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

CONTENTS

A. EXECUTIVE SUMMARY

During World War II, the independent Republic of Estonia was attacked and formally annexed by the Soviet Union in 1940, becoming one of the 15 Soviet socialist constituent republics. It was invaded by Germany in July 1941. Estonia's independence was restored on 20 August 1991.

Jews have resided in Estonia since the 14th century, with a significant influx taking place in the 19th century under the rule of the Russian czars. World War II decimated the Jewish population of Estonia. At war's end, virtually every member of its small pre-war Jewish community of 4,500 had been murdered, deported or fled the country. Out of the current population of 1.3 million, Jews of Estonia today number less than 2,000.

Shortly after independence in 1991, Estonia enacted property restitution laws. These were the most detailed and comprehensive in any of the three (3) Baltic States. The goal was to undo 50 years of nationalization and confiscation under Nazism and Communism and to restore property rights to former owners, Jews and non-Jews alike. The laws applied to restitution of property both to private individuals and religious institutions. No legislation was enacted dealing specifically with heirless property.

Private Property. Restitution of private property in Estonia began in 1991. The 1991 **Principles of Ownership Reform Act** and **Law on Land Reform** set out the framework for the country's restitution regime. These two laws were supplemented by other laws that set out revised claims procedures and filing deadlines. The laws applied equally to citizens as to foreigners, so long as the former owner was an Estonian citizen in 1940. The laws provided for either restitution *in rem* or compensation for property unlawfully nationalized, communized and expropriated between 1940 and 1981. Compensation vouchers could be exchanged for property and stocks. Critics have said that, at least initially, the Estonian government issued eight to nine times more compensation vouchers

than it had property to sell. According to the government of Estonia (in its 2015 response to the European Shoah Legacy Institute's (ESLI) Immovable Property Questionnaire), 230,000 people, including 13,000 foreigners were entitled to restitution under the regime. By 2015, the bulk of the process was completed, with 99.6 percent of legitimate restitution claims of private persons having been satisfied.

Communal Property. Estonia is somewhat unique in that the same restitution laws that governed private property restitution, the 1991 **Principles of Ownership Reform Act** and **Law on Land Reform,** also applied equally to religious and non-profit organizations. As long as the religious organization operated in Estonia until 1940 and the activities specified in its articles of association were not discontinued, the organization was eligible for restitution *in rem* or compensation. Only a few actual properties were returned to the Jewish community in Estonia. For other properties, restitution was made in the form of monetary payments to the Jewish community from the state. Restitution of Jewish communal property has not been a major issue because most pre-war religious buildings were rented rather than owned by the community. Moreover, the two synagogues in Tallinn and Tartu were destroyed during the war.

Heirless Property. The often-wholesale extermination of families in Estonia during the Holocaust had the effect of leaving substantial property without heirs. 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. Estonia has not made any special provisions for heirless property from the Shoah era.

Estonia 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. Estonia submitted a response in October 2015.

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

During World War II, Estonia (the smallest and northernmost Baltic state) was occupied twice by the Soviet Union and once by Germany. In June 1940, the Soviet Union invaded Estonia and then annexed the country in August 1940. Following the German invasion in the summer of 1941, the country was incorporated into the Reich Commissariat Ostland, a German civilian administration covering the Baltic States and western Belorussia. Jews in Estonia were subject to anti-Semitic German measures including property confiscation. Under German occupation, the Nazis and their Estonian auxiliaries systematically murdered the Estonian Jews. (*See* United States Holocaust Memorial Museum

("USHMM"), "Estonia".) Soviet troops reentered the country in 1944. Estonia remained a Soviet republic until independence in 1991.

The Jewish population in Estonia before the war numbered approximately **4,500** and was only a tiny fraction of the country's population. By the summer and fall of 1944 when the Soviet Union reoccupied Estonia, virtually none of the Jewish population who had been in Estonia at the time of the German occupation had survived. (*Id.*). Less than **2,000** Jews currently live in Estonia. (*See* "The Jewish Community in Estonia: A Short Historical Overview", Welcome to Estonia, Estonia.eu.)

