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

CONTENTS

A. EXECUTIVE SUMMARY

Yugoslavia (which included present day Croatia, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, Serbia, Slovenia) was invaded by the Axis powers in 1941. With the support and assistance of Germany and Italy, the Ustaše regime established the so-called Independent State of Croatia, a Nazi puppet state comprised of present-day Croatia, Bosnia-Herzegovina and parts of Serbia. After the war, Croatia became one of the constituent republics of socialist Yugoslavia.

Before World War II, between 23,000 and 26,000 Jews lived in the territory of present-day Croatia. Roughly 5,250 survived the war. Of the 15,000 Roma living in Croatia in 1931, only 405 were recorded in the post-war 1948 census. There are many estimates of Roma casualties from 10,000 to 20,000 making it impossible to determine the exact number. An estimated 2,000-2,500 Jews and at least approximately 17,000 Roma (possibly double that figure) live in Croatia 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.

In 1990, more than 40 years later, the post-Yugoslavian Republic of Croatia enacted its first set of denationalization legislation. Croatia's main restitution laws, however, were not enacted until the after the conclusion of the conflicts in the Balkans, which began in

1991 and ended in 1995. Croatia was a signatory to the Dayton Accords in 1995 that ended the Balkan conflicts and recognized Croatia's present-day borders.

Croatia has since passed legislation relating to restitution of private and communal property, albeit with certain key limitations. The government of Croatia has discussed ideas for how to address heirless property dating back to World War II, but no concrete solution has been reached.

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. In 1991, Croatia passed the **Law No. 19/1991** (on Transformation of the Enterprises in Social Ownership). In 1996, **Law No. 92/1996** (on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule) was passed. The law addressed restitution and compensation of property, which was appropriated from its former owners by the Yugoslav Communist authorities and became state property after 1945. The restitution and compensation regime under **Law No. 92/1996** has suffered from very slow and decentralized claims procedures at the county level often resulting in uneven decisions, an appeals process where many successful claims have been reversed without explanation, difficulty in accessing necessary state-held documents, incomplete compensation (up to a maximum of EUR 510,000 per claimant), and coverage gaps that exclude claims from most foreign citizens. Crucially, ambiguity in the law as written and subsequent government statements on the matter leave it uncertain as to whether **Law No. 92/1996** covers restitution for those whose property was taken during World War II. Other laws that fill out the core legal framework for Croatia's denationalization and restitution regime include: **Law No. 69/97** (on the Taken Property Compensation Fund), **Law No. 21/96** (on Privatization), **Law No. 91/96** (on Rent for Flats), **Law on Land-Ownership Records**, **Law on General Administrative Procedure**, **Law on Administrative Disputes**, and Rulebooks on the criteria for property value determination.

Communal Property. **Law No. 92/1996** also applied to the return of communal property. Just as with private property, it is unclear whether the law also applied to property confiscated during World War II. The umbrella organization for the Jewish community in Croatia – the **Coordinating Committee of Jewish Communities in the Republic of Croatia** – submitted claims for 135 communal properties. As of February 2014, less than 10% of the claimed properties had been returned. Other religious organizations have signed separate agreements with the government of Croatia in order to facilitate communal property restitution. No such agreements have been made with the Jewish community. In December 2014, as restitution in kind (substitute property) for a property once owned by a Jewish burial society in Zagreb, the Croatian government transferred a substitute building and land (valued at USD 4 million) to the Zagreb Jewish community.

Heirless Property. The often-wholesale extermination of Jewish and Roma 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. Croatia has not made any special provisions for heirless property from the Shoah era. In fact, according to the terms of **Law No. 36/45**, property not claimed within a one (1)-year statute of limitations period became the property of the Committee for National Property (i.e., property of the Yugoslav state). In 2012, the government of Croatia suggested establishing a foundation, whose function would include recognition of confiscated communal and heirless property, preservation of Jewish cultural and religious heritage in Croatia, and social care to the elderly. However, to date, no such foundation has been established.

Croatia 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 Croatia has been received.

