Property restitution/compensation in Poland

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This paper presents complex issues relating to the take-over of property by post-WW II Polish authorities, based on legislation enacted from 1944 to 1962, and measures taken after 1989 by central and local government authorities for the restitution of property and the payment of damages and compensation to eligible persons.
It contains a historical overview, a list of legal acts, a description of procedural paths for property restitution, and a Q&A section.

HISTORICAL BACKGROUND

The issue of property taken over by the Polish State between 1944 and 1962 should be considered against the background of complex historical processes and changes which took place during and immediately after the Second World War.

Historical processes and restitution

Given the size, scope and complexity of these historical processes and changes forcibly imposed on the Polish people, it was impossible to apply one simple formula to all the claims of persons deprived of their property. The Civil Code of 23 April 1964 and the Code of Administrative Procedure (CAP) of 14 June 1960 as amended by the Law of 31 January 1980 on the Supreme Administrative Court and the Amendment to the Code of Administrative Procedure regulate cases of property seized in breach of the then applicable law.

Shifting of Poland's borders after World War II

Following World War II, Poland's borders were radically shifted, which had been *de facto* recognised by the Allied Powers as early as in 1943 at the Teheran Conference. Under the Potsdam Agreement of 1945, Poland relinquished almost one-half of its pre-war territory to the Soviet Union and was compensated for it by receiving a part of the Eastern territories of the Third Reich and the area of the Free City of Gdańsk. As a result, Poland's territory was diminished by approximately 1/5 of its pre-war size.

Population resettlements

The shifting of borders entailed mass population resettlements. From 1944 to 1946, approximately **1.8** million Polish citizens were resettled. Pursuant to relevant agreements signed with the Soviet Republics, Polish citizens were obligated to leave their entire movable and immovable property (except for personal belongings which they could take with them in strictly regulated amounts). Polish civilian population suffered many abuses during

resettlements. The transfer of property on such large scale mandated the enactment of an applicable legal framework by the Polish legislator.

Change of the political and economic system

In analysing the background of ownership changes in Poland, mention should also be made of the change of Poland's political system to a socialist model that was forcibly imposed on the Polish people and sanctioned by the Western powers. The so-called social ownership was the dominant form of ownership in the socialist political and economic system. Measures intended to adjust the old ownership structure to new guidelines were referred to as "nationalisation" in socialist jurisprudence as early as in the period preceding World War II

War-time losses

Poland suffered enormous material losses during World War II. According to estimates, about **37 percent** of the national property was destroyed. To give an example, industrial property losses are estimated at as high as **60 percent** of the pre-war assets, **50 percent** of the infrastructure was destroyed and **43 percent** of historical substance. Many cities were turned into rubble and smaller towns and villages were destroyed. Warsaw represents a unique and an extremely tragic case. Counted among Warsaw's losses are **10,455** buildings, including **923** historical structures (**94% of the pre-war total**), **25** churches, **14** libraries (i.a. the National Library), **145** schools, as well as Warsaw University and Warsaw Technical University. Over a **million** inhabitants lost all their possessions. Detailed data on private and public property loss, including works of art, cultural heritage and science artefacts is not available. The exact extent of losses of private and public property, including works of art, cultural landmarks and scientific objects, is not known. A historical committee set up in 2004 assessed the total loss at USD **54.6** billion or more (calculated at the 2004 USD/PLN exchange rate). Confronted by the enormous scale of destruction and problems with establishing the legal status of a significant part of real property, the post-war authorities decided that taking over private property was a necessary condition of effectively rebuilding the country.

Nationalisation after World War II

After World War II, nationalisation of private property was a common practice. It was also resorted to by highly industrialised countries with high standards applied to the protection of private ownership. France nationalised factories of Renault, Gaz de France and Electricité de France, the UK did the same with its coal mines and iron and steel works. Italy kept ENI (gas and oil industry) which had been nationalised under the fascist regime. After World War II, almost all countries nationalised their railways. Countries which later became part of the Eastern Bloc – Hungary, Czechoslovakia, Bulgaria, Romania, Yugoslavia, the German Democratic Republic and Poland – nationalised private property on a massive scale, not limiting themselves to the industry sector.

How did the then existing norms of international law address these issues? According to most international law experts, at that time states had full discretion to set the conditions

under which they nationalised the property of their citizens. Hence, governments had the right to take over private property – even without paying compensation. This view was construed from the principle of sovereignty and autonomy of states as subjects of international law. Let us bear in mind that the human rights protection system as we know it today was not a familiar concept of international law at that time.

Persons who were not citizens of a country that nationalised property were in a different situation. Such acts were regarded as an indirect violation of the interests of the state whose citizens were deprived of their property, even though such property was physically located in the state that seized the property. The principle of sovereignty was construed as imposing a duty on the state that has nationalised the property of foreign citizens to compensate such states. The latter country could, but was not obliged, to pay such compensation to the individuals who had lost their property.

In view of the above circumstances, the Polish government entered into the so-called indemnity agreements during the 1948-1971 period with a number of countries whose citizens had been affected by the consequences of private property seizure. These agreements provided for specific amounts of compensation for citizens of those countries whose property was nationalised by the Polish State. Countries with entered into these agreements with Poland assumed responsibility for the payment of such compensation. These agreements (Table 1.) released Poland from any obligation under international law for the seizure of property previously owned by foreign citizens. The procedure for claiming damages is regulated solely by the domestic law of the aforementioned states.

