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

CONTENTS

A. EXECUTIVE SUMMARY

Yugoslavia (which included present-day Serbia, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Slovenia) was invaded by the Axis powers (Germany, Bulgaria, Hungary, Italy and Romania) in 1941. Nazi Germany established a brutal military occupation. In addition, other parts of modern-day Serbia were occupied by Hungary and Bulgaria, and Kosovo was occupied by Italy.

Roughly 85% of the 35,000 Jews who lived in Serbia before World War II were murdered during the war. Between 1,000 and 12,000 Roma were also murdered. The estimated Jewish population of Serbia today is between 600 and 3,000 Jews. An estimated 150,000 Roma live in Serbia 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 confiscations.

Restitution began in earnest in the 2000s, after nearly 50 years of Communist rule under Josif Broz Tito and 10 years of ethnic strife and armed conflict under Slobodan Milošević (who had been President of Serbia and then President of the Federal Republic of Yugoslavia). Serbia is the only country that has enacted private property restitution legislation since endorsing the Terezin Declaration in 2009. Serbia has also passed communal property legislation – albeit with key limitations whose effects have disproportionately negatively impacted the Jewish community. In February 2016, Serbia

became one of the first Eastern European countries to enact heirless property restitution legislation and the first country to enact an heirless property law since the Terezin Declaration was drafted in 2009.

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 12 foreign governments. In 2005, Serbia passed the **2005 Law on Reporting and Recording of Nationalized Property**. The purpose of this law was to collect information on the value of nationalized property in Serbia, which the Tax Administration later estimated to be between EUR 102 and 220 billion. A **2007 Draft Law on Denationalization** that would have allocated EUR 4 billion to restitution claims was never enacted. In 2011, the **2011 Law on Property Restitution and Compensation** was passed. On the face of the law, it is unclear as to whether the 2011 Law covers property confiscated during the Holocaust. However, the government has made public statements that it does. Eligible claimants are both citizens and non-citizens of Serbia. The 2011 Law states that restitution *in rem* is a priority, but the nearly two-dozen exceptions and a catchall statement are feared to swallow this priority. Compensation is capped at EUR 500,000 per property, but this could be drastically and proportionally decreased because all compensation payments cannot exceed EUR 2 billion and are subject to a formula that further minimizes the amount. Awards are paid in bonds and small advance cash payments over a 10 to 15 year period. In 2014, Serbia passed the **Law on Amendments of the Law of 2011**. The **Amendments** postpone payment on bonds and advance cash payments for between 2 and 2.5 years. According to the Serbian government, approximately 76,000 claims were filed under the law. As of August 2015, according to the response received from the **Agency for Restitution**, 34,000 claims have been resolved (3,700 accepted and 11,000 denied).

Communal Property. In 2006, Serbia enacted the **2006 Law on the Restitution of Property to Churches and Religious Communities**. Limitations written into the law made it difficult, however, for the Serbian Jewish community to receive restitution or compensation. One of these limitations was that the law only applied to property confiscated *after* 1945. In addition, although communal property can be returned to successor organizations, the Serbian government has not recognized the umbrella organization, **Federation of Jewish Communities** (**"SAVEZ"),** as a legal successor to Jewish organizations that ceased to exist since World War II. While **SAVEZ** filed over 500 communal property claims (out of more than 3,000 total claims filed by all religious communities), few properties have been returned. The Serbian government has stated that, as of September 2015, 20,867 square meters of land and over 8,300 square meters of buildings have been returned. Despite calls to amend the law to cover property confiscated *before* 1945, no amendments have been made.

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.

In its **2011 Law on Property Restitution and Compensation**, Serbia committed to passing a separate law that will cover heirless property. In February 2016, Serbia became one of the first Eastern European countries to pass heirless property legislation. Key provisions of the **2016 Law on Elimination of Consequence of Property Confiscation of Heirless Holocaust Victims** include that **SAVEZ** will receive EUR 950,000 per year for 25 years to support the revitalization of Serbian Jewish communities and that heirless Jewish properties will be restituted *in rem* to Serbian Jewish communities. Funds received by **SAVEZ** and the proceeds of *in rem* restitution will also be used to support the social welfare of Jews living in Serbia and Serbian Holocaust survivors living in Serbia and abroad, as well as for commemoration, education, and other purposes.

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. Serbia submitted a response in September 2015.

