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Rectification of Racial Discrimination during WWII: the Case of Restitution Laws in Serbia

Research Article

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Rectification of Racial Discrimination during WWII: the Case of Restitution Laws in Serbia

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Restitution for the mostly Jewish property and assets that were confiscated by the Nazis during World War II (WWII) in various European states has been a highly debated issue ever since the end of the war. Countries that adhered to the ideas of communism and nationalisation of property in the immediate aftermath of the war failed to address this issue until very recently. Serbia, too, has only begun to consider remedying the incredible damage done to its rather small Jewish community. More specifically, in the past decade, Serbia has been trying to repair the damage by passing a series of restitution laws which eventually led to separate legislation on heirless property. This paper explores the substance and application of these laws, as well as the history of discrimination based on which the Serbian Jewish community was persecuted by German occupiers and their collaborators. In doing so, through the lens of Critical Race Theory (CRT), this paper identifies another group that has been persecuted on the basis of race, namely the Romani. What follows from such research is the following: firstly, the law allowed for discrimination on a racial basis of both Jews and Roma during WWII and, secondly, the law is now remedying the damages caused towards the former group, but not the latter. In conclusion, this paper suggests that such a distinction is made due to a possible interest convergence, as defined by CRT.

Keywords: restitution, heirless property, Serbia, Critical Race Theory, Roma

Introduction

Race is a rarely discussed issue in the Balkans, a region where violence and discrimination seems to have always emerged in the context of ethnicity or religion. While much of Europe can to some extent relate to imperial conquest and the subsequent legacy that shaped the perceptions and performance of race, the Balkans lived through that era in their own kind of slavery – one where the slave owner was the Ottoman, not a white European. The unification of what are now known as the former Yugoslav republics after WWI focused on the main entities – i.e. Serbs, Croats, and Slovenes, and much less on minorities, which remained the case until the dissolution of the union.¹ When the Nazis occupied Yugoslavia in 1941, a couple of those forgotten minorities,

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¹ See, e.g. Crepaz, Katharina. 2016. *The Impact of Europeanization on Minority Communities*. Springer.

namely the Jews and the Roma, became the most despised ones, and their persecution began immediately. Serbia, one of the successor states, had a small Jewish community and a somewhat larger Roma community in 1941, and nearly lost both of them entirely by the end of the war. Today, it has a significantly smaller Jewish community on the one hand, and one of the largest Roma communities in Europe on the other, and has only recently begun to remedy the consequences of the Nazi policies.

The basic question this paper wishes to explore is the following: what has Serbia done to compensate the victims of the Holocaust for property that was confiscated by the Nazis? It is by answering this question that the paper reaches the notion of race, and rephrases the question into: what has Serbia done differently in compensating some victims of the Nazis' racial laws compared to other victims?

In providing a response to these two questions, this paper adopts Critical Race Theory (CRT),² trying to identify the ways in which the law enabled for persecution of Romani and Jewish people on the basis of race in Yugoslavia during WWII, and to analyse what the law has been doing – or not doing – more recently to remedy for the harm that was suffered then. The principles of CRT, which was developed by US scholars of colour, are, by and large, unexplored in the European context,³ although equally applicable. Some of the fundamental ideas Critical Race theorists have suggested are the following: (1) it is rather difficult to cure, or even properly address, racism, because its existence is not recognised, and there is nearly always a formal acknowledgment of equality; (2) when it seems like racism is being combatted, this merely reflects that there has been an “interest convergence,” meaning that the action in question would be beneficial for the white population as well; (3) racial categories are socially invented, fluid and manipulated by the majority as convenient; (4) frequently these perceptions of race and the subsequent racialisation of minority groups change according to the needs of the labour market, as do popular images and stereotypes; (5) unitary identities (such as white v. black) do not exist, but instead, everyone hosts overlapping identities to which the notion of intersectionality becomes crucial, and (6) the unique voices of people of colour must be heard, as their membership in minority groups gives them competence to speak about race.⁴ It is these pillars of CRT that this paper will take into consideration in the following analysis, particularly focusing on the first two ideas of hidden racism and interest convergence among Serbian majority and minority groups.

The paper begins with a brief narrative of the Holocaust in Serbia, focusing primarily on the persecutions of the Romani and Jewish communities.

