 18 January 1958
- **Denmark** on 26 May 1959
- **Netherlands** on 7 July 1961
- **Austria** on 2 May 1963
- **United States** on 2 July 1963
- **Greece** on 9 July 1964
- **Italy** on 26 June 1965
- **Canada** on 30 June 1966

(*Id.*; *see also* Richard B. Lillich and Burns H Weston, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995* (1999).)

4. Specific Claims Settlement Between Bulgaria and Other Countries

a. Claims Settlement with the United Kingdom of Great Britain

On 22 September 1955, Bulgaria concluded a bilateral agreement with the United Kingdom, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Bulgaria relating to the Settlement of Financial Matters ("B-UK Bilateral Agreement")**. According to **Article 1** of the **B-UK Bilateral Agreement**, Bulgaria agreed to pay GBP 400,000 in full and final settlement for claims brought by the UK government or British nationals against the Bulgarian government concerning all obligations arising out of **Article 23** of the **Treaty of Peace with Bulgaria** (**Article 1(b)**), property, rights, and interests that occurred through nationalization or similar expropriations before the date of the agreement (**Article 1(d)**), and other specified terms.

Article 2 of the **B-UK Bilateral Agreement** required Bulgaria to make payment installments of a specified amount on the 31st of March each year, beginning in 1956.

Article 4 of the **B-UK Bilateral Agreement** defined British property as "all property, rights and interests affected by the various Bulgarian measures which on the date of the relevant law, decree or other measure were owned . . . by British nationals."

As far as we are aware, the claims process established under the **UK Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful or whether Bulgaria paid the UK the full agreed-upon settlement amount.

The original text of this agreement is available for download in English from the website of the Foreign Commonwealth Office, UK Treaties Online.

b. Claims Settlement with the United States

As set forth in the **Treaty of Peace with Bulgaria** and U.S. legislation (International Claims Settlement Act of 1949, as amended), Bulgaria was responsible for claims of nationals of the United States for losses arising out of war damages, nationalization, compulsory liquidation, or other taking of property prior to August 9, 1955. The U.S. Treasury vested and liquidated Bulgarian assets that had been blocked during the war in the amount of USD 2,676,234 and designated them for use in paying the claims. The **U.S. Foreign Claims Settlement Commission ("FCSC")** heard the claims and completed the **First Claims Program** in 1959.

On 2 July 1963, Bulgaria concluded a Bilateral Agreement with the United States, **Agreement Between the United States of America and the Government of the People's Republic of Bulgaria Regarding Claims of United States Nationals and Related Financial Matters ("B-U.S. Bilateral Agreement")**. In the **B-U.S. Bilateral Agreement**, Bulgaria dedicated USD 3,543,398 (paying an additional USD 400,000) as full and final settlement and discharge of claims, including claims for restoration/compensation of property rights of nationals of the United States, as specified in Article 23 of the Treaty of Peace with Bulgaria. (**Article 1(a).**) The **Second Claims Program** was completed in 1971.

In total, the United States, through the **FCSC**, awarded nearly USD 5,000,000 to U.S. national claimants in the **First and Second Bulgaria Claims Programs**. However, only approximately USD 3,000,000 was available for payment based upon the terms of the **B-U.S. Bilateral Agreement** and the **Treaty of Peace with Bulgaria**. Successful claimants therefore received USD 1,000 plus 69.71% of the principal of their awards.

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

c. Claims Settlement with Canada

On 13 June 1966, Bulgaria concluded a bilateral agreement with Canada, **Agreement Between the Government of Canada and the Government of the People's Republic of Bulgaria Relating to the Settlement of Financial Matters ("B-Canada Bilateral Agreement")**. In **Article 1** of the **B-Canada Bilateral Agreement**, Bulgaria agreed to pay CAD 40,000 as full

and final settlement for any claims made by Canada, Canadian citizens, or Canadian juridical persons against the Government of Bulgaria concerning property, rights, interests, and debts that occurred through nationalization or similar expropriations before the date of the Agreement.

