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

CONTENTS

A. EXECUTIVE SUMMARY

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

C. PRIVATE PROPERTY RESTITUTION

D. COMMUNAL PROPERTY RESTITUTION

E. HEIRLESS PROPERTY RESTITUTION

F. BIBLIOGRAPHY

A. EXECUTIVE SUMMARY

Yugoslavia (which included present-day Montenegro, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Serbia and Slovenia) was invaded by the Axis powers (Germany, Bulgaria, Hungary, Italy, and Romania) in 1941. Fascist Italy occupied Montenegro between 1941 and 1943. There was no organized campaign for the murder of Jews and other targeted groups in Montenegro under the Italian occupation. Following the Italian surrender to the Allied powers in 1943, Montenegro was occupied by Germany until 1944. The German Gestapo identified most remaining Jews in Montenegro and sent them to concentration camps.

Only an estimated 30 Jews lived in Montenegro prior to World War II. During the war, Montenegro received Jewish refugees from neighboring Serbia and Bosnia-Herzegovina. The Italian occupying forces collected the refugees and sent them to camps in Italy. The current Jewish population in Montenegro is very small. At most, there are a few hundred Jews in the country (most of which are recent arrivals). The country's first synagogue in more than a century was completed in 2013.

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 (from any of the six (6) republics) 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, nationalization resulted widespread confiscations.

Restitution in Montenegro began in earnest in the 2000s, after nearly 50 years of Communist rule under Josip Broz Tito. During this period, Montenegro passed two property restitution laws, which chiefly addressed the issue of private property restitution.

The most recent property restitution law (from 2004 and amended in 2007) included language that a separate law would be enacted to address communal property restitution. To date, no such law has been passed, but the government has stated that its deadline to adopt the law is the end of 2018. No provisions for heirless property have been made.

Private Property. Claims by some foreign citizens relating to confiscation and nationalization were settled in the post-World War II years through bilateral agreements with Yugoslavia and at least 14 foreign governments. However, it was not until the early 2000s that Montenegro passed legislation permitting both citizens and non-citizens to seek restitution/compensation for their expropriated property. In 2002, Montenegro passed the **Just Restitution Act**. The law stated that restitution *in rem* was the priority. Upon review by the Constitutional Court in 2003, 13 of the law's core provisions were struck down as being unconstitutional and, as a result, the law was never implemented. In 2004, a second restitution law, the **Law on Restitution of Property and Compensation ("Restitution Law")**, was enacted. The law was revised in 2007 to provide for three (3) regional, rather than municipal, commissions to make decisions on restitution. The law provided for restitution *in rem* when possible; otherwise compensation was to be paid to successful claimants from the **Compensation Fund** or in the form of bonds. The law covered property taken by the state after World War II. Unlike restitution laws from a number of other European countries, the **Restitution Law** did not limit restitution to only Montenegrin citizens. However, other limitations have hampered the success of the restitution regime, including: the claims process has been lengthy and cumbersome (and varies in length by area of the country); it has been difficult to obtain compensation for expropriated property within a reasonable period; and there has been a lack of administrative capacity for the country's three (3) regional restitution commissions. The Montenegrin Ministry of Finance stated in its 2013 annual report that in the 10-year period of 2004 and December 2014, 53% of the total claims had been resolved.

Communal Property. The Jewish community of Montenegro at the time of World War II was nearly non-existent, with no identifiable communal property (not even a synagogue). The current Jewish community of Montenegro is also in a nascent state with only a few hundred members, most of which arrived after World War II. In terms of Holocaust era communal property in Montenegro, the **World Jewish Restitution Organization** only identifies a small number of houses claimed by the Jewish Community of Serbia (not Montenegro).

The **Just Restitution Act** would have provided religious groups and communities the right to seek restitution of property in the same manner as natural persons. However, due to constitutional challenges, this law was never implemented. The subsequent 2004 **Law on Restitution of Property and Compensation** (amended in 2007) provided that a separate law would govern communal property restitution. That separate law has not been enacted, but the government of Montenegro has stated there will be a law by the end of 2018.

Heirless Property. The often-wholesale extermination of Jewish families in Yugoslavia during the Holocaust had the effect of leaving substantial property without heirs to claim

it. Principles enshrined in documents such as the 2009 Terezin Declaration, 2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property should be used to provide for the material needs of Holocaust survivors most in need of assistance. Montenegro has not made any special provisions for heirless property from the Shoah era.