² For more on the birth and development of Critical Race Theory in the United States, see: Delgado, Richard and Jean Stefancic. 2012. *Critical Race Theory. An Introduction*. New York: New York University Press; Crenshaw, Kimberle W. / Gotanda, Neil / Peller, Gary and Kendall Thomas (eds.). 1995. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: The New Press.

³ For more on the absence of Critical Race Theory in Europe, consult, *inter alia*, Moschel, Mathias. 2007. Color Blindness or Total Blindness? The Absence of Critical Race Theory in Europe. *Rutgers Race and Law Review* 9(1), 57-127.

⁴ Delgado and Stefancic, *Critical Race Theory*, 8-10.

Furthermore, the paper provides an overview of similar logic for the period under socialism, before the break-up of Yugoslavia. With these two historical narratives in mind, the paper will move on to discuss trends in restitution laws in Serbia, and single out particular legislation that aims to return heirless property to the harmed communities in Serbia. After elaborating on the substance of this Law, a critique of these legal practices in Serbia in relation to both the Jewish and the Romani people will be offered, motivated by the fundamental principles of Critical Race Theory.

The Holocaust in Serbia: a brief overview

Romani people had been present in the Balkans for a long time, having arrived in the 13th century.⁵ Yet, even before WWII they were, just like the Jews, generally seen as outsiders, “the eternal others” in the whole of Europe.⁶ These negative stereotypes were surely partly created due to their skin colour, but also because of the distinct lifestyle which did not allow them to settle down permanently. For instance, with the birth of the nation-state, the Romani lifestyle began to be seen as backward and inappropriate for these new notions of borders and territory, which resulted in systemic discrimination, targeted persecution, and attempts to assimilate the Roma throughout Europe.⁷ Perhaps the peak of this persecution occurred during the Holocaust, when Romani people were, in the same way as European Jews, persecuted on a racial basis. A decree of 1938 signed by Heinrich Himmler called for resolving “the Gypsy question” as “appropriate to the character of this race,” and the subsequent racial laws targeting the Roma were applied in a number of occupied countries across Europe.⁸

The Kingdom of Yugoslavia was occupied by Germany in April 1941. Upon arrival, the Germans established a military occupation administration in Serbia, monitored by a puppet government led by Milan Nedić.⁹ Soon after, both the Jews and the Roma were put in detention camps across Serbia and in Croatia; moreover, their property was listed and confiscated. When, by the end of the summer, it became clear that Tito’s Partisan Movement and the Royalist Četnik Movement had both caused serious damages to the German Military, the Nazi leadership ordered that 100 detainees were to be executed for every single German death.¹⁰ Under this order, nearly all male Serbian Jews – some 8,000 of them, and an additional 1,000 Serbian male Roma – were executed by the end of 1941. Once Jewish and Romani men had been killed as a part of these retaliation measures, the German authorities began looking for a “solution” for the women, children and elderly left behind. As a response, they

⁵ Jehuda Bauer in History of the Holocaust cited in: Reinhartz, Dennis. 1999. Unmarked Graves: the Destruction of the Yugoslav Roma in the Balkan Holocaust, 1941-1945. *Journal of Genocide Research* 1(1), 81-89.

⁶ Reinhartz, *Unmarked Graves*.

⁷ Moschel, Mathias. 2014. *Law, Lawyers and Race. Critical Race Theory from the United States to Europe*. Oxon: Routledge, 142.

⁸ Zimmerman, Michael. 2007. *Jews, Gypsies and Soviet Prisoners of War: Comparing Nazi Persecutions*, in *The Roma: A Minority in Europe*, edited by Strauber, Roni and Raphael Vago. CEU Press.

⁹ USHMM. n.d. [Axis Invasion of Yugoslavia](#). United States Holocaust Memorial Museum (accessed: 07. August 2017).

¹⁰ USHMM, *Axis Invasion of Yugoslavia*.

constructed the Semlin camp in Zemun, where they transported Jewish women and children.¹¹ These people stayed in the camp until March 1942, when the Reich Central Office for Security ordered that they were all to be executed in a gas van, which by May of the same year had killed more than 6,280 Jews.¹² Romani women and children were integrated into the concentration camp together as well, and about a third were subsequently executed.¹³