Country	**Sums agreed**
France	**3.8 million** tonnes of coal (1948) worth USD **65 million**
Denmark	DKK **5.7 million**
Switzerland (and Lichtenstein)	CHF **53.5 million**
Sweden	SEK **116 million**
UK	GBP **5.4 million**
Norway	Mutual offset of Polish assets in Norway and Norwegian assets in Poland
USA	USD **40 million**
Belgium (and Luxemburg)	BEF **600 million**
Greece	USD **230,000**
Netherlands	NLG **9 million**
Austria	ATS **71.5 million**
Canada	CAD **1.2 million**

Table. 1. Indemnity agreements.

SELECTED LEGAL GROUNDS FOR TAKING OVER PROPERTY IN 1944-1989

- PKWN (Polish Committee of National Liberation) Decree of 6 September 1944 on Agrarian Reform and Regulations issued pursuant to the Decree (Dziennik Ustaw of

1945: No. 3, item 13; Dziennik Ustaw of 1946: No. 49, item 279; Dziennik Ustaw of 1957: No. 39, item 172 and Dziennik Ustaw of 1968: No. 3, item 6);

- PKWN Decree of 12 December 1944 on Takeover by the State Treasury of Ownership of Certain Forests (Dziennik Ustaw of 1944: No. 15, item 82; Dziennik Ustaw of 1948: No. 57, item 456; Dziennik Ustaw of 1968: No. 3, item 6; Dziennik Ustaw of 1969: No. 13, item 95);

- Decree of 26 October 1945 on Ownership and Usufruct of Land in the Capital City of Warsaw (Dziennik Ustaw of 1945: No. 50, item 279);

- Decree of 13 November 1945 on Establishment of "Film Polski" State Enterprise (Dziennik Ustaw of 1945: No. 55, item 308);

- Decree of 28 November 1945 on Takeover of Certain Landed Property for Purposes of Agrarian and Land Reform (Dziennik Ustaw of 1945: No. 57, item 321);

- Law of 3 January 1946 on Nationalisation of Core Branches of the National Economy (Dziennik Ustaw of 1946: No. 3, item 17; No. 71, item 389; No. 72, item 394; Dziennik Ustaw of 1958: No. 45, item 224; Dziennik Ustaw of 1969: No. 13, item 95);

- Decree of 8 March 1946 on Abandoned and Ex-German Property (Dziennik Ustaw of 1946: No. 13 item 87; No. 49, item 279; No. 72, item 395; Dziennik Ustaw of 1947: No. 19, item 77; No. 66, item 402; Dziennik Ustaw of 1948: No. 57, item 454; Dziennik Ustaw of 1969: No. 13, item 95);

- Decree of 6 September 1946 on the Agricultural System and Settlement in Regained Territories and the Former Free City of Gdańsk (Dziennik Ustaw of 1946: No. 49, item 279);

- Decree of 7 April 1948 on Expropriation of Estates Occupied for Purposes of Public Utilities during the 1939-1945 War (Dziennik Ustaw of 1948: No. 20 item 138; Dziennik Ustaw of 1949: No. 65, item 527);

- Decree of 26 April 1949 on Acquisition and Transfer of Real Property Indispensable for the Implementation of Economic Plans (Dziennik Ustaw of 1952: No. 4 item 31);

- Decree of 27 July 1949 on Takeover of Ownership of Landed Property not in Actual Possession of their Owners, Located in Certain Poviats of the Białostockie, Lubelskie, Rzeszowskie and Krakowskie Voivodeships (Dziennik Ustaw of 1949: No. 46, item 339; Dziennik Ustaw of 1958: No. 17, item 71);

- Law of 20 March 1950 on Nationalisation of Mortmain Property, Entrusting Farm Land to Parish Priests, and Creation of a Church Fund (Dziennik Ustaw of 1950: No. 9, item 87; No. 10, item 111; z 1969 No. 13, item 95; z 1998: No. 137, item 887);

- Law of 8 January 1951 on Nationalisation of Pharmacies (Dziennik Ustaw of 1951: No. 1, item 1; Dziennik Ustaw of 1968: No. 3, item 6; Dziennik Ustaw of 1969: No. 13, item 95);

- Decree of 2 February 1955 on Nationalisation of Inland Shipping Stock (Dziennik Ustaw of 1955: No. 6 item 36; Dziennik Ustaw of 1958: No. 17, item 71; Dziennik Ustaw of 1968: No. 3, item 6)

- Decree of 18 April 1955 on Enfranchisement and Regulation of Other Matters Relating to Agrarian Reform and Agricultural Settlement (Dziennik Ustaw of 1955: No. 18, item 107; Dziennik Ustaw of 1958: No. 17, item 71; Dziennik Ustaw of 1959: No. 14, item 78);

- Law of 13 July 1957 Amending the Decree of 18 April 1955 on Enfranchisement and Regulation of Other Matters Connected with the Agrarian Reform and Agricultural Settlement (Dziennik Ustaw of 1957: no. 39 item 174; Dziennik Ustaw of 1961: no. 32, item 161; Dziennik Ustaw of 1982: no. 11, item 79);

- Law of 25 February 1958 on Regulating the Legal Status of Property Remaining under State Administration (Dziennik Ustaw of 1958: No. 11 item 37; Dziennik Ustaw of 1968: No. 3, item 6);

- Law of 12 March 1958 on Sale of Immovable Property of the State Land Fund and on Settling Certain Matters Connected with Agrarian Reform and Agricultural Settlement (Dziennik Ustaw of 1989: No. 58, item 348; Dziennik Ustaw of 1991: No. 107, item 464);

- Law of 12 March 1958 on Rules and Procedure for Expropriation of Real Property (restated text Dziennik Ustaw of 1974: No. 10, item 64);

- Law of 22 April 1959 on Refurbishment and Reconstruction and Finishing Buildings (restated text Dziennik Ustaw of 1968: No. 36, item 249);

- Law of 6 May 1962 – the Water Act (Dziennik Ustaw of 1962: No. 34, item 158; Dziennik Ustaw of 1971: No. 12, item 115).