Montenegro 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 Montenegro has been received.

B. POST-WAR ARMISTICE, 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 Montenegro, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Serbia and Slovenia). Italy occupied Montenegro during between 1941 and 1943. Following the Italian surrender to the Allied powers in 1943, Montenegro was occupied by Germany until 1944. (*See* United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Axis invasion of Yugoslavia".)

The Jewish population of Montenegro prior to World War II only numbered **approximately 30**. (Paul Mojzes, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century* (2011), p. 93.) The number of Jews rose during the war when Jews from neighboring Serbia and Bosnia-Herzegovina fled into Montenegro. (*Id.*) The Italian occupying forces did not harm the Montenegrin Jews, but rounded up the refugees present in Montenegro and transferred them to camps in Italy. (*Id.*) However, after the Italians surrendered to the Allied powers in 1943, the German Gestapo identified most remaining Jews in Montenegro and sent them to concentration camps. (European Jewish Congress, The Jewish Community of Montenegro.)

It is estimated that **a few hundred Jews** live in Montenegro today.

After World War II, Josip Broz Tito formed the Federal People's Republic of Yugoslavia (FPRY). Montenegro became one (1) of six (6) constituent republics in the FPRY (along with Bosnia-Herzegovina, Croatia, Montenegro, Macedonia, Serbia and Slovenia). Montenegro, as a constituent republic of the greater FPRY, was involved in the **1947 Treaty of Peace with Bulgaria,** the **1947 Treaty of Peace with Hungary**, and the **1947 Treaty of Peace with Italy**. Yugoslavia was not involved with the **1947 Treaty of Peace with Finland** or the **1947 Treaty of Peace with Romania**.

In 1963, the FPRY became the Social Federal Republic of Yugoslavia (SFRY).

The Republic of Montenegro in its current form came into existence in 2006, following a referendum by Montenegro in which a majority of Montenegrins voted for independence from Serbia. Prior to the referendum, the country was known as Serbia and Montenegro (previously known as Federal Republic of Yugoslavia during the conflicts in the Balkans in the 1990s).

Montenegro ratified the European Convention on Human Rights in 2006 and became a member of the Council of Europe in 2007. As a result, suits against Montenegro claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). In 2010, the European Union granted Montenegro candidate status and accession negotiations began in 2012.

1. Claims Settlement with Other Countries

Following the war, Yugoslavia entered into at least 20 lump sum agreements or bilateral indemnification agreements with 14 countries. (*See* Richard B. Lillich and Burns H. Weston, *International Claims, Their Settlement by Lump Sum Agreements* (1975), pp. 328-334.) These agreements generally pertained to claims belonging to foreign nationals (natural and legal persons) arising from property that had been seized by the Yugoslavian state during and after WWII. As best as we are aware, claims settlements were reached with:

- **Switzerland** on 27 September 1948 and 23 October 1959
- **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
- **Hungary** on 29 May 1956
- **Turkey** on 13 July 1956
- **Netherlands** on 22 July 1958 and 9 February 1961
- **Greece** on 18 June 1959
- **Denmark** on 13 July 1959
- **Sweden** on 17 January 1963
- **Argentina** on 21 March 1964
- **United States** on 19 July 1948 and 5 November 1964

(*Id.*)

2. Specific Claims Settlements Between Yugoslavia and Other Countries

a. Claims Settlement with the United States

On 19 July 1948, Yugoslavia and the United States concluded **Y-US Bilateral Agreement I** (Agreement Between the Government of the United States of America and the Government of the Federal People's Republic of Yugoslavia Regarding Pecuniary

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

On 5 November 1964, a second agreement, **Y-US Bilateral Agreement II**, was concluded between the two countries (Agreement between the Government of the United States of America and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals). In **Y-US Bilateral Agreement II**, Yugoslavia agreed to pay USD 3,500,000 in full settlement of claims of nationals of the United States "on account of the nationalization and other taking of property and rights . . ." which occurred subsequent to the 19 July 1948 **Y-US Bilateral Agreement I** (*see* **US Bilateral Agreement II, Article 1**). The United States, again through the **FCSC**, awarded nearly USD 10 million to U.S. national claimants in the **Second Yugoslavia Claims Program**. Only USD 3,500,000 was available for payment based upon the terms of **Y-US Bilateral Agreement II.** The payments to successful claimants were thus only 36.1% of the principal of the awards.