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

On 6 April 1941, the Axis powers (Germany, Bulgaria, Hungary, Italy and Romania) invaded Yugoslavia (which included present-day Serbia, Bosnia-Herzegovina, Croatia. Kosovo, Macedonia, Montenegro and Slovenia). Germany established a military occupation of Serbia and created "an indigenous administration and police force nominally supervised by a puppet Serb government under former Yugoslav general Milan Nedic". (United States Holocaust Memorial Museum - Holocaust Encyclopedia, "Axis invasion of Yugoslavia".) In addition, other parts of modern-day Serbia were occupied by Hungary and Bulgaria. Kosovo was occupied by Italy.

During the war, the Nazis and other Axis powers murdered over **85%** of the **35,000** Jews in Serbia. (*See* Aleksandar Nećak & Ljubica Dajč, "Restitution in Serbia, A Never-Ending Story", Federation of Jewish Communities in Serbia (SAVEZ), 23 July 2009 ("*Aleksandar Nećak & Ljubica Dajč*"), p. 3.) According to the 2011 census, **fewer than 600** Serbs self-identified as being of the Jewish faith. (Statistical Office of the Republic of Serbia, "2011 Census of Population, Households and Dwellings in the Republic of Serbia: Religion, Mother Tongue and Ethnicity, Data by municipalities and cities", February 2013, ("Statistical Office of Republic of Serbia, 2011 Census"), p. 13.)[1]

[1] However, in a 2009 paper, **SAVEZ**, the umbrella Jewish community organization in Serbia, stated that there were approximately 3,000 members of the Jewish community. (*Aleksandar Nećak & Ljubica Dajč*, p. 2.) The difference in the figures can be explained in two ways. First, questions of nationality and religion did not have to be answered in the census, and second, anyone who has at least one Jewish grandparent can become a member of the Jewish community.

The precise number of Roma killed in Serbia during the war is unknown. Estimates range between **1,000** and **12,000**. (*See* United States Holocaust Memorial Museum - Holocaust Encyclopedia, "Genocide of European Roma (Gypsies), 1939-1945".) According to the 2011 census, approximately **150,000** Roma live in Serbia. (Statistical Office of Republic of Serbia, 2011 Census, p. 21.)

After World War II and the liberation of Belgrade, Josip Broz Tito formed the Federal People's Republic of Yugoslavia (FPRY). Serbia became one (1) of six (6) constituent republics in the FPRY (along with Bosnia-Herzegovina, Croatia, Montenegro, Macedonia and Slovenia).

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

Serbia became a member of the Council of Europe 2003 and ratified the European Convention on Human Rights in 2004. As a result, suits against Serbia claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). As of July 2016, Serbia is a candidate country for the European Union.

1. Claims Settlement with Other Countries

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

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

- **Denmark** on 13 July 1959
- **Argentina** on 21 March 1964
- **United States** on 19 July 1948 and 5 November 1964

(*Id*.)

2. Specific Claims Settlements Between Yugoslavia and Other Countries

a. Claims Settlement with the United States

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

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

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

b. Claims Settlement with the United Kingdom

On 23 December 1948, Yugoslavia and the United Kingdom entered into a bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia regarding Compensation for British Property, Rights and Interests affected by Yugoslav**

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

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

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

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

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

C. PRIVATE PROPERTY RESTITUTION

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

> property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had

> other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

In August 1943, General Milan Nedić's government authorized the seizure of all Jewish property without any compensation through **Decree No. 3313**. (*See* Aleksandar Nećak & Ljubica Dajč, "Restitution in Serbia, A Never-Ending Story", Federation of Jewish Communities in Serbia (SAVEZ), 23 July 2009, ("*Aleksandar Nećak & Ljubica Dajč*"), p. 3.) A rough estimate of the present value of the total amount of Jewish private property confiscated during the Holocaust in Serbia is around EUR 500 million. (*Id.*, p. 4.)

