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

CONTENTS

A. EXECUTIVE SUMMARY

Romania was an ally of Germany for most of World War II. During the war, extensive "Romanization" (akin to Germany's Aryanization) of Jewish and Roma property took place in Romania. Roughly 825,000 Jews and 263,000 Roma lived in Romania before the war. 420,000 Romanian Jews died along with between 13,000 and 20,000 Roma during the Holocaust. Approximately 3,200 Jews and 620,000 Roma live in Romania today.

Like other states previously allied with Germany, after switching sides in the war, Romania promptly enacted legislation to reverse the theft of Jewish and Roma property. The most significant legislation was **Law No. 641/1944** (regarding the abolition of anti-Semitic measures) and **Law No. 607/1945** (regarding the annulment of certain contracts that transferred property during exceptional circumstances). Little was done, however, to act on these commitments during the Communist regime (1945-1989). Instead, widespread nationalization resulted in a second wave of confiscation. Restitution only began to take place after the fall of the Communist regime in 1989. The restitution laws have not been effectively applied and, as a result, to date only limited restitution has taken place in Romania. A new 2013 restitution law, however, has been recognized by the European Court of Human Rights as providing an "accessible and effective framework of redress for alleged violations of the right to peaceful enjoyment of property confiscated or nationalised by the communist regime."

Private Property. Claims by some foreign citizens relating to war damage and nationalization were settled through bilateral agreements with foreign governments (e.g., United States, Canada, United Kingdom). Claimants from other countries and Romanian citizens had to wait until the 1990's when domestic legislation was enacted to settle private property claims. Under an early restitution law – **Law No. 112/1995** – private properties could only be returned to former owners if they were already living on the property as tenants or if the property was unoccupied. This law was replaced in 2001 by **Law No. 10/2001** permitting restitution *in rem* and compensation (in form of vouchers

for privatized companies, stocks, goods and services) when physical restitution was not feasible. In 2005, **Law No. 247/2005** was enacted to harmonize and streamline previous restitution schemes. This law created a **Property Fund** to pay successful claimants. However, recipients of shares from the Fund found that their shares were essentially untradeable and difficult to value. Litigation about the Property Fund reached the European Court of Human Rights (ECHR), which in 2010 issued a pilot judgment in ***Atanasiu and Others v. Romania*.** In ***Atanasiu***, the ECHR ordered Romania to rectify the systemic problems with its restitution program. In response, in 2013 Romania enacted **Law No. 165/2013.** The 2013 law did not allow new claims to be lodged. Claims previously filed were now subject to a program which, in theory, was more fair to the claimants. The program includes stricter time limits for the review of claims and the possibility of judicial review by regular Romanian courts for claims denied in administrative rulings. Yet, **Law No. 165/2013** also reduces the amount of compensation that had been available to claimants under previous laws. In 2014, in ***Preda and Others v. Romania,*** the ECHR examined **Law No. 165/2013** and held that in principle the law provides an accessible and effective framework to address the shortcomings of Romania's previous restitution law. In May 2016, the Romanian Parliament passed legislation that will prioritize the processing of claims lodged by Holocaust victims prior to the 2003 deadline. More than 40,000 claims overall have yet to be processed.

Romania was described in 2013 by then European Commissioner for Justice Viviane Reding, as a country with a systemic threat to the rule of law, giving the specific example of a political attempt to attack the independence of Romania's Constitutional Court because of its frequent criticism of Romanian laws. These threats led at least one family living in the United States whose property was nationalized by the Communist regime to seek redress in an American court in 2014, ***Sukyas v. Romania***.[1]

Communal Property. In the post-Communist period, Romania has enacted a number of laws relating to the restitution of communal property belonging to religious organizations and national minorities. These laws chiefly cover communal property taken during the Communist era. Jewish communal property claims have been filed by the **Caritatea Foundation**, a private foundation created by the **Federation of Jewish Communities of Romania (FEDROM)** and the **World Jewish Restitution Organization (WJRO)**. The **Foundation** is responsible for the maintenance of returned Jewish communal properties. According to the **WJRO**, the Foundation submitted nearly 1,500 claims by the deadline in 2003, but by September 2015 only 515 had been adjudicated. The **Foundation** has received 75 properties and parcels of land. Outstanding claims for restitution by the Jewish community are still being reviewed by the Romanian government under the new **Law No. 165/2013**, but as with private property, no new claims can be lodged. Legislation passed in May 2016 by the Romanian Parliament resolves two (2) issues that had previously delayed the return of certain Jewish communal property and allows these claims to move forward. The legislation addressed the roughly 55 communal properties

[1] Project Co-Directors Lee Crawford Boyd and Michael Bazyler are counsel for the Sukyas plaintiffs in their property action in the United States.

that had been incorporated separately from the pre-war central Jewish communities (thereby resolving a successorship issue), and the roughly 40 properties which the Jewish community had been compelled to "donate" to the Communist regime (presumed to be abusive confiscations).

Heirless Property. The often-wholesale extermination of families in Romania during the Holocaust had the effect of leaving substantial property without heirs to claim it. Heirless property was the subject of considerable focus of the Allied powers at the end of World War II. A provision in the **1947 Treaty of Peace with Romania** even *required* the Romanian government to transfer heirless property to communities in order to assist in providing relief and rehabilitation to community members. In response to its obligations under the 1947 Treaty, the Romanian Parliament enacted **Law No. 113/1948** in 1948. The law stated that heirless property formerly belonging to victims of racial or religious persecution would be transferred to a particular organization to benefit remaining members of a community. This law was never meaningfully implemented and no further legislation has been enacted to address heirless property in Romania. Although **Law No. 113/1948** is still technically still good law, the documentation required as a prerequisite to the transfer of heirless property (e.g., proof of death, proof of no heirs) precludes the use of the law today.