At the end of World War II, as a country annexed by the Soviet Union, Estonia was not a party to an armistice agreement or any treaty of peace. Estonia was, however, affected by the tacit agreements of the other Allied Powers during the **February 1945 Yalta Conference –** between President Franklin D. Roosevelt (United States), Prime Minister Winston Churchill (United Kingdom) and Chairman of the Council of Peoples' Commissars Joseph Stalin (Soviet Union) – and the **July 1945 Potsdam Conference** – between President Harry S. Truman (United States), Churchill (and later Prime Minister Clement Atlee) (United Kingdom) and Stalin (Soviet Union). The three (3) powers met at these two conferences to negotiate terms for the end of the war. Afterwards the Soviet Union annexed the Baltic States.

Estonia was thereafter incorporated into the U.S.S.R. as the Estonian Soviet Socialist Republic. However, during the Cold War period, the United States continued its so-called Baltic non-recognition policy whereby the United States did not recognize what it considered the unlawful incorporation of the Baltic States into the Soviet Union.

In 1991, independence was restored to Estonia and it became the Republic of Estonia. The country became a member of the Council of Europe in 1993 and ratified the European Convention on Human Rights in 1996. As a result, suits against Estonia claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Estonia became a member of the European Union (EU) in 2004.

The Soviet Union entered into a number of settlement agreements with other countries, which pertained to raising claims related to Lithuania, Latvia and Estonia that existed at the time the three (3) Baltic countries were incorporated into the U.S.S.R. These included agreements with **Bulgaria** on 18 January 1958, **Hungary** on 14 March 1958, **Czechoslovakia** on 30 June 1958, **Denmark** on 27 February 1964, **United Kingdom** on 5 January 1968 and 15 July 1986, **Netherlands** on 20 October 1967, **Norway** on 30 September 1959, and **Sweden** on 11 May 1964. (*See* Richard B. Lillich and Burns H. Weston, *International Claims, Their Settlement by Lump Sum Agreements* (1975), pp. 328-334.)

In addition, on 26 March 1992, in an **Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Estonia concerning the Settlement of Outstanding Claims and Financial Issues**, Estonia and the UK and Northern Ireland reciprocally agreed not to

pursue claims on behalf of their governments or physical or juridical persons arising after 1 January 1939 and before 27 August 1991. (*See e.g.*, paragraph 3: "The Government of the United Kingdom of Great Britain and Northern Ireland will neither on its behalf nor on behalf of its physical and juridical persons pursue with the Government of the Republic of Estonia or support claims arising after 1 January 1939, and before 27 August 1991 in relation to property, rights and banking, commercial and financial interests, including those affected by nationlisation or other measures, in Estonia owned by the Government or nationals of the United Kingdom of Great Britain and Northern Ireland . . .")

We do not have information on other bilateral settlement agreements with Estonia involving immovable property.

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.)

During the early years of the Soviet regime in Estonia, land, real estate, industry and agriculture were completely nationalized or collectivized. (*See, e.g.*, Anton Weiss-Wendt, "The Soviet Occupation of Estonia in 1940-41 and the Jews," *Holocaust and Genocide Studies* (Fall 1998), pp. 308-325.) The compensation and restitution process that aimed at undoing the widespread nationalizations began in Estonia in 1991. One of the main objectives of the property reform was to create a firm foundation for the transition from a socialist regime to a market economy and a democratic state system. According to the government of Estonia, "[t]he impetus behind the property reform was the desire for justice of a people that had been liberated from Soviet occupation as well as the dream of restoring Estonia to the county it once was." (2012 Green Paper on the Immovable Property Review Conference 2012, at p. 22 (Estonia).)

1. 1991 Principles of Ownership Reform Act and Law on Land Reform

The main principles for Estonia's overall property restitution plan were outlined in the 1991 **Principles of Ownership Reform Act (Law No. 1) ("Principles of Ownership Reform")** and **Law on Land Reform**.