In order to disburse payments as outlined in the **B-Canada Bilateral Agreement**, on 3 November 1996, Canada passed the **Foreign Claims (Bulgaria) Settlement Regulations** (**"Settlement Regulations")**. The **Settlement Regulations** permitted payments to be made from Canada's **Foreign Claims Fund** to any Canadian claimant who gave notice of his/her claim to the Canadian government before 30 June 1966 and satisfactorily established that he/she was entitled to compensation pursuant to the terms of the **B-Canada Bilateral Agreement**. Payments issued were considered final payment that constituted full satisfaction of the claims. If a Canadian claimant died on or after 30 June 1966 after initiating a valid claim, payment from the **Foreign Claims Fund** could be made to a personal representative or another person otherwise entitled to the compensation.

As far as we are aware, the claims process established under the **B-Canada Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful, or whether Bulgaria paid Canada the full agreed-upon settlement amount.

The original text of this agreement is available for download in English from the website of the **Government of Canada, Foreign Affairs, Trade and Development**.

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

C. RESTITUTION OF PRIVATE PROPERTY

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.)

In September 1944, Bulgaria came under Soviet control.

Article 5 of the 28 October 1944 **Armistice Agreement with Bulgaria** required that Bulgaria cancel all discriminatory legislation.

In March 1945, Bulgaria passed a **Rehabilitation Law** (which went into force in November 1946). Under the law, Jews who had lost property during the country's Fascist regime were to receive restitution. The law voided the wartime compulsory sales of Jewish property, where the proceeds of the sale had been used to pay a "Jewish tax". (1993 IJA Report, at p. 16; *see also* "Sweeping Changes in Bulgarian Reparations Law Benefit Jews; Property, Cash Returnable", Jewish Telegraphic Agency (JTA), 22 July 1946.) Where the original property had been destroyed, compensation of up to 50,000 Levas (then, USD 100) was given and the rest paid in bonds over a six (6)-year period. (1993 IJA Report, at p. 17.) Payment of the bonds was abruptly terminated at the end of 1948. Moreover, Jews who did not return to Bulgaria by March 1946 forfeited their rights to compensation altogether. (*Id.*) In March 1946, the Bulgarian government also announced that it would return confiscated Jewish houses that the government had been using. (*Id*.)

In 1947, the country came under Communist control at a time when the **Treaty of Peace with Bulgaria** (part of the **Paris Peace Treaties**) came into force, a new Constitution was adopted, and the multi-party system in the country was disbanded. Bulgaria became known as the People's Republic of Bulgaria.

In the late 1940s and early 1950s, all private industry, financial enterprises, and excess residential properties (the policy was to limit private real estate ownership to one (1) dwelling per family) were nationalized in the culmination of a gradual Communist government takeover of all private sectors of Bulgarian society. Agriculture was also collectivized and under government control through the use of the TKZS (state owned co-operative farms). (*See Collectivization of Agriculture in Eastern Europe*, (Irwin T. Sanders, ed., University of Kentucky Press, 1958).) Thus, whatever property had been returned to Bulgaria's Jewish community through post-war legislation, was soon subject to a second wave of confiscation. This time confiscation occurred equally regardless of race or religion or ethnicity.

After emerging from Communism in 1989, Bulgaria was one of the first countries to pass restitution legislation. The country's first free elections took place in 1990.

The private property restitution laws from the 1990s generally covered properties seized during Bulgaria's Fascist and Communist periods.

1. 1991 Law on Ownership and Use of Agricultural Land (LOUAL)

The restitution of agricultural lands previously nationalized by the Bulgarian Communist regime in the 1940s and 1950s was one of the most disputed aspects of Bulgaria's transition to democracy and a market economy.

In 1991, Bulgaria adopted the **Law on Ownership and Use of Agricultural Land (LOUAL)**.

Article 10 of the **Law on Ownership and Use of Agricultural Land ("LOUAL")** set out the general rules for the restitution of agricultural land. 1992 amendments made the restitution process very broad and inclusive – the law covered all cases of land nationalization, whether

directly through state laws, orders, provisions, etc., or indirectly through the system of TKZS (state owned co-operative farms).

As a general rule, under **Article 10(a)**, the land had to be restored to the original owners or their heirs within its original boundaries wherever possible (i.e., restitution *in rem*). An upper limit of 200 decare (or 300 decare in certain specified locations) was determined, with compensation owed for anything above that limit and no restrictions on the size of the compensation.