Only a year after the occupation, it became clear that the occupiers and their collaborators had wiped out nearly the entire Jewish population in Serbia. In August 1942, a Nazi report proclaimed that Belgrade was “*judenrein*,” a city “clean,” empty of Jews.¹⁴ By the end of 1942, the Nazis ordered all assets found in bank accounts and in the safes of the now dead Jews to be immediately surrendered to the Nazi party.¹⁵ The total worth of what was transferred is now estimated to roughly USD 17 million. A couple of thousand Jews who survived either joined the Partisans or were hidden by non-Jewish Serbs.¹⁶ Persecution of the Roma was much more heavily assisted by the government in Croatia, where the fascist Ustaša government executed some 20,000 Romani in the Jasenovac concentration camp. In Serbia, this number does not seem to exceed 2,000, although there are no reliable statistics. Only slightly over 3,000 people were registered as Romani in 1941,¹⁷ which would suggest that two thirds of this population perished during the war. Soon after Belgrade was liberated, the new government gathered information about the crimes committed in the city, demanding reparations from Germany. Romani victims were left out.¹⁸

Life under socialism

In May 1945, the new Yugoslav government enacted Law No. 36/45 with the aim of handling abandoned and seized property.¹⁹ The Law was applicable only to citizens of Yugoslavia, and any claims from those who lived abroad were rejected, which harmed the members of the Jewish diaspora who might have been related with those who vanished during the occupation of Yugoslavia. In any case, this legislation was short-lived due to the widespread nationalisation (as well as sequestration, confiscation, expropriation and/or agrarian reform) that took place, resulting in more lost property.²⁰ While unable to reclaim their property, some 14,000 surviving Yugoslav Jews re-established the Federation

¹¹ Zimmerman, *Jews, Gypsies and Soviet Prisoners*.

¹² USHMM, *Axis Invasion of Yugoslavia*.

¹³ Pisari, Milovan. 2014. *Stradanje Roma u Srbiji za Vreme Holokausta*. Forum za primenjenu istoriju.

¹⁴ World Jewish Congress. 2016. [Serbian Legislature Passes Compensation Law for Heirless Confiscated Jewish Property](#), *WCJ*, 15. February 2016 (accessed: 07. August 2017).

¹⁵ Aleksic, Vesna. 2016. *Arizacija i Holokaust: Pljacka Jevreja u Srbiji*. *Novi Magazin*, 29. February 2016 (accessed: 07. August 2017).

¹⁶ USHMM, *Axis Invasion of Yugoslavia*.

¹⁷ Manojlovic, Olga Pintar. 2013. *Uspostavljanje Fasistickih Zakona i Institutcija u Okupiranoj Srbiji. Holokaust u Jugoslaviji*. Jevrejska opstina Zemun.

¹⁸ Pisari, *Stradanje Roma u Srbiji Za Vreme Holokausta*.

¹⁹ See Zakon o zaštiti narodnih dobara i njihovom upravljanju (“Službeni list DFJ”, broj 36/45).

²⁰ European Shoah Legacy Institute. 2016. Overview of Immovable Property Restitution/Compensation Regimes – Serbia, as of 13. December 2016.

of Jewish Communities soon after the end of the war.²¹ However, Zionist sentiments also re-emerged, and more than half of the survivors migrated to Palestine. In 1950, the Jewish population in the federation amounted to merely 6,500 out of the 67,000 before the war.²²

Tito's government was undoubtedly more popular among the surviving Yugoslav Jewish population than other governments in the Eastern bloc could claim to be among their respective Jewish communities. Considering that those who survived largely did so with the help of the Partisans, and the fact that Tito's groups were given much credit for ending the war and driving the Nazis out of the country, the new government was garnished with prestige among the Jewish minority.²³ Furthermore, anti-Semitism under the socialist government was allegedly unheard of,²⁴ as the country had a leader who strongly adhered to the ideas of national and religious equality, and opposed hate speech.

Under socialism, the religiosity of people in Yugoslavia generally decreased, and the Jewish community was no exception. In the years immediately after the war, there were no religious services, and in 1968 the community lost its only rabbi.²⁵ That being said, this small postwar community largely preoccupied itself with building memorials, commemorating the victims, and maintaining Jewish cemeteries.

The number of Yugoslav Jews seemed to have further decreased due to large outflows of Serbian migrants to Western Europe and the Americas, and through interfaith marriage and losing faith. According to the 2011 census, fewer than 2,000 Jews live in Serbia.²⁶ The numbers of Romani people, on the other hand, significantly increased and now amounts to 150,000,²⁷ although some estimates suggest size of the community is five times higher.²⁸

Not much discrimination against the Roma was reported under socialism, although the group did not achieve the status of a minority.²⁹ Yet, this lack of discrimination came at the cost of assimilation, as the absence of ethnic divisions applied equally to all groups in the spirit of unity and brotherhood. During and after the break-up of Yugoslavia, discrimination and violence against the Romani people increased rapidly, with the first officially racial

²¹ Jewish Virtual Library. 2017. [Jews of the Former Yugoslavia After the Holocaust](#) (accessed: 07. August 2017).