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

b. Claims Settlement with the United Kingdom

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

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

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

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

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

C. PRIVATE PROPERTY RESTITUTION

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

> Property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

For most of World War II, the Italian occupying forces protected the Jews living in Montenegro from deportation and property confiscation. However, once the Italians withdrew, between September 1943 and February 1944, the German Gestapo identified most remaining Jews in Montenegro and shipped them to concentration camps. (European Jewish Congress, The Jewish Community of Montenegro.) After World War II, few Jews remained in Montenegro. (*Id.*)

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

Law No. 36/45 (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators) from 24 May 1945 was the first law enacted in Yugoslavia addressing property confiscated during World War II.[1] Amendments to **Law No. 36/45** were included in **Law No. 64/46** (on Confirmation and Changes to the Law on Handling Property Abandoned by its Owners during the Occupation and Property Seized by the Occupier and his Collaborators) (amended by **Law Nos. 105/46, 88/47** and **99/48).**

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

The law was expansive in its scope of property to be returned (it included real estate, businesses, securities and property rights) but a few provisions seriously marginalized the law's effect. (*See Robinson,* p. 364.) First, **Law No. 36/45** only applied to citizens of Yugoslavia. Moreover, the law denied restitution to all Yugoslavian citizens living

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

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

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

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.[2] Municipal and regional commissions carried out the nationalization processes. (*Id.*, p. 121.) Key nationalization laws included **Law Nos. 98/46** and **34/48** (on Nationalization of Private Commercial Enterprises (as amended)) and **Law No. 28/47** (Fundamental Law on Expropriation).

Privatization of businesses in Montenegro finally began in the early 1990s, between 40 and 50 years after they had initially been nationalized. However, denationalization legislation for property was not passed at the same time as the privatization schemes. Denationalization and restitution laws in Montenegro were not passed until the early 2000s.

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

2. 2002 Just Restitution Act

In June 2002, the Parliament of the Republic of Montenegro adopted the **Just Restitution Act** (Zakon o pravednoj restituciji) (Official Gazette of the Republic of Montenegro Nos. 34/02 and 33/03). The law entered into force on 10 July 2002.

Section 1 of the law directed that restitution *in rem* would be the rule and that other forms of compensation would be the exception. (*See, e.g., Eparhija Budimljansko-Nikšićka and others v. Montenegro,* ECHR, Application No. 26501/05, Decision of 9 October 2012 ("*Budimljansko-Nikšićka*")*,* ¶ 16 (describing provisions of the **Just Restitution Act**).) However, when restitution could not be carried out *in rem,* providing property of the same value or compensation was appropriate **(Section 12)**.

Section 3, ¶¶ 2 and 3 stated that previous owners whose property rights had been taken away on account of, *inter alia,* a court judgment or decision were also entitled to restitution. (*Budimljansko-Nikšićka,* ¶ 17.)

Section 5, ¶ 1(3) stated that *de facto* property expropriations would be treated in the same way as those expropriations that took place on legal grounds. (*Budimljansko-Nikšićka,* ¶ 18.)

Section 10, ¶ 6 permitted religious organizations/communities to be beneficiaries of the right to restitution in the same manner as natural persons. (*Budimljansko-Nikšićka,* ¶ 19.) The government of Montenegro was obliged within 60 days of entry into force of the law to establish a Restitution Fund **(Section 33)** and a Restitution Commission that would decide restitution requests **(Section 36)**. At least one-half (1/2) of the members of the Restitution Commission were to be representatives of the former (pre-nationalization) owners **(Section 40, ¶ 3)**. (*Budimljansko-Nikšićka,* ¶¶ 22-23, 27.)

The Government of Montenegro was also to enact a decree within the same time period on regulations and implementation of the law, which would set out how the Restitution Fund and Commission would be set up and run **(Section 40, ¶¶ 1 and 2).** (*Budimljansko-Nikšićka,* ¶¶ 25-26.)

The law was immediately subject to constitutional challenge and, as a result, the implementing regulations were never enacted. The Restitution Commission was never set up, and ultimately the law was never put into practice.

