

STATUS REPORT ON RESTITUTION FOR HOLOCAUST-ERA PRIVATE PROPERTY IN POLAND

November 2012

*Prepared by the Conference on Jewish Material Claims Against Germany
("Claims Conference") and the World Jewish Restitution Organization ("WJRO")*

Since 1990, the Polish government has made commitments and proposed numerous draft laws – none enacted – to deal with the restitution of confiscated private property.¹ In 2001, for example, the Sejm passed a bill, proposed by Prime Minister Jerzy Buzek, which provided for compensation of 50% of the value of the confiscated property in issue, but only to Polish citizens. President Aleksander Kwasniewski vetoed the bill. Subsequently, during the successive administrations of Prime Ministers Marek Belka, Kazimierz Marcinkiewicz and Jaroslaw Kaczynski, virtually identical versions of a bill, first issued in 2005 – entitled "On Compensation for Real Estate and Some Other Property Assets Seized by the State" – were proposed, but never voted on by the Sejm. The bills did not provide for in rem restitution, excluded compensation for property seized in Warsaw, offered severely limited compensation, and proposed a burdensome claims process. Around October 2008, a similar bill was proposed by the administration of Prime Minister Tusk. Prime Minister Tusk who, months earlier, had promised that a previous bill would be passed by the Sejm by the fall of 2008, pledged to present the October 2008 bill to the Sejm for a vote by year's end.² There was no vote on the bill; it was not even submitted to the Sejm – either in 2008, or any time after. Later, in May 2009, another (and what turns out to be the most recent) bill – resembling the draft legislation proposed in October 2008 in all significant respects – appeared on a government website. That bill also was never submitted to the Sejm for consideration.³ In fact, while the government has issued numerous draft laws with respect to regulating

¹ **See** Daniel Schatz and Ruth Deech, "Ghosts of the Past, Op-ed: Israel, US must ensure that Poland compensates Jews over property seized by Nazis," published in Ynet News, August 27, 2012.

² Max Minckler & Sylwia Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property," Humanity in Action 2008, <http://www.humanityinaction.org/knowledgebase/115-roadblocks-to-jewish-restitution-poland-s-unsettled-property>.

³ The most recent proposed legislation addressing the matter of confiscated immovable property, published by the Polish Treasury Ministry in May 2009, suffered from a number of problems, including the following:

- no in rem restitution;
- property confiscated prior to 1944 and Warsaw property not included;
- unspecified compensation;
- the unspecified compensation to be paid in installments, over a lengthy 15-year period; and
- a burdensome and costly claims process which would make it extremely difficult, particularly for elderly and foreign claimants, to file – much less prove – claims.

private property restitution, Poland has never enacted a single law pertaining to immovable properties seized from private owners in the country during the Holocaust era and its aftermath.⁴

Having failed, repeatedly, to pass a restitution or compensation law, notwithstanding recurring commitments to do so, the government shifted tactics in the spring of 2012. Claiming that such a law was superfluous, various Polish officials made it clear that the government would not move forward with the compensation for confiscated property bill (still pending three years after it was first proposed). Instead, the government insisted that claimants wrongfully deprived of property should pursue their remedy in the Polish legal system.⁵

Yet, bringing such a lawsuit places a claimant – including foreign, elderly applicants – on a complex, expensive and time-consuming path.⁶ An individual cannot simply file a complaint in a Polish

⁴ Indeed, the “country that endured many of the most prolific cases of Nazi genocide and thievery, and then much of the harshest effects of Communist property expropriation, has failed to enact a workable claims process for property stolen between 1939 and 1989. (Minckler & Mitura, “Roadblocks to Jewish Restitution: Poland’s Unsettled Property.”)

Poland did establish a compensation procedure for certain property expropriated during World War II, which was no longer located within its borders. After the outbreak of World War II, approximately one-third of what was pre-war Poland – roughly, territory east of the Bug River – became part of Ukraine, Lithuania and Belarus. In recent years, the European Court of Human Rights directed Poland to compensate owners who had been forced to abandon their property in this region. See Case of Broniowski v. Poland, application no. 31443/96, 22 June 2004. In response, Poland eventually enacted the “Eastern Territories (or Bug River) Law,” which became effective October 2006. The law established a claims process providing severely limited compensation – 20% of a property’s current market value, to be paid in four installments, over a number of years, starting in 2009 – for the loss of private immoveable property located in what had constituted, before World War II, eastern Poland.

In addition, pursuant to a 1960 treaty between Poland and the United States, Poland paid \$40 million, over a 20-year period, for claims by U.S. citizens related to the loss of commercial and personal property which had been confiscated in Poland. Ultimately, only 5,022 claimants received compensation, an average payment of less than \$5,000 per claimant.