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.[2] 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

[2] 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.)

against their will, or which were transferred under the pressure of the occupant to third persons, regardless of who is in their possession, or the basis of possession." (Nehemiah Robinson, "War Damage Compensation and Restitution in Foreign Countries", 16 *Law and Contemporary Problems* 347-376 (Summer 1951) ("*Robinson"*) (describing the terms of the law), p. 364.) The law provided for restitution *in rem*, except when restitution was contrary to interest of the economy, reconstruction or military security, in which case compensation would be paid. (*Id.*)

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

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

Within one (1) month of **Law No. 36/45** coming into effect, all properties coming within the provisions of the law had to be registered with and transferred to the **State Committee for National Property** (Državna Uprava narodnih dobara). (*Id.,* p. 365.) Until the court determined ownership, the state would administer the property. However, after one (1) year, if the property remained unclaimed, it would be transferred to state ownership. (*See* European Parliament – Directorate-General for Internal Policies, "Private Properties Issues Following the Change of Political Regime in Former Socialist of Communist Countries –Study", April 2010 ("2010 European Parliament Study"), p. 48 (in "Bosnia" section of the report but describing laws of Yugoslavia at the time).) In 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.[3] Municipal and regional commissions carried out the nationalization processes. (*Id.,* p. 121.) Key nationalization laws included **Law Nos. 98/46** and **34/48** (on

[3] 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.

Nationalization of Private Commercial Enterprises (as amended)) and **Law No. 28/47** (Fundamental Law on Expropriation).

Privatization of property finally began in the early 1990s. By 2009, the process was nearly complete. However, denationalization legislation was not passed at the same time as the privatization schemes. According to a 2010 European Parliament report, this situation complicated the restitution *in rem* of privatized companies. (*See id.*, p. 121.)

It has been observed that there was little political will – aside from campaign promises – to tackle the passage of denationalization/restitution legislation in Serbia after the fall of the Milošević regime in 2000 (which had been in power for 10 years). (Melina Rokai, "Restitution and Denationalisation of Property in Serbia, as Part of Transition and Democratization of the State: A Legal and Historical Approach", 46 Revista de Ştiinţe Politice (RSP) 52-62 (2015) ("*Rokai*"), p. 53.) There was a fear that by passing denationalization legislation, the government could lose votes, because many people had purchased nationalized property (land, flats, houses) in the early 1990s under the **1990 Law on Housing (Law No. 50/1990)**. (*Id.*, p. 57.) Many properties had been purchased at below market rates. (*Id.*)

2. 2005 Law on Reporting and Recording of Nationalised Property

As a precursor to a denationalization or restitution law, Serbia passed the **2005 Law on Reporting and Recording of Nationalized Property ("2005 Recording Law")**. The only purpose of the law was to collect information on the value of nationalized property located in Serbia. (*See* 2010 European Parliament Study, p. 123.)

Former owners were obliged to submit applications containing information about their property by **30 June 2006.**

A 2010 study by the European Parliament found a number of problems with the **2005 Recording Law**. These included that the law did not contain a definition of what 'nationalization' meant so that people would know whether to lodge an application, and in addition, if and when a denationalization law was passed, former owners would have to file *another* application for the return of their property. (*Id.*)

The **Directorate for Property** had only a duty to record the applications, not analyze them. (*See id.*, p. 123; *Medina*, p. 53.) In 2007, the **Directorate for Property** stated that 73,396 applications had been submitted (including 49,402 containing the requested data on the property under the law and 16,101 applications without the requested data). (2010 European Parliament Study, p. 124.) By 2009, more than 76,000 applications were received in total. (*Id.*)

Using the data from the applications lodged under the **2005 Recording Law,** the Tax Administration estimated the value of nationalized property contained in the timely applications to be EUR 102 to 220 billion. (*Id.*)

3. 2007 Draft Law on Denationalization

In 2007, under pressure from the Council of Europe, Serbia drafted the **2007 Draft Law on Denationalization ("2007 Draft Law")**. (*See Rokai*, p. 58.) Respect of property rights was seen as an essential precondition for joining the European Union.

The **2007 Draft Law** would have permitted claims for confiscated property dating back to 6 April 1941. (*Id.*) The **2007 Draft Law** also would have permitted persons who, for certain justified reasons (illness, living outside of Serbia, etc.), failed to file applications under the **2005 Recording Law** to still have an opportunity to apply for compensation. Compensation would have been paid to successful claimants who were Serbian citizens from a fixed fund of EUR 4 billion. (*Id.*) Payment would have been made via state bonds. (*Id.*)

The **2007 Draft Law** was never sent to the Serbian government for approval and was never adopted.

4. 2011 Law on Property Restitution and Compensation

Finally, in 2011, the **National Assembly of the Republic of Serbia** under then-Prime Minister Mirko Cvetković passed **Law No. 72/2011,** the **2011 Law on Property Restitution and Compensation ("2011 Law")**. The government described the law as "a significant requirement for candidate status for EU membership. With the adoption of this law Serbia will correct a great historical injustice. Serbia will be recognized as a modern European country that respects private property as an important part of human rights . . ." (*Rokai,* p. 59 (quoting statement made during a press conference by then Deputy Prime Minister Božidar Đelić).)