According to the **Principles of Ownership Reform,** the purpose of ownership reform was to (1) "restructure ownership relations in order to ensure the inviolability of property and free enterprise, to undo the injustices caused by the violation of the right to

ownership and to create the preconditions for the transfer to a market economy", and (2) for the "return of property to or compensation of former owners or their legal successors for property in the course of ownership reform shall not prejudice the interests protected by law of other persons or cause new injustices." (**Part I, Section 2**.) According to the **Law on Land Reform,** the objective of land reform was to "transform relations based on state ownership of land into relations primarily based on private ownership of land." (**Part I, Section 2**.) Land reform as described in the **Law of Land Reform**, was carried out pursuant to and using the procedures from the **Principles of Ownership Reform.**

The **Principles of Ownership Reform** covered property unlawfully nationalized, communized, and expropriated between 16 June 1940 and 1 June 1981. (**Part I, Section 3; Part II, Section 6**.) Eligible claimants included natural persons (who, as of the date of the entry into force of the Act are permanent residents of Estonia, or were citizens of Estonia on 16 June 1940), organizations, local government and the Republic of Estonia (**Part II, Section 7**.) This meant that the restitution laws applied equally to foreigners and citizens, so long as the former owner was an Estonian citizen on 16 June 1940. Successors designated by will, or if there was no will and those designated by the law, were also entitled to receive property under the law. (**Part II, Section 8**.)

Property was restituted *in rem* when possible (there were a number of exclusions including if the current owner was a purchaser in good faith) (**Part II, Section 12**), and when not possible, compensation was paid by compensation vouchers (**Part II, Sections 13, 17**). Compensation vouchers could be exchanged for other property subject to privatization as well as stocks. (**Part II, Section 17**.) Certain problems with the Estonian restitution process early on in the mid-1990s included that the government had issued eight to nine times more securities than it had property to sell. (*See* Frances H. Foster, "Restitution of Expropriated Property: Post-Soviet Lessons for Cuba", 34 *Colum. J. Transnat'l. L.* 539, 644 (1996) ("*Foster*") (valuable 20-page discussion of Baltic restitution legislation).)

Special committees set up by the State Property Department examined and decided claims. Claimants could appeal property decisions either extra-judicially (via county committee) or by an appeal to a court **(Part II, Section 19).** The **Procedure for Filing and Examination of Applications Concerning Unlawfully Expropriated Property and for Submission and Evaluation of Evidence** was enacted in 1991. It set out procedures as to how applications were filed by claimants and evaluated by the authorities.

Special exceptions and exemptions from the original **17 January 1992** claim-filing deadline were given at least once for "persons who were physically unable to file before the deadline and persons living overseas who were not aware of the deadline." (*Foster*, p. 638.) The 1992 **Law Concerning the Procedure for Reinstatement of Time-limits for Submission of Applications for Return or Compensation of Unlawfully Expropriated Property** (amended in 1993), stated that the Central Commission on the Return and Compensation of Unlawfully expropriated property was the body competent to accept applications until **31 March 1993**. (*See* *Shestjorkin v.*

Estonia, ECHR, Application No. 49450/99, Decision of 15 June 2000 (describing Estonian restitution laws).) However, documentation claimants had regarding ownership, and composition and value of the property could be added later. (*See* Government of Estonia – Ministry of Foreign Affairs, Response to ESLI Immovable Property Questionnaire (October 2015) ("2015 Government of Estonia Questionnaire Response"), p. 14.)

2. 1992 Law on Speeding Up Restitution for Illegally Expropriated Property that has Retained its Individuality

The 1992 **Law on Speeding Up Restitution for Illegally Expropriated Property that has Retained its Individuality ("Speeding Up Restitution Law")** laid out rules for the expeditious return of property, where government authorities had determined there was sufficient, accurate documentation and that there had not been a decrease in value of the expropriated property. (*Foster*, p. 640.) The **Speeding Up Restitution Law** required that all restitution decisions be published in a newspaper within one week of the decision. (*Id*.) If no further valid claims were filed, property would be returned to the claimant after two (2) weeks. The law then cut-off the right to any other claims for restitution *in rem* of the subject property. (*Id*.)

Other similar laws that expedited the Estonian process have likely been enacted since the 1992 **Speeding Up Restitution Law**. However, we are unaware of the specifics of these laws.