⁵ In a letter to Prime Minister Tusk, dated May 29, 2012, Steve Schwager, Co-Chairman of the WJRO, noted there was nothing new or helpful to Holocaust survivors in the government’s recommending that claimants bring restitution claims in Polish courts. That option, after all, had been available for years, but had been rejected as impractical long ago by the overwhelming majority of potential claimants, in large part, due to the burdensome costs, excessive time involved, and procedural and legal obstacles of litigation. In its letter, the WJRO inquired whether the government’s suggestion that restitution claimants go to court was to be accompanied by any modifications in Poland’s legal system or pertinent laws which, over the years, had discouraged innumerable, victimized property owners from bringing restitution lawsuits. Not until four months later, by letter dated September 25, 2012, did Krzysztof Miszczak, Director of the Office of the Plenipotentiary of the Prime Minister for International Dialogue, respond on behalf of Prime Minister Tusk. Mr. Miszczak’s letter, however, was disappointing, utterly failing to address the principal concerns raised by the WJRO.

⁶ “The restitution process ... is usually very complex and time consuming (each administrative decision may be appealed and/or submitted to judicial review) because it involves legal actions at the junction of administrative and civil law.” (Monika Krawczyk, “Restitution of Jewish Assets in Poland – Legal Aspects,” Justice, No. 28 Summer 2001, p. 27.) In addition, without an official claims program to recover confiscated private property, “[v]ictims of private property expropriation ... are relegated to the Polish civil courts, where arguably over-stringent ownership and inheritance verification laws, processing times that can span many years, and the legislative residue of the

court to recover property seized during the Holocaust or its aftermath. The country's legal system does not permit it. Rather, Polish law requires a claimant to initiate and pursue separate, but sequential, civil and administrative proceedings. Thus, an aggrieved party seeking restitution must first submit a claim to the appropriate administrative agency and exhaust all administrative procedures before bringing a lawsuit to the civil courts. The agency, it should be noted, lacks the authority to remedy an illegal land expropriation. It may only determine whether a particular seizure occurred in violation of the law prevailing at the time of confiscation. In fact, administrative declarations that a property expropriation is null and void are uncommon, as most property in the communist era was confiscated pursuant to legally issued – albeit altogether unjust – laws.⁷ In effect, a claimant seeking restitution of private property stolen by the communist regime pursuant to its unjust laws cannot successfully argue to a Polish court the unconstitutionality of the communist government, its laws or the implementation of its laws, but must show that the communist law was not properly followed to be able to recover his stolen property.⁸

Nonetheless, should such a rare administrative ruling be obtained – that property in issue was seized in breach of pertinent communist nationalization laws – the claimant may then, and only then, file a lawsuit for restitution or related compensation in the Polish civil court system.⁹

Thus, even should a claimant be deemed to have standing, no claimant that is only able to prove that her property was seized by the Germans and/or their collaborators during the Holocaust era will be able to obtain restitution or related compensation. There is no law in Poland which specifically covers and permits recovery of property seized during the Holocaust. Thus, it is most unlikely that litigation

Communist era are just a few of the obstacles they can expect to face.” (Minckler & Mitura, “Roadblocks to Jewish Restitution: Poland’s Unsettled Property.”)

⁷ See Krawczyk, “Restitution of Jewish Assets in Poland,” p. 26. Moreover, most former owners whose property had been seized by the Nazis and their collaborators lost title to their property as a result of the “Post-German and Deserted Properties Decree.” Under the decree, any property an owner (as of September 1, 1939) did not recover, within 10 years of 1945, passed to the state. Of course, in the 1945-1955 period during which claims were accepted, virtually no Jews, much less Jewish property owners, were left in Poland; most had been murdered, while few that did survive the war returned to or stayed in Poland. Thus, they could not recover their seized property pursuant to the decree in the time period specified. And, of course, during that time, Jewish Holocaust survivors were fully occupied with other, more immediate matters – such as searching for family members and friends, and trying to rebuild their lives, typically in foreign lands, with alien cultures and languages, bereft of their possessions. In sum, to require the survivors to return to Poland and claim their stolen property in what, often, was a hostile post-war environment was, too put it mildly, unrealistic.

While this decree is no longer in force, titles to properties apparently continue to accrue to the state by virtue of its provisions. Indeed, the Supreme Court of Poland affirmed this presumption – that properties which were not recovered between 1945-1955 escheat to the state – in 1987. See Krawczyk, “Restitution of Jewish Assets in Poland,” p. 27.

⁸ See Minckler & Mitura, “Roadblocks to Jewish Restitution: Poland’s Unsettled Property.”

