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

**CONTENTS**



## A. EXECUTIVE SUMMARY

Yugoslavia (which included present day Slovenia, Croatia, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia) was invaded by the Axis powers (Germany, Bulgaria, Hungary, Italy) during World War II. Slovenia was annexed by Germany, Italy and Hungary. The main opposition to the Axis forces in Slovenia were the Communist-led Liberation Front and their armed units, the Partisans.

The occupation lasted from 1941-1945. The occupying Axis powers targeted Slovenian Jews, Roma, Catholic clergy and other opposition forces in Slovenia during World War II. The Italian occupiers however, did not attack the Catholic clergy. In 1939, the Jewish population in Slovenia was small, numbering 1,338. Nearly 90% of Jews were killed during the war, with the majority having died at Auschwitz. An estimated 100-400 Jews live in Slovenia today. The number of Slovenian Roma killed during the war has been, to date, incompletely researched. Less than 1% – 3,300 according to the 2002 census, but with unofficial estimates ranging between 7,000-12,000 – of Slovenia's population today are Roma.

Immediately after the war, in May 1945, Yugoslavia enacted **Law No. 36/45** (on Handling Property Abandoned by its Owner during the Occupation and Property Seized by the Occupier and his Collaborators). The expansive restitution and compensation law addressed property confiscated during World War II where the owners had to leave the country and were deprived of their property against their will, or where property was transferred under the pressure of the occupier to third persons. The restitution measures were short-lived. As Yugoslavia fell under Communist rule, widespread nationalization – which this time occurred irrespective of race, religion or ethnicity – resulted in a second wave of property confiscations.

Slovenia gained its independence in 1991 and that same year passed the **1991 Denationalization Act**. The Act addresses the restitution of private property nationalized

between 1945-1963. In some cases, the law has also been used to gain return of religious property. No concrete solutions have been reached between the government and the **Jewish Community of Slovenia** (**JCS**) and other Jewish organizations regarding the status of communal property restitution and how heirless property should be addressed.

*Private Property.* Claims by some foreign citizens relating to wartime confiscations and subsequent nationalizations were settled in the post-World War II years through bilateral agreements with Yugoslavia and at least 12 foreign governments. Slovenian citizens, however, had to wait until the early 1990s to seek return of confiscated property.

In 1991, Slovenia passed the **1991 Denationalization Act**. The law chiefly addressed private property. Property subject to restitution or compensation under the Act included property nationalized between 1945 and 1963. Restitution and compensation under the **Act** was limited to persons who were Yugoslav citizens at the time of the taking. A **1998 Amendment** permitted foreign nationals to lodge claims only if their property was taken from a Yugoslav citizen and if the foreign national's country also granted restitution rights to Slovenian nationals. Restitution *in rem* was prioritized, but where property could not be returned, compensation was principally paid in 20-year bonds. A total of 39,635 claims were lodged and, while the Ministry of Justice states that 99.9% of claims have been finalized (25 years after the law was enacted), the process has suffered from a number of issues. Problems – in addition to the citizenship requirement – have included: complexity in the claims process, which involves multiple administrative units and courts; difficulty in obtaining necessary documentary information because much of it was destroyed; a years-long backlog in deciding claims; a lack of resources and trained personnel to handle cases; inconsistent outcomes; as well as negative public response. The restitution reciprocity requirement for foreign nationals and alleged excessive length of proceedings have been the subject of applications to the **European Court of Human Rights.**

*Communal Property.* During World War II, the Slovenian Jewish population was quite small. At the time, only two synagogues operated in the whole country. Despite the lack of specific legislation, communal property has been returned to the Jewish community in Slovenia. Yet restitution of communal property to the Jewish community of Slovenia remains an open issue. Between 2000 and 2011, a commission was been formed and studies prepared to examine the status of the restitution of Jewish communal property in Slovenia. No additional legislation or further agreements on the return of property have resulted from the commissions or the reports.

*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.

Slovenia has not made any special provisions for heirless property from the Shoah era. In fact, the **1945 Restitution Law** provided that property not claimed within the one (1)-year statute of limitations period, became the property of the Committee for National Property (i.e., property of the Yugoslav state).

Slovenia 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 Slovenia has been received.