If land was to be returned to foreign citizens, they were required to sell the property back to Bulgarian citizens within a three (3) year period (**Articles 10(a)** and **3(b)**). The sell-back rule came from **Article 22** of the **1991 Bulgarian Constitution**, which prohibited foreign citizens from owning land in Bulgaria. A 2005 amendment to the Constitution (which entered into force in 2007 (as a requirement for Bulgaria's entry into the European Union ("EU")) slightly revised the early rules and permitted citizens of the EU and some other states to be able to own land in Bulgaria. **Article 10** of **LOUAL** is still important as many non-EU citizens are unable to own land in Bulgaria and are subject to the three (3) year sell-back rule. (*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. 64.)

Article 11 governed the procedure for filing a restitution claim. Claimants had to file a declaration with the Municipal Office of Agriculture within a 17-month time period after the promulgation of the law claiming restitution of their property rights (**Article 11(1)**). The 17-month time period expired on **30 July 1992**. Later amendments to the law provided for additional restitution periods until **21 November 2007**, but the requirements for successful restitution became more demanding. (2010 European Parliament Study, p. 65).

The declaration had to include a description of the property and evidence of the claimant's property rights. Supporting evidence was very broad and could include notary acts, declarations for membership in the TKZS, audit books for rent payment, decisions for granting property rights according to the 1946 Law on Labour Agricultural Property, and "other written documents". (**Article 12(2).**) In some cases, the testimony of elderly neighbors and a written declaration was sufficient. Once the Municipal Agriculture and Forestry Service announced its decision, the outcome could be challenged in court within 14 days (**Article 14(3)(3).**)

In order to meet all of the restitution claims, **Article 10(b)** required that at least 50% of the municipal land fund be allocated as compensation *in kind* for the claimants who could not receive restitution *in rem*. However, the claims of the owners exceeded the amount of available land, making it impossible to compensate all owners with adequate land. Restitution *in rem* became a largely obsolete concept in the late 1990s.

In response to land shortages, an amendment to **LOUAL** was adopted in 1999 by which personal compensation bonds ("poimenni") were issued in place of restituted land. (**Article 10(b)(5).**) Problems arose with the trade of such bonds and their value, which detracted from the legitimacy of this compensation measure. Another major issue concerned bona fide third parties, who had acquired ownership over the land legally during the pre-1989 period. Sometimes the rights of

these bona fide third parties were violated in the attempt to compensate restitution claims. Examples of these cases can been seen in applications filed with the **European Court of Human Rights ("ECHR")**. (*See, e.g.*, *Todorova and Others v. Bulgaria*, ECHR, Application No. 48380/99, Judgment of 24 July 2008; *Velikovi and Others v. Bulgaria*, ECHR, Application No. 43278/98, Judgment of 9 September 2007.)

By late 2000, 99.79% of land with recognized claims had been returned under the law. (*See* 2010 European Parliament Study, p. 65.) However, it is worth noting that following denationalization of agricultural land, the agricultural output in Bulgaria actually shrank. (*Id.*, pp. 67-68.) Moreover, restituting land *in rem* resulted in the fragmentation of the country's agricultural lands and created problems with appropriating EU agricultural funding. (*Id.*, p. 80.)

2. 1992 Law on the Restitution of Nationalized Immovable Property (LRNIP)

The **Law on the Restitution of Nationalized Immovable (Real) Property (Law No. 15/1992) ("LRNIP")** addressed the return of urban and industrial property.

Article 1 of **LRNIP** provided that former owners of real estate that had been nationalized under several laws during the Communist regime would become *ex lege* (as a matter of law) owners of their nationalized property if it still existed, was still owned by the state, and if no adequate compensation had been paid at the time of nationalization. (*See also* 2010 European Parliament Study, p. 68.)

Article 7 of **LRNIP** provided an exception to the requirement that the property had to be state-owned. Even if the nationalized property had been acquired by third parties, the former owners or their heirs could still recover the physical property (restitution *in rem*) if the third parties had become the owners in breach of the law, by virtue of their political position, or through abuse of power. The former owners had a one (1)-year time period to bring an action before the courts against the allegedly unlawful owners. If the courts held in favor of the former owners, the current ownership was considered null and void and the property was returned *in rem* to the former owners. The one (1)-year time period expired on **21 February 1993**. The Constitutional Court struck down a 1997 amendment reopening the claims period for an additional year, but claims filed between the time the amendment took effect and the time the amendment was struck down by the Constitutional Court were still considered.