²² USHMM, *Axis Invasion of Yugoslavia*.

²³ Goldstein, Ivo. 2014. Restoring Jewish Life in Communist Yugoslavia, 1945–1967. *East European Jewish Affairs* 34(1), 58-71.

²⁴ See the following statement by Albert Vajs, President of the Federation of Yugoslav Jewish Communities in 1958 (cited in Goldstein *Restoring Jewish Life*, 68:

“Anti-Semitism does not exist today. If there are – rarely – statements by some individuals that have a minimal anti-Semitic character, such cases are always prosecuted by the Yugoslav judicial system in accordance with the law [...]”

²⁵ Jewish Virtual Library.

²⁶ Results of the census can be accessed [here](#).

²⁷ Census 2011.

²⁸ B92. 2009. [Zvanican broj Roma u Srbiji](#) (accessed: 07. August 2017).

²⁹ Rakic-Vodinelic, Vesna and Sasa Gajin. 2009. [Kratka istorija pravnog položaja i diskriminacije Roma u nekadasnjoj Jugoslaviji i nekadasnjoj i danasnjoj Srbiji](#). *Pescanik*, 06. April 2009 (accessed: 07. August 2017).

crime occurring in 1997.³⁰ Ever since, treatments of Serbian Romanis as inferior in all spheres of life including ghettoisation³¹, denial of birth certificates³² and forcible evictions³³ have continuously been reported, and the Roma remain physically and socially segregated in most of Serbia.

Restitution laws 2006-2016

Any effective remedy for the Nazi crimes in Southern and Eastern Europe was delayed for decades due to the Cold War and the subsequent shifts in borders. It was only in the 1990s that talks about the restitution of Jewish property became serious, and conferences and declarations on that subject followed one after the other.³⁴ Serbia, too, was preoccupied with fighting its more recent wars throughout the 1990s, and then seeking justice for them for most of the 2000s. What happened to several thousands of people from minorities in the 1940s was not a matter of concern, at least not in the first years of democratic rule.

In 2009, 46 states which had been greatly affected by the Holocaust gathered in Terezin to sign a declaration (hereinafter the Terezin Declaration) in order to codify their commitment to provide for the restitution of property expropriated by the Nazis and their collaborators.³⁵ Although non-binding, the Declaration gathered a great number of leaders, activists and Holocaust survivors, many of whom stressed the need to have these wrongs finally corrected, not only in respect to the Jewish community, but also to the Roma. State parties committed to correct the consequences of illegal seizures of property including “confiscations, forced sales and sales under duress of property” as part of a larger policy of persecution against certain groups, “the vast majority of whom died heirless.”³⁶

Nonetheless, eight years later, the unresolved issues outnumber the initiatives taken to return such property among the signatory states. The European Shoah Legacy Institute, set up to monitor compliance with the Terezin Declaration, published a report in 2017, finding that most former Yugoslav republics failed to enact appropriate legislation, either completely or partly by omitting heirless property from their new restitution laws.³⁷ Heirless property was indeed in focus during the drafting of the Declaration, considering that the number of surviving Jews in the above-mentioned countries is very low due to

³⁰ A thirteen-year old Romani boy was murdered by a group of skinheads. See: Simeunović Bajić, Nataša 2011. Roma in Serbia After the Collapse of Yugoslavia: Political Implications and Media Silence on Racial Violence. *European Journal of Interdisciplinary Studies* 3(2), 87-93.

³¹ See, for example, Ignac, Benjamin. 2016. Behind the Wall – Ghettoization of Roma people in Krusevac, Serbia. *European Roma Rights Centre*, 22. December 2016 (accessed: 07. August 2017).

³² Weiss, Adam. 2016. Roma in Serbia Still Denied Birth Certificates – ENS Members Take Legal Action to Challenge Register Offices’ Unlimited Power. *European Network on Statelessness*, 07. March 2016 (accessed: 07. August 2017).

³³ Amnesty International. 2015. Serbia: Roma Still Waiting for Adequate Housing.