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

On 6 April 1941, the Axis powers (Germany, Bulgaria, Hungary, Italy) invaded Yugoslavia (which included present-day Slovenia, Croatia, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia). Germany annexed a large part of northern Slovenia, Italy annexed southern Slovenia, and Hungary annexed a smaller portion of northeastern Slovenia. The three (3) occupying powers absorbed the Slovenian territory into their states and planned to permanently dissolve Slovenia. The occupation of Slovenia lasted from 1941-1945.

The German, Italian and Hungarian occupying powers deported Slovenian Jews between 1942 and 1944 and (along with collaborating Slovene militia) also targeted the Communist-led Liberation Front and their armed Partisan units. The Nazi-occupying forces also targeted the Roma and the Catholic clergy in Slovenia.

On the eve of World War II, in 1939, the Jewish population in Slovenia was small, numbering **1338**.[1] Nearly 90% of Slovenian Jews were killed during the war, with the majority having died at Auschwitz. (*See* International Holocaust Remembrance Alliance, "Slovenia: Overview".) Most scholars estimate **100-400** Jews live in Slovenia today, with most living in the capital, Ljubljana. The **Jewish Community in Slovenia** – the country's only Jewish organization – favours the higher figures in its estimates of the current Jewish population. (*Kranjc*, p. 605.)

[1] Other estimates of the number of Jews in Slovenia right before the Axis invasion **exceed 1500**. (*See, e.g.*, Gregor Josef Kranjc, "19. On the Periphery: Jews, Slovenes, and the Memory of the Holocaust, *in Bringing the Dark Past to Light: The Reception of the Holocaust in Postcommunist Europe* (John-Paul Himka & Joanna Beata Michlic, eds., 2013 (*"Kranjc*"), p. 592.)

The number of Slovenian Roma killed during the war has been, to date, incompletely researched**. Less than 1%** (**3,300** according to the 2002 census, but with unofficial estimates ranging between **7,000-12,000**) of Slovenia's population today are Roma.

In October 1944, after the liberation of Belgrade, Josip Broz Tito formed the Democratic Federal Yugoslavia (DFY) that lasted until the end of 1945. The name was then changed to the Federal People's Republic of Yugoslavia (FPRY). Slovenia, as the "People's Republic of Slovenia" became one (1) of six (6) constituent republics in the FPRY (along with Bosnia, Croatia, Macedonia, Montenegro, and Serbia).

As a constituent republic in the FPRY, Slovenia 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), and Slovenia was known as the "Socialist Republic of Slovenia". Communist rule in Yugoslavia continued through the 1980s.

By the late 1980s, the centralized control of the constituent republics of Yugoslavia began to break down. In 1990, the first multi-party elections took place in Slovenia, with nearly 90% of people voting for independence in a referendum. On 25 June 1991, Slovenia declared its independence as the "Republic of Slovenia". Immediately after its declaration of independence, the "Ten Day War" broke out between Slovenia and Croatia (which also declared independence on 25 June 1991) on the one hand and the Yugoslav People's Army (JNA) and Yugoslav government on the other hand. A ceasefire was later brokered in 1991, in which Slovenia and Croatia assented to a three (3)-month delay in the implementation of Slovenian and Croatian independence and the Yugoslav government in turn withdrew JNA forces.

Slovenia became a member of the Council of Europe 1993 and ratified the European Convention on Human Rights in 1994. As a result, suits against Slovenia claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Slovenia has been a member of the European Union since 2004.

## 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.)

Laws passed and practices adopted by occupying German, Italian and Hungarian governments during World War II stripped Jews, Roma and other targeted groups of their rights, property and businesses.

### 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]

[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.)

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 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).)

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

Scholars have found that most surviving Jewish Slovenians emigrated to Israel at this time, and their properties and businesses were nationalized. (*See Kranjc*, p. 603.) Kranjc notes that "in some cases the communist regime justified nationalization by the German-sounding last names of the Jewish owners – their property was thus deemed to belong to enemy aliens." (*Id.*)

As part of Slovenia's transformation to a market economy in the early 1990s, the issue of restoring individual property rights returned to the forefront. In 1991, the same year Slovenia became an independent state, the **1991 Denationalization Law** was enacted.

### 2. 1991 Denationalization Act

In 1991, the National Assembly of the Republic of Slovenia (Parliament) enacted the **1991 Denationalization Act** (Official Gazette RS, No. 27/91 and amendments 31/1993, 65/1998, 66/2000). The law "governs the legal matter of denationalization of property which had passed into state ownership through previous legislation such as respecting agrarian reform, nationalizations and confiscations as well as by other rules and regulations and in different ways such as also specified in this Act." (**Article 1.**) The law covered the restitution/compensation for private property, but in some instances religious communities have also been able to use the law to obtain return of property.