A 8 May 2003 decision of the Constitutional Court of the Republic of Montenegro (published in the Official Gazette of the Republic of Montenegro No. 33/03, 2 June 2003), determined that 13 provisions included in the **Just Restitution Act** were unconstitutional. According to the decision, restitution *in rem* as prescribed by the law, would be in breach of existing property rights. The Court also held that the Restitution Commission's competence to decide on restitution of the property taken by virtue of final court judgments was contrary to the principle of separation of powers. The Constitutional Court also held that the law was contrary to the current owners' property rights. It further

held that it was inappropriate to have previous (pre-nationalization) owners as members of the Restitution Commission because they had an interest in the outcome of the proceedings. (*Budimljansko-Nikšićka,* ¶ 30 (summarizing 8 May 2003 decision of the Constitutional Court of the Republic of Montenegro).)

3. 2004 The Law on Restitution of Property Rights and Compensation

On 23 March 2004, the Parliament of the Republic of Montenegro adopted the **Law on Restitution of Property and Compensation** (also known as Restitution of Expropriated Property Rights and Compensation Act) (Zakon o povraćaju oduzetih imovinskih prava i obeštećenju) (Official Gazette of the Republic of Montenegro Nos. 21/04, 49/07 and 60/07), which entered into force on 8 April 2004 **("Restitution Law").** Other required administrative regulations for the law came into effect on 1 January 2005. The passage of the 2004 **Restitution Law** effectively repealed the **2002 Just Restitution Act**. The **Restitution Law** was amended in 2007 in order to provide for three (3) regional, rather than municipal, commissions to make decisions on restitution.

According to **Article 1**, the law "shall govern the conditions, manner, and procedure for restitution of ownership rights and other property rights and compensation of former owners for the rights taken away from them for the benefit of public, state, social, or cooperative ownership."

Articles 6-8 described who was entitled to restitution under the law. Former owners (i.e., pre-nationalization) who were natural persons were entitled to restitution/compensation **(Article 6)**. Legal entities, including "pious endowments and other non-commercial legal entities" were entitled to restitution/compensation but a separate "special law shall regulate the conditions, manner and procedure for restitution of the taken away property rights to religious organizations" **(Article 8)**. Persons or their heirs whose property was taken away pursuant to three (3) enumerated laws from the mid-1940s where property was taken for political or ideological reasons were also entitled to restitution/compensation **(Article 8b)**. Persons *not* entitled to restitution included those who received or had the right to receive compensation for taken property from another state **(Article 7)**.

Unlike many other private property restitution laws from other countries, the **Restitution Law** did not limit property restitution to citizens of Montenegro.

Articles 9 and **10** described who was responsible for returning property and paying compensation. Unless current owners of property at the time the **Restitution law** came into force acquired ownership in accordance with the law, they could have been obliged to forfeit the property to the former owners **(Article 9)**. Where compensation was to be paid, the Republic of Montenegro would provide compensation to former owners through the **Compensation Fund (Article 10)**. Compensation was either to be paid annually in cash, on a pro-rata basis of the claim relative to the aggregate of claims against the **Compensation Fund**, or in 10-year bonds **(Articles 22 and 25)**. Compensation paid in one (1) year could not exceed 0.5% of the previous year's GDP and the total

compensation under the **Restitution Law** could not exceed 10% of GDP for the period of application of this law **(Article 22)**. The **Compensation Fund** could also offer former owners immovable property owned by the **Fund**, as compensation for the former owners' confiscated property **(Article 22)**. The **Compensation Fund** was formally established on 1 March 2005.

Restitution *in rem* was preferred but where the property in issue was not subject to restitution (e.g., had been destroyed or damaged to the extent that restoration would exceed the value, was being using to perform state or local self-government activities, was being used in the areas of healthcare, education, culture, science or other public services, etc.), the former owner was entitled to compensation **(Articles 11 and 12)**. Ownership rights, other property rights or monetary compensation obtained pursuant to the law were not subject to tax **(Article 5)**.

Property to be returned under the law included immovable property, movable property, olive groves, forests, forest land, residential buildings, apartments, business buildings, and business premises and undeveloped buildable land **(Articles 13-17)**.