PROPERTY RESTITUTION AFTER 1989 (LEGAL REGULATIONS)

Immovable property of churches and other religious associations

Restitution of immovable property of churches and other religious associations has been carried out by the state through the work of property restitution commissions which are a type of arbitration courts.

One example of such commission was the Property Commission set up pursuant to the Law of 17 May 1989 on the Relationship between the State and the Roman Catholic Church in the Republic of Poland (Dziennik Ustaw of 1989: No. 29, item 154 as amended). The

Property Commission was dissolved pursuant to the Law of 16 December 2010 Amending the Law on the Relationship between the State and the Roman Catholic Church in the Republic of Poland (Dziennik Ustaw of 2011: No. 18, item 89).

The following bodies continue their work:

1) Commission for the Restitution of Property of the Polish Autocephalous Orthodox Church set up pursuant to the Law of 4 July 1991 on the Relationship between the State and the Polish Autocephalous Orthodox Church (Dziennik Ustaw of 1991: No. 66, item 287 as amended);
2) Property Restitution Commission set up pursuant to the Law of 13 May 1994 on the Relationship between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland (Dziennik Ustaw of 1994: No. 73, item 323 as amended);
3) Commission for the Restitution of Property of Jewish Religious Communities set up pursuant to the Law of 20 February 1997 on the Relationship between the State and Jewish Religious Communities in the Republic of Poland (Dziennik Ustaw of 1997: No. 41, item 251 as amended);
4) Commission for the Restitution of Property of Other Churches set up pursuant to the Law of 17 May 1989 on Guarantees of the Freedom of Conscience and Religious Denomination (Dziennik Ustaw of 2005: No. 231, item 1965; of 2009: No. 98, item 817; of 2010: No. 106, item 673; of 2011: No. 112, item 654). The Commission examines restitution claims filed by Churches and their legal entities, operating pursuant to:
    a) Law of 13 May 1994 on the Relationship between the State and the Evangelical Reformed Church in the Republic of Poland (Dziennik Ustaw of 1994: No. 73, item 324 as amended);
    b) Law of 30 June 1995 on the Relationship between the State and the Evangelical Methodist Church in the Republic of Poland (Dziennik Ustaw of 1995: No. 97, item 479 as amended);
    c) Law of 30 June 1995 on the Relationship between the State and the Christian Baptist Church in the Republic of Poland (Dziennik Ustaw of 1995: No. 97, item 480, as amended);
    d) Law of 30 June 1995 on the Relationship between the State and the Seventh-day Adventist Church in the Republic of Poland (Dziennik Ustaw of 1995: No. 97, item481, as amended).

Claims were filed with this last Commission also by other Churches and religious associations, as well as national inter-Church organisations. These were:

e) The Muslim Religious Union in the Republic of Poland;
f) The New Apostolic Church in Poland;
g) The Anglican Church in Poland;
h) The Evangelical Christian Church in Poland;
i) The Pentecostal Church in the Republic of Poland;
j) The Bible Society in Poland.

The claims of the last three Churches and the Bible Society in Poland have already been examined.

The duration of restitution proceedings before the Commissions depends on many factors and often entails search queries in both Polish and foreign archives.

The property restitution process applicable to churches and other religious associations has also exposed problems, such as the destruction of documents during the war, loopholes in the communist legal system, the deletion of names of former owners from deeds, and the frequent absence of former property owners' names in earlier court decisions. Given these problems, the Commissions that examine restitution cases usually decide in favour of claims when they are in doubt. The Commission for the Restitution of Property of Jewish Religious Communities where the beneficiaries of the performances awarded by the said Commission are the Union of Jewish Religious Communities and Jewish religious communities may serve as an example of such practice.

Once a claim has been found to fulfil statutory requirements, a procedure is initiated leading to:
a) restitution *in rem*;
b) award of similar property of comparable value;
c) compensation or monetary damages.

Many cases have been settled by the parties (between the current owner of immovable property and its pre-World War II owner) or by the Commission.

Restitution proceedings are conducted by individual Commissions (competent and appropriate for the respective Churches and religious denominations), composed of (in equal number) representatives of a given Church/religious denomination and the government. In addition to the claimant, all central and local government agencies and religious agencies concerned participate in the restitution proceedings. A large number of cases are settled by a decision of the Commission competent for the relevant Church or religious denomination. Restitution proceedings also end in settlements reached before members of the commission adjudicating on a restitution case. In most cases, restitution proceeding regulations take into account the special circumstances created after the post-World War II shift of Poland's borders. In the event that the Commission fails to reach a decision, restitution proceedings participants may bring their case to court or assert their claims pursuant to general provisions of private property law (see below).

