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Facts and Myths on Restitution of Property in Poland

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ABSTRACT:

This article presents an analysis of the 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.

I. INTRODUCTION

Poland does not have a single law providing for the restitution of property nationalized by the communist government after World War II. For the time being, each particular case must be assessed individually, taking into account various particular pieces of legislation from different periods. That being said, we have to notice that on October 11, 2017, 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

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Grzegorz is constantly recognized as a leading Private Client lawyer in Poland by the Legal 500 (2016, 2017 and 2018) and by Chambers & Partners (2017), the two most highly-renowned legal directories since they started ranking the private client practice for Poland. Sources regard him to be "highly professional and knowledgeable".

His law firm is also listed by the WJRO as the recommended restitution law firm in Poland.

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

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 Central Europe) such claims could not have been even formulated because of the political situation. Only after 1989 could these claims be raised. There was a political consensus among politicians that: (a) the years 1945-1989 should not count in terms of statute of limitations for bring such claims, 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 by returning property to its rightful owners, who would be the heirs of the pre-war owners. These types of proceedings continue today. Unfortunately, the proceedings have been very slow and many obstacles, both legal and factual, face the claimants. The main problem has been the lack of documentation 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 the judges take towards foreign or fragmentary documents. There have been many irregularities in the process, which in June 2016 finally led to the disclosure of the big scandal in Warsaw being called today the “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, rather than on the actual restitution process itself.

As indicated above, for the time being, the restitution 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

1. See Ustawa o zrekompensowaniu niektórych krzywd wyrządzonych osobom fizycznym wskutek przejęcia nieruchomości lub zabytków ruchomych przez władze komunistyczne po 1944 [hereinafter Law to Compensate for Some of the Harm Done to Individuals as a Result Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944] (*draft*, Oct. 6, 2017) (Pol.).

2. See *infra* Section III.

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

these matters from the very beginning. Working on these cases is a unique experience for an advocate, especially for an advocate with a Mergers & Acquisitions background (including the author of this article). It is a very moving and eye-opening experience. It is one thing to read about the millions of people who died during the war however, it is completely different to read about the plight of a particular family with given names and personal details. In one family's story, for example, the father was shot by a policeman and then died in the middle of the street. The mother died one month later while out to buy some bread, and their children were killed in the following months while the grandparents were transported to the gas chambers in Treblinka. 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 other things, a short presentation of the legal environment of property restitution in Poland, a look on recent experiences of pre-war owners or their heirs attempts to reconstitute their properties, considerations on provisions stipulated in the draft law proposed by the Polish government in October 2017 and an analysis (as well as refutation) of various beliefs and common opinions concerning restitution of property in Poland.

II. PRESENT LEGAL ENVIRONMENT OF PROPERTY RESTITUTION IN POLAND

As it was indicated in the beginning of this article, Poland remains the last European Union member state that has not enacted a law concerning restitution of property nationalized by communist authorities. There were multiple, however unsuccessful, attempts to regulate the issue. The closest to success was the draft law of 2001, vetoed by President Aleksander Kwaśniewski.⁵ Throughout the years, because the problem of property restitution was viewed as legally difficult, economically challenging and politically charged, it was avoided. No simple solutions were considered available. Thus, thousands of former owners and their heirs living in Poland or dispersed around the world faced a complex legal regime built from many particular laws, modified by jurisprudence and a practice of administrative organs. The most

4. See YAD VASHEM, *Testimonies*, <http://www.yadvashem.org/archive/about/testimonies.html>.

5. See Max Minckler & Sylwia Mitura, *Roadblocks to Jewish Restitution: Poland's Unsettled Property*, HUMANITY IN ACTION (June 27, 2008), <http://www.humanityinaction.org/knowledgebase/115-roadblocks-to-jewish-restitution-poland-unsettled-property>.

popular laws that serve as the legal basis for property takeover are, in chronological order, the following:

1. Polish Committee of National Liberation (“PKWN”) Decree of September 6, 1944 on Agrarian Reform;⁶
2. PKWN Decree of December 12, 1944 on Takeover by the State Treasury of Ownership of Certain Forests;⁷
3. Decree of March 2, 1945 on Abandoned Property;⁸
4. Law of May 6, 1945 on Abandoned Property;⁹
5. Decree of October 26, 1945 on Ownership and Usufruct of Land in the Capital City of Warsaw (the so-called “1945 Warsaw Land Decree” or “Bierut Decree”);¹⁰
6. Decree of November 28, 1945 on Takeover of Certain Landed Property for Purposes of Agrarian and Land Reform;¹¹
7. Law of January 3, 1946 on Nationalization of Core Branches of the National Economy;¹²
8. Decree of March 8, 1946 on Abandoned and Ex-German Property;¹³
9. Decree of April 7, 1948 on Expropriation of Estates Occupied for Purposes of Public Utility During the 1939-1945 War;¹⁴

6. Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 6 września 1944 r. o przeprowadzeniu reformy rolnej [Decree of the Polish Committee of National Liberation of September 6, 1944 on the Implementation of Land Reform] (1945 Dz. U. nr. 3 poz. 13) (Pol.).

7. Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 12 grudnia 1944 r. o przejęciu niektórych lasów na własność Skarbu Państwa [Decree of the Polish Committee of National Liberation of December 12, 1944 on Taking Over Some of the Forests into the Ownership of the State Treasury] (1944 Dz. U. nr 15 poz. 82) (Pol.).

8. Dekret z dnia 2 marca 1945 r. o majątkach opuszczonych i porzuconych [Decree of March 2, 1945 on Abandoned and Abandoned Property] (1945 Dz. U. nr 9 poz. 45) (Pol.).

9. Ustawa z dnia 6 maja 1945 r. o majątkach opuszczonych i porzuconych [The Act of May 6, 1945 on Abandoned and Abandoned Property] (1945 Dz. U. nr. 17 poz. 97) (Pol.).

10. Dekret z dnia 26 października 1945 r. o własności i użytkowaniu gruntów na obszarze m. st. Warszawy [Bierut Decree] (1945 Dz. U. nr. 50 poz. 279) (Pol.).

11. Dekret z dnia 28 listopada 1945 r. o przejęciu niektórych nieruchomości ziemskich na cele reformy rolnej i rolnictwa [Decree of November 28, 1945 on Taking over some of the Land Properties for the Purposes of Land Reform and Agriculture] (1945 Dz. U. nr. 57 poz. 321) (Pol.).

12. Ustawa z dnia 3 stycznia 1946 r. o przejęciu na własność Państwa podstawowych gałęzi gospodarki narodowej [The Act of January 3, 1946 on Taking over the Ownership of Your Basic Branches of the National Economy] (1946 Dz. U. nr. 3, poz. 17) (Pol.).

13. Dekret z dnia 8 marca 1946 r. o majątkach opuszczonych i ponemieckich [Decree of 8 March 1946 on Abandoned and Former German Property] (1946 Dz. U. nr. 13, poz. 87) (Pol.).

14. Dekret z dnia 7 kwietnia 1948 r. o wywłaszczeniu majątków zajętych na cele użyteczności publicznej w okresie wojny 1939-1945 [Decree of April 7, 1948 on Expropriation of Assets Seized for Public Utility Purposes During the War of 1939-1945] (1948 Dz. U. nr. 20, poz. 138) (Pol.).

10. Decree of April 26, 1949 on Acquisition and Transfer of Estates Indispensable for Realization of National Economic Planning;¹⁵
11. Law of March 20, 1950 on Nationalization of Mortmain Property, Entrusting Farm Land to Parish Priests, and Creation of the Church Fund;¹⁶
12. Law of January 8, 1951 on Nationalization of Pharmacies.¹⁷

Before 1945, the majority of agricultural land and forests belonged to rich noble families, as the pre-war government had started agrarian reform just before the outbreak of the war. The PKWN Decree on Agrarian Reform followed suit and completed the reform. In effect, not only vast areas of fields, but also residential properties like castles and palaces, were taken from the aristocrats by the government. The effects of the PKWN Decree on Forests were similar.

A privately-held industry was usually taken under the above-mentioned 1946 Law on Nationalization of Core Branches of the National Economy. The law indicated particular industry branches, including, *inter alia*, mines, ironworks, refineries, distilleries, printing, textiles, energy and transport.¹⁸ Under the law, facilities of any other type were nationalized if they employed more than fifty workers on one shift.¹⁹ In effect, a vast majority of industry was nationalized during the period of 1946-1950. The law provided that every expropriated owner would receive proper compensation within a year from the takeover.²⁰ The compensation had to be calculated and granted by special committees appointed by the government. In practice, the committees were never created and, thus, no compensation was paid.

The situation in Warsaw was different than the rest of the country because Warsaw properties were nationalized by the Polish communist government in 1946 under the “Bierut Decree.” The decree did not apply to the rest of Poland. Under the decree, all the real property located in

15. Dekret z dnia 26 kwietnia 1949 r. o nabywaniu i przekazywaniu nieruchomości niezbędnych dla realizacji narodowych planów gospodarczych [Decree of April 26, 1949 on the Purchase and Transfer of Real Estate Necessary for the Implementation of National Economic Plans] (1952 Dz. U. nr. 4, poz. 31) (Pol.).

16. *See generally* Ustawa z dnia 20 marca 1950 r. o przejęciu przez Państwo dóbr martwej ręki, poręczeniu proboszczom gospodarstw rolnych i utworzeniu Funduszu Kościelnego [The Act of March 20, 1950 on Taking over by the State the Goods of a Dead Hand, a Guarantee to Parish Priests of the Farms and the Creation of the Church Fund] (1950 Dz. U. nr. 9 poz. 87) (Pol.).