Property Covered by the Act

**Article 2** described that restitution *in rem* is preferred where possible, but when not possible, compensation may be granted via alternate assets, securities (bonds) or cash. Real estate and other compensation recovered through denationalization under the law will not be taxed, but inheritance tax on property inherited under the law shall be paid (**Article 7**).

**Articles 3-5** described the type of property subject to restitution or compensation. Eligible property included property nationalized pursuant to any one of 29 enumerated nationalization laws enacted between 1945 and 1963 (**Article 3**); property that passed into state ownership on the grounds of a regulation not enumerated in **Article 3** but which came into effect prior to the implementation of the 1963 Constitution of the SFRY (**Article 4**); property transferred into state ownership on the grounds of a legal agreement concluded under threat, force or guile (**Article 5**).

[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.

"Property" under the law included movable and immovable property, real estate, enterprises and equity shares in enterprises owned by partnerships or joint stock companies (**Article 8**). Immovable property that could not be recovered *in rem* included: property used for certain health, educational, cultural, or public services where finding a replacement property for those services would entail disproportionately high costs (**Article 19**).

More specifically, if real estate property could not be restituted *in rem*, claimants were entitled to just compensation in the form of an equity share in the legal entity or stock owned by the Republic of Slovenia, or in bonds **(Article 42)**. If it was impossible to restitute *in rem* an enterprise which was in state ownership, compensation would be paid in an amount equal to the claimant's former equity share in the enterprise **(Article 43)**. The value of nationalized property was determined by the condition of the property when it passed into state ownership and by taking into account its present value (**Article 44**). 20-year compensation bonds with a 6% interest rate would be issued and could be redeemed twice annually (**Article 45**).

Compensation assets were to be pooled in a **Compensation Fund of Slovenia**, which included assets from the Development Fund of the Republic of Slovenia, a portion of the proceeds from the sale of state-owned businesses and properties to people who were not claimants under the **1991 Denationalization Act**, the Farmland and Forest Fund of the Republic of Slovenia, and other sources provided by the law **(Article 49**).

Standing for Claimants

Persons had legal standing to bring a restitution/compensation claims under the law if they were "Yugoslav citizens and if such citizenship was recognized by Law or by an international treaty after May 9, 1945" (**Article 9**) or, if "at the time of the nationalization of their property, were not Yugoslav citizens, but had had permanent residence upon the territory of the present Republic of Slovenia and whose citizenship in addition was being recognized after September 5, 1947 on the grounds of Law or international treaty" (**Article 10**). A **1998 Amendment** to the **1991 Denationalization Act** added a reciprocity provision to the standing requirement, stating that a foreign resident could only file a claim if the foreign claimant's country of origin also granted restitution to Slovenian nationals.

The Act and the amendment largely denied restitution to foreign citizens. Most Slovenian Jews who survived World War II either fled the country after World War II or never returned. As a result, most of Slovenia's former Jewish population are now foreign citizens and were unable to file restitution claims. This included Slovenian Jews who immigrated to Israel in the late 1940s and had to renounce their citizenship and forfeit their property in order to leave the country. In addition, as per the terms of the peace treaty between Hungary and Yugoslavia, Hungarian heirs of Slovenians were not allowed to inherit property. Most Slovenian Jews lived near the border with Hungary and had families in Hungary, which meant that a significant amount of property that was not

actually heirless, was declared heirless. Slovenian courts also often deemed property heirless before heirs had time to return and claim the property.

Standing to file the claim lay with the former owner (entitled claimant) or their legal successor (**Article 61**).

Claims Procedure

Initially, the claims filing deadline was 18 months from the date the **1991 Denationalization Act** came into effect, by **1993** (**Article 64**)**.** However, many claims were filed beyond the limitations period.

Claims had to be lodged with the local government administrative units (and ministries) where the real estate was nationalized (**Articles 3**-**4**). Claims had to be made to local courts where the asset was nationalized by a legal transaction based on threat, force or guile of a state organ or authority (**Articles 5**, **56**).

