

Facts and Myths on Restitution of Property in Poland: part 1

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Abstract:

The article presents analysis of current social and legal circumstances of property restitution by pre-war owners or their heirs in Poland. The main issues concern the present legal environment of property restitution in Poland, recent experiences of pre-war owners or their heirs in their attempts to reconstitute their properties, the draft law on restitution presented recently by the Polish ruling party and various false concepts around restitution of property in Poland.

Introduction

Poland does not have a single law providing for the restitution of property nationalized by the communist government after the World War II. For the time being, each particular case must be assessed individually, taking into account various particular pieces of legislation from different period. This said, we have to notice that on 11 October this year, the Polish government presented the draft law aimed at resolving restitution issues in Poland in totality by offering monetary compensation of approximately 20-25% of the value of the lost property (in Warsaw or elsewhere in Poland) to the heirs of the pre-war owners.¹ Nevertheless, it is too early to say whether this bill will be passed into a new law and what will be its final shape. The considerations on the draft law will be developed further in this article.²

¹ Projekt ustawy o zrekompensowaniu niektórych krzywd wyrządzonych osobom fizycznym wskutek przejęcia nieruchomości lub zabytków ruchomych przez władze komunistyczne po 1944 r. [Draft Law on Compensation for Particular Injuries Caused by Takeover of Real Property and Movable Relics by Communist Authorities after 1944] [Draft Law], UD316, <https://legislacja.rcl.gov.pl/projekt/12304605/katalog/12466630#12466630> (last visited Nov. 14, 2017).

² *Infra* p. 14-19.

A vast majority of restitution claims in Poland concern families who fled Poland in or shortly after 1945. In the period 1945-1989 (i.e. until the fall of the Iron Curtain in the Central Europe) such claims could not have been even formulated because of the political situation. Only after 1989 these claims could be raised. There was a political consensus among politicians that: (a) the years 1945-1989 should not count in terms of statute of limitation and (b) the justice should be done and the claims of the pre-war owners should be somehow satisfied.

The first claims regarding confiscation of property were filed in the 1990s. The prevailing method of awarding these claims was returning a property to rightful owners which should be the heirs of the pre-war owners. These types of proceedings continue today. Unfortunately, the proceedings have been very slow and many (legal or factual) obstacles appear before the claimants. The main problem has been the lack of documents and the need to obtain a confirmation of inheritance from the Polish courts which is never easy because of evidentiary issues and the rigid approach of the judges towards foreign or fragmentary documents. There have been many irregularities in the process which finally in June 2016 led to the disclosure of the big scandal in Warsaw being called today 'reprivatization scandal'.³ Unfortunately for the heirs, recently there has been more focus given to the irregularities in the procedure and various scandals surrounding the matter than on the actual process of restitution itself.

As indicated above, for the time being the process must be looked into on a case-by-case basis. It is important to make an application for the return of property and wait for future developments of the case. Restitution attorneys in Poland are doing their best to help as many people as possible. We have had the honor of being involved in these matters from the very beginning. Working on these cases is a unique experience for an advocate, especially for an

³ Iwona Szpala, *Reprywatyzacja w Warszawie. Co o zwrocie działki przy Pałacu Kultury wiedział ratusz?*, GAZETA WYBORCZA, 30 June 2016, <http://warszawa.wyborcza.pl/warszawa/1,34862,20326346,reprywatyzacja-w-warszawie-co-o-dzialce-przy-palacu-kultury.html> (last visited Nov. 10, 2017).

advocate with the M&A background (including the author of this article). It is a very moving and eyes-opening experience. It is one thing when one reads in books about millions of people dead during the war and something completely different when one reads about the plight of a particular family with a given names and personal details, where first the father dies on the street being shot by a policeman, then the mother dies a month later when she went to buy some bread, then their children got killed in the following months while the grandparents are transported to Treblinka and gas chambered there. The plight of a single family can be reconstructed today thanks to the Yad Vashem testimonies and through the meticulous process of searching the archives.⁴ The story of each family is extremely moving and almost unbelievable.

This article aims to offer an insight into a complex and multi-faceted issue of property restitution in Poland. It will include, among others, a short presentation of the legal environment of property restitution in Poland, a look on recent experiences of pre-war owners or their heirs in their attempts to reconstitute their properties, considerations on provisions stipulated in the draft law proposed by the Polish government in October 2017 and analysis (as well as refutation) of various beliefs and common opinions concerning restitution of property in Poland.

⁴ Mark Landler, *Polish Premier Denounces Obama for Referring to a 'Polish Death Camp'*, NEW YORK TIMES, 31 May 2012, A6.