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 Romania has been received.

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

During World War II, Romania fought as an ally of Germany until 23 August 1944. That day, King Michael I overthrew General Ion Antonescu and his Fascist government, responsible for the deaths of hundreds of thousands of Jews and Romani. At the same time, Romania withdrew from the war against the Allied Powers and officially proclaimed war against Germany and Hungary.

Prior to the war, there were approximately **825,000** Jewish people living in Romanian territories, which until 1940 also included parts of Bulgaria and the current Republic of Moldova. Roughly 420,000 Romanian Jews died during the Holocaust era. Approximately **3,200** Jews live in Romania today. The Jewish community is decreasing every year due to the advanced age of most local Jews.

Between 1939 and 1940 there were an estimated **263,000** Roma in Romania. Most scholars of Roma history agree that approximately 25,000-30,000 Roma were deported to Transnistria during the war. Approximately one-half of the Roma deportees returned to Romania, putting the number of Roma victims between 13,000-20,000. (*See* Stefan Ionescu, *Jewish Resistance to 'Romanianization', 1940-1944* (2015), pp. 124-146

(*"Ionescu"*); Viorel Achim, *The Roma in Romanian History* (2005).) According to the 2011 census, about **620,000** Roma live in Romania today (3.3 percent of the population).

1. 12 September 1944 Armistice Agreement

On 12 September 1944, Romania concluded an **Armistice Agreement** with the Allied Powers (Agreement Between The Governments Of The United States Of America, The United Kingdom, And The Union Of The Soviet Socialist Republics, On The One Hand, And The Government Of Rumania, On The Other Hand, Concerning An Armistice).

Article 6 of the **Armistice Agreement** stipulated that Romania must free all the people detained on racial grounds (i.e., Jews and Roma) and cancel all anti-Semitic laws and administrative directives. It stated: "[t]he Rumanian Government will immediately set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favor of the United Nations or because of their sympathies with the cause of the United Nations, or because of their racial origin, and will repeal all discriminatory legislation and restrictions imposed thereunder." Most Jews whose property was confiscated before August 1944 were either citizens of Romania or were stateless. Nearly a quarter of a million Jews lost their Romanian citizenship as a result of a denaturalization process based on **Decree Law No. 169/1938** (regarding the revision of the Romanian citizenship adopted by the Goga-Cuza government). **Article 6's** provision that all discriminatory legislation be repealed was particularly relevant for post-war restitution because the Antonescu regime had confiscated Jewish urban and rural real estate through a series of racially discriminatory laws. (*See Ionescu*, pp. 34-65.)

Article 13 of the **Armistice Agreement** also required that "[t]he Rumanian Government undertake to restore all legal rights and interests of the United Nations and their nationals on Rumanian territory as they existed before the war and to ret[urn] (sic) their property in complete good order." **Article 13** applied to the comparatively smaller number of Jews who were citizens of the United Nations countries.

2. 10 February 1947 Treaty of Peace with Romania

Articles 24 and **25** from the **Treaty of Peace with Romania**, signed on 10 February 1947, also addressed immovable property restitution and compensation, and confirmed Romania's previous obligations on the subject from the **Armistice Agreement.**

Article 24 related to the restoration of property in Romania belonging to the United Nations and their nationals. If the property could not be returned the owner, the Romanian government would be obliged to pay the owner compensation equal to two-thirds (2/3) of the amount necessary at the date of payment to purchase similar property.

Article 25 related to the restoration of immovable property confiscated "on account of the racial origin or religion of such persons." Where restitution was not possible, compensation was required. **Article 25** also addressed treatment of heirless or unclaimed property. It required the Romanian government to transfer heirless property to

organizations and communities "for purpose of relief and rehabilitation of surviving members of such groups [who were the object of racial, religious or other Fascist measures of persecution], organisations and communities in Roumania."

3. Claims Settlement with Other Countries

Following the war, Romania entered into at least nine (9) lump sum agreements or bilateral indemnification agreements with ten 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 out of war damages or property that had been seized during and after WWII. They included claims settlements reached with:

- **Switzerland** on 3 August 1951
- **Greece** on 25 August 1956 and 2 September 1966
- **France** on 9 February 1959
- **Denmark** on 17 March 1960
- **United States** on 30 March 1960
- **United Kingdom** on 10 November 1960 and 12 January 1976
- **Austria** on 3 July 1963
- **Norway** on 21 May 1964
- **Italy** on 23 January 1968
- **Canada** on 13 July 1971

(*Id.*)

4. Specific Claims Settlements Between Romania and Other Countries

a. Claims Settlement with the United States

As set forth in the **Treaty of Peace with Romania** and the United States' International Claims Settlement Act of 1949, as amended, Romania was responsible for claims of nationals of the United States for losses arising out of war damages, nationalization, compulsory liquidation, or other taking of property prior to August 9, 1955. The U.S. Treasury liquidated Romanian assets that had been blocked during the war in the amount of USD 22,026,370 and designated them for use in paying the claims. The **U.S. Foreign Claims Settlement Commission ("FCSC")** heard the claims and completed the **First Romania Claims Program** in 1959.

On 30 March 1960, Romania concluded a bilateral agreement with the United States, **Agreement Between The United States Of America And The Rumanian People's Republic Relating To Financial Questions Between The Two Countries** (**"U.S. Bilateral Agreement")**. In this bilateral agreement, Romania and the United States agreed that the lump sum of USD 24,526,370 would constitute full and final settlement and discharge of claims, including claims for restoration/compensation of property rights of nationals of the United States, as specified in **Articles 24** and **25** of the **Treaty of Peace with Romania**, and nationalization or liquidation or other takings occurring prior to 30 March 1960 (*see* **U.S. Bilateral Agreement, Articles 1(a) and (b)**). The lump sum

was composed of the USD 22,026,370 used in the **First Romania Claims Program**, and an additional USD 2,500,000 to be paid by the Romanian government in installments, for the **Second Romania Claims Program** (*see* **U.S. Bilateral Agreement, Articles III (a) and (b)**).