Claims had to include specific information about the property in issue, including the record of the property's nationalization or a publication of the Official Gazette that published the grounds for a particular decree that specifically mentioned the object of nationalization; a citizenship certificate of the claimant; indication of the relation between the claimant ("recoverer"), the property in issue, and those who were also considered legal successors of the property, and proof of inheritance where the claim was filed by the legal successor of the claimant; where the claimant was not a permanent resident of Slovenia, the name of the person with power of attorney for the proceedings; claims for immovable property should have been accompanied by a Land Registry Excerpt and additional data on the location and use of the land at the time of nationalization. (*See* **Article 62.**) Parties to denationalization proceedings under the law were not liable for legal fees (**Article 71.**)

In practice, claimants faced a number of limitations in gathering the necessary documentation. Evidence and accurate records were often either non-existent or extremely difficult to locate for the relevant properties. Slovenia lacks adequate land ownership records and access to existing archived records is often disorganized and limited. Registered property titles are inconsistent, land records were lost or destroyed at the time of nationalization, and small rural land grants were not properly recorded.

Once all documentation was submitted, the administrative unit would undertake a fact-finding procedure in which all of the evidence was considered and a report prepared on the "factual and legal disposition of the matter." The report was thereafter submitted to the parties, who had 15 days to propose modifications to the report. The administrative unit could accept or reject proposed changes to the report (**Article 65**). Following this period, the administrative unit would decide on the claim, issue any applicable decrees, and order any Land Registry changes (**Article 66**).

During the claims process, the claimant (and other parties) could arrive at a settlement regarding the property in issue (**Article 69**).

Decrees on denationalization were executed by: regular courts in the case of recovery of real estate; the Development Fund in cases of determination of an equity share in an enterprise or in case of compensation in shares; the Compensation Fund of Slovenia in the case of compensation bonds; and the Ministry of Finance in the case of compensation in cash (**Article 59**).

Both the claimant and the current holder of the property could appeal denationalization decisions. Certain appeals had to be made to the relevant ministry (e.g., Ministry of Agriculture, Forest and Food, Ministry of Industry and Building, Ministry of the Environment) (**Article 57**) or to a second instance court (**Article 56**).

Claim resolution slowed over the years due to backlogs, lack of resources, lack of trained personnel to handle and investigate claims, and changes in the **1991 Denationalization Act** itself. (U.S. Department of State, Bureau of European and Eurasian Affairs, Property Restitution in Central and Eastern Europe – Slovenia, 3 October 2007.) Moreover, claimants complained about a lack of transparency in the claims process and that certain procedures were inconsistent with the law. (*Id.*)

The Slovenian government adopted numerous instructions revising the initial restitution process under the **1991 Denationalization Law**, including the **Instructions for Implementing Measure for Accelerating Denationalization** issued by the Ministry for Environment and Space in 2001. (Vlado Bevc, "Property Restitution in Slovenia—Ten Years of Procrastination", The South Slav Journal, 22 (85-86), Autumn-Winter 2001, pp. 77-84, n.8.) Unfortunately, the instructions often made the successful resolution of claims more difficult or even impossible. In some cases, the instructions, for example, required more documentary evidence or government records that were largely never created, or transferred claims to the court system where a higher burden of proof was required. (*Id.*) Technicalities were also often used to reject claims. (*Id.*)

Another competing factor in the early 2000s was that the media often characterized claimants as greedy or acting against the health of the nation. (*Id.*)

Finally, an additional roadblock to restitution and, more basically, a general understanding of the Holocaust in the Slovenia, is the "persistent trivialization of the Holocaust, still voiced by Slovene political leaders who claim that the fate of the Jews was intended for occupied Slovenes." (*Kranjc*, p. 592.)

Despite these difficulties, today – 25 years since the law was enacted – all but a few outstanding claims have been processed. 39,635 property claims were lodged under the **1991 Denationalization Act**. According to the Ministry of Justice in Slovenia, 99.9% of the claims have been finalized.

Data is lacking for the overall number of successful restitution claims and how much property the Slovenian government returned to residents. No concrete data exist to determine the number of persons, if any, whose property was confiscated during the Holocaust and who received property through the restitution/compensation process, and the value of that property.