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 Croatia, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, Serbia, Slovenia). With the support and assistance of Germany and Italy, the fascist Ustaše regime established the Nazi puppet state, the Independent State of Croatia, whose territory included that of present-day Croatia, Bosnia-Herzegovina, and parts of Serbia.[1] The Independent State of Croatia lasted from 10 April 1941 to 8 May 1945. By mid-1941, the Ustaše regime had passed laws stripping Jews of their property and businesses. The German, Italian and Ustaše regimes set up concentration camps throughout the country. (United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Axis Invasion of Yugoslavia".)

Croatian Jews and Roma were murdered and deported by Ustaše and German forces. Approximately 13,116 Jews and 16,173 Roma were murdered in the Jasenovac camp, which was located 60 miles south of Zagreb. (Jasenovac Memorial Site, "List of Individual Victims of Jasenovac Concentration Camp".) Another 4,000 were shipped to Auschwitz-Birkenau in German-occupied Poland. (United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Axis Invasion of Yugoslavia".)

Before World War II, there were approximately **23,000-26,000** Jews living in the territory presently known as Croatia. (Marica Karakaš Obradov, Iseljavanje Židova iz

[1] Parts of present-day Croatia were also annexed by Italy (including parts of Dalmatia) and Hungary (including Međimurje). The majority of the Jewish population, however, was under the control of the Ustaše regime in the Independent State of Croatia.

Hrvatske nakon Drugog svjetskog rata, "Historijski zbornik", LXVI, 2013, vol. 2., pp. 391-404; Naida-Michal Brandl, "Djelatnost Židovske bogoštovne općine u Zagrebu 1945.-1946. godine" (Activities of the Jewish Religious Community in Zagreb in 1945 and 1946), Radovi-Zavod za hrvatsku povijest (0353-295X) 47 (2015) 2, pp. 675-710.) By the end of the war, only an estimated **5,250** survived.

An estimated **2,000-2,500**[2] Jews presently live in Croatia, with more than half living in Zagreb. (*See* World Jewish Restitution Organization, "Immovable Property Review Conference of the European Shoah Legacy Institute: Status Report on Restitution and Compensation Efforts", November 2012, p. 6). The 2011 census recorded only **509** Croatians who identified themselves as being Jews by nationality, and **536** Croatians who identified themselves as being Jewish by religion, thereby suggesting that the number of self-identified Jews is between those two numbers. (*See* Croatian Bureau of Statistics, Statistical Databases - 2011 Census "3. Population by Religion, by Towns/Municipalities".)

By the end of the war, Ustaše authorities and their supporters also murdered nearly the entire Roma population of Croatia, whose 1931 pre-war population numbered at least **15,000**. The post-war 1948 census only recorded 405 Roma in Croatia. (Danijel Vojak, Bibijana Papo, Alen Tahiri, *Stradanje Roma u Nezavisnoj Državi Hrvatskoj 1941.-1945 (The Suffering of Roma in the Independent State of Croatia 1941-1945),* (Zagreb, 2015), pp. 55-59.) However, there are several estimates of Roma casualties numbering between 10,000 and 20,000, making it impossible to determine the actual number of Roma deaths.

The 2011 census found that less than **16,000** Croatians officially reported being of the Roma origin. Some organizations estimate the actual Roma population might be at least double that amount. (*See* Croatian Bureau of Statistics, Statistical Databases - 2011 Census "2. Population by Ethnicity, by Towns/Municipalities".)

At the end of World War II, as an occupied country, neither Yugoslavia nor any of its constituent parts was a party to an armistice agreement or any treaty of peace but the 1947 Treaties of Peace affected its borders**.**

In October 1944, after the liberation of Belgrade, Josip Broz Tito formed the Democratic Federal Yugoslavia (DFY) that lasted until the end of 1945. The name was then changed to Federal People's Republic of Yugoslavia (FPRY). Croatia became one of six constituent republics in the FPRY (along with Bosnia-Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia). In 1963, the FRPY became the Social Federal Republic of Yugoslavia (SFRY). Communist rule in Yugoslavia continued through the 1980s.

[2] There are between 1,200 and 1,500 members in the Zagreb Jewish community. The Jewish community in Split has around 100 members. Membership is determined by persons who have at least one Jewish grandparent.

By the late 1980s, the centralized control of the constituent republics of Yugoslavia began to break down. In 1990, Croatia held its first free, multi-party elections in more than 50 years.