17. Ustawa z dnia 8 stycznia 1951 r. o przejęciu aptek na własność Państwa [Act on the Acquisition of Pharmacies into State Ownership of January 8, 1951] (1951 Dz. nr. 1 poz. 1) (Pol.).

18. *See* Act of January 3, 1946 on Taking over the Ownership of Your Basic Branches of the National Economy art. 3(1)(A).

19. *See id.* art. 3(1)(B).

20. *See id.* art. 7.

pre-1945 Warsaw became property of the Polish state. As the city was heavily damaged during the war, a decision to nationalize all the land within was nothing out of the ordinary. The official reasoning for this decision was to facilitate the reconstruction of the ruined city, which was partially true. Theoretically, those who lost their properties in Warsaw were entitled to receive back “temporary ownership” (i.e., perpetual usufruct) rights to the buildings upon filing a motion.²¹ However, in practice all such motions were refused, or even never assessed by the authorities.

Various separate legal acts, including those indicated above, concerned takeovers of property of churches, pharmacies, and other particular groups.

As indicated above, certain laws provided the expropriated owners, or their heirs, a possibility to recover property rights or obtain proper compensation. From a legislative point of view, these laws safeguarded basic rights of the expropriated parties. However, in practice, just like in the case of the motions filed under the “Bierut Decree,” no such rights were effective due to legal nihilism typical for Communist regimes. The subject was dead until 1990 and only upon the fall of the Soviet Union and the changes in Poland, could the pre-war owners or their heirs bring their claims once again and seek justice.

As there is no single coherent law on the process of seeking restitution and compensation, each applicant must first carefully assess a legal basis for the claim. Usually, either they rely on provisions guaranteeing certain compensation or report the unlawfulness of the takeover in order to demand restitution. One has to rely on an entangled construction of multiple pieces of legislation, including those mentioned above, and the provisions of Polish codes, including the Civil Code,²² Civil Procedure Code²³ and Administrative Procedure Code.²⁴ Therefore, the claimants, irrespective of their background, citizenship, type of property and legal basis of nationalization, usually pursue similar paths first through administrative bodies to nullify the takeover decisions, and then through civil courts, to pursue remedy in the form of restitution or compensation. Everything is performed under general procedural rules as applied in other types of proceedings. In regards to the various types of

21. *See* Bierut Decree art. 7.

22. Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Act of April 13, 1964 Civil Code] (1964 Dz. nr. 16 poz. 93) (Pol.)

23. Ustawa z dnia 23 kwietnia 1964 r. – Kodeks postępowania cywilnego [Act of April 23, 1964 Civil Procedure Code] (1964 Dz. nr. 43 poz. 296) (Pol.)

24. Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego [Act of June 14, 1960 Code of Administrative Procedure] (1960 Dz. nr. 30 poz. 168) (Pol.)

cases, some discrepancies are possible. For example, in case of Warsaw properties, an heir may complete the restitution procedure just before the municipality.

Beside the restitution itself, heirs often also have to prove their inheritance rights to the property from the pre-war owners. In regards to real estate in Poland, the inheritance rights must be established in proceedings before Polish courts in accordance with general procedural rules. This process requires additional time and resources from the heirs. In practice, this is often the main obstacle for the heirs. While the restitution itself would be rather simple in many cases, difficulties arise at the stage of death confirmation or establishing inheritance in Polish courts. Due to the lack of available documents caused by the time passed since and the turmoil of World War II, as well as variations of name spellings (particularly with Jewish names, which can appear in three or more versions in various documents), foreign heirs are refused their rights. In effect, they cannot begin the restitution process successfully. In some instances, the courts even deny their jurisdiction over the case.

The complexity and obscurity of the issue described above is not only unfavorable to the heirs, but also has allowed for fraudulent restitutions by false heirs or proxies, particularly in Warsaw. There were approximately 4,000 Warsaw properties, which were handed over to people who had claimed to be the heirs of rightful owners. It is unknown how many of them were really genuine heirs of genuine owners. There are grounds to believe that many documents were forged and that the circle of corruption approached advocates, town hall officials, judges and property developers, who all closely cooperated in taking Warsaw properties unlawfully. In many cases, genuine heirs were forced or misled to sell their claims for a fraction value of the property to so-called “claim traders,” who then succeeded in obtaining property rights or a full compensation. That process was called a “wild reprivatization.” Since 2016, when the “reprivatization scandal” erupted, the property restitution issue has been one the most discussed problems of Warsaw and became even more politically charged then before.²⁵ Now, a shadow of a doubt has fallen on all past and present restitution proceedings, which led to halting the process and even reversing proceedings in some instances.²⁶

25. See *Prokuratura prowadzi ponad 100 postępowań dotyczących reprivatyzacji nieruchomości warszawskich*, PROKURATURA KRAJOWA (Oct. 12, 2016), <http://www.pk.gov.pl/aktualnosci-prokuratury-krajowej/prokuratura-prowodzi-ponad-100-postepowan-dotyczacych-reprivatyzacji-nieruchomosci-warszawskich.html#.WhMrTUribIU>.