Former owners had **18 months** (from the day the Commission for Restitution and Compensation was established in the municipality where the property was located) to lodge restitution/compensation claims **(Article 27)**.

Article 28 described how the Commissions for Restitution and Compensation were to be created. Three (3) separate Commissions were set-up (one each in Podgorica, Bad, and Bijelo Polje) and each had jurisdiction over certain municipalities in the country.

A request for restitution/compensation had to include: data on the expropriated property, including the address and number of a property certificate, location and area; the legal basis, manner and time of the nationalization; legal basis of the request for compensation, including any evidence to show the claimant was a former owner under the law; the subject matter of the restitution/compensation; any information on heirs or other persons who may have rights to the property who are known to the claimant; and any other relevant information **(Article 29)**.

Within 30 days of the hearing on the request for restitution/compensation, the law obliged the Commission to adopt a first-instance decision **(Article 34)**. Any party had 15 days from receipt of the decision to appeal to an **Appellate Commission (Articles 35-36)**.

The **Restitution Law** also incorporated other domestic legislation in order to help regulate delays or inactions during restitution proceedings. **Article 4** of the law stated, *inter alia,* that the **General Administrative Proceedings Act** (Zakon o opštem upravnom postupku) (Official Gazette of the Republic of Montenegro No. 60/03) ("**Administrative Proceedings Act"**) applied to restitution/compensation proceedings, and in particular could be used to regulate delays or inaction by the Restitution Commissions and courts vis-à-vis the restitution/compensation process. **Article 212** set out time limits for administrative bodies to issue decisions (between one (1) and two (2)

months). If decisions were not timely issued, the law set out an appeals process. The acceptable time limits for the issuance of administrative decisions were shortened in 2011 amendments to between 20 days and one (1) month. (*See Vuković v. Montenegro,* ECHR, Application No. 18626/11, Decision of 27 November 2012 ("*Vuković"*) ¶¶ 16-20 (describing Article 212 of the Administrative Proceedings Act).)

In addition to the **General Administrative Proceedings Act** (and amendment), the **Administrative Disputes Act** (Zakon o upravnom sporu) (Official Gazette of the Republic of Montenegro No. 60/03) provided that claimants could initiate a special administrative proceeding before an Administrative Court if no decision had been issued within 60 days under the appeals process laid out in **Article 212** of the **Administrative Proceedings Act.** 2005 amendments to the law reduced this time period to 30 days. Under the **General Administrative Proceedings Act**, the Administrative Court was empowered to rule on the merits of the action. (**Article 35**). (*See Vuković*, ¶¶ 21-25 (describing Articles 18 and 35 of the Administrative Disputes Act).)

Article 40 discussed probate matters associated with an inheritance request on the former owner's property. The court of the Republic of Montenegro had exclusive competency to hear probate-related matters under the law.

As written, the **Restitution Law** showed much promise. Unfortunately, in practice, the actual restitution process under the law proved somewhat disappointing.

The Ombudsman of Montenegro issued a report in July 2012, "Universal Periodic Review of Human Rights in Montenegro, 2nd Cycle" in which the status of the country's property restitution under the **Restitution Law** was discussed. The Ombudsman's report discussed some of the then-lingering issues with the country's restitution efforts:

> The procedures for restitution and compensation are unnecessarily long. The process is significantly slower in the south and the north of the country. Long duration of the procedures prevents the citizens from exercising their right to restitution and compensation which is prescribed by the Law. At the same time, the process for obtaining ownership right over the real estate that is the subject of the restitution for the citizens who are entitled to restitution is prolonged, and the citizens who have the right to compensation are prevented from realizing their right to compensation within a reasonable time period. All applicants who have filed a request for restitution and compensation and whose requests have not been resolved are kept in legal uncertainty, i.e. inability to use adequate legal remedies to protect their rights. Administrative capacities in all three regional committees for restitution and compensation are weak. It is necessary that the relevant authorities take all actions necessary to finalize the procedures upon requests for restitution and compensation as soon as possible, which would provide general legal security of the participants in the process. It is necessary to increase the number of expert associates in all committees, in proportion to the number of cases being processed. Also, it is necessary to regulate restitution of property that was once taken from religious communities.