According to **Article 1**, the law only applies to property confiscated in the territory of the Republic of Serbia *after* 9 March 1945, from natural persons and legal entities. **Article 1** also states that the law applies to "restitution of property whose confiscation was the consequence of the Holocaust". Thus, on the face of the law, it is unclear as to whether the law actually applies to Holocaust-era confiscated property. To clarify this ambiguity, the government has since stated that "Article 1, Paragraph 2, of this Law, states that the law shall apply also on the restitution of the confiscated property as a consequence of the Holocaust on the territories forming an integral part of the territory of the Republic of Serbia today, *without stipulation of any date (year) limitation (deadline)*." (Green Paper on the Immovable Property Review Conference 2012, p. 89 (emphasis added).)

Article 5 defines eligible claimants. The law applies to claimants who are Serbian citizens and also to foreign citizens if the foreign citizens are from a country that recognizes the right of Serbian citizens to inherit property in that country. There are certain exclusions for foreign citizen claimants, including, for example, where the foreign citizen's country assumed responsibility for property claims under an international agreement.

Article 5 also states that the treatment of Holocaust-era heirless property will be dealt with in a separate special law.

The **2011 Law** prioritizes restitution *in rem* over compensation **(Article 8)**. Yet **Article 18** sets out nearly twenty-four (24) exceptions to the restitution *in rem* priority, as well as "other cases determined by the law." **Article 18** further states that nationalized enterprises (companies) shall not be returned. Skeptics of the law have noted that if all of the exemptions are applied, all that will be restituted will be "some unused land, cafes, restaurants and shops (which have not been sold by the Government or local authorities), and some flats where previous owners already live". (Đurđje Ninković, "The Law of Restitution of Property and Compensation in Serbia (2011): Heir Beware!", britić – The *British Serb Magazine*, 27 April 2012 ("*Ninković*").) In addition, **Article 20** gives preference to tenants over owners in certain key cases. Tenants can continue using land for up to 20 years for farming and 40 years for vineyards.

Where restitution *in rem* is not possible under the law, compensation shall be paid **(Article 8)** in government bonds and in cash for the payment of advance compensation **(Article 30)**. Unlike the **2007 Draft Law**, which would have created a fund of EUR 4 billion for compensation, the **2011 Law** allocated EUR 2 billion plus accrued interest (2% per year from 1 January 2015) for compensation. Compensation for claimants is capped at EUR 500,000 per property irrespective of the confiscated property's size **(Article 31)**. Claimants awarded the maximum of EUR 500,000 for a claim could end up just receiving a fraction of that amount, because the award (and all others) has to be valued as a proportion of the total amount of compensation awards and divided by the EUR 2 billion amount. (*See Ninković.*) Moreover, a formula laid out in **Article 31** further minimizes the compensation amount ("The amount of compensation shall be determined in Euros by multiplying the compensation basis with the coefficient equal to the ratio between the amount of two billion Euros and the total sum of individual compensation basis determined by decisions on the compensation right increased by the estimated undetermined bases referred to in paragraph 5 of the Article. The coefficient shall be expressed with two decimal places.") Compensation in bonds will be paid out over a 15-year period beginning in 2015 **(Article 35)**. Bonds owed to claimants who were over 70 years of age when the **2011 Law** entered into force (September 2011) will be paid out over a 10-year period **(Article 35)**. 10% of a claimant's award (not to exceed EUR 10,000) is payable in cash **(Article 37).**

According to **Article 42,** each claim had to be supported with specific documentation including information on the claimant, the location and identification of the property, the nationalization, inheritance, and any other evidence that may be of importance. The European Parliament has found that "Serbia's land registries are either not up to date or completely lacking in some parts of the territory", which would make providing documentation difficult. (2010 European Parliament Study, p. 125.)

The law created the **Agency for Restitution (Agencija za restituciju)** **(Article 51)**. The **Agency** is tasked with managing proceedings, deciding restitution claims, paying compensation, maintaining records, and providing assistance to claimants **(Articles 51,**

55). The **Agency** also took over the activities of the **Directorate for Restitution** that was created by the **2006 Law on Restitution of Religious Community Property (Law No. 4) (Article 63)** (*See* **Section D.1.**)

Claimants had two (2) years to file claims **(Article 42)**. The claim-filing process closed in **March 2014.** Late and incomplete claims were not accepted **(Article 43)**.