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

### 3. Notable European Court of Human Rights Decisions Relating to Denationalization Claims in Slovenia

#### a. *Smiljanić v. Slovenia*

In its 2 June 2009 decision in ***Smiljanić v. Slovenia,*** the **ECHR** considered whether Slovenia's citizenship requirement in the **1991 Denationalization Act** violated **Article 1** of **Protocol No. 1** to the **European Convention on Human Rights** ("Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided by law and by the general principles of international law"). (*Smiljanić v. Slovenia*, ECHR, Application No. 481/04, Decision of 2 June 2009.)

The applicant was a Croatian national, who had submitted a restitution request under the **1991 Denationalisation Act** for land in Slovenia that belonged to his father and father's family until it was nationalized in 1947 and 1948.

Article 68 of the Constitution of the Republic of Slovenia stated that foreigners could not acquire title to land except by inheritance and under the condition of reciprocity. The **1998 Amendment** to the **1991 Denationalisation Act** permitted foreign citizens to recover property in Slovenia on the condition that the property was confiscated from a Yugoslav national and the claimant's state of origin recognized a reciprocal restitution right for Slovenian nationals.

The Črnomelj Administrative Unit (Upravna enota Črnomelj) granted the applicant's claim and ordered the Farmland and Forest Fund of the Republic of Slovenia ("Fund") to return the property in issue to the applicant.

The Fund appealed the decision to the Slovenian Ministry for Agriculture, Forestry and Food, which ultimately voided the original administrative unit's decision granting applicant's restitution claim because the property was owned by multiple family members (and therefore could not be returned to one heir) *and* the reciprocity condition was not met. In Croatia, Slovenian nationals were excluded from the right to restitution of property.

Appeals to the Slovenian Administrative Court and the Supreme Court, as well as a constitutional complaint lodged with the Constitutional Court, were dismissed. The

Slovenian courts agreed that the reciprocity agreement was not satisfied, and therefore the applicant could not acquire the claimed property.

The ECHR found the application to be inadmissible, finding that under **Article 1** of **Protocol 1** of the **European Convention on Human Right**, applicant's restitution request did not amount to an enforceable claim under domestic law. The limited scope of restitution under Slovenia's Constitution and **1991 Denationalization Act,** and in particular, the reciprocity condition for foreign nationals, were valid and did not infringe on the applicant's rights. Thus, the applicant's claim for restitution of his family's land "did not amount to an enforceable claim sufficiently established in domestic law to fall within the ambit of Article 1 of Protocol No. 1". (*Smiljanić,* ¶ 49.)

### b. ***Sirc v. Slovenia***

In its 8 April 2008 judgment in ***Sirc v. Slovenia***, the **ECHR** considered whether the alleged excessive length of several domestic restitution proceedings violated **Article 6 § 1** of the **European Convention on Human Rights** ("In the determination of his civil rights and obligations . . . , everyone is entitled to a . . . hearing within a reasonable time by [a] . . . tribunal . . . ."). (*Sirc v. Slovenia*, ECHR, Application No. 44580/98, Judgment of 8 April 2008.)

The applicant was a Slovenian and British national. In 1947, the applicant and his father were convicted of collaborating with Western powers, which required forfeiture of their property to the State. The trial was later determined to be a sham, and the Supreme Court ordered a retrial.

In 1991, the court in Ljubljana terminated the retrial proceedings ordered by the Supreme Court and quashed the convictions of the applicant and his father. The applicant then filed various actions to recover his father's property under a law that allowed restitution of property forfeited through penal proceedings and involving jurisdiction under the **1991 Denationalization Act.**

The proceedings instituted by the applicant to recover his father's property continued for more than 10 years. The actions were still pending when the applicant filed a complaint with the **ECHR** in 1998 regarding the length of the domestic proceedings.

A **2006 Act on Protection of the right to trial without undue delay** ("**2006 Act**"), which came into effect 1 January 2007, provided two remedies to expedite domestic proceedings, (1) a supervisory appeal and a motion for a deadline, and (2) a claim for just satisfaction in respect of damage sustained because of the undue delays.

The **ECHR** noted that for excessively long proceedings *still pending* in the courts of first or second instance at the time the **2006 Act** came into effect (1 January 2007), the aggregate of remedies provided by the **2006 Act** "were in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing redress for any violation that has already occurred." (*Sirc,* ¶

169 (ECHR relying upon previous findings concerning the **2006 Act** made in *Grzinčič v. Slovenia*, ECHR, Application No. 26867/02, Judgment of 3 May 2007, ¶ 98) (emphasis added).) As a result, the ECHR "found no reason to assume that the applicant would not be able to avail himself of the remedies provided by the **2006 Act**" and this portion of the application was declared inadmissible. (*Sirc,* ¶¶ 170-173 (emphasis added).)