In total, the United States, through the **FCSC** awarded over USD 62,000,000 to U.S. national claimants in the **First and Second Romania Claims Program.** However, only approximately USD 23,000,000 was ultimately available for payment based upon the terms of the **Treaty of Peace with Romania** (and the International Claims Settlement Act of 1949, as amended) and the **U.S. Bilateral Agreement.** Successful claimants therefore received only USD 1,000 plus 37.84% of the principal of their awards.

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

b. Claims Settlement with Canada

On 13 July 1971, Romania and Canada entered into a bilateral agreement, **Agreement Between the Government of Canada and the Government of the Socialist Republic of Romania Concerning the Settlement of Outstanding Financial Problems** (**"Canada Bilateral Agreement").** Under the Canada Bilateral Agreement**,** Romania agreed to pay Canada CAD 1,400,000 (in a series of quarterly installments) to settle claims of Canadian nationals, including claims relating to property affected by Romanian measures of nationalization or expropriation, which were effective before the date the **Canada Bilateral Agreement** came into force (*see* **Article I(a))**. The **Canada Bilateral Agreement** also settled "[a]ll claims deriving from the terms of the Treaty of Peace with Romania, signed in Paris, February 10, 1947" (*see* **Article I(b)**).

In March 1972, pursuant to the **Appropriation Act, No. 9 1966**, the **Regulations respecting the determination and payment out of the Foreign Claims Fund of certain claims against the Government of the Socialist Republic of Romania and its citizens** (**"1972 Regulations")** were enacted in Canada. These **Regulations** permitted Canada's **Foreign Claims Commission** to adjudicate claims within the scope of the **Canada Bilateral Agreement**. The **Foreign Claims Commission** was only empowered to adjudicate claims where notice of the claim had been given on or before 14 December 1971 (the date of the **Canada Bilateral Agreement)**.

Successful claimants under **Article I(a)** (relating to nationalized property) had to be Canadian citizens as of the date of the signature of the **Canada Bilateral Agreement** (13 July 1971) *and* also had to be Canadian citizens at the date when the Romanian nationalization measures took place. In practical terms, this meant that the property in question had to have been continuously held by a Canadian citizen from the time the claim arose to the date of the **Canada Bilateral Agreement** and Jews and Roma who lost property as a result of wartime Romanization laws could not seek compensation from the Foreign Claims Commission**.** Successful claimants under **Article I(b)** (relating to the terms of the **Treaty of Peace with Romania**) had to be Canadian citizens as of the date

of the signature of the **Canada Bilateral Agreement** (13 July 1971) *and* also had to have been a United Nations national from 19 September 19, 1947 to 13 July 1971 (**1972 Regulations, Section 4(2))**.

As far as we are aware, the claims process established under the **Canada Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful or whether Romania paid Canada the full agreed-upon settlement amount.

The original text of this agreement is available for download in English from the website of the Government of Canada, Foreign Affairs, Trade and Development.

c. Claims Settlement with the United Kingdom

On 12 January 1976, Romania 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 the Socialist Republic of Romania ("UK Bilateral Agreement").** According to **Articles 1 and 4,** Romania agreed to pay the United Kingdom GBP 3,500,000 (paid in four (4) annual installments) in settlement of (1) certain specified claims arising out the Treaty of Peace with Romania signed in Paris on 10 February 1947 (**Article 1(a))**, (2) all claims with respect to "British property affected prior to the date signature of the present Agreement by Romanian measures of nationalization, expropriation, State administration, liquidation and other similar measures and regulations made or administrative action taken thereunder . . ." (**Article 1(b))**, and (3) other financial debts owed by Romania. Claimable "British property" under **Article 1(b)** included only property, rights and interests in former oil companies in Romania (**Article 3**).

As far as we are aware, the claims process established under the **UK Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement, how many claims were ultimately successful or whether Romania paid the UK the full agreed-upon settlement amount.

The original text of this agreement is available for download in English from the website of the Foreign Commonwealth Office, UK Treaties Online (last accessed 24 September 2015)).

We do not have more detailed information for the remaining six (6) lump sum settlement agreements.

C. RESTITUTION OF PRIVATE PROPERTY

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) Ear 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.)

During the war, extensive "Romanization" (akin to Germany's Aryanization) of Jewish property took place in Romania. (*See Ionescu.*) Property belonging to Jews and Roma in Romania was subjected to at least two (2) confiscations. Immovable property was first confiscated by specific anti-Semitic and anti-Roma laws of the far-right Antonescu Fascist regime in power during WWII and then subsequently nationalized after the war by the generally applicable nationalization laws of Communist governments. In addition, a 2010 European Parliament report on Romania noted that "a more subtle form of expropriation took place in the case of Jewish and Germans in the following decades, until 1989, when they were applying for passports to emigrate to Israel or Germany." (European Parliament (Policy Department (Citizen's Rights and Constitutional Affairs) of the Directorate-General for Internal Policies), *Private Property Issues Following the Change of Political Regime in Former Socialist or Communist Countries*, 2010 ("2010 European Parliament Report"), p. 100.) This expropriation reportedly included the requirement that émigrés sign "donation acts" for their property with the state as beneficiary – which, in some instances resulted in a blackmail-type situation whereby property was handed over to the state in exchange for a passport. In other instances émigrés had to renovate their properties at their own expense before the government paid compensation. (*Id.*)

1. Law No. 641/1944 Regarding the Abolition of Anti-Semitic Measures

Even prior to the signing of the **Treaty of Peace with Romania,** Romania, under King Michael, passed **Law No. 641/1944 (regarding the abolition of anti-semitic measures),** directing that "all legal provisions adopted as anti-Jewish . . . will be abolished, including those comprised in court decisions, as well as all discriminatory measures adopted without legal basis against Jews by the public authorities".