26. See *Chmielna 70: komisja weryfikacyjna oddaliła odwołania Marzeny K., Janusza P. i mec. Grzegorza M. od decyzji o zwrocie miastu nieruchomości*, RZECZPOSPOLITA (Nov. 14, 2017), <http://www.rp.pl/Nieruchomosci/171119536-Chmielna-70-komisja-weryfikacyjna-oddalila->

The situation was addressed partly by the Law of July 25, 2015, on changing the Law on Real Estate Management and the Family Code,²⁷ which aimed to limit the scope of cases in which restitution is allowed and closed the remaining open cases concerning Warsaw properties once and for all. The main points of the law are the following:

1. A former owner of a property taken under the “Bierut Decree” who lost the right to compensation provided by the decree may have their former property restituted if they or their legal successor applied for a perpetual usufruct right to the property prior to December 31, 1988.
2. An organ may deny an application for a perpetual usufruct right to an estate taken under the “Bierut Decree,” not only due to reasons established in the decree (i.e., contradiction with a zoning plan), but also due to the following circumstances:
 - a. The estate is used or intended to be used for a public purpose (defined widely in Article 6 of the Law on Real Estate Management – which includes public roads, airports, infrastructure, public offices, schools, monuments, etc.);²⁸
 - b. The estate has been sold or given into a perpetual usufruct to a third party;
 - c. A building, the value of which “significantly exceeds the value of the property taken for that purpose,” was erected by the State Treasury or the community on the estate after the “Bierut Decree” entered into force;
 - d. The building taken under the “Bierut Decree,” damaged during the years of 1939-1945, and more than in sixty-six percent was rebuilt or repaired with use of public funds;
 - e. It is impossible to divide the estate in accordance with the law and “spatial order” if only a part of it is subject to a claim under the “Bierut Decree.”
3. An organ may discontinue proceedings regarding applications filed under the “Bierut Decree” if it is impossible to establish the parties of the case or their addresses while the application is the only existing document concerning the case. It has to make a

odwolania-Marzeny-K-Janusza-P-i-mec-Grzegorza-M-od-decyzji-o-zwrocie-miastu-nieruchomosci-.html.

27. Ustawa z 25 czerwca 2015 r. o zmianie ustawy o gospodarce nieruchomościami oraz ustawy - Kodeks rodzinny i opiekuńczy [Small Reprivatization Statute] (2016 Dz. U. poz. 1271) (Pol.).

28. *See id.* art 6.

public announcement that it is requesting the former owner of the property or their heirs by the press and Internet (including name of the owner, address of the estate and other relevant information) to contact. If within six months from the announcement no interested party contacts the organ or, if contacted, fail to prove their rights within the following three months or fail to indicate an address, the proceedings will be discontinued. Therefore, the applicants will have only six months to take part in the proceedings—otherwise, they permanently lose their right to restitution, as the property concerned will become public.²⁹ Moreover, no compensation is possible.

4. State Treasury and Warsaw municipality enjoy pre-emptive rights to rights and claims under the “Bierut Decree.” These rights do not concern the transactions reported in the proceedings before the law entered into force.

The law, called the “Small Reprivatization Statute,” entered into force in September 2016. After only one year, it is difficult to fully assess its effects. However, some conclusions can be made. First, the law caused many applications, which would previously result in restitution, to be refused due to additional grounds for refusal. Secondly, the new procedures started after a few months since the law entered into force, which slowed down restitutions. Thirdly, the proceedings before the municipality, rather due to bad publicity of the restitution issue than the law itself, are frozen. At the same time, a special parliamentary verification committee was appointed to analyze the most controversial restitutions.³⁰

In conclusion, the present legal environment of property restitution in Poland remains complex, particular and obscure. The owners and their heirs need the help of professional lawyers to assess the chances of their claims on an *ad hoc* basis without a clear estimation of possible success. Criminal activity around restitution brought this issue in the spotlight and raised doubts and a bad atmosphere around any trials to get any property back by the rightful heirs, as well as any other entities. For more than twenty-five years, Poland has been waiting for the complex law on property restitution to be passed. Now is the time.

29. See Small Reprivatization Statute art. 1; see also Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami [Act of August 21, 1997 on Real Estate Management] (2015 Dz. U. poz. 782) (Pol.).

30. See Chmielna 70, *supra* note 26; see also Małgorzata Zubik *Reprywatyzacja. Komisja weryfikacyjna zaczęła od Hanny Gronkiewicz-Waltz*, GAZETA WYBORCZA (June 12, 2017), <http://wyborcza.pl/7,75398,21951198,reprywatyzacja-komisja-weryfikacyjna-zaczyna-pracownajpierw.html>.