⁹ In addition to other difficulties the property restitution claimant faces in bringing a lawsuit in the Polish judicial system, “[t]he processes of Nazification and Communization ... involved the destruction of volumes of written documentation proving property ownership, line of inheritance, and birth certification ... directed, especially in the case of Nazism, specifically against the Jews. The loss of this form of documentation was to prove one of the largest impediments to property restitution in the future[.]” (Minckler & Mitura, “Roadblocks to Jewish Restitution: Poland’s Unsettled Property.”)

will bring a significant number of interested parties anything more than additional frustration and resentment.¹⁰

Guidelines and Best Practices

Poland participated in discussions leading to the drafting of the “Terezin Declaration on Holocaust Era Assets and Related Issues,” which was released June 30, 2009, during the Prague Conference on Holocaust Era Assets, and the follow-up “Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II,” issued June 9, 2010 (“Guidelines and Best Practices” or “GBP”). While Poland has subsequently waffled regarding its endorsement of these documents, its actions have sent a clear message.

The Guidelines and Best Practices are motivated, at least in part, by the failure or inadequacy over the years of regular court systems and laws to effectively address the extraordinary circumstances of the Holocaust, particularly in the realm of the restitution of confiscated immovable property. Thus, the guidelines encourage governments to “develop their own national programs and legislation for addressing or revisiting the compensation and restitution of confiscated immovable (real) property,” seized 1933-1945 (GBP, paragraph a), by applying the principles embodied in the document.¹¹ Poland, however, has developed no national program, nor enacted a law, which permits the recovery of, or compensation for, private immovable property confiscated from its population during the Holocaust. Indeed, it has abandoned moving forward with any legislation to deal with the problem of Holocaust confiscations.

Nonetheless, the most recent version of Poland’s compensation for confiscated property bill offers insight into the government’s “thinking.” The bill did not include property confiscated during the Holocaust, nor did it provide for restitution in rem, both critical features of the “Guidelines and Best Practices” (GBP, paragraphs a, g, h). The bill also failed to disclose the compensation amount to be offered, making it impossible to measure against the “genuinely fair and adequate” standard advocated by the guidelines. But whatever compensation the government might have had in mind, that amount would have been substantially diminished in value in being paid over a prolonged, 15-year period, which itself is contrary to the prompt payment standard of the guidelines (GBP, paragraph h). Finally, the bill

¹⁰ In the September 25, 2012 letter to Steve Schwager – see footnote 5 above – Krzysztof Miszczak, the Prime Minister’s representative, asserted that “Poland shares the conviction that restitution is of paramount importance.” And, yet, the Polish government has failed to enact an effective, indeed, any, restitution law. Furthermore, while a small number of successful restitution claims may have been brought over the years by Jewish Holocaust survivors in Polish courts, the country’s regular legal system is simply not equipped to effectively and expeditiously address the nature and magnitude of the property crimes perpetrated during the Holocaust. Nonetheless, without offering any credible supporting data, Mr. Miszczak asserted in his letter that “The provisions of the Polish law, as well as numerous decisions of Polish high-instance courts in favour of the interests of those who lost property during and after World War II, and also the administrative practice, make it possible for a significant majority of interested parties to recover their property in kind or obtain a compensation representing its total value.” Mr. Miszczak then seeks to substantiate this assertion with another, again, providing absolutely no supporting evidence, that “even the uncertain and approximate data available to us at present allow for making the above statement.”

¹¹ See Introduction to “Criteria for Guidelines and Best Practices” within the “Guidelines and Best Practices.”

outlined a burdensome and costly claims process, which would have proven especially difficult for elderly, foreign – especially survivor – claimants. Foreign claimants, for example, would most likely have had to retain a local representative or attorney, archival information would have been difficult to procure, claimants would have faced problems ascertaining the proper regional agency to approach in submitting a claim, establishing who is a legitimate heir would have had to be done in a Polish court, and there was no time limit under the bill within which decisions had to be made. (**But see** GBP, paragraph d (calling for an “accessible, transparent, simple, expeditious, non-discriminatory ... and ... not ... subject to burdensome or discriminatory costs” claims process); paragraph e (“unfettered and free access” should be provided to government archives); and paragraph f (“[d]ecisions should be prompt [with] a clear explanation”).

Finally, the property of countless Jewish families killed during the Holocaust passed to the possession of Poland and the country, albeit unintentionally, continues to benefit from such assets. Nonetheless, there is no Polish legislation for the restitution of heirless confiscated property.

This report is an extract from a paper presented to the Immovable Property Review Conference of the European Shoah Legacy Institute in Prague in November 2012.