On 25 June 1991, the Republic of Croatia declared its independence. At that time, conflicts between the Serbs and Croats in Croatia escalated, but fighting in Croatia stopped for the most part in 1992 when Yugoslav forces withdrew and the United Nations installed troops to stabilize the country. Croatia was also involved in the Balkan conflicts in Bosnia (1992-1995). Croatia was a signatory to the **Dayton Accords** in 1995 that ended the Balkan conflicts and recognized Croatia's present-day borders. Croatia is now a constitutional parliamentary democracy.

Croatia became a member of the Council of Europe in 1996 and ratified the European Convention on Human Rights in 1997. As a result, suits against Croatia claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Croatia became a member of the European Union in 2013.

1. Claims Settlement with Other Countries

Following World War II, 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:

- **United States** on 19 July 1948 and 5 November 1964
- **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

(*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. (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 ("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 by the Ustaše regime during World War II stripped Jews, Roma and Serbs of their property and businesses. (For more information on the property confiscation process, *see* Naida-Michal Brandl, "Jews Between Two Totalitarian Systems: Property Legislation", Review of Croatian History 12 (2016) ("*Brandl, Jews Between Two Totalitarian Systems*"), pp. 106-127.)

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.[3] 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

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[3] 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 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 ("Dobrovšak"), p. 69 n. 10.)

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 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.[4] 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).

Communist rule in Yugoslavia continued through the 1980s.

Croatia enacted its first denationalization law in 1990 and in 1991 passed the **Law No. 19/91** (on Transformation of the Enterprises in Social Ownership) (amended by **Law Nos. 83/92, 84/92**). However, the country's main restitution laws were not enacted until after the conclusion of the Balkan conflicts in Bosnia in the mid-1990s.

[4] 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 with the Ustaše regime in order to facilitate the seizure of their property by the state. (*See Brandl, Jews Between Two Totalitarian Systems*, pp. 115-116.)

2. Law No. 92/96 on Restitution/Compensation for Property Taken during the Yugoslav Communist Rule

Law No. 92/96 (on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule) (amended by Law Nos. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02 and 81/02) was passed on 11 October 1996 and entered into force on 1 January 1997.

According to **Article 1**, the law governed the restitution of property appropriated by the Yugoslav Communist authorities, which became state or "socially-owned property" via confiscation, nationalization, etc. Claimants were entitled to restitution if the property was confiscated based upon one (1) of the 32 separate laws listed in **Article 2,** which date back to 1945. Pursuant to **Articles 3** and **4**, claimants were also entitled to restitution or compensation for property taken after 15 May 1945 via court judgment, including criminal judgments that resulted in confiscation of property, if the sentence was a result of abuse of justice or power.

Time Period Covered by the Law

Whether the law actually covered property confiscated during World War II is subject to debate. In its Report for the 2012 Immovable Property Review Conference, the Croatian government stated that **Law No. 92/96** "represents a basic legal framework for the restitution of confiscated property, *including the restitution of immovable property confiscated or seized by Nazis, Fascists and their collaborators during the Holocaust era*". (Report of the Government of the Republic of Croatia for the 2012 Immovable Property Review Conference ("Croatia IPRC Report"), p. 1 (emphasis added).) Yet, the government later qualified this broad language by stating **Law No. 92/96** "refers to the property confiscated during the Yugoslav Communist rule (i.e. as of 15 May 1945). However, it is much more comprehensive . . . and *indirectly encompasses confiscation of property committed earlier*, i.e. during the Fascist and collaborators regime and the Holocaust era." (*Id.* (emphasis added).) Notwithstanding the statements from the 2012 Croatia IPRC Report, Croatian government officials have also stated that law did *not* cover Holocaust-related confiscations. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 4 (Croatia) (describing statements made by Croatian government officials to WJRO representatives).)