II. HOW TO UNCOVER YOUR PROPERTY

Before dealing with the above-mentioned legal environment, every potential applicant has to gather information about their claim. The pre-war owners of property in Poland and their heirs have to brace themselves for a long journey through the past of their family, a thorough documentary research, and a diligent analysis of legal and factual aspects of their reclaimed properties.

Based on the author's experience in assisting foreign and domestic families in uncovering lost real estate in Poland, the whole procedure may be presented in five simple steps:

1) Check Your Family Albums

First, it is important to decide what one wants to do in the long run. The primary step is to review all family documents, files, old photographs, letters or diaries. This should help clarify what assets were once owned by the family in Poland and what the possible location and addresses are. Do not diminish the importance of anything you come across because it can lead to very important information.

2) Talk to Your Grandma

The second step is talking to grandparents and other elderly people in your family. They usually remember many stories and hold lots of valuable information. It could be that there are no documents, but recollections of such living people may lead you to the right track. It is vital to be as inquisitive as possible. You might be lucky like Ron Balamuth, who learned about his claims from Pope John Paul II, mentioning the Balamuth family during his speech in Wadowice.³¹ But you might be like all other heirs – nobody will be interested in helping you.

3) Establish the Line of Inheritance in Your Family

The question of inheritance is very important. More often than not, pre-war property owners died in Poland making the inheritance governed by Polish succession law. There is a main line of inheritance (children inherit from parents) but also a side inheritance (in the absence of children—e.g., a brother inherits from his childless sisters). It is important to check and verify who the heirs are under Polish law, because they will be entitled to inherit the assets in Poland and pursue restitution.

31. See *infra* Section III and accompanying text.

4) Collaborate and Build a Good Team Around You

All the gathered information, pictures, and stories may suffice to reconstruct the history of the family, including not only names and relations, but also certain rights. All the family, including those who do not inherit, should collaborate and agree on strategy. One may consider seeking the advice of a professional genealogist – they are very good at identifying the roots. Help will be needed from many professionals: genealogists, historians, valuers, accountants, archivists, translators and, naturally, lawyers. Their experience, knowledge and assistance will be crucial to find out more information in Poland and finalize the assessment of potential claims.

5) Hire Good and Experienced Lawyers

Among different kinds of experts, good and experienced lawyers in Poland are really indispensable for pursuing a claim. Polish solicitors are necessary for researching the national archives and ascertaining whether in fact there is any case.

The current political situation surrounding restitution cases in Poland is very unfavorable. Therefore, the outcome of particular case cannot be foreseen. Simultaneously, nothing should be expected before a thorough research of the family's past is done. The most sensible solution is to make an application in accordance with present law and wait. Inaction creates a risk that the fraudsters may continue with their "wild reprivatization" practices.

III. A CASE STUDY OF RON BALAMUTH

There are several cases where heirs of pre-war owners managed to get their property back. Ron Balamuth's amazing story provides a great example of how the heirs of pre-war owners can get their property back on an *ad hoc* basis.

Ron Balamuth and Amosa Arad were the successors of the Balamuths, a Jewish family who rented out a flat in Wadowice, a town near Cracow, to Karol Wojtyla's, later known as Pope John Paul II's family. The town house in which the flat was located was built in the first half of the 19th century and bought in 1911 by Rozalia and Yechiel Balamuth. There, Yechiel and his son Chaim opened the very first bicycle shop in town.

Nearly all the members of the Balamuth family were murdered under Nazi occupation during World War II in a death camp in Belzec. There was just one survivor: Yechiel's son, Chaim, who had managed to

escape on a motorbike and reach the Soviet border. After his arrival, he was arrested and sent to a labor camp. Once the war finished, he fled to Israel where his son Ron was born.

On June 16, 1999, on one of his papal visits, Pope John Paul II travelled to his hometown, Wadowice. While addressing the crowds in the old town, reminiscing about his time living there, he mentioned the Balamuth family and their townhouse at 7 Koscielna Street. A journalist from the *New York Times* then telephoned Ron Balamuth asking whether he was aware that televisions around the world were broadcasting John Paul II's visit to Wadowice and him speaking about his childhood home. Ron Balamuth was until then oblivious to the existence of the Wadowice flat. He immediately flew out to Poland and took steps to reclaim his family's property. He informed the local authorities of his intention to try to get the property back, though he assured them he would not be attempting to change its use.³²

A few months later, a 1966 court judgment was discovered at the Regional Court in Wadowice confirming title over the townhouse to Chaim Balamuth and his sister, Pepe. The property therefore proved to still be owned by the Balamuths. Ron Balamuth simply applied for an update of the land and mortgage registers to reflect his title as the sole owner of the flat.

