

Facts and Myths on Restitution of Property in Poland: part 5

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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.

Taking Down the Myths

The current unfavorable circumstances of property restitution in Poland, just to mention the freezing of the current proceedings, the verification committee and the menacing draft law are effects of the bad publicity restitution has due to ‘wild reprivatization’ and its repercussions. In addition, around restitution appeared various common beliefs and myths which affect negatively the public opinion on restitution. This part of the article addresses some of these myths as important factor on social perception of the whole issue in Poland.

1) Most of the claimants are fraudsters and thieves

Because of “reprivatization scandal” it is often believed that anyone trying to recover a property in Poland is dishonest. Stories of frauds, described extensively in the press,¹ led many to think that the attorneys represent either already dead owners or

¹ *Supra* notes 3, 28.

impostors of the heirs while all the rightful owners have already been compensated or have no interest in restitution at all.

Actually, the number of Polish or Jewish families of rightful owners, who try to recover their properties or get compensation, is large. However, the few cases of fraud have gained much larger publicity and cast shadow over all the applicants. It is vital for the families of the rightful owners to join their efforts in clearing the atmosphere around restitution by not only pursuing their claims, but also by showing that they are proper applicants while they are only few fraudsters with whom they have nothing in common.

2) Restitution is a quick and simple procedure in which no documents are assessed

As it was indicated previously, the restitution is only a short and final phase of a long-lasting process. Before making the application, the owner or the heirs have to carry out extensive research through Polish state archives and family documents, which are often dispersed around the world. Due to the war, many documents have been lost permanently. Then, the inheritance proceedings must be conducted before a Polish court. Due to various factors, including atmosphere around restitution, lack of trust towards historical or foreign documents, as well as discrepancies in the records, the courts conduct such cases very reluctantly. In effect, although inheritance proceedings in general do not require much time and effort, the inheritance for the purpose of restitution may be really time-consuming process.

Courts and state organs can be very rigid while assessing documentary evidence and catch every possible small detail. For example, even different transliteration of a name, like “Shimon” instead of “Simon” (in Polish, “Szymon”), may rise doubts in some instances. Relying on these details, the authorities may try to delay or even discontinue the proceedings. That is why it is crucial to have a team of good experts not only in law, but also well translation and archive experts.

In sum, the whole restitution may take years. Some families spent decades on their fight, often without success.² Nevertheless, there is no better way than to take a chance, assess the claim and file proper motions with the help of trusted experts.

3) Upon successful restitution, the heirs increase rents and remove tenants

Many opponents of the restitution assert that most of the properties, in particular in Warsaw, should not be returned due to social reasons. While some of the buildings serve public purpose as schools, kindergartens, administration offices, libraries etc., many other serve housing purposes. These buildings, often located in the modern city center, are old and usually have not been refurbished for decades. The rents there are relatively very low. Therefore, usually the houses are inhabited by the poor or the elderly. Some fraudsters, who succeeded in obtaining the property, began dynamically increasing the rent to the market value level and even removing the tenants. That activity is called ‘house cleansing’.³ Basing on these experiences, some politicians and social activists are afraid that more restitution would cause massive evictions and gentrification of the cities.⁴

Such reasoning, although understandable, omits several important points. Firstly, the original owners or their heirs pursue their claims not only for pure profit, like in the case of ‘house hunters’ of ‘wild reprivatization’. They discover their heritage along with their property rights. Secondly, the example of Ron Balamuth shows clearly how the heirs treat the reclaimed property. The house was given to the Catholic Church,

² *Ogórek v Poland*, ECHR, Application No. 28490/03, Judgment of 18 September 2012; *Pikielny and others v Poland*, ECHR, Application No. 3524/05, Judgment of 18 September 2012.

³ Renata Krupa-Dąbrowska, *Czyściciele kamienic zapłacą zadośćuczynienie wyrzuconym z mieszkań*, RZECZPOSPOLITA, 19 January 2017, <http://www.rp.pl/Nieruchomosci/301199982-Czysciciele-kamienic-zaplaca-zadosuczynienie-wyrzuconym-z-mieszkan.html> (last visited Nov. 10, 2017).

⁴ Martyna Chmielewska, *Reprywatyzacja w Warszawie: Jest petycja o wstrzymanie eksmisji*, POLSKA THE TIMES, 17 January 2017, <http://www.polskatimes.pl/fakty/polityka/a/reprywatyzacja-w-warszawie-jest-petycja-o-wstrzymanie-eksmisji,11699695/> (last visited Nov. 10, 2017).

while a part of it is dedicated as a memorial place for the local Jews murdered during the Holocaust.⁵ Thirdly, the property is restituted not to be immediately sold afterwards to any developer. The heirs, regardless that under the draft law it may be necessary, apply for confirmation of their Polish citizenship, visit Poland and the places related to their past. For them, restitution of property is a part of that heritage discovery, not a business. If it was, it would turned out not be profitable, seeing the amounts of time and resources required.

4) Most of the properties have been already returned to the rightful owners

Another argument brought against restitution is that the heirs had more than 25 years after the fall of Communism in Poland and, thus, they would have been remedied earlier if they really wanted to. Moreover, it is claimed that the majority of property has been already returned or should not be returned at all, for example due to social reasons as described above. Sometimes it occurs that some family member recovers the property leaving the rest of the heirs unaware of their claims. When they find it out after years or even decades, it is often they stay with nothing while the claim was successfully remedied or the property was sold to a third party.

It is true that after 1989 the pre-war owners and their heirs gained a possibility to recover their properties. As it was indicated in the introduction, some families started their attempts in the early 1990s. However, the tangled web of regulations and the transformation did not allow for simple restitution, which is still not possible. Through the years, the law was subject to changes while the courts added a significant input by their decisions. Besides the lengthiness of the process, many heirs were often oblivious of any property in Poland or a possibility of filing claims. The proceedings conducted

⁵ *Supra* notes 30-31.

under the 'Small Reprivatization Statute' since the end of 2016 concern exactly the heirs of the owners of Warsaw properties who did not know about the claim until they found out by public announcements. It is still possible that even today someone does not know about his family past and potential claims to bring in order to recover the family property. That was the case of Ron Balamuth, who found about his claim by a mere coincidence.

These myths are just few examples of false assumptions around property restitution in Poland. These myths have to be faced in order to cure the and bring a real effective cure for the problems the process suffers from the most. To do so, a cooperation between the former owners, their families, organizations and experts is needed to use facts not only to clear the blurred image of their cause, but also to create for restitution-friendly atmosphere in Poland.

Closing Remarks: The Past and the Future of Property Restitution in Poland

Restitution of property in Poland remains to be a difficult, laborious, multi-faceted, multi-layered and sometimes even painful process. Complex legal system, lack of simple solutions and heavy political atmosphere around the issue raise obstacles for the former owners and their families on almost every step. The best thing to do is to gather the family around its history, discover the heritage and dig in the past. With the help of expert advice, one can collect information sufficient to assess the potential claim and pursue it before the Polish state. A lot of time and patience is advised.

Unfortunately, throughout all these years Poland has not managed to develop a coherent legal mechanism for reclaiming nationalized properties. Moreover, the current draft law brings upon more doubts and fears than high hopes. That would be the case, the families should double their efforts as the new law would finally end the process of restitution related to post-war nationalizations. Before the new draft law enters into force, claims need to be assessed on a

case-by-case basis as described above. That may seem difficult, but the anticipated changes would bring rather more difficulties. Nevertheless, there is no better chance in current circumstances to try and file the claim now, while it is still relatively available.