Private property

Since 1980, the Polish system of administrative law has provided for the possibility, in perpetuity, to challenge administrative decisions (including decisions of property deprivation). The legal situation applicable at the time such decisions were issued is subject to scrutiny. If a decision was issued "in breach of regulations on competence", "without legal grounds or in gross violation of the law", "was addressed to a person who was not a party to a case" or in other similar circumstances, it may be removed from legal circulation, together with all the legal consequences it has caused. Such a decision is challenged when a higher level body declares it "invalid." Detailed premises that provide grounds for requesting invalidity of an administrative decision are laid down in Article 156 § 1 of the CAP.

Once an administrative decision is declared invalid, it is treated almost as if it did not exist. A nationalisation decision, once it is declared invalid, in many cases may lead to the restitution of property to its former owners or their legal successors and subsequently to their repossession of real property and the reconciliation of the land and mortgage register entries with the actual legal situation.

An administrative decision may not be declared invalid if it has caused irrevocable legal consequences (for example, in the meantime the nationalised property was sold to third parties). Such a decision is nonetheless declared to have been "issued in breach of the law" and a party to the proceedings that was injured by this decision has the right to assert – pursuant to Article 160 § 1 of the CAP – claims for the damage actually suffered (*damnum emergens)*. Damages referred to in this legislative provision may also be claimed in certain cases when a higher instance body declares an administrative decision to be invalid.

Damages may be asserted within three years of the date a decision was declared invalid, irrespective of the time the decision was declared invalid (e.g. even if a damage occurred many years earlier). The right to indemnification is determined pursuant to general principles of private law in the course of civil proceedings. According to the Supreme Court's case law, persons who did not take part in proceedings that ended in a decision finding a breach of the law may also claim damages.
Court case law also favours former owners in cases involving acquisitive prescription of real property acquired by the State Treasury for the exercise of its public authority. Pursuant to a resolution of the full Civil Chamber of the Supreme Court of 26 October, 2007, ref. No. III CZP 30/07, acquisitive prescription of real estate is not possible if its owner could not have effectively claimed repossession of such property.

Claims relating to immovable property located in the capital city of Warsaw

The Decree of 26 October 1945 (the "Decree") on Ownership and Usufruct of Land in the Area of the Capital City of Warsaw provided for the ownership transfer of all landed property located within the Warsaw city limits to the municipality of the Capital City of Warsaw**–**. Former owners of real estate had the right to apply for perpetual lease (perpetual usufruct) provided that the enjoyment by the present owner could be reconciled with the use of land. Pending the examination of their application, the former owners retained ownership of buildings and other objects located on the land. If the municipality dismissed the application, the ownership of all buildings located on the land was transferred to the municipality (and subsequently to the State Treasury).
Under the current legal system decisions issued pursuant to the Decree can be verified.
If a decision refusing temporary ownership of land was issued by the National Council Presidium of Warsaw, an application for invaliding such decision should be submitted to the Local Government Board of Appeals (municipal property) and if the property now belongs to the State Treasury – to the Voivode of the Mazowieckie Voivodeship. Claimants may appeal against final decisions issued by the former Ministry of Municipal Economy to the Minister of Transport, Construction and Maritime Economy.
If the above decision is found to be invalid, the competent authority re-examines the application for temporary ownership (now: perpetual usufruct).

If a negative decision issued pursuant to the Decree has caused damage, damages may be asserted pursuant to the rules described above.

Moreover, in certain situations referred to in Article 215 of the Law of 21 August 1997 on Real Property Management (Dziennik Ustaw of 2010, no. 102, item 651), former owners could claim damages without having to challenge decisions issued pursuant to the Decree. Damage claims should be submitted to the Mayor of the Capital City of Warsaw.

Claims relating to property taken over in the course of nationalisation of industry

After the end of World War II, industry in Poland was nationalised. Nationalisation decisions are examined for compliance with the then applicable law pursuant to the rules described above.
Pursuant to the Law of 3 January 1946 on the Nationalisation of Core Branches of the National Economy, the Law of 25 February 1958 on Regulating the Legal Status of Property Administered by the State, the Decree of 16 December 1918 on Compulsory State Management, nationalisation decisions were issued whose legality is now subject to verification.

Decisions may be checked for legality pursuant to Article 156.1.2 of the CAP. The party concerned should apply to the authority that issued the final decision or to its legal successors. In the case of the Law of 3 January 1946 on the Nationalisation of Core Branches of the National Economy, the authority to apply to is the Minister of Economy, and in the case of forced management and enterprises taken over by the state, applications should be lodged with the competent ministers:

- Minister of Health – health resorts;
- Minister of Environment – sawmills;
- Minister of Agriculture and Rural Development – mills, butcher shops, oil mills;
- Minister of Finance – the spirits industry.

If a nationalisation decision concerns an enterprise owned by a natural person or persons as at the date of seizure, applications may be submitted by such persons or their legal successors. In the case of a joint stock or limited liability company, applications may be submitted by the management board of the company or a court-appointed receiver.

Claims relating to property taken over pursuant to the Decree on agrarian reform and the Decree on takeover by state treasury of ownership of certain forests

After World War II, agricultural enterprises and farmland were nationalised in Poland.

Pursuant to the PKWN Decree of 6 September 1944 on Agrarian Reform, the State Treasury nationalised landed property owned or co-owned by natural or legal persons, provided that their total area exceeded 100ha of the overall area or 50ha of arable land, while in the Poznańskie, Pomorskie, and Śląskie Voivodeships, provided that their total area exceeded 100ha of the overall area – irrespective of the portion of arable land in such landed property.