The **Agency** is obliged to make a decision on a complete case within six (6) months, or one (1) year for "particularly complex cases" **(Article 46)**. Claimants have the right to appeal to the "ministry competent for financial matters" within 15 days of receiving a decision from the **Agency**. At least one academic has noted that most former owners did not actually believe in the government's intentions with the **2011 Law,** which is evidenced by the fact that more than half of the applications for restitution and compensation were filed in the final month before the application deadline. (*See Rokai*, p. 59.)

In December 2014, the Serbian government passed the **Law on Amendments of the Law of 2011 ("Amendment to 2011 Law")**. The **Amendment to the 2011 Law** postpones the government's financial compensation obligations under the **2011 Law**. The effect of the postponement is that bonds will not be paid until 30 June 2017 (delay of two and a half (2.5) years) and advance payments will not start being paid until 31 March 2017 (delay of two (2) years). (*See* Karanović & Nickolić Law Office, "Real Estate – Recent News Highlights", January 2015 (last accessed 21 October 2015).)

According to the Serbian government, approximately 76,000 claims were filed under the **2011 Law**. (Government of the Republic of Serbia Response to ESLI Immovable Property Questionnaire, 17 September 2015, p. 111.) As of August 2015, 34,000 claims (44%) of all submitted claims have been resolved. (*Id.*) Of those, 3,700 have been accepted and 11,100 have been denied.[4] (*Id.*) We do not have additional information as to the value of the awards, the average payout, the number of successful claims where

[4] The statistical figures were given by the Agency for Restitution in response to the following questions in the Questionnaire about the **2011 Law on Property Restitution and Compensation**:

> Q. How many claims have been filed?
> A. About 76,000 claims in total.
> Q. How many claims have been finalized?
> A. Up to August 2015 the number of resolved cases was about 34,000 which constitutes about 44 percent of all submitted claims.
> Q. How many claims have been accepted?
> A. 3,700
> Q. How many claims have been denied?
> A. 11,100.

(Government of the Republic of Serbia Response to ESLI Immovable Property Questionnaire, 17 September 2015, p. 111.)

restitution *in rem* versus compensation was awarded, or the percentage of claims and awards that relate to Holocaust victims.

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 Serbia, consisting of 10 communities, is the **Federation of Jewish Communities of Serbia ("SAVEZ"). SAVEZ** was founded in 1919. (*See Aleksandar Nećak & Ljubica Dajč*.)

1. 2006 Law on the Restitution of Property to Churches and Religious Communities

In 2006, Serbia passed a communal property restitution law, **2006 Law on the Restitution of Property to Churches and Religious Communities ("2006 Religious Property Law")**. There were a number of reasons the communal property law was passed before the **2011 Law on Property Restitution and Compensation** (private property law), including that the number of religious properties and identities of the religious institutions that would be claimants was known. Also, communal property was comparatively easier to restitute *in rem*. (*Medina*, p. 55.)

The **2006 Religious Property Law** applied to religious properties confiscated *after* 1945 (**Article 1)**. This meant that Jewish communal property confiscated during the Holocaust (i.e., *before* 1945) was not eligible for return under the law. The European Commission against Racism and Intolerance's Report on Serbia in 2011 recommended that the **2005 Religious Property Law** be amended "to ensure that property confiscated before 1945 is restituted" and the "restitution of property is conducted satisfactorily and without discrimination." (European Commission against Racism and Intolerance, "ECRI Report on Serbia (fourth monitoring cycle)", 31 May 2011, p. n.13.) However, no such amendments have been made.

Under **Article 6**, eligible claimants were churches and religious communities and their legal successors. **Article 6** also had the effect of severely limiting the recovery of Jewish communal property. According to the **World Jewish Restitution Organization ("WJRO")**, roughly 60 property claims filed by **SAVEZ** were rejected because the government did not find that **SAVEZ** was the heir or successor to Jewish communal

properties formerly owned by Jewish institutions that had since ceased to exist. (*See* World Jewish Restitution Organization, "Position Paper on Restitution in Serbia", February 2014, p. 7.) The government rejected **SAVEZ's** claims notwithstanding the fact that the bylaws of the now defunct Jewish organizations stated that the Jewish community should inherit the property if the organizations ceased to exist. (*Id.*) As recently as 2015, members of the Serbian government have stated that no Jewish community in Serbia is recognized as the legal successor to the Jewish community targeted during the Holocaust era. (*See* European Shoah Legacy Institute, "Report on Visit of Ms. Halyna Senyk to Belgrade, Republic of Serbia", 25 March 2015 ("2015 ESLI Belgrade Visit Report"), p. 2.)