In 2009, Ron Balamuth sold his property in Wadowice to Ryszard Krauze, a Polish businessman, who then donated it to a Cracow church.³³

The moral of the story is be inquisitive, optimistic and proactive. Sometimes even a small coincidence may allow one to find out more about their past, which may later affect their future.

IV. THE NEW POLISH DRAFT LAW ON RESTITUTION – LEGAL CONSIDERATIONS

After years of legal uncertainty with regard to possibilities of restitution or compensation for unlawfully taken properties, and facing a serious scandal around Warsaw properties restitution, the current government took another chance to propose a complex and coherent draft law to organize and unify filing restitution claims. At the same time, their aim was to limit the number of claimants, to propose a limited

32. See Stanisław Tyszka, *Restitution as a means of remembrance. Evocations of the recent past in the Czech Republic and Poland after 1989*, in PERFORMING THE PAST. MEMORY, HISTORY, AND IDENTITY IN MODERN EUROPE 327-330 (Karin Tilmans et al. eds., 2010).

33. See Craig Whitlock, *Last Pope's Birthplace Shrine Will Honor Jews*, WASH. POST (May 28, 2006) <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/27/AR2006052700891.html>.

compensation instead of restitution, and to ensure that only a lawful owners or their heirs would receive compensation. The draft, called the “Big Reprivatization Statute” (as it concerns all of Poland, rather than the “Small Statute” which concerns Warsaw properties only) although it is subject to amendments and currently it is difficult to assess when, if ever, and in which shape it will enter into force, has already raised controversies in Poland and abroad.³⁴

This part of the article provides legal considerations on the most important points of the draft law to initiate discussion concerning its aims and measures proposed by the ruling party.

One of the major changes is that restitution of the confiscated real property to rightful heirs would not be possible any longer. The only remedy provided to the applicants would be monetary compensation for the lost property. The compensation would be limited to twenty percent of the value of the property at the time of the takeover by the Polish state.³⁵ If the applicant accepts the compensation to be paid by the means of treasury bonds, the amount of compensation relates to twenty-five percent of value instead twenty percent.³⁶ The limitation of remedies and of the amount of the compensation applies to all the nationalized properties, irrelevant of the grounds of their takeover. This limitation was previously applied in the Law of July 8, 2005 on the Execution of the Right to Compensation for a Real Property Left beyond the Present Borders of the Republic of Poland³⁷ and was considered justifiable due to historical circumstances of the European Court of Human Rights.³⁸

However, with regard to the various groups of properties or owners, even the above-mentioned remedy would not be allowed as their claims would expire upon the draft law entering into force.³⁹ For example, no compensation is granted for properties taken as parts of enterprises under the 1946 Law on Nationalization of Core Branches of the National

34. See Lahav Harkov, *Edelstein Concerned About Polish Bill Denying Restitution to Holocaust Survivors*, THE JERUSALEM POST (Oct. 29, 2017) <http://www.jpost.com/Diaspora/Edelstein-concerned-about-Polish-bill-denying-restitution-to-Holocaust-survivors-509748>.

35. See Law to Compensate for Some of the Harm Done to Individuals as a Result Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944 art. 18(3).

36. See *id.* art. 18(4).

37. Ustawa z dnia 8 lipca 2005 r. o realizacji prawa do rekompensaty z tytułu pozostawienia nieruchomości poza obecnymi granicami Rzeczypospolitej Polskiej [Act on the Exercise of the Right to Compensation for Leaving the Property Outside the Current Borders of the Republic of Poland of July 8, 2005] (2005 Dz. U. nr. 8 poz. 2042) (Pol.).

38. Broniowski v. Poland, 2002-X Eur. Ct. H.R.

39. Law to Compensate for Some of the Harm Done to Individuals as a Result Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944 art. 75(1).

Economy.⁴⁰ That is the gravest, but not the only limitation with regard to the grounds of the takeover listed in the draft.⁴¹

Other limitations concern the applicants. Not only is the scope of applicants limited to natural persons,⁴² but the previous owner and their heirs must also meet certain prerequisites. On the day of the takeover, the owner must have been a Polish citizen, must have not lost the citizenship afterwards, must have had a domicile on the territory of Poland and prove their property rights with regard to the property concerned. In addition, the applicant (be it the owner or an heir) must be a Polish citizen on the day of the draft law entered into force and on the day of making the application.⁴³ Moreover, not every heir can be the applicant. Each allowed heir must be a natural person and a spouse or a descendant (child, grandchild etc.) of the owner. No legal persons or curators for the deceased would be allowed to claim compensation.⁴⁴ If there are more claimants with regard to a certain property, they are all allowed to obtain compensation in proportionate parts. The claimants may also appoint a member of their group as their representative to submit the application.⁴⁵ The citizenship requirement, although controversial, in practice is not difficult to meet for a majority of potential applicants even if they are currently citizens of other states and live outside of Poland, as they usually meet legal requirements for Polish citizenship due to their ancestry. Also, a vast majority of the pre-war owners were Polish citizens.