With respect to land-related standards referred to in the legal provision above, claimants may apply for a decision, issued under administrative law, that would determine whether their taken-over property met the criteria set out in Article 2.1(e) of the Decree on Agrarian Reform. The Supreme Administrative Court in its Resolution of 10 January 2011 (file no. I OPS 3/10) reaffirmed that Article 5 of the Ordinance of the Minister of Agriculture and Agrarian Reforms of 1 March 1945 implementing the PKWN Decree of 6 September 1944 on Agrarian Reform (Dziennik Ustaw of 1945 No. 10, item 51, as amended) may constitute grounds for issuing an administrative decision on whether real property or part thereof forms part of landed property referred to in Article 2.1.(e) of the PKWN Decree of 6 September 1944 on Agrarian Reform (Dziennik Ustaw No. 4, item 17, as amended). The competent authority in such cases is the voivode. Its decisions may be appealed against to the Minister of Agriculture and Rural Development. In other cases in which food production enterprises were located on the premises of landed property, eligible claimants should apply to a court to obtain a decision establishing ownership title pursuant to the procedure provided for Article 189 of the Code of Civil Procedure.

Similar rules apply to forests and forest lands covering an area of over 25 ha whose property has been transferred to the State Treasury pursuant to Article 1 of the PKWN Decree of 12 December 1944 on Takeover by the State Treasury of Ownership of Certain Forests. In the course of proceedings before common courts, legal successors of former owners may present arguments to support the claim that the real property taken over pursuant to the above decree did not fulfil the conditions permitting their ownership transfer to the State Treasury.

Claims relating to the loss of property left beyond the present borders of the Republic of Poland

As a result of frontier changes in the aftermath of World War II, large numbers of Polish citizens found themselves living in areas that remained outside the re-defined Polish borders. These persons had the right to claim compensation under the Law of 8 July 2005 on Exercising the Right to Compensation for Immovable Property Left outside the Borders of the Republic of Poland (Dziennik Ustaw of 2005: No. 169, item 1418, as amended). Pursuant to Article 2 of the Law, a former owner of immovable property left outside the existing Polish borders is entitled to compensation, provided that he or she meets all of the following criteria:

1. was a Polish citizen as at 1 September 1939 and was settled at that time within the borders of the then territory of the Republic of Poland and was resettled from that territory for reasons referred to in the Law; it should also be noted that the Constitutional Court in its judgement of 23 October 2012, file no. SK 11/12 found that the requirement of residence in the former territory of the Republic of Poland on 1 September 1939 is unconstitutional.

2. is a citizen of the Republic of Poland.

In the event an owner of immovable property left outside the present borders of the Republic of Poland dies, the right to compensation may be exercised by all or some of his successors appointed by the remaining ones, on condition that such persons fulfil the requirement referred to in Article 2.2 of the Law. The successors may appoint a person entitled to compensation by submitting a written declaration with notarised signatures or by signing it before a public administration body or by sending it to a Polish consular office (Article 3.2 of the Law).

Confirmation of the right to compensation is issued upon an application of the person concerned. The deadline for submitting such applications expired on 31 December 2008. The relevant voivode is empowered to issue a decision confirming the right to compensation. Pursuant to Article13 of the Law, the right to compensation may be exercised in one of the following forms:

1. By crediting the value of immovable property left outside the existing borders of the Republic of Poland against:
   a) the sale price of immovable property owned by the State Treasury, or
   b) the sale price of perpetual usufruct rights held by the State Treasury, or
   c) fees for perpetual usufruct of landed property owned by the State Treasury and sale price of buildings located thereon and other premises and appurtenances thereon, or
   d) fees for changing a perpetual usufruct right into an ownership right of immovable property owned by the State Treasury under separate provisions of law, or
2. Cash payment from the Compensation Fund

Eligible claimants receive twenty percent of the value of immobable property left outside the present borders of the Republic of Poland in the form of cash payments. The payments are made out of the Compensation Fund, a special-purpose fund administered by the Minister of Treasury.

Claiming compensation for works of art and movable cultural heritage seized by the state after World War II

Works of art and other cultural heritage artefacts, including libraries and archives, were seized by the authorities after World War II pursuant, in most part, to the following two legislative acts:
1. PKWN Decree of 6 September 1944 on Agrarian Reform – Article2 SubArticle1 letter e) and implementing provisions issued under the Decree (Dziennik Ustaw of 1945: No. 3, item 13; Dziennik Ustaw of 1946: No. 49, item 279; Dziennik Ustaw of 1957: No. 39, item 172, and Dziennik Ustaw of 1968: No. 3, item 6).

During the implementation of the Agrarian Reform, the government also seized movable property of historical, artistic or scientific value found on landed estates that were nationalised and belonged to the owners of such estates. Under the Agrarian Reform, property located within the pre-1939 Polish state borders was nationalised.

Restitution claims to property seized under the Agrarian Reform take the form of individual actions before civil courts for possession of property. Claimants should prove that, at the

time the 1944 Agrarian Reform Decree was promulgated, they were owners of specific works of art or other cultural heritage artefacts, to which the Agrarian Reform regulations did not apply. The court then examines whether the claimant has lost his title by operation of Agrarian Reform regulations or otherwise. If the court admits a claim, it orders the current holder of claimed property which usually is a museum, library or archive, to return the work or artefact to the owner or his legal successor.

2. Decree of 8 March 1946 on Abandoned and Ex-German Property (Dziennik Ustaw of 1946: No. 13 item 87; No. 49, item 279; No. 72, item395; Dziennik Ustaw of 1947: No. 19, item 77; No. 66, item 402; Dziennik Ustaw of 1948: No. 57, item 454; Dziennik Ustaw of 1969: No. 13, item 95).