Claimant Eligibility

Article 9 describes who is eligible for restitution under the law. Eligible claimants included former owners and direct legal heirs (children and grandchildren, but not brothers, sisters, nephews, etc.). The original text of the law also limited eligibility to those persons "who have Croatian citizenship on the day of the adoption of [the law]." To make this more explicit, **Article 11** originally stated that "[f]oreign individuals and legal

persons shall not have any rights under [this law]". These statements unequivocally foreclosed restitution for all foreign nationals.[5]

In 2002, the definition of an eligible claimant under **Law No. 92/96** was amended by **Law No. 80/02**. Pursuant to the amendment, a foreign national was eligible to bring a claim if his or her country of nationality had a bilateral agreement with Croatia concerning restitution. **Law No. 80/02** originally provided a six (6)-month filing window for foreign claimants (**July 2002-January 2003**). The deadline was eventually waived after Croatia determined it did not have appropriate bilateral agreements with any country that would allow foreigners to file restitution claims in Croatia. (*See* Summary of Property Restitution in Central and Eastern Europe Submitted to the US Commission on Security and Cooperation in Europe on the Occasion of a briefing Presented to the Commission by Ambassador Randolph M. Bell, 10 September 2003 ("2003 Central and Eastern Europe Property Restitution Report to OSCE"), p. 3.)

A 2010 decision from the Supreme Court of the Republic of Croatia (Uzz 20/08-2 of 26 May 2010) found that the bilateral agreement requirement from **Law No. 80/02** was unconstitutional. In the case, a Brazilian citizen sought return of property in Croatia that had been nationalized by the Communist regime. There was no bilateral agreement between Brazil and Croatia on property restitution, and as a result, no grounds for restitution under either **Law No. 92/96** or **Law No. 80/02**. Contrary to the provisions of the existing laws, the Supreme Court held that the foreign national claimant *did* have a right to compensation. (The 2010 Supreme Court decision confirmed an earlier holding in an Administrative Court opinion from 14 February 2008 (UP/II-942-01-01/61, Ref. No. 514-03-03/03-2-03-3) regarding the right of foreign nationals to seek compensation). (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 5 (Croatia); Presentation of Dr. Ivan Koprić and Dr. Boris Ljubanović, "Restitution: The Experience of Croatia" for the Council of Europe Round Table on the European Experience – Recommendations for Serbia, 23 September 2009 ("*Koprić and Ljubanović,* 2009 Council of Europe Presentation").) Despite the ruling, scholar Ljiljana Dobrovšak notes that as of 2015, the successors of the Brazilian national had not gotten their property back and the case had been returned to the Office of State Administration in Zagreb. (*Dobrovšak*, p. 74.)

[5] This effectively foreclosed the return of property to former Yugoslav citizens who survived the war but lost their citizenship as an attendant consequence of later leaving the country. Laws passed in Yugoslavia in the immediate post-war years did not permit dual citizenship. This meant that Jews who left Yugoslavia had to renounce their citizenship, and by "giving up" their citizenship, they lost the right to own property in Yugoslavia. For example, Article 3 of the 28 April 1948 Law Regarding Nationalization of Private Economic Enterprises stated that a "Yugoslav citizen who acquires foreign citizenship shall lose the right of ownership over real estate in FNRJ [Federal People's Republic of Yugoslavia], and the real estate shall become the property of the State." (*Brandl, Jews Between Two Totalitarian Systems*, p. 118 (quoting the text of the Law Regarding Nationalization of Private Economic Enterprises).)

A draft amendment to **Law No. 92/96,** which would have allowed foreign national claimants to pursue property compensation claims in Croatia, irrespective of whether there was a bilateral agreement between Croatia and claimant's country of nationality, was prepared but not passed.

Property Covered by the Law

Property eligible for restitution/compensation under **Law No. 92/96** included: undeveloped construction land, agricultural land, forests and woodland, residential and commercial buildings or indivisible parts thereof, ship and boats, enterprises (companies), and movable property. (**Article 15**.)

Exclusions to restitution *in rem* included *inter alia*: flats (apartments) subject to any tenancy right (**Article 22**), property to which a third party had established a right of ownership based on a valid legal business; property that according to the Law on Privatization of Socially Owned Enterprises was part of the capital; property of legal persons in the field of health care, social care and education, culture, cultural and natural heritage protection, science, power supply and water management; property that was part of a network in the field of power supply, utility services, transport and communication, and forestry; and where the economic or technological function of the property was reduced by restitution (**Articles 52-56**).