With regard to the owners who were not Polish citizens, the drafters of the law pointed to the fact that after World War II, the Polish government concluded so-called indemnity agreements with a number of countries whose citizens were most affected by the takeovers. According to these agreements, Poland paid significant amounts of compensation to other states, which, in return, took on itself the responsibility to compensate its own citizens for their property nationalized in Poland. Such agreements were concluded, in alphabetical order, with: Austria, Belgium, Canada, Denmark, France, Greece, Liechtenstein, Luxembourg, the Netherlands, Norway, Sweden,

40. *See id.* art. 12(2).

41. *See id.* art. 13.

42. *See id.* art. 6(1).

43. *See id.*

44. *See id.* art. 7(2); *see also* Act of April 13, 1964 Civil Code arts. 931, 932(1)-(3).

45. *See* Law to Compensate for Some of the Harm Done to Individuals as a Result of Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944 art. 7.

Switzerland, the United Kingdom and the United States of America.⁴⁶ In theory, a citizen of any of the above-mentioned states should be refused compensation from Poland and would instead have to claim it from their own government. In practice, the compensation under the indemnity agreements was often not paid, and even if it was, it often concerned only a small part of the value of the property. As a result, many foreign previous owners or their heirs seek restitution and compensation before Polish authorities as they were not given the full remedy they deserved. At the same time, citizens of states, which do not recognize such indemnity agreements, are still free to file their claims.

That issue has led to another limitation of the scope of potential claimants. The person who was entitled to compensation under an indemnity agreement concluded by Poland, even if they ultimately did not receive any money, is not entitled to compensation.⁴⁷

The applicants would have only a one-year window to file applications for compensation in accordance with the new law on a special form, providing the following information:

1. Description of the property (location, registration number, legal basis for the takeover, information about its status at the time of the takeover);
2. Statement that the property was taken illegally;
3. Information about the property owner and the applicant (if applicable);
4. Indication of the mode of payment of the compensation;
5. Inheritance from the owner by the applicant (if applicable);
6. Polish citizenship of the owner and the applicant (if applicable);
7. Polish domicile of the owner at the time of the takeover.⁴⁸

The application is filed to a *voivode* (regional governor) – a local government officer. If the *voivode* assesses the application positively, he will request the applicant to provide the opinion of an expert witness on the value of the property.⁴⁹ After assessing the value of the property, the *voivode* issues a final decision on the compensation. The draft law stipulates that the final decision should be issued within six months from the filing of the application.⁵⁰ Within fourteen days after receiving the

46. A full list of indemnity agreements may be found at: *Property Restitution in Poland: Nationalization after WW2*, Advisory Team on Property Restitution in Pol., <http://propertyrestitution.pl/Nationalization,after,WW2,18.html> (last visited Nov. 11, 2017)

47. Law to Compensate for Some of the Harm Done to Individuals as a Result of Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944 art. 11.

48. *See id.* art. 20.

49. *See id.* art. 24(2).

50. *See id.* art. 26(4).

final decision, the applicant has to declare acceptance of the decision and the compensation. Otherwise, the applicant would be regarded as renouncing their claim.⁵¹

The “Big Reprivatization Statute” also follows the “Small Statute” concerning the Warsaw properties only in refusing compensation for property currently used for a public purpose or buildings that were destroyed or heavily damaged at the time of the takeover.⁵²

As indicated above, the change with regard to the claims is sweeping: all the claims and their legal bases, including the “Bierut Decree,” would expire upon the draft law entering into force.⁵³ All the pending proceedings would be discontinued and all the cases would be assessed in accordance with new law. That would cause many current or potential applicants to be barred from pursuing their claims due to particular above-mentioned limitations.

At the same time, some groups of applicants may find positive aspects of the law. Among them are the lawful owners of properties taken in Warsaw under the “Bierut Decree” or their heirs who failed to file an application for restitution prior to 1990. According to the current rules, any person who was entitled to Warsaw property taken by the Polish state after World War II under the 1945 Warsaw Land Decree had until the end of 1990 to file a motion to restitute the property or to receive a compensation for it.⁵⁴ This means that if an owner or an heir files a motion now, they may be refused any remedy. The new draft, in its current wording, brings them some hope. It is stated explicitly in the draft law that a person who did not file the application on time is entitled to compensation.⁵⁵

Nevertheless, the general view of the draft law, which sweeps away current restitution claims and replaces them with claims for relatively small compensation and various vague or even contradictory provisions and mysterious lacunae, is rather negative as various solutions included in the draft raise controversies, in particular abroad.⁵⁶

51. *See id.* art. 28.

52. *See id.* art.13(2)-(3).

53. *See id.* art. 75.

54. *See* Act of August 21, 1997 on Real Estate Management art. 111(a).