The decree on Abandoned and Ex-German Property covered, in principle, two categories of property. First, any property that had been lost during the 1939-1945 war and occupation and was not repossessed by its owners before the end of 1950 (applies to movable property including works of art and other cultural heritage artefacts) or by the end of 1955 (applies to immovable property) – i.e. abandoned property. Secondly, any property formerly owned by the German Reich or the Free City of Gdansk, German or Gdansk legal persons and German or Gdansk citizens excluding Poles and other nationalities persecuted by the Germans (e.g. Jews) – the so-called ex-German property.

The ownership of abandoned property was transferred to the State Treasury of Poland as of the final date for regaining its possession, which for works of art and cultural heritage items was 1 January 1951. The ownership of ex-German property was transferred to the Treasury of Poland as of 19 April 1946. In both cases the ownership was transferred to the State Treasury by operation of law, without the need to issue decisions or take other actions, regardless of whether the property in question was currently held by the state or someone else.
If an owner of a work of art classified as abandoned property (or his legal successor) did not regain possession of his property before the end of 1950, he may pursue his claim in a civil court for possession, like in the case of claims for possession of property seized under the Agrarian Reform regulations. The claimant has to demonstrate that the artefact did not fall in the category of abandoned property or that he regained its possession before the final date set in the Decree. The court establishes the identity of the artefacts and whether the claimant has not lost his ownership title otherwise.
The same applies to any work of art classified as ex-German property, i.e. a claimant may pursue his claim in a civil court for possession and is required to demonstrate that his property had not be classified as ex-German property and that he has retained the ownership right to this property.
In both cases, the opposing party in any action for possession is the one that holds the object in question, which in most cases means a museum, library or archives.

RESTITUTION IN NUMBERS

Information on proceedings for the restitution of churches' and other religious associations' property

Property Commission (property belonging to the Catholic Church (e.g. to its parishes and dioceses), in the years 1989-2011:

- **2,476** proceedings ended in decisions or settlements that restituted or returned to church legal entities or awarded them damages or compensation,
- **666** proceedings ended in dismissal of the application or in discontinuation of proceedings before the Property Commission,
- the Property Commission has transferred to legal persons real property whose total area amounts to **65,538** hectares and paid out compensations and damages totalling PLN **143,534,000**.

Inter-Church Restitution Commission (for property belonging to the following churches: the Christian Baptist Church in the Republic of Poland, the Evangelical Church of the Augsburg Confession in the Republic of Poland, the New Apostolic Church in Poland, the Seventh-day Adventist Church in the Republic of Poland, the Muslim Religious Union in the Republic of Poland, the Evangelical Reformed Church in the Republic of Poland) (as of 10 August, 2012):

- a total of **170** applications have been submitted,
- **73** cases were initiated,
- **14** cases ended in restitution of property, award of substitute property or damages.

The Restitution Commission for the Polish Autocephalous Orthodox Church (as of 30 June, 2012):

- **566** cases were initiated,
- **329** cased ended in property restitution decisions or settlements or the award of damages,
- **65** cases ended in decisions to discontinue proceedings or to dismiss the application,
- pursuant to decisions and settlements, the following were handed over: undeveloped pieces of landed property totalling **5,080ha**, developed pieces of landed property totalling **21ha**, residential and business premises totalling **1,749.63m^2**, **13** cemeteries with a total area of **5.4ha**. Damages worth **PLN 7,713,290** were awarded.

The Restitution Commission for the Evangelical Church of the Augsburg Confession in the Republic of Poland (as of 26 July, 2012):

- **1,200** cases were initiated,
- **430** cased ended in property restitution decisions or settlements or the award of substitute property,
- **513** cases ended in decisions to discontinue proceedings at the joint motion of its participants or in the dismissal of the application,
- undeveloped landed property totalling **398ha** and developed landed property totalling **46.5ha** was restituted or returned; approximately **PLN 2,113,118** was paid out in cash compensations.

Commission for the Restitution of Property of Jewish Religious Communities (as of 31 July, 2012):

- **5,504** proceedings were initiated;
- **2,282** proceedings were closed in full or in part;
- **1,017** proceedings ended in a settlement or decision to accept the application;
- **1,213** proceedings were discontinued or ended in decision to dismiss the application;

-Settlements reached before the Restitution Commission provide for the payment of **PLN 27,801,507** as cash compensation for the Union of Jewish Religious Communities in Poland. In addition, applicants were awarded damages totalling **PLN 34,607,249**.

Information about the restitution of real property to individuals and the payment of compensation for private property taken over by the state.

Real estate in Warsaw:
- **17,000** pieces of developed landed property had been seized,
- **3,486** pieces of real property were restituted *in rem*,
- approximately **300** damages were awarded (from 2002 to 2012, the total amount of damages paid was **PLN 520 million**)
- approximately **5,000** cases are pending.

Real estate in large cities:
In cities located within the borders of the 2nd Republic of Poland, as a rule, regulations like the Warsaw Decree were not in force. Other towns suffered less extensive damage during WW II. For this reason, the restitution of illegally seized property in those towns after 1989 was less complicated than in the case of Warsaw. Below is an estimated percentage of accepted applications for restitution of real property and/or restoring the ownership title to real property taken over by the state in the years 1944-1989 (estimated data provided by organisations of real property owners):

- Gdynia: **90%**
- Katowice: **80%**
- Krakow: **80%**
- Lublin: **90%**
- Łódź: **90%**
- Poznań: **80%**

Landed real property taken over pursuant to the Decree on Agrarian Reform: lack of detailed data. However, more and more castles, palaces and country manors together with non-arable land have been restituted.