A number of cases have been filed with the **European Court of Human Rights** concerning **Articles 22** and **32** of the law. These provisions concerned the issue of flats occupied by persons with specially protected tenancies. **Article 22** provided that in the case of flats that were *nationalized* but whose tenants thereafter acquired specially protected tenancies, the tenants had the right to purchase the flat under favorable conditions. The original owners would receive compensation for the flat (not restitution *in rem*). However, for flats that had been *confiscated*, the current tenant could only buy the flat if the original owner failed to submit a restitution claim or if the original owner's restitution claim had been dismissed in a final decision. (**Article 32.**) According to the government, the distinction between property that was *confiscated* and property that was appropriated on other grounds (e.g., *nationalization*) is that former owners whose property was confiscated often suffered much greater injustice than persons whose property was appropriated on other grounds. Thus, owing to the comparatively graver ownership violations suffered by those whose property was confiscated, restitution *in rem* was determined to be appropriate. (*See, e.g.*, *Pavlinović v. Croatia*, ECHR, Application No. 17124/05 and 17126/05, Decision of 3 September 2009.)

If the property could not be restituted *in rem* or in kind (via substitute property), successful claimants received compensation (25% of the compensation amount due within three (3) months, and the remainder to be paid via state-issued 20-year bonds (**Article 57**)). However, the first 25% is routinely not paid for two (2)- three (3) years. The law set out the percentage of compensation that property administrators could grant to claimants based upon the value of the property. The more valuable the confiscated property, the lower the recoverable percentage of the property value would be. Any

claim, no matter how valuable, could not exceed HRK 3.6 million (approximately EUR 510,000) in compensation (**Article 58**). We do not have information regarding the number of successful claimants who have received compensation and the total amount of compensation received.

Claims Process

Croatian citizen claimants only had **six (6) months** from when the **Law No. 92/96** entered into force to file their claims. All claims had to be submitted by **1 July 1997** (**Article 65**).

The claims resolution process was entrusted to the administrative offices of Croatia's 21 separate counties. (**Article 64**.) Each county had only loose guidelines to follow regarding the handling of claims. The result has been uneven resolution of claims between counties. This is amplified by the fact that the restitution regime established by the **Law No. 92/96** left county administrative offices presiding over claims that – if successful – would result in the restitution of its own county-owned property (creating a conflict of interest). (2010 European Parliament Study, at pp. 88, 93.)

Appeals from county administrative decisions are made to the Ministry of Justice (**Article 71**). The **WJRO** has noted that successful restitution claims at the county level have often been reversed at the Ministry of Justice level without clear reasoning. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 5.)

Claims had to include information concerning: identification of the claimant (including evidence of Croatian citizenship and uninterrupted legal succession and domicile within Croatia); the law which nationalized the property at issue; registered land certificate; certified power-of-attorney; death certificate – if claim was submitted by a legal heir; valid decision on inheritance; and any other documents necessary to determine the legitimacy of a claim (**Article 67**.) Obtaining the required documentation was difficult for many claimants. Many necessary records were held in government offices and were not readily accessible to claimants.

Known problems associated with **Law No. 92/96** include: the law did not explicitly address Holocaust-era property confiscations; the claim filing window was extremely narrow and no amendment has been passed to permit foreign nationals to file claims; the claims resolution process has been very slow and continues nearly 20 years after the filing deadline; the claims process was decentralized and complicated; there was difficulty obtaining necessary documents from state institution; and only partial compensation was offered. The **WJRO** has also found that even where claimants were successful in gaining the return of property, they were made to pay fees of between 10% and 25% of the property's value (World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, pp. 4-5 (Croatia).)

In 2004, members of the Jewish Municipality of Zagreb formed an **Association for the Restitution of Jewish Property (CEDEK)**, whose purpose was to try to change unfavorable terms from **Law No. 92/96**. (*Dobrovšak,* p. 79.)

We do not have official information regarding how many claimants were successful and the value of the property restituted. However, data published in the newspaper *Slobodna Dalmacija* on 25 May 2014 indicates that after **Law No. 92/96** came into effect, 50,000 claims for restitution of nationalized property were filed with the county and city office of Zagreb. The number of in kind and refused claims is unknown. As of May 2014, 311 million kunas in compensation was paid to nearly 10,000 owners of nationalized property, EUR 191 million was paid in bonds for 22,000 claims. (*Dobrovšak,* p. 68.) We are unaware as to how many of the claimants were Jews.