³⁴ Nazi Gold Conference (1997), Washington Conference on Holocaust-Era Assets (1998), Stockholm Declaration (2000), Vilnius Conference on Holocaust Era Looted Cultural Assets (2000).

³⁵ See Terezin Declaration on Holocaust Era Assets and Related Issues, signed at the Prague Holocaust Era Assets Conference, available [here](#).

³⁶ Terezin Declaration, section I, Art 2.

³⁷ European Shoah Legacy Institute. 2017. The Holocaust (Shoah) Immovable Property Restitution Study: Overview. *ESLI*.

the passage of time, and the majority of the Jews at the time perished during the war, without any of the governments doing justice to the property left behind.

With democracy knocking on Serbia's door quite late, the first legislation on restitution of property expropriated during the communist regime came only in 2006.³⁸ This Law, called the Law on the Restitution of Property to Churches and Religious Communities referred only to the property confiscated after 1945, and therefore made it difficult for the Jewish Community to receive any compensation. Further amendments were made in 2011, and the new Law on Restitution of Property and Compensation³⁹ involved property that was nationalised, confiscated or expropriated under socialism, i.e. since the end of WWII. Although vaguely framed, Article 1 of the Law stated that the legislation would also apply to the property that was confiscated as a "consequence of the Holocaust,"⁴⁰ while at the same time promising that such matters would be dealt with in separate legislation. In either case, the law is seen as flawed, with its long list of exceptional situations that are not covered, and a set limit on the amount of money that can be paid.

As several years had gone by and no separate legislation was passed, there were some concerns about whether the promise would be realised at all due to the potential financial ramifications of such legislation on the government and its expenses. Namely, at the time, there was no full list of Jewish properties that had been unlawfully confiscated by the Nazis, nor was there any Jewish organisation that Serbia recognised as a rightful successor of Jewish communities of the 1940s.⁴¹ Despite these concerns, good news finally arrived in February, 2016, when the Parliament adopted the Law on Removing the Consequences of Confiscating Property,⁴² especially targeting the assets of the heirless Holocaust victims in Serbia (hereinafter the Law on Heirless Property). Immediately afterwards, the Serbian Jewish Community Association approximated that the number of buildings that were expropriated during WWII and would now be given back amounted was over 3,000.⁴³ Importantly, the legislation was very well-received by both Israel and the United States, the Embassy of the former calling February 23 "a historic day for justice, morality, and commitment to the special relationship between the Serbs and the Jews."⁴⁴ The World Jewish Congress, too, urged "other countries to follow Serbia's lead and return heirless Jewish property."⁴⁵

³⁸ Law on the Restitution of Property to Churches and Religious Communities (Zakon o vraćanju (restituciji) imovine crkvama i verskim zajednicama) Official Gazette of Republic of Serbia No. 46/2006.

³⁹ Law on Property Restitution and Compensation (Zakon o vraćanju oduzete imovine i obeštećenju), Official Gazette of the Republic of Serbia, No. 72/2011, 108/2013 and 142/2014.

⁴⁰ European Shoah Legacy Institute, *the Holocaust (Shoah) Immovable Property*.

⁴¹ European Shoah Legacy Institute, Report on Visit of Ms. Halyna Senyk to Belgrade, Republic of Serbia, 25. March 2015.

⁴² Law on removing the consequences of confiscating property of the victims of the Holocaust who do not have living legal heirs (Zakon o otklanjanju posledica oduzimanja imovine žrtvama Holokausta koje nemaju živih zakonskih naslednika), Official Gazette of Republic of Serbia No. 13/2016.

⁴³ Dragojlo, Sasa. 2016. Serbian Jews to Reclaim Seized WWII Property. *Balkan Transitional Justice*, 22. February 2016 (accessed: 07. August 2017).

⁴⁴ Dragojlo, *Serbian Jews to Reclaim Seized WWII Property*.

⁴⁵ World Jewish Congress, *Serbian Legislature Passes Compensation Law*.

Serbia, in fact, remains the only former Yugoslav country with such comprehensive and inclusive legislation on heirless property expropriated during the Holocaust, nonetheless enacted with one great flaw. While the Terezin Conference specifically made sure that other persecuted groups were included in the talks, bringing in the representatives of the Roma Holocaust groups,⁴⁶ Serbia seemed to have completely disregarded the fact that its own Romani people, too, suffered tremendously during WWII.

What is in the law?