Industry enterprises

According to Ministry of the Economy estimates, around **4,000** applications for invalidating nationalisation decisions have been filed since 1989. To date, around **3,000** cases have been considered, most of them in favour of the old owners. In the early 1990s, most cases ended in restitution *in rem*. From 2001 until 2012, arising from a decision by the Ministry of the Economy, the State Treasury paid out damages to **402** claimants for illegal seizure of industrial plants. The damages totalled **PLN 191.7 million**. The Ministry of the Economy has estimated initially that **2,000** cases have led to restitution *in rem*.

Property Beyond the Bug River (as of October 31, 2012)

- **111,600** applications have been filed;

- **47,538** claims (or **43%**) have been processed;
- payments exceed **PLN 2.3** billion;

RESTITUTION OF PROPERTY IN POLAND (Q&A)

What is the historical background to Polish restitution?

In the years 1939-1945, Poland suffered massive and extensive war damage – both in terms of population and property. Large portions of Polish cities were destroyed. Warsaw suffered the most extensive damage. Most of its buildings were razed to the ground. To rebuild Poland's capital, Warsaw's authorities at the time decided to nationalise large parts of the city.
In communist-ruled Poland, like in all former Eastern Bloc countries, at the final stages of World War II and immediately afterwards, private property was nationalised on a mass-scale because of:

- the need to rebuild ruined cities and to modernise transportation infrastructure, industry and agriculture;
- border shifts resulting from the Potsdam Agreement (the incorporation into Poland of a part of the Third Reich's former territories and the Free City of Gdańsk with the concurrent loss of Poland's eastern territories);
- a change of the economic and political systems.

Who was affected?

Those affected by the nationalisation of private property at the time can be divided into four categories:

- Citizens of the Second Republic of Poland;
- Citizens of the Third Reich (including citizens of the Second Republic who assumed German citizenship during the war).
- Citizens of the Free City of Gdańsk;
- Persons who were not Polish citizens prior to 1 September 1939.

Was any compensation awarded during the communist rule?

Compensation claims, although admissible in theory, were extremely rarely awarded in practice. The communist government followed these rules:

- Property owned by citizens of the Second Republic of Poland, in almost all cases, was nationalised without any compensation;
- In the case of citizens of other states, the Polish government, based on indemnity agreements entered into with over ten countries ("indemnity agreements") paid global damages for the property owned by citizens of these states that it had nationalised;
- German property located within post-1945 Polish borders was treated as reparations for war-time losses, therefore the Polish legislator did not consider himself bound by an obligation to pay damages.

Was the take over of property by Polish authorities performed in conformity with international law?

Yes. According to most international law experts, during this period states exercised full discretion in the scope of taking over property belonging to their citizens. Hence, governments had the right to take over private property even without paying compensation to its former owners. This norm was derived from the principle of sovereignty and autonomy of states as subjects of international law. Let us note that a system of international human rights protection had not yet been internationally codified.
Persons who were not citizens of the country that nationalised their property were in a different situation. Such act was regarded as an indirect violation of the interests of the state whose citizens were deprived of their property, even if physically such property was located in the territory of the seizing country. The principle of sovereignty was construed as imposing a duty on the state that nationalised the property of foreign citizens to compensate their respective states. The latter states could, but were not obliged to transfer the said compensation to the entities that had lost their property. For these reasons, in the years 1948–1971 the Polish government entered into the so-called indemnity agreements with a number of countries whose citizens were affected by nationalisation.

What are the measures available today to persons who want to claim property restitution in Poland?

Persons who lost their property after World War II and their legal successors (even if they are not Polish citizens) may pursue their claims through court and administrative procedures. The choice of procedure is determined by the type of property and the grounds on which it was taken over.

Persons claiming property restitution may apply, without time limits, for a declaration of invalidity of a decision pursuant to which the property was seized, provided that the decision at the time it was issued contained serious defects referred to in the Code of Administrative Procedure (CAP). Declaration of invalidity leads to disregarding the administrative decision in the process of establishing the legal status of property. If a decision has led to irrevocable legal consequences, then an administrative body instead of declaring the decision to be invalid, finds that it was issued in breach of the law. A party to the proceedings may assert damages pursuant to Article 160 § 1 of the CAP for damage actually suffered (*damnum emergens)* caused by an invalid decision or a decision issued "in breach of the law." Persons who did not take part in proceedings that ended in a decision finding a breach of the law may also claim damages. Indemnity claims are barred by a statute of limitations of three years from the day an oversight decision becomes final.

Damages for unlawful takeover of property are paid out of the Reprivatisation Fund administered by the Minister of Treasury. Pursuant to the Law of 30 August 1996 on Commercialisation and Privatisation (Dziennik Ustaw of 2002 No. 171, item 1397 as amended), the Reprivatisation Fund is funded with proceeds from the sale of companies owned by the State Treasury (**5%** of the value of shares sold). Damages are paid from the Fund on the basis of legal titles, i.e. non-appealable and final judgments, court settlements,

and final administrative decisions. Since 2001, i.e. from the date the Reprivatisation Fund was set up, until 31 October, 2012, it paid out damages totalling **PLN 1.05 billion** to **2,682** natural and **63** legal persons based on **807** awarded claims.