3. Other Croatian Denationalization and Restitution Laws

Other laws, which fill out the core legal framework for Croatia's denationalization and restitution regime, include:

- **1997 Law on the Taken Property Compensation Fund (Law Nos. 69/97, 105/99, 64/00),**
- **1996 Law on Privatization (Law No. 21/96),**
- **1996 Law on Rent for Flats (Law Nos. 91/96, 48/98; 66/98, 22/06),**
- **1996 Law on Ownership,**
- **1996 Law on Land-Ownership Records,**
- **Law on General Administrative Procedure (Law No. 47/09),**
- **Law on Administrative Disputes (Law Nos. 20/10, 143/12, 152/14),** and
- Rulebooks on the criteria for property value determination,

(*See Koprić and Ljubanović*, 2009 Council of Europe Presentation.)

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

4. Notable European Court of Human Rights Decisions Relating to Croatia's Law No. 92/96

A number of Croatian restitution cases have been filed with the **European Court of Human Rights ("ECHR")** concerning **Law No. 92/96 (as amended)**, dealing specifically with how the law treats both original owners and tenants with specially protected tenancies of nationalized and confiscated flats **(Articles 22** and **32)**. Most of these cases have been declared inadmissible.

a. *Pavlinović v. Croatia*

In ***Pavlinović v. Croatia***, the applicant, who had a specially protected tenancy on a flat, had his contract of sale on the apartment nullified when the original owner of the flat,

whose property had been confiscated from him by the Communist regime, sought restitution of the property under **Law No. 92/96.** (*Pavlinović v. Croatia,* ECHR, Application No. 17124/05 and 17126/05, Decision of 3 September 2009.) The applicant complained of a violation of his right to peaceful enjoyment of his possessions (**Article 1** of **Protocol No. 1** of the **European Convention on Human Rights** ("**Convention**")) but **Law No. 92/96** provided for restitution of *confiscated* property to the original owner regardless of whether the current tenant had a specially protected tenancy. The government had determined that those whose property was *confiscated* (as compared to property that was *nationalized*) had suffered comparatively more and should get their property back under all circumstances. The application was declared inadmissible. Other cases relating to restitution/compensation issues concerning flats with specially protected tenancies include: *Tomašić v. Croatia,* ECHR, Application No. 39867/07, Decision of 19 November 2009; *Kolarić-Kišur v. Croatia*, ECHR, Application No. 39867/07, Decision of 17 September 2009; and *Gottwald-Markušić v. Croatia*, ECHR, Application No. 49049/06, Decision of 30 March 2010.

Smoje v. Croatia addresses another issue regarding the implementation of **Law No. 92/96**, the alleged excessive length of the proceedings. (*See Smoje v. Poland*, ECHR, Application No. 28074/03, Judgment of 11 January 2007.)

b. ***Smoje v. Croatia***

In its 11 January 2007 judgment in ***Smoje v. Croatia***, the **ECHR** addressed the issue of excessive length of proceedings in connection with restitution/compensation claims under **Law No. 92/96.** (*Smoje v. Croatia*, ECHR, Application No. 28074/03, Judgment of 11 January 2007). The applicant claimed violations of **Article 6** of the **Convention** (reasonable length of proceedings requirement) and **Article 1** of **Protocol No. 1** to the **Convention** (peaceful enjoyment of one's possessions).

The property at issue was a flat located in the city of Split. The applicant's grandmother had owned the property. The flat was nationalized by the Communist regime in 1958 and was given to a tenant who acquired a specially protected tenancy in the flat. When the tenant died in 1996, the tenancy was transferred to the tenant's wife.

In 1997, pursuant to **Law No. 92/96**, the applicant sought restitution *in rem* of his grandmother's flat. Over a period of nine (9) years, the applicant attempted to use Croatian courts. He first filed an administrative claim with the local property office for the return of the flat. The local property office failed to timely respond. The applicant then appealed to the Ministry of Justice because of the local property office's failure to timely respond. The Ministry of Justice also failed to timely respond to applicant's appeal. The applicant then filed a claim against the Ministry of Justice with the Administrative Court for not timely addressing his failure to respond appeal. The local property office then decided to stay applicant's claim pending the outcome of the tenant's concurrent civil and administrative proceedings that were meant to determine her tenancy relationship with applicant's flat (described below). The applicant appealed the local property office's decision to stay the proceedings to the Administrative Court. The