(Montenegro Ombudsman, "Universal Periodic Review of Human Rights in Montenegro, 2nd Cycle", July 2012; *see also* European Commission, Montenegro 2015 Report, 10 November 2015, p. 59 ("On property rights, the restitution of property as provided by law is being hampered by the lack of administrative capacity and cumbersome procedures. The court did not make any progress on addressing pending cases in line with the national legislation and [European Court of Human Rights] case law"); U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Montenegro 2015 Human Rights Report", p. 9 (as of 2015 "a large number of restitution claims for private and religious properties confiscated during the community era remained unresolved. Both private individuals as well as the Serbian Orthodox Church continued to criticize the government for not actively addressing this problem.").)

In terms of numbers, the U.S. Department of State summarized the Montenegro Ministry of Finance's 2013 annual report on restitution:

> [B]etween 2004 and December 2013, as many as 10,847 citizens filed restitution claims. As of July, 5,780 claims (53 percent) were resolved, of which 3,671 were in favor of the claimants. The ministry also reported that the restitution fund established to pay the claims had received 1,360 final and executable court decisions authorizing compensation of more than 211 million euros ($264 million). In a majority of instances (789 cases), compensation consisted of a mix of cash and state bonds. In the remainder (166 cases), the claimants obtained the return of the property, or when physical return was not possible, other state-owned land . . .

(U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Montenegro 2014 Human Rights Report, pp. 14-15.)

Since endorsing the Terezin Declaration in 2009, the Republic of Montenegro has not passed any new laws dealing with restitution of private property.

4. Notable European Court of Human Rights Decision Relating to Montenegro's Private Property Restitution Laws

Vuković v. Montenegro

In its 27 November 2012 decision in ***Vuković v. Montenegro,*** the **ECHR** examined allegations of an **Article 6** (right to fair trial) of the **European Convention on Human Rights ("Convention")** violation in regards to excessive length of proceedings before the Restitution Commission and lack of appropriate domestic remedy for the excessive length. (*Vuković v. Montenegro,* ECHR, Application No. 18626/11, Decision of 27 November 2012.)

Vuković involved several pieces of land expropriated from applicant's father in 1962. In 2004, Montenegro enacted the **Restitution Law.** In 2005, applicant, as an heir of his father, filed a restitution request with the Restitution and Compensation Commission in the city of Nikšić. In May 2007, the Commission held an oral hearing on applicant's case,

where applicant stated he wanted compensation instead of restitution. According to applicant, the property in issue had been sold after the **Restitution Law** came into effect and therefore could not be returned to him. As a result of applicant's request for compensation, the Commission sought the opinion of the Supreme State Prosecutor on the sale contract. The Commission hearing was adjourned indefinitely. In June 2008, the Supreme State Prosecutor found no legal ground to annul the sale contract of applicant's property. As of the date of the **ECHR's** decision in November 2012, the Commission had not yet issued a decision on the applicant's request for compensation. (*Vuković*, ¶¶ 3-10.)

The **ECHR** noted that based upon the facts, the applicant had lodged his request for restitution/compensation in 2005 and, by late 2012, the first-instance administrative body still had not issued a decision. However, the Court observed that the applicant failed to pursue his domestic remedies under the **General Administrative Proceedings Act** (expressly incorporated into the **Restitution Law**) and the **Administrative Disputes Act**. The Court stated specifically that:

> [T]he relevant provisions of the said Acts enabled the applicant whose request had not been dealt with by the first-instance body within 30 days or, in more complex matters, within two months, to lodge an appeal with an appellate body as if his request had been rejected []. These time-limits were even further reduced by the subsequent legislative amendments []. Furthermore, he could also institute the proceedings before the Administrative Court should the appellate body fail to issue a decision upon such an appeal.

(*Vuković*, ¶ 30.) Accordingly, the Court found that under the circumstances, the applicant could not complain to the **ECHR** about the length of the proceedings before the Commission (administrative body) and that the application had to be rejected for non-exhaustion under domestic remedies (under **Article 35** of the **Convention**). (*Id.*)

D. COMMUNAL PROPERTY RESTITUTION

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

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

(Terezin Best Practices, para. b.)

During World War II, Jews from other neighboring areas took refuge in Montenegro. While Jews in Montenegro were spared under the Italian occupation until 1943, between September 1943 and February 1944, the Gestapo identified most remaining Jews in Montenegro and most were taken to concentration camps. (European Jewish Congress,

The Jewish Community of Montenegro.) After World War II, few Jews remained in Montenegro. (*Id.*).