This law was not meaningfully implemented to effectively permit restitution of stolen property and is best described as a normative act, where the very text of the law simply stated that anti-Jewish measures would remain abolished "de jure, without any formality" (i.e., by default). Indeed, even though the anti-Jewish legislation and administrative measures were abolished *de jure*, Jewish owners still had to claim their property in court. While the number of successful Jewish restitutions (i.e., the percentage of Jews actually got back their property through courts or outside courts) during this time period is not known, it appears a majority of Jewish survivors from Bucharest (and perhaps from other parts of the country as well) were successful in recuperating their real estate. This would

have been achieved either by court decision or by the eviction (sometimes after negotiating with former Jewish owner) of the Romanianization beneficiaries who had been living on those properties. Further, for a variety of reasons (including death, dislocation, etc.), not all victims of the anti-Semitic legislation were able to reclaim their property under **Law No. 641/1944** before the property was nationalized by the communist government. (*See* 2010 European Parliament Report, p. 99.)

2. Decree Law No. 607/1945 Regarding the Annulment of Certain Contracts that Transferred Property during Exceptional Circumstances

The government adopted **Decree Law No. 607/1945 (regarding the annulment of certain contracts that transferred [property] during exceptional circumstances**) on 30 July 1945 (published on 1 August 1945) in an effort to resolve some of the controversies created by **Law No. 641/1944.** The belief at the time was that due to the discriminatory, violent and anti-Semitic policies of the Antonescu regime, many Jews agreed to transfers of property (immovable property, businesses and movable goods), which they never would have otherwise agreed to during peacetime. Their free will had been compromised by physical and psychological violence. **Law No. 607/1945** undid the forced transfers of property if claimants filed their claims with the local courts (*Tribunal* level) and/or appeals with a superior court. The law also permitted Jews to request the cancellation of donations they had made to non-Jews (gentiles), except insofar as they were family members. The law presumed that consent by Jews to these property transactions was flawed or occurred under duress.

However, **Law No. 607/1945** only applied to transactions concluded between 6 September 1940 and 23 August 1944 by Jews that had lived in Romania or had been deported from Romania. This meant that Jews living in Northern Transylvania under Hungarian rule between 1940 and 1944 – a region returned to Romania in 1945 – were excluded from the law.

Jews outside of Romania due to deportation or internment benefited from an extended deadline to fill their claims – until 1 January 1946.

Overall, it is not clear how effective **Law No. 607/1945** was and to what extent Romanian Jews managed to gain back their property – that they had transferred during the Antonescu regime – in domestic courts.

With more members of the Communist Party gaining power and a pro-Soviet government installed, King Michael was forced to abdicate in December 1947. Romania then became known as the Romanian People's Republic from 1947-1965, and the Socialist Republic of Romania from 1965-1989. Under Communist rule, extensive portions of the economy, including most land and buildings, were nationalized. The main Communist nationalization laws – which affected both Jews and non-Jews – concerning real estate and businesses, were the following:

- **Decree Law No. 187/1945** (published in *Monitorul Oficial* no. 68 of 23 March 1945) **(regarding the implementation of the agrarian reform).** Through this law, agricultural land of ethnic-Germans, war criminals, absentees, and landlords (regardless of their ethnicity) owning more than 50 hectares, were seized and distributed to poor peasants. Some Jewish owners whose rural estates (larger than 50 hectares) had been recently restituted, were also targeted for nationalization by the new Communist government.

- **Law No. 119/1948** (published in *Monitorul Oficial* No. 133 bis of 11 June 1948) (**regarding the nationalization of industrial, banking, insurance, mining, and transportation companies).** After seizing complete power in Romania, this law facilitated the Communist regime's first major confiscation of businesses . By adopting **Law No. 119/1948**, the Communist regime nationalized most of the means of production in the country (1,060 industrial and financial companies representing around 90% of the economy) and thus eliminated the majority of private entrepreneurs (including Jews) from the economy.

  Law No. 119/1948 was followed by a number of other laws that nationalized/confiscated businesses from particular subfield of the economy, such as **Decree No. 232/1948** of 9 September 1948 **(regarding the nationalization of certain private railways companies); Decree No. 302/1948** (published in *Monitorul Oficial* No. 265 of 13 November 1948) **(regarding the nationalization of certain private health care institution); Decree No. 134/1949 (regarding the nationalization of private pharmacies).**

- **Decree No. 92/1950** (published in *Buletinul Oficial* no. 36 of 20 April 1950) **(regarding the nationalization of certain real estate (the buildings belonging to former industrialists, bankers, tradesmen, and all the elements of the high bourgeoisie, buildings of hotel owners, accommodation speculators and others like these)** was perhaps the most significant nationalization law in Romania. It enabled a massive expropriation without any compensation. Between 120,000 and 140,000 buildings throughout Romania (approximately 25 percent of all privately-owned homes) were transferred to state ownership.