By September 2000, more than 100,104 restitution claims declarations were submitted under **LRNIP**. At the time, more than 58,000 properties had been given back to their original owners, but that only amounted to approximately 58% of all immovable property estimated to be subject to restitution. (2010 European Parliament Study, p. 69.)

Another law that related to the return of urban property was the **1992 Law on Restitution of Property over Some Alienated Properties According to the Law on the Territorial and Urban Development, The Law on the Planned Development of Populated Areas, The Law on Development of the Populated Areas** (**Law No. 25/1992).** This law addressed the return of property that was expropriated for the purpose of urban development. Property could be returned under the law if the urban development or zoning activity for which the property had originally

been expropriated, had not yet began. (For more information, *see* 2010 European Parliament Study, at p. 69.)

3. 1997 Law on Restitution of Property over Forests and the Lands from the Forest Fund

Legislation providing for the restitution of forest property was not passed until December 1997. Private forests and the private lands from the national forest fund constituted just 15% of the forests in the country, the majority of which were state property. Private individuals with potential claims had until **either 30 June 1999 or 30 September 1999** (depending on the complexity of the case) to register their claims with the appropriate local forest restitution committee (Caedmon Staddon, "Restitution of Forest Property in Post-Communist Bulgaria," Natural Resources Forum 24 (2000), 241.)

Article 3 provided for the return of the ownership rights to the original owners or their heirs.

Article 4 provided that the restitution of private forests was to be within "real boundaries" (i.e., restitution *in rem*). If restitution *in rem* was impossible, then the owners were to be provided with a forest area of similar size and quality either in the same area or in a neighboring area. Forests that fell within national parks, or the 200m "border area" around the parks, were excluded from being restituted *in rem* along with natural and archeological reserves, some historic gardens, etc. (*Id.*, pp. 242-43.)

Article 13 required that the right of ownership be proven by means of title deeds and records, court deeds, real property and tax registries, protocols by the arable land property commissions, co-operative share certificates, ownership maps and lists, and other written proof admissible under the Civil Code of Procedures. Ownership rights could not be proven by oral testimony or written affidavits by the applicants. (*Id.*, p. 243.)

Forest property could be restituted even if the pre-nationalization owners had received compensation for the property at the time of nationalization, so long as they returned the compensation received. Owners whose forests were cut down after 1990 received personal ("poimenni") compensation bonds for the lost wood, and the plot of land itself was also returned. (2010 European Parliament Study, pp.70-71.)

4. 1997 Law on the Compensation of Owners of Nationalised Assets (LCONA)

Compensation for confiscated property was considered only a second-best scenario to restitution in Bulgaria.

In November 1997, the Bulgarian government passed the **Law on the Compensation of Owners of Nationalized Assets ("LCONA")** better known as the **"Luchnikov Law"** (after the law's sponsor, Svetoslav Luchnikov). The law mainly regulated compensation for nationalized property whenever it could not be fully restituted *in rem* to the former owners or their heirs. The value of the compensation determined under the **Luchnikov Law** in general was not correlated

to the initial value of the confiscated property. Rather, the law used the real market value of the property at the time of the adoption of the law in November 1997.

According to the **Luchnikov Law**, compensation could be made in one (1) of three (3) ways. The owners could obtain: (1) equivalent parts in currently existing real properties in relation to the value of their original nationalized property, (2) shares in the enterprises developed on their property, or (3) so-called compensation bonds, which would be tradable on the stock exchange. (**Article 3(1), 1, 2, 3.**)

There were three (3) different types of compensation bonds: (1) "compensation bonds," tradable on the stock exchange and usable in privatization bids, (2) "zhilishtni" (housing) compensation bonds, with which only housing could be purchased, and (3) "poimenni" (named) compensation bonds, which were issued based upon the **1997 amendments to LOUAL** and the **1999 amendment to the Law on Restitution of Property over Forests and the Lands from the Forest Fund** and allowed for compensation with bonds for those owners whose land or forests could neither be returned *in rem* nor be substituted with other lands or forests, since such were unavailable. (*See* European Parliament Study, pp. 71-73.)

With the exception of some of the housing bonds, the compensation bonds were not exchangeable for cash. The compensation bonds accrued no interest and could only be used for participation in privatization tenders or purchasing of property. As their value largely depended upon the availability of privatization offers, a secondary market for the compensation bonds developed. Until November 2004, the bonds were traded at 15-25% of their nominal value, which was what most people sold their bonds for. (*Id.,* p. 73.)