Montenegro's current Jewish community is small (*Id.*) Studies and differing sources put the Jewish population at between 12 and a few hundred. (*See, e.g.*, "Montenegro Jewish Community Petitions to pray", The Jerusalem Post, 9 July 2012.) Most of the Jews currently living in Montenegro arrived after World War II. The main Jewish organization is the **Jewish Community of Montenegro.**

In 2013, the government of Montenegro gave land to the country's small Jewish community so that it could build a synagogue. It would be the country's first synagogue in over 100 years (Cnaan Liphshiz, "Montenegro gives land for building of first modern synagogue", Jewish Telegraphic Agency (JTA), 2 January 2013.) Later that same year, the country's first provisional synagogue opened in the capital, Podgorica.

According to the **World Jewish Restitution Organization** ("**WJRO**"), Montenegro has not returned two (2) houses purchased by the women's organization of the Jewish community in Belgrade prior to WWII. The properties were used as a summer resort. (World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014 (Montenegro, p. 8).) The Jewish Community in Belgrade and the **Federation of Jewish Communities in Serbia (SAVEZ)** continue to seek restitution of these properties. (*Id.*)

Montenegro's two restitution laws, the **Just Restitution Act,** and the **Law on Restitution of Property and Compensation ("Restitution Law")** also mentioned the return of property belonging to religious communities.

1. 2002 Just Restitution Law

In June 2002, the Parliament of the Republic of Montenegro adopted the **Just Restitution Act** (Zakon o pravednoj restituciji) (Official Gazette of the Republic of Montenegro Nos. 34/02 and 33/03). The law entered into force on 10 July 2002, but was never implemented in practice.

Article 10, ¶ 6 provided that religious organizations or communities could be beneficiaries of restitution in the same manner as natural persons. (*Budimljansko-Nikšićka,* ¶ 19.)

Constitutional challenges (more fully described in **Section C.2** of this report) resulted in 13 core portions of the law being declared unconstitutional.

2. Law on Restitution of Property and Compensation (2004, 2007)

On 23 March 2004, the Parliament of the Republic of Montenegro adopted the **Law on Restitution of Property and Compensation** (also know as Restitution of Expropriated Property Rights and Compensation Act) (Zakon o povraćaju aduzetih imovinskih prava i obeštećenju) (Official Gazette of the Republic of Montenegro Nos. 21/04, 49/07 and

60/07), which entered into force on 8 April 2004 **("Restitution Law").** Other required administrative regulations for the law came into effect on 1 January 2005. The **Restitution Law** was amended in 2007 to provide for three (3) regional, rather than municipal, commissions to take decisions on restitution.

Article 8 of the law provided that a separate "special law shall regulate the conditions, manner and procedure for restitution of the taken away property rights to religious organizations." **(Article 8.)** Churches and religious organizations whose property was taken for the benefit of public, state, social or cooperative ownership "without fair or market" compensation could submit an application to the Ministry of Finance within three (3) months of the date of entry into force of the law (**Article 8a).** The application had to include evidence of: the former owners or successors of the property, the property taken away, and the grounds for the property having been taken away **(Article 8a**). The application, however, was **not** a request for exercising the right to restitution or compensation **(Article 8a**). Thus, under the law, religious organizations were obliged to submit an application describing the expropriated property but it did not amount to an enforceable restitution claim.

To date, the separate "special law" referred to in the **Restitution Law** has not been enacted. In its 18 June 2015 "Mid-Term report of Montenegro on the implementation of recommendations received during the second cycle of Universal Periodic Review (UPR)", the government of Montenegro stated that with respect to the United Nations' recommendation that cases related to confiscated property from various religious communities be resolved (mainly the Holy See):

> **IMPLEMENTATION HAS NOT STARTED**
>
> In order to solve the cases of property restitution for churches and religious communities, passing of the Law on Property Restitution to Religious Community has been planned. The deadline for adoption of this law is the end of 2018. The analysis of draft law making is underway. After the law is passed, the analysis will be conducted and actions will be taken upon requests for restitution of property rights.