The **2006 Religious Property Law** prioritizes restitution *in rem* over compensation **(Article 4)**. Monetary compensation is only paid when restitution *in rem* or payment of substitute property is not possible **(Article 4)**. Eligible property includes agricultural land, forests and forest land, residential and commercial buildings, flats and business premises, and movable property of cultural, historical or artistic importance **(Article 9)**.

Compensation can be paid in government bonds or in cash **(Article 16)**. The amount of compensation is determined by the value of the property at the time of seizure (**Article 17)**. No payment will be made by the government for lost profits due to inability to use the premises **(Article 19)**.

The **2006 Religious Property Law** created the **Directorate for Restitution (Article 21)**. The **Directorate** was charged with managing proceedings, deciding restitution claims, paying compensation, maintaining records, and providing assistance to claimants **(Article 22)**. (Pursuant to **Article 63** of the **2011 Law on Property Restitution and Compensation**, the duties undertaken by the **Directorate for Restitution** were transferred to the **Agency for Restitution**).

According to **Article 26**, restitution or compensation applications had to contain information concerning the type, size and location of the property as well as the manner in which it was confiscated. Applicants also had to provide proof of capacity (i.e., whether the applicant is the former owner or the successor). Pre-1945 documentation belonging to Serbia's Jewish communities has not survived. Documentation for Jewish properties confiscated under the Communist regime, however, still exists. (*See* Draško Djenović, "SERBIA: Very slow official implementation of Restitution Law", Forum 18 News Service, 12 March 2007 (relying on information provided by Aca Singer, then President of SAVEZ).)

The claim application deadline was **30 September 2008 (Article 25)**. The deadline was not extended. The **Directorate** had six (6) months from the date of submission to issue a decision to an applicant **(Article 31)**. **Directorate** decisions cannot be directly appealed, but applicants can file an administrative claim **(Articles 32).**

SAVEZ timely filed more than 520 communal property claims on behalf of the Jewish community in Serbia and as of February 2016, 23 claims have been approved.

The Serbian Orthodox Church, the Roman Catholic Church, the Jewish community, the Roman Orthodox Church, the Reformation Church, the Islamic community, the Evangelical Church, and the Association of Christian Baptist Churches collectively filed 3,049 restitution claims during the application period. (*See* United States Department of State – Bureau of Democracy, Human Rights, and Labor, "2009 Human Rights Report: Serbia" 11 March 2010.) According to the Serbian government, as of September 2015, 20,867 square meters of land and over 8,300 square meters of total surface of buildings have been returned to the Jewish community through the restitution process (Government of the Republic of Serbia Response to ESLI Immovable Property Questionnaire, 17 September 2015, p. 151.)

No new communal property legislation, and no new amendments to existing legislation, has been passed since Serbia endorsed the Terezin Declaration.

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 [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.)

Article 5 of the **2011 Law on Property Restitution and Compensation** specifically states that Serbia will address the issue of heirless Jewish property in a subsequent law. In February 2016, Serbia passed its heirless property law.

1. 2012 Agency for Restitution Instruction (on Property Suspected to Have Been Acquired during the Holocaust)

In June 2012, the Director of the **Agency for Restitution** (established under the terms of the **2011 Law on Property Restitution and Compensation**) issued a special internal Instruction to the **Agency.** The Instruction set out certain actions that must be taken

regarding property suspected of having been acquired during the Holocaust. (Green Paper on the Immovable Property Review Conference 2012, pp. 90-91.)