  The expropriation was socially based and targeted several categories of "exploiters" including rich nobles, landlords, and bourgeoisie. Many Jews also lost their property but the numbers cannot be confirmed because since 1945, Romanian law forbade the registration of ethnicity or race of local citizens and the Communist expropriation laws did not mention the religion of the victims. **Law No. 92/150** included a list of thousands of names of owners whose property was nationalized under the law. Hundreds if not thousands of those names were typical Jewish names. While names were not always a precise indicator of ethnicity/religion, between 1940 and 1950 non-Jewish Romanians were not adopting Jewish names. Conversely, many Jews actually adopted ethnic Romanian names in an effort to avoid anti-Semitism. It is therefore likely that property was expropriated from more Jews than just those with typically Jewish names listed in **Decree No. 92/1950.**

Following the collapse of the Communist regime in Romania in 1989, the Romanian government sought to address the issue of restitution/compensation of agricultural property, urban property, and religious and communal property nationalized by the Communist regime between 6 March 1945 and 22 December 1989. Jewish owners whose real estate was returned to them by courts in the early post-Antonescu years based on **Law No. 641/1944** and whose property was again confiscated a few years later (especially from 1948 on) by the Communist regime, were entitled to file for restitution of their former real estate after 1989, provided that they fulfilled the requirements and procedures in the laws.

3. Law No. 112/1995

Pursuant to **Law No. 112/1995,** properties could only be returned to former owners if they were already living on the property as tenants or if the property was unoccupied. If restitution *in rem* was not possible, owners were entitled to compensation, which was capped. (*See Atanasiu and Others v. Romania*, ECHR, Application Nos. 30767/05 and 33800/06, Judgment of 12 October 2010 ("*Atanasiu"*), ¶ 47.)

4. 2001 Restitution Law

Law No. 10/2001 on the Legal Status of Property Abusively Taken Over by the Communist State During the 6 March 1945-22 December 1989 Period (**"2001 Restitution Law")** permitted restitution *in rem* and compensation (in the form of vouchers for privatized companies, stocks, goods and services) when physical restitution was not feasible. (Lavinia Stan, *The Roof over Our Heads: Property Restitution in Romania,* Journal of Communist Studies and Transition Politics, Vol. 22, No. 2 (2006), p. 195 (*"Stan"*).) Unlike the previous **Law No. 112/1995**, compensation was not capped under the **2001 Restitution Law.** (*Atanasiu,* ¶ 47.) The law applied to nationalized property belonging to industrial, banking, insurance, mining and transportation companies, as well as to property belonging to private individuals that had been confiscated or requisitioned by the state. (*Stan,* p. 95.) It also only applied to property taken between 6 March 1945 and 22 December 1989.

Claimants had only six (6) months from the date of the law's adoption to lodge restitution claims. Another difficulty with the law was that owners of properties were required to pay tenants for improvements made to the property, but owners were not compensated for the decades in which they were deprived of the property. (*Id.*, p.196.) Many tenants had also previously purchased the property and the original owners now had to challenge the titles of the tenants. It was also unclear as to whether Holocaust era claims were covered by the law. In addition, the compensation requirement of the **2001 Restitution Law** remained unfulfilled because Romania's national budget never included compensation funds. (*Id.,* p.197.)

According to one Romania scholar, hundreds of thousands of claims worth billions of dollars were lodged under the **2001 Restitution Law** but few were resolved**:**

> By mid-2001 local authorities had registered 210,000 claims, 128,000 of which were for 'natural' [*in* rem] restitution and 82,000 for financial compensation, but resolved only two per cent of all requests. Most claimants received no reply, although local authorities were supposed to respond within 60 days. By 2002 only 615 Bucharest owners had received their houses back, and it was estimated that the bureau needed 40 years to resolve the 24,350 outstanding claims. By late 2003 the bureau had accepted 50,000 claims for financial compensation totaling the equivalent of US$ 5.3 billion and 20,000 requests for 'reparatory measures' totaling US$ 3 billion, but it had resolved only 3,475 petitions.

(*Stan,* p.198.)

5. Law No. 247/2005 on Judicial and Property Reform

Law No. 247/2005 (on judicial and property reform) (**"2005 Property Reform Law"**) attempted to harmonize the administrative procedures set forth in prior laws addressing the restitution of various types of property, including the **2001 Restitution Law,** but the **2005 Property Reform Law** proved to be equally complex and burdensome.

The **2005 Property Reform Law** provided that where restitution *in rem* is not possible (like the **2001 Restitution Law,** it applied to property taken beginning in 1945), claimants can either choose compensation in the form of (1) goods and services or (2) payment of an amount determined in accordance with "domestic and international practice and standards on compensation for buildings and houses wrongfully acquired by the State." (*Atanasiu,* ¶ 53.)

Claimants had 60 days to lodge claims for agricultural land and six (6) months to lodge claims for immovable property that had belonged to religious institutions and national minority organizations. (*Atanasiu,* ¶ 55.)

The law established a **Central Compensation Board** and the **National Agency for Property Restitution ("NAPR")** to deal with the claims and compensation process**.** Compensation awards issued by local authorities under the **2005 Property Reform Law** had to be reviewed by the **Central Compensation Board** for lawfulness and then a determination on amount of compensation. The **Central Compensation Board** would then issue successful claimants a compensation certificate.

For properties that could not be restituted *in rem,* the **2005 Property Reform Law** set up a **Property Fund** to pay out financial compensation. Successful claimants would receive shares in the **Property Fund,** whose capital was to be comprised of state-owned companies. However, these shares could not be traded or easily converted into cash.

Over the years various amendments were made to the **2005 Property Reform Law**, including giving successful claimants the option of receiving all compensation in form of shares in the **Property Fund**, or receiving part of the amount in cash – up to 500,000 Romanian lei (USD 127,000) – and the rest in shares. (*Atanasiu,* ¶ 64.) Successful

claimants had three (3) years from the issuance of their compensation certificate to elect their payment choice and notify the **NAPR** of the choice, whereupon the **NAPR** would issue a payment certificate. (*Id.*, ¶ 65.) Cash payments up to 250,000 Romanian lei were to be paid within a year of the issuance of the payment certificate, while payments between 250,000 and 500,000 Romanian lei were to be paid within two (2) years. (*Id.*, ¶ 66.)