The Law on heirless property includes a definition of the Holocaust, as necessary for further identifying eligible beneficiaries of the Law, and importantly, incorporates *racial* discrimination as the basis for the crimes that occurred during this period. It defines the Holocaust as:

“the period between April 6, 1941 and May 9, 1945 during which the occupying entity and its collaborators committed a systemic exodus and killing of the members of the Jewish community, destroyed and confiscated Jewish property, regardless of their citizenship, and the property of Jewish organisations, based on racial laws, rules and acts of the Nazi regime on the territory of today’s Republic of Serbia.”⁴⁷

This definition itself is monumental. On the one hand, Serbian legislators specifically addressed a phenomenon wholly different from the nationalisation of property that occurred under socialism, and aimed to separately correct the harm done by an occupying force on Serbian territory. The puppet government of Milan Nedić did indeed issue an order about the confiscation of Jewish property in August 1942, according to which the property of all Jews who were living on Serbian territory belonged to Serbia without any compensation.⁴⁸ The order made no mention of the Romani people. On the other hand, the Law defines the Holocaust as a crime that was based on racial discrimination, but fails to even mention, let alone retribute, another group that was persecuted on the basis of race through the application of Nazi racial laws, and has never recovered from such prejudice – the Roma.

These both require further elaboration. The Law on Heirless Property perhaps came a bit too late, considering the small size of the Jewish community in Serbia today. Nevertheless, due to the specific circumstances of the political regime that persisted until the beginning of the 21st century, it is not unsurprising that the needs of minorities were left at the bottom of the agenda. There is no justification for the delay, but there must be an understanding of the circumstances and a respect that despite such circumstances some progress – more than in many less economically deprived states – has been achieved. At the same time, the fact that each and every one of these laws have ignored the Roma community is worth criticising. While it has been argued that

⁴⁶ See the speech by Čeněk Růžička, President of the Committee for the Redress of the Roma Holocaust in the Czech Republic at the Holocaust Era Assets Conference in Prague, 2009.

⁴⁷ Art. 3 of the Law on Heirless Property (n. 42), author’s translation.

⁴⁸ Uredba o Pripadanju Imovine Jevreja Srbiji.

Romani people at the time did not hold much property to begin with, it would still be just if such an option was given to the Roma community as it was given to the Jewish community – even if this would only include one returned house, or none. It is the aspect of *race* that is selectively used in the legislation to promote further discrimination and stigmatisation of the Roma community that is beyond troubling in this case. According to the racial laws which allowed for the execution of certain groups in occupied Serbia, Jews and Roma were equally inferior.⁴⁹ It was the law that allowed for such grave discrimination, and it is the law that now seems to be unable to remedy it.

Moving beyond the definition of the Holocaust, the Law on Heirless Property furthermore prescribes regular and mandatory financial contributions by the Republic to the Jewish community, amounting to 950,000 EUR annually, to be given for the period of 25 years, starting on January 1, 2017.⁵⁰ What the Jewish community does with the money is left at their discretion, however with an exhaustive list of possible options, most of them including enhancing education, research and commemoration of the Holocaust.⁵¹ All of them are in line with the recommendations established in the Terezin Declaration on consequences of “the Holocaust (Shoah) and other Nazi crimes.”⁵²

So far, the Law has been anything but a mere fairytale. The National Agency for Restitution stated at the end of 2016 that, in the first nine months since the Law was enacted, 29 commercial properties, one building and seven apartments were handed back to the Jewish communities.⁵³ This is seen as late, slow, but rather remarkable progress.

⁴⁹ Pisari, *Stradanje Roma u Srbiji*.

⁵⁰ Art. 9 of the Law on Heirless Property.

⁵¹ Art. 22 of the Law on Heirless Property states that the restituted property and/or earnings therefrom are to be used for the purposes of:

- 1) Studying and documenting the Holocaust; commemorating important dates from the Holocaust period and commemorative ceremonies in Serbia;
- 2) Scientific-research-oriented projects about the Holocaust and other crimes committed by the Nazis and their collaborators and publishing papers on these topics;
- 3) Education about the Holocaust and other crimes committed about the Nazis and their collaborators, cultural events, and maintenance of tradition;
- 4) Financial support for tuition and stipends of students, young talents and scientists from Serbia;
- 5) Financial support to the living survivors of the Holocaust who had residence on the Serbian territory during the Holocaust and now live in Serbia or abroad;
- 6) Financial support to the existing Jewish community in Serbia;
- 7) Strengthening of the ties between the Jewish community in Serbia with other nationals in other states;
- 8) Supporting future activities related to these goals by putting parts of the income to savings accounts;
- 9) For humanitarian purposes in Serbia;
- 10) In order to cover the costs and duties that the Jewish community and the Council has gained by managing the property and income through the application of this Law.