3. 1993 Unlawfully Expropriated Property Valuation and Compensation Act

In 1993, the **Unlawfully Expropriated Property Valuation and Compensation Act ("Valuation and Compensation Act")** was passed. The purpose of the law was set out the bases and procedure for valuing unlawfully expropriated property and the method and extent of compensation. (**Section 1**.)

Compensation was paid to former owners where the claimant had requested the compensation, the subject property had been destroyed, or the law did not provide for the return of the subject property. Where compensation was to be paid to former owners, the value of the property was determined from the date of the expropriation. (**Section 2**.) Successful applicants were paid in compensation vouchers until 31 December 2005. (**Section 14**.) If a successful claimant was not paid in compensation vouchers by 31 December 2005, he would be paid in cash from state funds. (*Id*.)

Estonia established a compensation fund to satisfy the property claims. It was funded by the proceeds of 50% of sales of privatized state-owned property. (*See Foster* at p. 636 (*citing* Addendum to the Resolution of the Supreme Council of the Republic of Estonia on Enacting the Conditions and the Procedure for Privatizing State and Municipal Property, Art. 26 (13 August 1992)).)

As of October 2015, the government of Estonia reported that approximately 233,000 individual claims were accepted (18 percent of the population), including 13,000 foreigners who were entitled to restitution. 27,400 claims were denied. A total of EUR 542 million has been paid as compensation for private property. The average claims process (median value) took five (5) years. The average amount of expenses incurred in the restitution process varied between EUR 0 and EUR 500, depending on the circumstances of the claim (such as needing to obtain cadastral measurements, certificates of inheritance, acts of the Land Register). In regular cases, judicial authorities and attorneys were not involved in the restitution process. (*See* 2015 Government of Estonia Questionnaire Response, pp. 28-29.)

Two (2) longstanding restitution issues in Estonia concerned the return of rental houses and the return of property of Baltic Germans who left Soviet-occupied Estonia in 1941 (the post-settlers). (2015 Government of Estonia Questionnaire Response, p. 3.) By 2015, both matters were largely resolved. Loans and building construction assisted the resettlement of tenants in rental homes. (*Id.*) The Supreme Court of Estonia said in 2006 that the post-settlers had to be treated like other Estonian subjects entitled to restitution. (*Id.*) Local commissions and government must consider their claims. (*Id.*)

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

4. Notable European Court of Human Rights Decision Relating to Estonia's Restitution Regime

When Estonia ratified **Protocol No. 1** to the **European Convention on Human Rights** in 1996, it included a reservation to **Article 1**. **Article 1 of Protocol No. 1** states in relevant part "[e]very 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 for by the law and by the general principles of international law." Estonia's reservation states: "The provisions of Article 1 of the First Protocol shall not apply to the laws on property reform which regulate the restoration or compensation of property nationalised, confiscated, requisitioned, collectivized or otherwise unlawfully expropriated during the period of Soviet annexation; the restructuring of collectivized agriculture and privatization of state owned property." (Council of Europe Conventions, "Reservations and Declarations for Treaty No.009 – Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms – Estonia".) The reservation then goes on to list the names of seven (7) specifically applicable property laws.

In ***Shestjorkin v. Estonia,*** the **European Court of Human Rights (ECHR**) examined Estonia's reservation to **Protocol No. 1**. (*Shestjorkin v. Estonia*, ECHR, Application No. 49450/99, Decision of 15 June 2000.) In ***Shestjorkin,*** the applicant claimed his right to peaceful enjoyment of his possessions under **Article 1 of Protocol No. 1** had been interfered with when he was denied restitution of his family's property because he failed

to file a claim by the 17 January 1992 deadline under the **Principles of Ownership Reform** law.

Before deciding the merits of the application, the **ECHR** had to determine admissibility (i.e., whether it could decide the claim). The **ECHR** found that Estonia's reservation to **Protocol No. 1** followed the required conditions that: "(1) It must be made at the moment the Convention is signed or ratified; (2) It must relate to specific laws in force at the moment of ratification; (3) It must not be a reservation of general character; (4) it must contain a brief statement of the law concerned." (*Id.*) As a result, the Court held that the reservation was valid and the application was inadmissible because the applicant's claims were based on a law included in Estonia's valid reservation. The **ECHR** did however note that the "reservations only cover laws in force at the material time and does not extend to later amendments to the restitution laws which might subsequently be subjected to Convention scrutiny." (*Id.*) (Since the **Principles of Ownership Reform** was enacted, it has been amended 40 times). The ***Shestjorkin*** decision meant that the **ECHR** was not competent to hear property restitution cases that alleged a violation of **Article 1** of **Protocol No. 1,** where the claims were based upon the laws specifically named in Estonia's reservation.