The Instruction requires **Agency** officials, when examining restitution or compensation claims filed under the **2011 Law on Property Restitution and Compensation**, to take all necessary measures to determine beyond a reasonable doubt whether the property in issue was acquired as a result of dispossession during the Holocaust. (*Id.*) Compensation claims for property acquired as a result of the Holocaust will be declared inadmissible. (*Id.*) The **Agency** will then bring such decisions to the attention of the **Federation of Jewish Communities of Serbia ("SAVEZ").** The matter may also be referred to the Public Prosecutor of the Republic of Serbia to consider whether war crimes charges are appropriate. The government will also thereafter protect the property in question. The Serbian government has stated that it put in place provisions for the safekeeping of heirless property "pending final adoption of [the] separate law which will define the status of Jewish property having no successors, namely heirless property." (*Id.*) The **Agency** has already prevented several transfers of property to persons who acquired property during the Holocaust, in particular in the central Belgrade area. (*Id.*)

2. 2016 Law on Elimination of Consequences of Property Confiscation of Heirless Holocaust Victims

In 2014, the Ministry of Justice created a working group to draft the text of the heirless property law. (*See* European Commission, "Serbia Progress Report", October 2014, p. 49.) The working group included representatives of the government, SAVEZ, WJRO, and academia.

In February 2016, with the support of Prime Minister of Serbia, Aleksandar Vučić, the National Assembly passed the proposed heirless property legislation. The passage of the **2016 Law on Elimination of Consequences of Property Confiscation of Heirless Holocaust Victims ("2016 Heirless Property Law")** makes Serbia one of the first countries in Eastern Europe or the former Soviet Union to have enacted a Jewish heirless property law.

Key provisions of the law include that the **Federation of Jewish Communities in Serbia (SAVEZ)** will receive EUR 950,000 per year for 25 years beginning in 2017, to support the revitalization of Serbian Jewish communities and that heirless Jewish properties will be restituted *in rem* to Serbian Jewish communities **(Article 9)**. Jewish communities in Serbia are permitted to file restitution claims for heirless property under the law. Restitution of heirless property *in rem* to the Jewish community is linked to the **2011 Law on Property Restitution and Compensation** such that the exceptions to restitution written into the 2011 law apply equally here. The Jewish communities have **three (3) years** from when the law comes into force to file claims with the **Agency for Restitution** for the restitution of property of former Jewish owners that is believed to be heirless **(Article 14)**. As a safeguard measure, Holocaust survivors and their heirs will have the opportunity to obtain the return of their property that was believed to have been heirless and was transferred to Jewish communities as heirless property under the law. In this

instance, upon proof of legal successorship, the Jewish community will be obliged to return the property in issue to its former owner or heirs within one (1) month of receipt of such request. **(Article 21)**.

Funds received by **SAVEZ** and the proceeds of restitution to the Jewish communities will be used to support: the social welfare of Jews living in Serbia and Serbian Holocaust survivors living in Serbia and abroad; Holocaust research, commemoration and education; and sustaining Jewish communities and religious activities (**Article 22**).

A Supervisory Board will monitor management of the disbursed funds. Members will include individuals from **SAVEZ**, the **World Jewish Restitution Organization (WJRO)** and the Serbian government **(Article 23)**.

F. BIBLIOGRAPHY

Articles, Books and Papers

Draško Djenović, "SERBIA: Very slow official implementation of Restitution Law", Forum 18 News Service, 12 March 2007 (http://www.forum18.org/archive.php?article_id=929%20-%20Article%20re:%20problems%20in%20getting%20property%20back) (last accessed 13 December 2016).

Ljiljana Dobrovšak, "Restitution of Jewish Property in Croatia", Limes Plus Journal of Social Sciences and Humanities: Holocaust and Restitution, 2/2015, pp. 65-88 (http://www.limesplus.rs/limesplus/eng/images/limes5/2015-2-Dobrovsak.pdf) (last accessed 13 December 2016).

Embassy of the United States – Serbia, "Restitution" (https://serbia.usembassy.gov/service/restitution.html) (last accessed 13 December 2016).

European Commission against Racism and Intolerance, "ECRI Report on Serbia (fourth monitoring cycle)", 31 May 2011 (http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/serbia/SRB-CbC-IV-2011-021-ENG.pdf) (last accessed 13 December 2016).

European Commission, "Serbia 2014 Progress Report", October 2014 (http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf) (last accessed 13 December 2016).

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.

European Shoah Legacy Institute, "Report on Visit of Ms. Halyna Senyk to Belgrade, Republic of Serbia", 25 March 2015 (http://shoahlegacy.org/wp-content/uploads/2015/03/Report-on-the-Trip-to-Serbia_27march2015_final.pdf) (last accessed 13 December 2016).

Government of the Republic of Serbia Response to ESLI Immovable Property Questionnaire, 17 September 2015.

Green Paper on the Immovable Property Review Conference 2012, (Serbia, pp. 85-94) (http://shoahlegacy.org/wp-content/uploads/2014/06/Green_paper_on_the_immovable_property_review_conference_2012.pdf) (last accessed 13 December 2016).