⁵² Terezin Declaration, section I, Article 4.

⁵³ Agencija za restituciju.

Double standards: where do the Roma come in?

“I confess that I feel somewhat guilty towards our Romani friends. We have not done enough to listen to your voice of anguish. We have not done enough to make our people listen to your voice of sadness. I can promise you we shall do whatever we can from now on to listen better...” Elie Wiesel ⁵⁴

In addition to the generally strict rules of occupation that applied to all Serbs during WWII, there were two groups that were treated as especially inferior – *racially* inferior – by the Nazi occupiers in Serbia: the Jews and the Roma. Only several days after the Nazi troops occupied Belgrade, the leadership ordered that all Jews and Roma must be registered. Within three days, both groups were forced to wear yellow armbands with the Star of David on them if registered as Jewish, and armbands with the word “Ciganin,”⁵⁵ if registered as Romani.⁵⁶ The rest of the story is familiar to everyone who has studied the Holocaust or at least seen a movie on the issue: the Jews in Serbia were not allowed to mingle with the “Aryans,” they were not allowed in theatres, parks or hospitals. Soon after, they were forced to register all of their property, which was taken away from them along with their civil rights. After less than a month, they were put in ghettos, with the police patrolling day and night.⁵⁷ Then the first detentions began – first it was political enemies, but then it was everyone Jewish. All Jewish men, women and children in Serbia were rounded up in concentration camps only months after the occupation, and everyone knows what happened from there.

The problem with this narrative in the case of Serbia is that everything that happened to the Jews happened to the Roma, too. From a CRT perspective, such persecutions were made possible through the application of law; it was the law that discriminated the two groups on equal ground,⁵⁸ and it is the restitution laws in Serbia and elsewhere that have, by and large, been ignoring one of the groups. Is it the case that Serbia does not see the Roma as a *racial* minority, or, rather, that the racism that results in discriminatory treatment of this minority in absolutely all spheres of life is *unconscious*,⁵⁹ hidden?

Naomi Zack argues that there is no legal mechanism that could be used to punish those who enabled racial discrimination through laws. In other words, irrespective of the passage of time, there was no law against racial laws in 1941.⁶⁰ For that reason, awarding reparations for grave racially-motivated injustices is based on moral convictions, rather than on legal arguments. What follows is that societies which remain racist are less likely to put forth such

⁵⁴ Elie Wiesel in 1986, cited in Reinhartz, *Unmarked Graves*, 81.

⁵⁵ Serbian for “Gypsy.”

⁵⁶ Manojlovic Pintar, *Uspostavljanje Fasistickih Zakona i Institutcija*.

⁵⁷ Manojlovic Pintar, *Uspostavljanje Fasistickih Zakona i Institutcija*.

⁵⁸ According to the Decree on Racial Origins (*Zakonska Odredba o Rasnoj Pripadnosti*) adopted on 30. April 1941.

⁵⁹ The term unconscious racism was coined and developed by Lawrence, Charles. R. III. 1995. *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, in *Critical Race Theory: The Key Writings that Formed the Movement*, edited by Crenshaw, Kimberle W. / Gotanda, Neil / Peller, Gary and Kendall Thomas. New York: The New Press.

⁶⁰ Zack, Naomi. 2003. Reparations and the Rectification of Race. *The Journal of Ethics* 7(1), 139-51.