Administrative Court ruled that within 60 days, the Ministry of Justice must rule on the local property office's decision to stay the applicant's restitution proceedings. The Ministry failed to issue a timely decision. The applicant appealed once again to the Administrative Court, this time requesting it to issue the decision on the local property office's decision to stay the proceedings. The Administrative Court found the decision to stay applicant's proceedings was appropriate because the tenant's concurrent proceedings as to the existence of a tenancy relationship on the applicant's flat would be decisive as to whether the applicant could ultimately receive restitution or compensation for the flat. The Applicant then filed a constitutional complaint with the Constitutional Court alleging his right to property had been violated due to the decision to stay the proceedings. The Constitutional Court found the complaint to be premature. Later the local property office resumed applicant's administrative restitution proceedings. At the time the **ECHR** decided applicant's case in 2007, applicant's claim was still pending with the local property office. (*Smoje,* ¶¶ 8-19.)

At the same time applicant's restitution proceedings were working their way through the domestic courts, the Split Municipal and County courts decided that the tenant's wife had acquired a specially protected tenancy in the flat. Thus, pursuant to **Law No. 92/96,** she could seek to purchase the flat from the **Fund for the Restitution of and Compensation for Property Taken**. The tenant's wife bought the flat. (*Id.,* ¶¶ 20-27.)

The **ECHR** ruled that the length of the restitution proceedings exceeded the reasonable time requirement from **Article 6** of the **Convention.** The Court found the "length of the administrative proceedings at issue, that have so far lasted some nine years, and are still pending, is *a priori* unreasonable and calls for a global assessment." (*Id.,* ¶ 45.)[6]

As to applicant's claim that he had been deprived of his **Article 1** of **Protocol No. 1** right to peaceful enjoyment of his possessions (i.e., restitution *in rem* of his flat), the Court found that the applicant had not exhausted his domestic remedies. The applicant's own restitution *in rem* claim was still pending with the local property office at the time of Court's decision. He also had the ability to bring an action against the **Fund for the Restitution of and Compensation for Property Taken** and also against the tenant's wife (the parties to the sale contract on the flat) to try to have the sale declared null and void. Thus, this portion of the claim was declared inadmissible. (*Id.,* ¶¶ 48-51.) We do not have information as to the final outcome of the applicant's domestic restitution proceedings.

[6] The Court noted that the length could be justified in exceptional circumstances "for the proper administration of justice," but in this case, the Croatian government failed to offer any justification for the length of proceedings. (*Id.,* ¶ 45.) Accordingly, the Court found the length of proceedings violated the "reasonable time" requirement.

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.)

Before World War II, there were more than 40 Jewish communities in Croatia. Roughly five (5) percent of Zagreb's citizens were Jewish.

By the end of the war, 20 of Croatia's 41 synagogues had been destroyed. Most of the remaining synagogues were either seized by the government or sold by the **SJVOJ (The Federation of Jewish Communities)** for construction material. The **SJVOJ** sold its surplus assets in order to raise money to renovate other buildings or to help meet the needs of the community. (Naida-Michal Brandl, "Židovski identiteti u Hrvatskoj iza Drugog svjetskog rata" (Jewish Identities in Croatia after the Second World War) *in Nacionalne manjine u Hrvatskoj i Hrvati kao manjina - europski izazovi* (Institut društvenih znanosti Ivo Pilar, 2015), pp. 175-176 (in Croatian).)

During the Communist regime, communal property (as well as private property) of all Yugoslav citizens was nationalized. This included almost all property owned by the Croatian Jewish community. By law, these properties became "socially-owned property" and were "given" to the state so that they could be used for other purposes.

1. Law No. 92/96 on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule

Law No. 92/96 (on Restitution/Compensation of Property Taken under the Yugoslav Communist Rule) (amended by Law Nos. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02 and 81/02), which was applicable to private property, also addressed restitution of communal property.