In 2010, there were still compensation bonds valued at about 600 million Levas (approximately EUR 300 million) on the market but which were essentially useless. At the time, the Bulgarian state did not offer attractive assets to be purchased with them and had no alternative for trading them in for cash value. (*Id.,* pp. 74.)

We do not have information as to whether the compensation efforts under the **Luchnikov Law** are complete, including whether all recipients of compensation bonds have been able to use them.

5. Notable European Court of Human Rights Decisions Relating to Bulgaria's Restitution Laws

a. *Velikovi and Others v. Bulgaria*

On 9 September 2007, the **European Court of Human Rights ("ECHR")** issued its judgment in ***Velikovi and Others v. Bulgaria***. (*See Velikovi and Others v. Bulgaria*, ECHR, Application No. 43278/98, Judgment of 9 September 2007.) The case concerned **Article 7** of **Law on the Restitution of Nationalized Immovable Property ("LRNIP")**, which provided that even if certain property had been acquired by third persons (the current owners) after its nationalization, former owners could recover the property *if the third persons had become owners in breach of the law.*

The applicants had lost their real property as a consequence of **Article 7** of **LRNIP.** Applicants asserted the property deprivation violated **Article 1 of Protocol No. 1** of the **European Convention on Human Rights** ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided by law and by the general principles of international law").

In May 1968, applicant Velikovi bought, from the Sofia municipality, a five/six-room apartment, which had previously been nationalized in 1949. In February 1993, the original pre-nationalization owner brought an action to reclaim the apartment under **Article 7** of **LRNIP.**

The Sofia district court returned the apartment to the original owner on 17 February 1995 and declared the 1968 purchase null and void. Other domestic proceedings found that applicant Velikovi had "abused his position as an 'anti-fascist and anti-capitalist veteran'" when originally acquiring the property and as a result, the property had to be returned to the original pre-nationalization owner. Applicant Velikovi had to vacate the apartment and the original owners took possession in 2000. The apartment was valued at EUR 42,900 and the applicants received compensation bonds they ultimately sold back for a total of EUR 30,500.

The **ECHR** concluded that applicants had been deprived of their property as a result of the **Article 7** of **LRNIP**, and that in order for the law not to violate **Article 1 of Protocol No. 1** of the **European Convention on Human Rights**, "[s]uch deprivation of property must be lawful, in the public interest and must strike a fair balance between the demands of the general community and the requirements of the protection of the individual's fundamental rights." (*Velikovi*, ¶ 159.)

The Court found that, with respect to a legitimate aim, the law pursued an "important aim in the public interest", namely, to restore justice and respect for rule of law. (*Id.*, ¶ 170.) Next, the Court found it was "highly relevant to the assessment of proportionality" under **Article 1 of Protocol No. 1** to determine whether the property deprivation under **LRNIP** occurred because of a material breach of the substantive law or abuse of power, or as a result of an administrative omission of a minor nature for which the administration had been responsible (i.e., whether the current owner had been a good faith purchaser). (*Id.*, ¶ 186.) The Court also held that, in complex cases concerning the difficult issues of transition from a totalitarian regime to democracy and rule of law, a certain "threshold of hardship" must have been crossed for the Court to find a violation of **Article 1 of Protocol No. 1**. (*Id.*, ¶ 192.)

Thus, the Court determined that, where property titles were declared null and void due to a material breach of substantive law or abuse of power (e.g., obtaining a flat that exceeded the relevant size for the applicant's family, or using one's position as an "anti-fascist and anti-capitalist veteran" to obtain property), the law struck a fair balance between the individual's **Convention** rights and the public interest and there was no violation of **Article 1** of **Protocol No. 1**. But for property titles declared null and void due to an administrative omission of a minor nature (e.g., where there had been an administrative mistake imputable to the government and

not the current owner), the fair balance required by **Article 1 of Protocol No. 1** required payment of adequate compensation.