In the event that property was seized without legal grounds or based on an invalid administrative decision, a claim may also be filed with a common court of law for possession of property (Article 222 § 1 of the Civil Code) and for reconciling the entries of a land and mortgage register with the actual legal status of the property in question.
The evolution of case law and court practice in the last twenty years has affected the process of awarding damages for taken over property. A significant number of proceedings ended in rulings awarding former owners their property *in rem* or damages. Many judgements delivered by the Supreme Administrative Court, the Supreme Court and the Constitutional Court are in favour of the parties concerned.
Similarly, as regards the real property located in Warsaw and properties taken over in other cities on different legal grounds, local authorities have for some years interpreted the law in favour of the expropriated owners.

How much property in Poland has been returned to claimants?

Due to the complex nature of this issue, the following data is not comprehensive and should be treated as an estimate. The information presented below illustrates the scale of restitution in Poland claimed through court and administrative procedures.

- Warsaw properties (number of immovable properties nationalised ca. **17,000**)
  - **3,486** pieces of real property returned;
  - ca. **300** damages paid (in the years 2002-2012 alone damages paid totalled over PLN **530 million**);
  - ca. **5,000** cases pending

- Real property in other large cities

In large cities located within the borders of the Second Polish Republic, as a rule, regulations like the Warsaw Decree were not in force. Those towns suffered less extensive damage during WW II. For this reason, the restitution of illegally seized property in those towns after 1989 was less complicated than in the case of Warsaw. Below is an estimated percentage of accepted applications for restitution of real property and/or restoring the ownership title to real property taken over by the state in the years 1944-1989. Estimated data was provided by organisations of real property owners:

- Gdynia: **90%**
- Katowice: **80%**
- Krakow: **80%**
- Lublin: **90%**
- Łódź: **90%**
- Poznań: **80%**

- Landed property seized pursuant to the Decree on Agrarian Reform.

No detailed data available; castles, palaces and country mansions are being returned in increasing numbers.

- Property Beyond the Bug River
  - **111,600** applications have been filed;
  - **47,538** claims (or **43%**) have been processed by October 31, 2012;
  - payments exceed **PLN 2.3 billion.**

- Industry enterprises

According to the Ministry of the Economy estimates, around **4,000** applications for invalidating nationalisation decisions have been filed since 1989. To date, around **3,000** cases have been examined, of which most ended in decisions in favour of the old owners. In early 1990s, most cases ended in restitution *in rem*.

- Reprivatisation Fund

Since **2001**, i.e. from the date the Reprivatisation Fund was set up, until 31 October, 2012, it paid out damages totalling **PLN 1.05 billion** to **2,682** natural and **63** legal persons based on **807** awarded claims. This sum includes damages paid to persons claiming enterprises to whom their property was not returned *in rem*.

- Communal property (churches and religious communities):
  - Landed property: no less than **70,000ha**.
  - No less than **PLN 215 million** paid in compensation.

Do Jewish claimants have a separate legal status?

No. Polish citizens of Jewish origin who lost their property (and their legal successors) do not represent a separate legal category. Legally, the situation of persons of Jewish origin and their successors (also those who today are not Polish citizens) is no different from the situation of other persons, in particular from that of other Polish citizens.
If their property was taken over in violation of the then applicable law, persons of Jewish origin may claim property restitution in court and administrative proceedings on the same grounds as other eligible persons.

What guarantees are provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms to persons deprived of their property in the course of post-WW II nationalisation processes?

Poland has been bound by the Convention since 19 January, 1993, and since 1 May, 1993 it acknowledges the jurisdiction of the European Court of Human Rights in adjudicating cases that may be brought against it. The provisions which guarantee the protection of ownership are stipulated in Article 1 of Protocol No. 1 to the Convention which has been binding for Poland since 10 October, 1994.
According to the general principles of international law, an international agreement - in this case the Convention and Protocol No. 1 - may not be applied to acts of the state that had occurred before the entry into force of the agreement in such state, or to situations which

ceased to exist before such date. Consequently, the European Court of Human Rights, a~~n~~ supervisory body that operates pursuant to the Convention, may examine applications filed with the Court only to the extent they concern events or acts committed by the state before the entry into force of the Convention and its relevant additional protocols in that state.

Within the meaning of Article 1 of Protocol No. 1, the loss of ownership resulting from expropriation, nationalisation or confiscation is, in principle, an instantaneous act and does not create a continuing situation which the Court would be competent to examine.

For this reason, once it is found that property had been seized before the Convention and Protocol No. 1 entered into force in Poland, the Court has no temporal jurisdiction to examine the circumstances surrounding specific acts of property takeover or their effects, even if they continue to this day. In other words, the Court would not find any nationalisation, confiscation or expropriation carried out under communist regimes to be in breach of the Convention. The idea of the Strasburg system is to protect individuals against current infringements of the rights guaranteed to individuals under the Convention and its additional protocols.
The Court's case law has developed the principle that Article 1 of Protocol No. 1 to the Convention does not create any binding obligation on a state to return any property taken over by that state prior to the ratification of the Convention and Protocol No. 1. This transpires from the Court's case law relating to the scope of the right of ownership subject to protection. It involves the right to enjoy the existing ownership, and not "the right to property". It transpires from the Court's case law that if property was nationalised under nationalisation laws, the fact that a state later became bound by the Convention and its Protocol No. 1 does not constitute grounds for questioning ownership relations that existed on the day that state became bound by these international agreements.