In 2009, the Romanian High Court of Cassation and Justice held that courts could not do the job of the **Central Compensation Board** and determine the amount of compensation for property. The **Board**, and not a court, must determine restitution/compensation claims within a "reasonable time". (*Atanasiu*, ¶ 76.)

In 2010, **Emergency Government Ordinance No. 62/2010** suspended cash payouts for a two (2)-year period in order to balance the budget. Compensation certificates could therefore only be issued for shares in the **Property Fund** during this period. According to government estimates in 2010, EUR 21 billion would be needed to pay out compensation to successful claimants under the compensation laws. (*Atanasiu*, ¶ 66.)

In March 2012, the government issued another emergency ordinance suspending all compensation procedures until new restitution legislation was completed. As a result, in 2012 the **NAPR** ceased issuing shares in the **Property Fund** as a form of compensation**.** This was despite the existence of many claimants with previously-approved claims who were waiting only for their compensation. These claimants would ultimately be subject to the payment scheme established under the new legislation. The effect was that the compensation which the previously-approved claimants would otherwise have received under the **2005 Property Reform Law** would be dramatically reduced under the new legislation.

The flawed implementation of the **2005 Property Reform Law** and its **Property Fund** significantly undermined its effectiveness, which was the centerpiece of a 2010 European Court of Human Rights pilot judgment in *Atanasiu and Others v Romnia.*

6. ***Atanasiu and Others v. Romania***

In 2010, the ECHR issued a pilot judgment[2] in ***Atanasiu and Others v. Romania***, in which the Court found that Romania's restitution procedures (including the **Property Fund**) violated rights guaranteed under the **European Convention on Human Rights,** chiefly the right to a fair and public hearing (**Article 6, Section I)** and the right to peaceful enjoyment of property (**Article 1, Protocol No. 1)**. (*See* Atanasiu and Others v.

[2] The pilot judgment procedure is a mechanism available to the ECHR to address a large number of identical or near-identical cases from a particular country arising from the same systemic problems within that country's legal system. In its pilot judgment decision, the ECHR resolves the claims of a particular case and also sets forth prescriptive guidance for the government of the relevant country to resolve similar cases. (*See* European Court of Human Rights, Pilot Judgment Procedure.)

Romania, ECHR, Application Nos. 30767/05 and 33800/06 , Judgment of 12 October 2010.)

In ***Atanasiu,*** several buildings belonging to applicant Atanasiu's family, including one located in Bucharest, were nationalized in 1950 pursuant to Decree No. 92.

In 1999, applicant Atanasiu lodged a claim for restitution of the Bucharest building pursuant to **Law No. 112/1995.** The building had since been divided into a number of flats, one of which was the subject of Atanasiu's ECHR action. Atanasiu had filed an action in the Bucharest County Court against the City of Bucharest (who had managed the property) and the people who purchased the flat in 1996. In 2002, the County Court held that because the nationalization of the building was unlawful (applicant's family was not part of any social category listed in the nationalization decree), the sale of the flat in 1996 was also unlawful. The Bucharest Court of Appeal reversed, finding the contract of sale of the flat in 1996 lawful because it complied with **Law No. 112/1995.** On appeal to the High Court of Cassation and Justice in 2005, the Court found applicant's appeal inadmissible because applicant lodged the action after the date of entry into force of the **2001 Restitution Law** and after that date the applicant could only claim restitution in the circumstances set out by the **2001 Restitution Law**. (*Id.*, ¶¶ 20-27.)

In tandem with the judicial actions, applicant Atanasiu also filed a claim pursuant to the **2001 Restitution Law** with the Bucharest City Council for the restitution of the entire building in Bucharest. Over the next nine (9) years, the claim was not resolved, with the city council continuing to assert that the applicant failed to submit a complete claim file. (*Id.*)

The ECHR ultimately found that issuing shares of the **Property Fund** to claimants pursuant to then applicable **2005 Property Reform Law** was not an effective compensation mechanism because the shares of the **Property Fund** were not listed in any regulated market, making the shares largely untradeable and their value difficult to determine. The **Property Fund** is somewhat emblematic of the systemic problems with the Romanian restitution system. The legislative act that created the **Property Fund** required shares of the **Property Fund** to be listed on the Bucharest Exchange. It was not until January 2011 that the **Property Fund** was listed in the exchange.

In ***Atanasiu,*** the ECHR directed Romania to rectify the systemic failures in processing claims and to award restitution and compensation in a timely manner.

7. Romania's Response to the *Atanasiu* Decision – Law No. 165/2013

In 2013, **Law No. 165/2013** was enacted as a response to the ***Atanasiu*** decision. The law established a new body (the **National Committee for Real Estate Compensations and erecting the National Fund** ("**National Committee"**)) to process *existing* claims related to private property and communal property. Restitution *in rem* is required when possible; otherwise monetary compensation is ordered.

The law has established a new compensation mechanism to replace the previous **Property Fund** created by the **2005 Property Reform Law.** The **National Fund** is a points-based compensation mechanism in which successful claimants are awarded "points" that can be used to purchase property at auction beginning in 2016 or redeemed for cash (after a holding period of three (3) years and then payout in installments over a subsequent seven (7)-year period). The **National Fund's** holdings currently consist of farmland owned by the Romanian government. The auctions are to be held by video conference at the headquarters of the National Agency for Cadastre and Land Registry. Subject to the requirement of prior registration, participation in the auction is free of charge to those who have been awarded points by the **National Fund**.