Richard B. Lillich and Burns H. Weston, *International Claims, Their Settlement by Lump Sum Agreements* (1975).

Aleksandar Nećak & Ljubica Dajč, "Restitution in Serbia, A Never-Ending Story", Federation of Jewish Communities in Serbia (SAVEZ), 23 July 2009 (http://www.holocausteraassets.eu/files/200000352-8e2f6fc883/WG_IP_2_3_Necak_Prague_Conference_govor_A._Necaka_engl.doc) (last accessed 13 December 2016).

Đurđje Ninković, "The Law of Restitution of Property and Compensation in Serbia (2011): Heir Beware!", britić – *The British Serb Magazine*, 27 April 2012 (http://www.ebritic.com/?p=183744) (last accessed 13 December 2016).

Vesna Perić Zimonjić, "SERBIA: Mixed Feelings on Restitution Law for WWII Property", Inter Press Service News Agency, 27 September 2011 (http://www.ipsnews.net/2011/09/serbia-mixed-feelings-on-restitution-law-for-wwii-property/) (last accessed 13 December 2016).

Dušan Rakitić, "Achievements and Future Goals of the Government of Serbia in the Field of Religious Freedom", 2003 B.Y.U. L.Rev. 625 (2003).

Republic of Serbia, Agency for Restitution (Agencija za restituciju), (http://www.restitucija.gov.rs/eng/index.php) (last accessed 13 December 2016).

Nehemiah Robinson, "War Damage Compensation and Restitution in Foreign Countries", 16 Law and Contemporary Problems 347-376 (Summer 1951) (http://scholarship.law.duke.edu/lcp/vol16/iss3/2) (last accessed 13 December 2016).

Melina Rokai, "Restitution and Denationalisation of Property in Serbia, as Part of Transition and Democratization of the State: A Legal and Historical Approach", 46 Revista de Ştiinţe Politice (RSP) 52-62 (2015) (http://cis01.central.ucv.ro/revistadestiintepolitice/files/numarul46_2015/5.%20Restitution%20and%20Denationalization%20of%20Property%20in%20Serbia,%20as%20Part%20of%20Transition...%20pp.%2052-62.pdf) (last accessed 13 December 2016).

"Sekulic: Beginning of the End of Restitution", International Radio Serbia, 3 May 2014.

Statistical Office of the Republic of Serbia, "2011 Census of Population, Households and Dwellings in the Republic of Serbia: Religion, Mother Tongue and Ethnicity, Data by municipalities and cities", February 2013 (http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4_Veroispovest.pdf) (last accessed 13 December 2016).

Tel Aviv University, "Report on issues related to property restitution and compensation in former Communist countries", November 2012, (Serbia, pp. 55-60) (http://www.kantorcenter.tau.ac.il/sites/default/files/Property%20Restitution%20Report%20251112.pdf) (last accessed 13 December 2016).

United States Department of State – Bureau of Democracy, Human Rights, and Labor, "2009 Human Rights Report: Serbia", 11 March 2010 (http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136056.htm) (last accessed 13 December 2016).

United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Axis invasion of Yugoslavia" (http://www.ushmm.org/wlc/en/article.php?ModuleId=10005456) (last accessed 13 December 2016).

United States Holocaust Memorial Museum – Holocaust Encyclopedia, "Genocide of European Roma (Gypsies), 1939-1945" (http://www.ushmm.org/wlc/en/article.php?ModuleId=10005219) (last accessed 13 December 2016).

World Jewish Restitution Organization, "Holocaust-Era Confiscated Communal and Private Immovable Property: Central and East Europe", June 2009, (Serbia, pp. 27-28).

World Jewish Restitution Organization, "Position Paper on Restitution in Serbia", February 2014 (http://wjro.org.il/cms/assets/uploads/2015/12/RestitutionInSerbia.pdf) (last accessed 13 December 2016).

World Jewish Restitution Organization, "Serbia Operations" (http://wjro.org.il/our-work/restitution-by-country/serbia/) (last accessed 13 December 2016).

Individuals

Academics

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

Morgan Lewis & Bockius LLP

Seth Gerber, Partner, Morgan Lewis, Los Angeles.

Lisa Veasman, Associate, Morgan Lewis, Los Angeles.

Laura della Vedova, Associate, Morgan Lewis, Los Angeles.

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)