According to **Article 1**, the law governed the restitution of property appropriated by the Yugoslav Communist authorities, which became state or "socially-owned property" via confiscation, nationalization, etc. Claimants were entitled to restitution of property if the property was confiscated based upon one (1) of the 32 separate laws listed in **Article 2,** which date back to 1945. It remains an open question as to whether **Law No. 92/96** covered Holocaust-era confiscations. The law described the applicable period for when the subject property was confiscated as being from 15 May 1945 (i.e., after World War II), but officials from the government of Croatia have stated at times that property

confiscated during the Holocaust era *is* covered by the law, and at other times *is not* covered by the law. (*See* discussion *supra*, **Section C.2.**)

Article 12 of **Law No. 92/96** stated that legal entities or their legal successors have the right to compensation for property "provided that they have retained an uninterrupted legal succession, performed their business activities and had the seat in the territory of the Republic of Croatia until the adoption of [the law]". Despite this apparent restriction on claimants, **Article 12** also provided that where reasonably justified, the government can provide compensation to entities not able to maintain uninterrupted legal succession "because they were forbidden and dissolved for political reasons, but which promoted Croatian national interests." Thus, under the text of the law, religious organizations that could not demonstrate uninterrupted legal succession could still have received compensation (i.e., if the claimant of Jewish communal property was not the same entity that originally owned the property because that original entity ceased to exist).

Claimants had only **six (6) months** from when **Law No. 92/96** entered into force to file their claims. All claims had to be submitted by **1 July 1997**. (**Article 65**.)

The umbrella organization for the Jewish community in Croatia – representing the main Jewish community in Zagreb as well as other smaller communities in the country – is the **Coordinating Committee of Jewish Communities in the Republic of Croatia** (**"Croatian Jewish Coordinating Committee"**).

Pursuant to **Law No. 92/96,** the **Croatian Jewish Coordinating Committee** submitted claims for 135 properties, including hospitals, community buildings, synagogues and residential buildings. As of February 2014, less than 10% of the claimed properties had been returned. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, p. 3; *see also Dobrovšak*, pp. 80-81 (describing location and types of properties returned as of 2015).)

Other religious organizations, such as the Catholic Church, have signed agreements with the Croatian government in order to facilitate communal property restitution. A 1998 concordat between the government and the Vatican provided for the return (or compensation when restitution *in rem* was impossible) of all Catholic Church property confiscated after 1945 by the Communist regime. (*See* 2003 Central and Eastern Europe Property Restitution Report to OSCE, p. 4.) No similar agreement has been made for Jewish communal property because of internal conflicts between two Jewish organizations, the **Croatian Jewish Coordinating Committee** and the **Jewish Community "Bet Israel"** regarding legal successorship of Jewish communities that have disappeared. (*Dobrovšak*, p. 66.)

In December 2014, as restitution in kind (substitute property) for a property once owned by a Jewish burial society in Zagreb (Chevra Kadisha), the government of Croatia transferred a building and surrounding land (valued at USD 4 million) to the local Jewish community. (*See* "Croatia to give Zagreb Jews $4 million property in Holocaust restitution", *Times of Israel*, 4 December 2014.) Originally, the Croatian government had

wanted the Jewish community to relinquish all remaining claims in the whole of the country in exchange for the return of the Zagreb property. However, the property was ultimately returned without requirements to relinquish all other claims. (*Dobrovšak,* p. 67.) The original burial society building had been confiscated by the Nazi-allied Ustaše government, returned for a month in 1947, and thereafter nationalized by the Communist regime. The original burial society building is currently owned by the Croatian Agricultural Cooperative Union. The actual property given to the local Jewish community, as restitution in kind for the original burial society building, previously belonged to a Jewish family murdered in Auschwitz-Birkenau. The government took possession of the Jewish family's property in 1950. The original burial society building was the subject of one of the 135 claims submitted in 1997 by the **Croatian Jewish Coordinating Committee** under the terms of **Law No. 92/96.**

Since Croatia endorsed the Terezin Declaration, no new laws (or amendments to existing 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.)

Since Croatia endorsed the Terezin Declaration in 2009, no laws have been passed dealing with restitution of heirless property.

In fact, 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).

The government of Croatia stated in its 2012 Croatia IPRC Report that it was considering different ways to address heirless property that "would enable legal and practical solutions aimed at achieving both substantive and symbolic recognition of material and/or moral character." (Croatia IPRC Report, p. 5.) Possible solutions offered by the government included the establishment of a foundation for substantial and symbolic recognition of confiscated communal and heirless property, preservation of Jewish cultural and religious heritage in Croatia, and social care to the elderly. (*Id.*) We are not aware of any further progress since 2012 by the government of Croatia to reach a concrete solution on heirless property.

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