Law No. 165/2013 only applies to petitions *previously submitted* within the time limits prescribed by some of Romania's earlier restitution laws, which had not been granted prior to **Law 165/2013** coming into effect, and are either pending in national courts or pending in the ECHR after being suspended by the ***Atanasiu*** decision. (*See* **Law No. 165/2013, Article 4.**)

Law No. 165/2013 substantially reduces the amount of compensation awarded to successful claimants under the previous restitution law (**2005 Property Reform Law**). Moreover, **Law 165/2013** also permits the newly-established **National Committee** to review and completely invalidate previously-approved claims issued by the **NAPR** (claims that had been approved but not yet paid out at the time the government issued a moratorium on pay-outs in 2012). The **National Committee** has required claimants with previously-approved claims to submit additional documentation (in the State's possession and that the claimant usually cannot obtain). The result is that many claims that were previously-approved but not paid before **Law No. 165/2013** came into effect are being cancelled. A claimant's only recourse for a cancelled claim is to file suit in the Romanian courts (if he/she has the resources and means to do so).

Review of claims for private property under the procedure set up by **Law 165/2013** is ongoing.

In May 2016, the Romanian Parliament passed legislation that will prioritize the examination of claims for Holocaust survivors who lodged claims before the 2003 deadline. According to the **WJRO**, as of May 2016, 40,000 claims overall remain to be processed. The new legislation resulted from recommendations made by a working group formed in February 2015 by the then-Prime Minister Victor Ponta. The working group included representatives from the Romanian government, the **WJRO** and the **Federation of Jewish Communities of Romania (FEDROM)**. Representatives from the United States and Israeli governments also provided assistance. (*See* World Jewish Restitution Organization, Press Release, "WJRO Commends Passage of Restitution Legislation in Romania (10 May 2016).)

8. ***Preda and Others v. Romania***

In 2014, following the enactment and implementation of **Law No. 165/2013**, the ECHR re-visited Romania's property restitution law in ***Preda and Others v. Romania***. (*See* *Preda and Others v. Romania*, ECHR, Application Nos. 9584/02, 33514/02, 38052/02, 25821/03, 29652/03, 3736/03, 17750/03, 28688/04, Judgment of 29 April 2014 (available only in French).) In ***Preda***, the ECHR examined the facts surrounding 16 applicants' claims, all concerning the nationalization or confiscation of applicants' land/buildings by the Communist regime and which were returned in accordance with laws passed after 1989. The applicants' claims under the Convention were eventually declared inadmissible for failing to exhaust the domestic remedies under **Law No. 165/2013**.

The Court considered whether the remedies provided by the recently enacted **Law No. 165/2013** where effective. The Court held that, in principle, **Law No. 165/2013** provided an accessible and effective framework for addressing the systemic shortcomings of the Romanian restitution law as described by the Court in its prior ***Atanasiu*** decision. In particular, the Court found that **Law No. 165/2013** set out how the points-based system worked for the purchase of compensatory property at auction, how compensation would be determined when the claimant opted for delayed cash pay-out in lieu of property at auction (market value of the property and payable in installments), that each administrative step was subject to certain time limits, and that decisions were subject to judicial review on lawfulness and court rulings could supersede decisions made by administrative agencies. (*See* Press Release, ECHR, "Law passed by Romanian Parliament provides in principle an accessible and effective framework of redress for alleged violations of the right to peaceful enjoyment of property confiscated or nationalised by the communist regime" (29 April 2014).)

In delivering its holding, the Court made clear that it would defer to the Romanian government's wide discretion in implementing regulations responsive to the ***Atanasiu*** decision.

9. **Litigation in United States Courts Concerning Property Nationalized in Romania**

In March 2015, two (2) plaintiffs, brothers born in Romania, filed an action in United States courts against Romania and RADEF Romania Film (an agency or instrumentality of Romania) in a case known as ***Sukyas v. Romania, et al.* (C.D. Cal. Case No. 2:15-cv-01946)**. Plaintiffs seek redress for property (a state-of-the-art post production film laboratory and business, Cinegrafia Romano) taken from their father under the nationalization laws of the Romanian Communist government in the late 1940s. Even though post-Communist era legislation provides for compensation and restitution for state-confiscated property, the plaintiffs allege they have been unable to obtain any form of redress for their property under the Romanian legal system. Since 2008, they have filed multiple actions in both the domestic courts in Romania and with the ECHR seeking the return of this property, none of which have been resolved positively. Plaintiffs allege in their complaint that even though "Romanian courts have acknowledged Plaintiffs as

rightful heirs of the owners of [the property], they have refused to compensate Plaintiffs for Romania's confiscation and ongoing use of the [] business for its own benefit." This case is pending in the United States District Court for the Central District of California.

D. RESTITUTION OF COMMUNAL PROPERTY

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.)

Romanian laws relating to restitution of communal property include:

- **Decree No. 589/1949;**
- **Law No. 18/1991** (relating to agricultural lands and woodlands);
- **Emergency Government Ordinance (E.G.O.) No. 21/1997** (relating to urban properties abusively confiscated from religious cults);
- **E.G.O 83/1999 (and amendments pursuant to Law No. 66/2004)** (relating to properties belonging to national minorities);
- **E.G.O. 94/2000 (and amendment pursuant to Law No. 51/2002)** (relating to real property belonging to religious cults);
- **Law No. 10/2001** (relating to property abusively confiscated between 6 March 1945 and 22 December 1989); and
- **Law No. 165/2013.**

As with private property legislation, it is unclear how and to what extent these laws have offered redress for communal property confiscated during the Holocaust (Shoah) era, 1933-1945, and how these laws interact with **Law No. 641/1944** regarding the abolishment of anti-Semitic legislation. Property returned "de jure" under the normative language of **Law No. 641/1944** would have again been taken and subject to widespread nationalization (applying to Jews and non-Jews alike) in the late 1940s. Claims had to be lodged under these laws by **2003.**

The umbrella organization for the Jewish community in Romania is the **Federation of Jewish Communities of Romania ("FEDROM")**.