As a result, the Court found no violation of **Article 1** of **Protocol No. 1** for applicant Velikovi. (Violations of **Article 1** of **Protocol No. 1** were found for other applicants). The Court reiterated the domestic findings that applicant Velikovi used his station as an "anti-fascist and anti-capitalist veteran" to acquire the property and that the applicant received nearly 73% of the property's value in compensation. (*Id.*, ¶ 198.) And "the interference with the applicants' rights under Article 1 of Protocol No. 1 did not breach that provision's requirement that a fair balance must be struck between the individual's Convention rights and the public interest." (*Id.*, ¶ 199.)

(*See also* related case of *Todorova and Others v. Bulgaria*, ECHR, Application Nos. 48380/99, 51362/99, 60036/00, and 73465/01, Judgment of 24 July 2008 (addressing computation of fair and adequate compensation for persons who were good faith purchasers of nationalized property, who were obliged to give up their property to the original pre-nationalization owners under **Article 7** of **LRNIP).)**

b. ***Kehaya and Others v. Bulgaria***

In its 12 January 2006 judgment in ***Kehaya and Others v. Bulgaria,*** the **ECHR** examined the perceived failures of the Bulgarian domestic courts to respect final judgments ordering restitution of previously nationalized land. (*See* *Kehaya and Others v. Bulgaria*, ECHR, Application Nos. 47797/99 and 68698/01, Judgment of 12 January 2006 ("*Kehaya*").)

The applicants' relative in ***Kehaya and Others*** owned agricultural land that was collectivized under Bulgaria's Communist regime in the 1950s. In 1991, applicants requested restitution of several plots of land from the local agricultural land commission under the **Law on Ownership and Use of Agricultural Land ("LOUAL")**. The land was still in state ownership. A 1993 commission decision partially refused applicants' restitution claim. The applicants appealed the decision. In 1995, the district court set aside the commission's decision and awarded the applicants' restitution request. In 1996, the Chief Public Prosecutor, on behalf of the state, initiated review proceedings before the Supreme Court of Bulgaria, but the Supreme Court agreed with the district court. As a result, the applicants formally entered into possession of the disputed land in 1997. (*Kehaya*, ¶¶ 13-19.)

The local forest authority then demanded return of the disputed land, claiming it was still state-owned. In 1998, the district court agreed with the local forest authority and held that it did not have to follow the prior court rulings since the local forest authority was not a party to the original case between the applicants and the local agricultural land commission. The applicants appealed the district court's ruling. In 1999, the regional court vacated the 1998 district court ruling finding that the local forest authority had not proved that the land was state-owned. In 2000, the Supreme Court of Cassation found that the previous1996 judgment was administrative and that the local forest authority was not bound by the decision, and ordered applicants to vacate the land. The Supreme Court of Cassation also held that the disputed land was not agricultural and that the applicants' ownership rights had not been established. The forest authority entered into possession of the land in 2002. (*Id.*, ¶¶ 20-26.)

In 2006, the **ECHR** held that the decisions in 1995 and 1996 had the effect of determining the applicant's property rights and that there was no justification for requiring the applicants to again prove their case in subsequent proceedings in 1998 and 2000 as it would impose a breach of the principle of legal certainty. The **ECHR** awarded a sum of EUR 2,000 to applicant Kehaya and EUR 1,500 to each of the other 14 applicants for non-pecuniary damage and ruled that the land should be returned to the applicants, a failure of which the state was to pay the current value of the land. (*Id.*, ¶¶ 58-70.)

We do not have information as to the final outcome of this property dispute, including whether the applicants received the prescribed financial payment from Bulgaria and whether the land was returned.

6. Litigation in United States Courts Concerning Property Nationalized in Bulgaria

Avramova v. U.S

The case, ***Avramova v. U.S.***, was filed in the United States District Court for the Southern District of New York in 1973. (*See Avramova v. U.S.*, 354 F.Supp. 420 (S.D.N.Y., 1973).) The Plaintiffs in the action (who were U.S. citizens) had previously filed property claims with and received compensation from the **Foreign Claims Settlement Commission ("FCSC")** pursuant to the terms of the 1963 **Agreement Between the United States of America and the Government of the People's Republic of Bulgaria Regarding Claims of United States Nationals and Related Financial Matters ("B-U.S. Bilateral Agreement")** (described in **Section B.4.b**).