In contrast, for the applicant's proceedings that had been commenced in 1993 and ended on 20 October 2006, the **ECHR** found that the "transitional provisions of the **2006 Act** were not applicable as the proceedings had terminated before 1 January 2007". (*Sirc,* ¶¶ 175-176 (emphasis added).) The **ECHR** noted previous similar cases where the Court had determined the remedies available prior to the **2006 Act** were ineffective. (*Id.,* ¶¶ 176-177 (relying on findings from *Belinger v. Slovenia,* ECHR, Application No. 42320/98, Decision of 2 October 2001 and *Lukenda v. Slovenia,* ECHR, Application No. 23032/02, Judgment of 6 October 2005).) The ECHR found that after applicant's property claim was transferred to the ordinary courts from the administrative authorities in 2002, that the over four (4) years of court proceedings that took place thereafter "failed to meet the 'reasonable-time' requirement" of **Article 6 § 1**. (*Id.,* ¶ 182.) The **ECHR** noted that the proceedings were not particularly complex, what was at stake in the proceedings were of great importance, and the applicant did not in any way contribute to the length of the proceedings. (*Id.*) As result, for the proceedings terminating before the **2006 Act** came into effect, there was a violation of **Article 6 § 1**.

We do not have information as to the current status of this case.

## 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.)

In the immediate aftermath of World War II, there was hardly a Slovenian Jewish community to speak of. Prior to World War II, there were only two (2) operating synagogues in Slovenia, the Lendava synagogue and the Murska Sobota synagogue. After the war, there were no operating synagogues. The Lendava synagogue was badly damaged and sold by the community to the town to be used as a warehouse, and the Murska Sobota synagogue was demolished in 1954. (*Kranjc.,* p. 605.) Shortly thereafter, during the Communist period under Tito, communal property (as well as private property) was wholly nationalized in Yugoslavia. It was not until Slovenia gained

independence in 1991 and the fall of Communism that a small Slovenian Jewish community began to reemerge.

In 1997, the Slovenian Jewish community was officially established as a religious community. In 1999, the first Chief Rabbi for Slovenia was appointed.
The umbrella organization for the Jewish community is the **Jewish Community of Slovenia (JCS).**

There are no laws in Slovenia that formally address the return of communal property confiscated during the Holocaust era.

The **1991 Denationalization Act** (Official Gazette RS, No. 27/91 and amendments 31/1993, 65/1998, 66/2000) give the "right to recovery [] to churches and other religious communities, their institutions or orders operating on the territory of the Republic of Slovenia at the time of coming into effect of this Act" (**Article 14**). As with private property, the Act only applies to property nationalized by laws passed between 1945 and 1963.

However, the **World Jewish Restitution Organization** (**WJRO**) notes that even without a communal property restitution law that explicitly covers Holocaust-era confiscated property, the **Jewish Community of Slovenia** has received a number of properties, – including the synagogue in Lendava – through agreements with the government. (*See* World Jewish Restitution Organization, "Background on Restitution in the Former Yugoslavia", February 2014, pp. 8-10 (Slovenia).)

In 2000, the government convened the Committee for the Unresolved Question of Religious Communities. In 2006, the WJRO and the Jewish community of Slovenia signed an agreement creating a foundation that would receive restituted communal property. (*See id.*) Also in 2006, the Sector for Redressing of Injustices and for National Reconciliation at the Ministry of Justice completed a study "Jewish property in 20th century Slovenia". In 2008, the government of Slovenia completed a report, which incorporated the 2006 report. The 2008 report was done by the Institute of Contemporary History - Property and Civil Law Status of Slovenian Jews in the 20th Century. Finally, in 2009, experts commissioned by WJRO completed another report on Jewish private, communal and heirless property. The reports have not yielded any additional legislation or further agreements on the return of Jewish communal and heirless property.

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

## E. HEIRLESS PROPERTY RESTITUTION

The Terezin Declaration states "that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences."

(Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

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

In fact, according to the terms of **Law No. 36/45**, property not claimed within the one (1)-year statute of limitations period became the property of the **State Committee for National Property** (i.e., property of the Yugoslav state). As a result, no concrete solutions have been implemented.

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