55. *See* Law to Compensate for Some of the Harm Done to Individuals as a Result Taking Over Real Estate or Movable Monuments by the Communist Authorities after 1944 art. 10(1).

56. *See* Harkov, *supra* note 34.

V. 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, various common beliefs and myths appeared around restitution which negatively affected the public opinion on restitution. This part of the article addresses some of these myths as important factors of social perception of the whole issue in Poland.

A. Most of the Claimants are Fraudsters and Thieves

Because of “reprivatization scandals” it is often believed that anyone trying to recover a property in Poland is dishonest. Stories of frauds, described extensively in the press,⁵⁷ led many to think that the attorneys represent either already dead owners or impostors of the heirs while all the rightful owners have already been compensated or have no interest in restitution at all.

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 a 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 and there are only a few fraudsters with whom they have nothing in common.

B. Restitution is a Quick and Simple Procedure in Which No Documents are Assessed

As was indicated previously, 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 the 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

57. See *Chmielna 70*, *supra* note 26; see also *Szpala*, *supra* note 3; see also *Zubik*, *supra* note 30.

require much time and effort, the inheritance for the purpose of restitution may be a really time-consuming process.

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

In sum, the whole restitution process may take years. Some families spent decades on their fight, often without success.⁵⁸ Nevertheless, there is no better way than to take a chance, assess the claim and file proper motions with the help of trusted experts.

C. Upon Successful Restitution, the Heirs Increase Rents and Remove Tenants

Many opponents of 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 purposes such as schools, kindergartens, administration offices, or libraries many others 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.”⁵⁹ Based on these experiences, some politicians and social activists are afraid that more restitution would cause massive evictions and gentrification of the cities.⁶⁰

Such reasoning, although understandable, omits several important points. First, the original owners or their heirs pursue their claims not only for pure profit, like in the case of “house hunters” of “wild privatization” but they discover their heritage along with their property

58. See, e.g., *Ogórek v. Poland*, Eur. Ct. H.R. (Sept. 18. 2012); *Pikielny v. Poland*, Eur. Ct. H.R. (Sept. 18. 2012).

59. See Renata Krupa-Dabrowska, *Czyszciciele kamienic zaplacq zadoszczynienie wyrzuconym z mieszkai* RZECZPOSPOLITA, (Jan 1, 2017, 9:08 AM), <http://www.rp.pl/Nieruchomosci/301199982-Czyszciciele-kamienic-zaplaca-zadoszczynienie-wyrzuconym-z-mieszkan.html>.

60. See Martyna Chmielewska, *Reprywatyzacja w Warszawie: Jest petycja o wstrzymanie eksmisji*, POLSKA TIMES (Jan. 17, 2017 3:06, PM), <http://www.polskatimes.pl/fakty/polityka/a/reprywatyzacja-w-warszawie-jest-petycja-o-wstrzymanie-eksmisji,11699695/>.

rights. Second, the example of Ron Balamuth shows clearly how the heirs treat the reclaimed property. The house was given to the Catholic Church, while a part of it was dedicated as a memorial place for the local Jews murdered during the Holocaust.⁶¹ Third, the property is restituted, not to be immediately sold afterwards to any developer. The heirs, regardless of the fact that under the draft law it may be necessary, apply for confirmation of their Polish citizenship and visit Poland and the places related to their past. For them, restitution of property is a part of the discovery of their heritage, not a business. If it were seen as a business, it would not be profitable, considering the amount of time and resources required.

D. Most of the Properties Have Been Already Returned to the Rightful Owners

Another argument brought against restitution is that the heirs had more than twenty-five years after the fall of Communism in Poland to seek restitution and, thus, they would have been remedied earlier if they really wanted to be. Moreover, it is claimed that the majority of property has been already returned or should not be returned at all, for example due to the social reasons as described above. Sometimes it occurs that one 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, they often receive 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 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 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’s past and potential claims could bring in order to recover the family property. That was the case of Ron Balamuth, who found out about his claim by a mere coincidence.

61. See Tyszka, *supra* note 32, at 329-30; see also Whitlock, *supra* note 33.

These myths are just a few examples of false assumptions around property restitution in Poland. These myths have to be faced in order to bring a real effective cure for the problems the process suffers from the most. To do so, 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 a restitution-friendly atmosphere in Poland.

VI. CLOSING REMARKS: THE PAST AND THE FUTURE OF PROPERTY RESTITUTION IN POLAND

Restitution of property in Poland remains a difficult, laborious, multi-faceted, multi-layered and sometimes even painful process. A complex legal system, lack of simple solutions and heavy political atmosphere around the issue raise obstacles for the former owners and their families at almost every step. The best thing to do is to gather the family around its history, discover their heritage and dig up 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 creates 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 more difficulties. Nevertheless, there is no better chance than in current circumstances to try and file the claim, while it is still relatively available.