Plaintiffs were paid approximately one-third (1/3) of the value of the award issued by the **FCSC** for their property that had been confiscated in Bulgaria. After receiving their compensation, Plaintiffs filed a case in federal court in the United States alleging that they had been deprived of their property without due process because they were not paid the full value of the **FCSC** award. The court dismissed the case for lack of subject matter jurisdiction and failure to state a claim on which relief could be granted.

The court stated that judicial review was not permitted for the claims determined by the **FCSC**. The court concluded that the settlement of U.S. citizen claims against foreign countries is within the implied powers given to the Executive by the Constitution. Therefore, the **B-U.S. Bilateral Agreement** was constitutionally valid. Even though many citizens (including Plaintiffs) did not receive the full value of their compensation awards from the **FCSC** because the settlement fund ran out, there was no deprivation of property in violation of due process.

D. RESTITUTION OF COMMUNAL PROPERTY

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.)

Jewish religious properties, along with properties belonging to other religious denominations, were targeted by the Communist regime after World War II. The **1949 Law on Religious Denominations** prohibited religious denominations – including Jews – from engaging in secular education and establishing hospitals or orphanages, and provided for the government to take over such institutions with the owners receiving fair indemnity. (1993 IJC Report, p. 17.) All but three (3) synagogues were closed and turned into museums during Bulgaria's Communist period.

In 1990, the **Organization of the Jews of Bulgaria "Shalom" ("Shalom")** was established and registered as a successor to the previously established Jewish organizations in Bulgaria (including the Consistory (created in 1922) and the Public Cultural and Educational Organization of the Jews in Bulgaria (created in 1944)). **Shalom** unites Bulgarian citizens of Jewish descent. The organization coordinates all forms of the Jewish life in the country, via various social, educational, and cultural programs. (*See* Organization of the Jews of Bulgaria "Shalom".)

1. 1992 Government Decree Regarding Jewish Communal Property

In 1992, Bulgaria issued a special decree ("**1992 Decree**") to transfer all Jewish communal property held by the state to **Shalom.**

Despite the issuance of the **1992 Decree**, it took nearly 20 years for certain properties to be returned to **Shalom**.

For example, in 2003, the Bulgarian government restituted to **Shalom** all but the top two floors of the building at 9 Saborna Street in Sofia. The government had added the top two floors after the property had been confiscated and they were therefore not eligible for restitution under the terms of the **1992 Decree**. It was not until 2007 that the Bulgarian government elected to "gift" the top two floors of the building to **Shalom**.

In 2006, the government appointed a Commission to examine the status of several other properties claimed by **Shalom**. The properties in issue were ones that had been the subject of discussion between **Shalom** and the government for more than a decade. One of the properties was a Sofia hospital restituted to **Shalom** in 1997, which was then leased back to the state so the

hospital could continue to operate. The hospital then refused to pay rent to **Shalom**. In May 2009, the state hospital finally vacated the premises so that **Shalom** could utilize the property.

One property that was not on the Commission's agenda was the Rila Hotel in Sofia. Half of the land upon which the hotel was built was land that had been confiscated from Sofia's Jews in 1943. The land was previously home to a Jewish school, ownership of which had passed to **Shalom**. A court ruling in early 2006 rejected the long-contested ownership claim of **Shalom**. However, since 2006, **Shalom** has received compensation for the land in the form of the "gifted" top two floors of the building at 9 Saborna Street (described *supra*). (*See* Green Paper on the Immovable Property Review Conference 2012, p. 18 (Bulgaria).)

A central problem all claimants of communal property faced, regardless of faith, was the need to demonstrate that the organization seeking restitution was the organization (or its legitimate successor) that owned the property prior to 9 September 1944. This was difficult because Communist hostility to religion led some groups to hide assets or ownership, and because documents had been destroyed or lost over the years. (United States Department of State Archive, Bureau of European and Eurasian Affairs, "Property Restitution in Central and Eastern Europe", 3 October 2007.)

In the period between 1992 (when the **1992 Decree** was issued) and 2009, 70 pieces of property (synagogues, residential houses, land, etc.) in Sofia and other cities in Bulgaria were restituted to **Shalom**. (Green Paper on the Immovable Property Review Conference 2012, p. 18 (Bulgaria).) Nevertheless, the process of restitution has not yet been completed.

E. RESTITUTION OF HEIRLESS PROPERTY

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.)

Since becoming a signatory to the Terezin Declaration in 2009, Bulgaria has not passed any laws dealing with restitution of heirless property.

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