In 1997, **FEDROM** and the **World Jewish Restitution Organization (WJRO)** established the **Caritatea Foundation**, which assumed responsibility for submitting claims for confiscated formerly Jewish-owned communal property. The **Caritatea Foundation** submitted 1,450 claims by the claims deadline. By the end of September

2015, 515 had been adjudicated, and 367 were positive results. This included return of 75 properties and financial compensation financial compensation in 292 cases to the **Caritatea Foundation.** Of these 292 cases for compensation solved prior to passage of the 2013 law, 165 remain subject to review by the National Commission for Compensation under the new legislation.

The **Caritatea Foundation** is also responsible for managing recovered property or compensation in Romania in order to sustain and revitalized Romanian Jewish communities, preserve Romanian Jewish religious, social and cultural heritage and assist elderly Jews from Romania. In 2016, the **Caritatea Foundation** will distribute USD 8 million, which includes more than USD 2 million to assist needy Romanian Holocaust survivors living in Israel. (*See* World Jewish Restitution Organization, Press Release, "WJRO Commends Passage of Restitution Legislation in Romania" (10 May 2016).)

A few aspects of **Law No. 165/2013** particularly impact communal property claims. Under **Law No. 165/2013,** only immovable property that was formally expropriated (i.e., via written documentation) can be compensated. The law is unclear as to whether it covers other types of expropriation, namely, coercive or unfair land swaps (a common way the Communist regime confiscated Jewish community property) or *de facto* expropriations without written documentation.

However, in May 2016, the Romanian Parliament passed legislation that will speed up the process of examining claims lodged by the Romanian Jewish community in two (2) main ways. First, the legislation addresses the return of roughly 55 Jewish communal properties, which had been incorporated separately from the pre-Holocaust central Jewish communities. These include Jewish schools, hospitals and social welfare institutions. Before the May 2016 legislation, the **Caritatea Foundation** had to go to court and establish for each property that it was a successor. The new legislation permits national minorities to submit evidence that they are acknowledged to be a legal successors of the entity who held the property in issue at the time of the confiscation. Second, the law clarifies that roughly 40 Jewish communal properties which were "donated" to the Communist regime, are presumed to have been abusively taken by the then-government. In the past, a number of domestic courts recognized these "donations" were presumed abusive confiscations, but the **Caritatea Foundation** still had to file separate court actions to cancel such "donations".

Law No. 165/2013 also stipulates that where public institutions occupy property subject to restitution, there will be a 10-year delay on restitution (**Article 45**). The law requires the current occupants to pay "market value" rent to rightful owner (calculated by law as 6% of the construction value and 4% of the land value). However, the **Caritatea Foundation** conducted studies on the market value of rent and found that the legal formula results in payment of below-market rent to the rightful owners.

In addition, the WJRO has pointed out that unlike individual claimants, religious organizations under **Law 165/2013** (this was also the case under previous communal property laws) cannot receive compensation for nationalized property that was

subsequently demolished. (*See* WJRO, "Position Paper on Romanian Law No. 165/2013", 17 September 2013, p. 10.)

Review of claims for communal property under the procedure set up by **Law No. 165/2013**, is ongoing to date. The law only applies to petitions *previously submitted* within the time limits prescribed by some of Romania's earlier restitution laws, which had not been granted prior to this law coming into effect, and are either pending in national courts or pending in the ECHR after they were suspended by the ***Atanasiu*** decision. (*See* **Law No. 165/2013**, Article 4.)

E. RESTITUTION OF HEIRLESS PROPERTY

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.)

1. Article 25(2) of the Treaty of Peace with Romania

Article 25(2) of the 1947 **Treaty of Peace with Romania** stated that all property that had been confiscated on account of race or religion and "remain[ed] heirless or unclaimed . . . shall be transferred by the Roumanian Government to organisations in Roumania representative of such persons, organisations or communities . . . for purpose of relief and rehabilitation of surviving members of such groups, organisations and communities in Roumania."

2. Law No. 113/1948

In response to its **Article 25(2)** obligations under the **Treaty of Peace with Romania**, the Romanian Parliament thereafter enacted **Law No. 113/1948. Law No. 113/1948** addressed real property belonging to heirless members of the Jewish community (and

other victims of racial or religious persecution) by transferring ownership of such property to the **Federation of Jewish Communities Union**, as the representative of the Romanian Jewish community. However, similar to **Law No. 641/1944 (**relating to the abolishment of anti-Semitic legislation), this law was never fully or meaningfully implemented.

Law No. 641/1944 still exists in Romanian law, but in practice, cannot be used to transfer ownership of property. The law requires extensive documentation as a prerequisite to transferring property, *inter alia*, proof of death and proof of no heirs. This type of documentation cannot be obtained for Jewish property owners (and other victims of racial or religious persecution) who died during World War II.

Part of the problem with the implementation of **Law No. 113/1948** lay with the decreasing independence and autonomy of the Jewish community in Romania after the war. When the Communist regime attempted to seize complete power and control of local society, they established a pro-Communist, obedient section of the Jewish community – the **Jewish Democratic Committee ("CDE")**. The **CDE** gradually seized control over Romanian Jews and eliminated the community's traditional liberal democratic leaders by forcing them to flee the country (as it happened with the Chief Rabbi Alexandru Safran, who fled in 1947 and Wilhelm Filderman, the leader of the Union of Native Jews and former leader of the Jewish community, who fled Romanian in January 1948) or arresting them (as it happened with some local Zionist leaders). Thus, by the time new Jewish leadership was "elected" in February 1948, the Jewish community of Romania had lost its independence/autonomy, became mainly an annex of the Communist government, and it followed the government's instructions. As a result, the Jewish community could not pursue the issue of restitution of heirless property.

Since Romania endorsed the Terezin Declaration, no new laws have been passed relating to the restitution of heirless property.

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