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.)

The umbrella organization for the Jewish community in Estonia is the **Jewish Community of Estonia**. It was founded in 1992 and operates in the following areas: promoting educational and culturally-oriented activities and historical research; social welfare; aiding the repatriation of Jews to Israel; and representing Jewish rights to the government.

1. 1991 Principles of Ownership Reform Act

According to the government of Estonia, property illegally expropriated from Jewish individuals or organizations has been returned using the same procedures in place for the return of all illegally expropriated property. (*See* 2012 Green Paper on the Immovable Property Review Conference 2012, at pp. 23-24 (Estonia).)

The 1991 **Principles of Ownership Reform Act ("Principles of Ownership Reform")** applied equally to both natural persons and to religious organizations. Under the **Principles of Ownership Reform,** "Non-profit organisations and religious societies which operated in the Republic of Estonia until 16 July 1940 are entitled subjects of ownership reform if the activities specified in their articles of association did not discontinue." (**Part II, Section 9**.)

Unlike private property claims by natural persons, property ownership claims submitted by religious organizations could only be resolved by a court (not an administrative entity). (**Part II, Section 9**.)

The United States Department of State has reported that according to Jewish community leaders in Estonia, communal property restitution has not been a major issue because the community rented (not owned) most pre-war religious buildings. (*See* "Estonia" in Property Restitution in Central and Eastern Europe, Bureau of European and Eurasian Affairs, 3 October 2007.)

Examples given by the government of Estonia of communal property returned to the Jewish community include schools and the property where synagogues once stood in the cities of Tallinn and Tartu. (*See* 2015 Government of Estonia Questionnaire Response, pp. 12-13; 2012 Green Paper on the Immovable Property Review Conference 2012, at pp. 23-24 (Estonia).) Compensation was paid where the properties were not restituted *in rem.* (*Id.*) The **World Jewish Restitution Organization ("WJRO")** notes that the former Jewish school in Tallinn that was returned currently serves as the Jewish community headquarters and synagogue. (*See* WJRO, Estonia Operations.)

According to the government of Estonia, "[a]ll restitution claims of Jewish communities and congregations have been satisfied in full" and any Jewish communal property that remains in possession of the state is "[b]eing examined in cooperation with the Estonian Jewish Community." (2015 Government of Estonia Questionnaire Response, pp. 12-13.)

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 "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, 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.)

Under Estonian law, title to heirless property passes to local municipal administrations in Estonia. (*See* Commission on Security & Cooperation in Europe, "Property Restitution and Compensation in Post-Communist Europe: A Status Update", 10 September 2003, pp. 20-21 (Estonia).)

The government of Estonia reported in 2015 that "[o]nly rough estimates [of the total amount of heirless property located in the country] have been made (concerning immovable property)" and that "[h]eirless property has not been an object of restitution or compensation." (2015 Government of Estonia Questionnaire Response, p, 12.)

Since endorsing the Terezin Declaration in 2009, Estonia has not passed any laws dealing with the restitution of heirless property

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Individuals

Academics

Dr. Anton Weiss-Wendt, Fellow at the United States Holocaust Memorial Museum, Washington D.C.

Brownstein Hyatt Farber & Schreck LLP

Ed Barad, Partner, Brownstein Hyatt Farber & Schreck LLP, Denver.

Cole Woodward, Summer Associate, Brownstein Hyatt Farber & Schreck LLP, Denver.

World Jewish Restitution Organization

Evan Hochberg, Director of International Affairs, World Jewish Restitution Organization, New York.

Report Prepared by ESLI Restorative Justice and Post-Holocaust Immovable Property Restitution Study Team (queries: michael.bazyler@shoahlegacy.org)