(Government of Montenegro, "Mid-Term report of Montenegro on the implementation of recommendations received during the second cycle of Universal Periodic Review (UPR)", 18 June 2015, at p. 30 (bold in original).)

Given the small size of Montenegro's Jewish community and absence of unrestituted pre-war Jewish communal property (with the exception of the two houses identified by the **WJRO** as rightfully belonging to the Jewish community in *Serbia*), the law on religious property will likely have minimal impact on the Jewish community.

Since endorsing the Terezin Declaration in 2009, the Republic of Montenegro has not passed any laws dealing with restitution of communal property.

3. <u>Notable European Court of Human Rights Decision Relating to Montenegro's Communal Property Restitution Laws</u>

Eparhija Budimljansko-Nikšićka and others v. Montenegro

In its 9 October 2012 decision in ***Eparhija Budimljansko-Nikšićka and others v. Montenegro***, the **ECHR** examined whether the applicants' rights under the **European Convention on Human Rights ("Convention")** (namely, the right to peaceful enjoyment of one's property under **Article 1 of Protocol No. 1 of the Convention**) had been breached where applicants' plots of land, expropriated after Word War II, had not been returned. (*See* *Eparhija Budimljansko-Nikšićka and others v. Montenegro,* ECHR, Application No. 26501/05, Decision of 9 October 2012 ("*Eparhija Budimljansko-Nikšićka"*).) Applicants in the case were the diocese *Eparhija Budimljansko* and other churches and monasteries, all of which were part of the Serbian Orthodox Church in Montenegro.

After World War II, several plots of land were expropriated from the applicants. Some of the land was taken without any decision describing the reasons for the taking. Other land was taken pursuant to District Agricultural Commissions' decisions later upheld by the State Agrarian Court. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 4-5.)

On 12 July 2002, Montenegro's **Just Restitution Law** came into effect but was never implemented in practice. The law provided that religious organizations and communities could seek restitution of property in the same manner as natural persons. However, (as noted in **Section C.2** of this report) an 8 May 2003 Constitutional Court decision declared many of the law's core provisions unconstitutional, including that restitution *in rem* would breach existing property rights. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 13-14, 19.)

On 18 March 2004, applicants filed a request for restitution of their land with the government. After receiving no word from the government for two (2) months, applicants initiated an administrative action. Approximately one (1) year later, the Administrative court ruled against applicants, stating that the government had no jurisdiction to rule on the request. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 6-9.)

On 8 April 2004, a new restitution law, the **Law on Restitution of Property and Compensation ("Restitution Law")** came into force, thereby repealing the **Just Restitution Act**. The law stated that a separate law would regulate restitution of property to religious communities. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 32-33.)

Applicants complained to the **ECHR** that the government's failure to determine their restitution request under the **Just Restitution Act** breached their "legitimate expectation" to re-acquire expropriated property under **Article 1 of Protocol No. 1 of the Convention** ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.")

(*Eparhija Budimljansko-Nikšićka,* ¶ 44.)

According to the **ECHR,** legislation providing for restitution of property confiscated by prior regimes, which has been enacted by a member State after ratification of the **Convention** and **Protocol No. 1**, may be regarded as creating a new property right protected by **Article 1 of Protocol No. 1**. However, **Article 1 of Protocol No. 1** does not create a *general* obligation to return property transferred to the State before it ratified the **Convention**. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 68-69.)

The Court examined whether the applicants had a legitimate expectation that their request for restitution would be decided in their favor. The Court noted that key provisions of the legislation applicants relied on – the **2002 Just Restitution Law** – had been declared unconstitutional *before* applicants filed their request. It was therefore unrealistic that their request would be decided at all. As a result, applicant did not have a claim that was sufficiently enforceable to fall within the meaning of **Article 1 of Protocol No. 1** and the complaint was deemed inadmissible. (*Eparhija Budimljansko-Nikšićka,* ¶¶ 71-76.)

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 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.)

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).

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

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Individuals

Academics

Dr. Naida-Michal Brandl, Faculty of Humanities and Social Sciences and Chair of Judaic Studies, University of Zagreb, Zagreb.

Fried Frank Harris Shriver & Jacobson LLP

Brendan McNamara, Associate, Fried, Frank Harris, Shriver & Jacobson LLP, Washington, D.C.

World Jewish Restitution Organization

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