moral convictions and initiate the awarding of any kind of remedy.⁶¹ Although Zack makes this argument in the context of the post-slavery United States, the same rationale could be used to explain what is going on in Europe, including Serbia. The Jewish community in Serbia is smaller than ever, and is, after all, *white*. Anti-Semitism is a rare occasion, because *Semitism* is equally as rare. On the other hand, anti-Gypsyism is integrated into all layers of the non-Roma Serbian society, and “the enemy” – that is the *Gypsy*, is more numerous than ever. Research has shown that the police in Serbia have a habit of arresting Romani people because they assume that all Roma are criminals, and they often do so without any evidence.⁶² Racist attacks against the Roma have not been prevented nor investigated properly. Inequality in job opportunities remains stark, particularly so in the private sector. According to a survey, a quarter of the population in the early 2000s did not want to have a Romani as a friend, and nearly 80% would not have a Romani as a spouse.⁶³ The level of perception of discrimination towards the Roma is on the rise as well, being the second (by 0.4 per cent after women) most discriminated group in Serbia.⁶⁴ These racial biases are deeply integrated into the mindsets of the non-Roma Serbs from an early age, and racism remains omnipresent even when unconscious. Hence, while the fact that intent behind discrimination towards the Roma is based on the perceptions of race and seeing people of colour as inferior may be hidden, the application of such discrimination is quite visible, and often very open. While the extent of racial discrimination towards the Roma in Serbia in relation to the Jews before WWII can be debated, these statistics cannot deny that racism towards Romani people in Serbia, like in most of Europe, is individual and communal, institutional and structural. The absence of reparations, therefore, does not come as a surprise, but must not remain a norm.

Conclusion

Many groups were targeted by the Nazis, but no groups other than Jews and Roma were targeted for extermination through directives and on the basis of race.⁶⁵ It is due to this legacy and connections to the long and gruesome Holocaust⁶⁶ that ideas of race and racial categorisation meet with reluctance in Europe, even merely for statistical purposes.⁶⁷ Now that racial categorisation is finally brought up again, why has the Jewish community been singled out in this attempt to retribute for the racial discrimination that occurred decades ago? Perhaps the answer lies in the fact that Romani people, unlike the Jews, do not have a state of their own to support them, or because of the lack of a well-organised central community with international operations, such as the World Jewish Congress. For one reason or another, this group seems to remain the eternal outsider in Serbia, the segregated other who even the law has

⁶¹ Zack, *Reparations and the Rectification*, 140-41.

⁶² Humanitarian Law Center. 2003. *Roma in Serbia*. Humanitarian Law Center Belgrade.

⁶³ Simeunović Bajić, *Roma in Serbia After the Collapse of Yugoslavia*.

⁶⁴ CeSID. 2013. *Public Perception of Discrimination in Serbia*. Cesid doo.

⁶⁵ For instance, the mentally and physically disabled were targeted because they were *genetically* imperfect: see the writing of Hancock, Ian. 2010. *Danger! Educated Gypsy: Selected Essays*. University of Hertfordshire Press.

⁶⁶ Moschel, *Color Blindness or Total Blindness*.

⁶⁷ Grigolo, Michele / Hermanin, Costanza and Mathias Möschel. 2011. Introduction: How Does Race ‘Count’ in Fighting Discrimination in Europe? *Ethnic and Racial Studies* 34(10), 1635-47.

treated as less worthy through its actions (or absence thereof). On the other hand, considering how well received the enactment of the Law on heirless property has been in Israel, it may be reasonable to ask the following: have the remaining Jewish community and the non-Jewish Serbs at last reached an *interest convergence*? Has racism towards the Jews been combatted because it is of (economic, political, diplomatic) interest for the Serbian government, or is it rather the understanding of the grave injustice that has occurred on Serbian territory and the need to use the last opportunity to remedy it that are driving this initiative?

As of December 2016, Serbia is the only country that has passed a private property restitution legislation since the signing of the Terezin Declaration.⁶⁸ In addition, it is one of the first Eastern European states to have a separate law on heirless property. While this has improved its image internationally, it has not addressed all concerned voices domestically. Not being able to rely on the law for restitution, the groups that were heavily persecuted during WWII have taken their cases elsewhere.⁶⁹ Assuming that there is more to these developments than the desire to be well-respected by Israel and its allies, and in response to the critique regarding the Roma, it is about time that Serbia, too, faces its often hidden institutional racism, and at least recognises the harm its Roma community has suffered based on racial laws, if it indeed aspires to set an example of a rights-respecting, leading state in the region, and rebut the interest convergence critique.

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⁶⁸ ESLI.

⁶⁹ Perhaps for the first time, Serbian, Jewish and Roma victims stood together in filing a complaint for compensation for WWII damages towards their groups against Croatia as a successor state to the Fascist Croatian regime in the 1940s. The applicants demanded USD 3.5 billion before a District Court in Chicago as compensation for the confiscated property, but also other nonpecuniary damage suffered by the victims of the government-run concentration camps in Croatia, where all three groups were persecuted. See more at: Beta. 2017. Hrvatskoj stigla tuzba zrtava NDH (accessed: 07. August 2017).

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