OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – POLAND (AS OF 13 DECEMBER 2016)

CONTENTS

A. EXECUTIVE SUMMARY

As a result of World War II and its aftermath, no country suffered more than Poland. World War II began on 1 September 1939 when Germany invaded Poland. For the duration of the war, Poland was occupied by either the Germans or the Soviets. Poland's Jewish presence dates back a millennium, and the Jewish population of Poland in 1939 (3.3 million) was the largest in pre-war Europe. Pre-war Poland had a vibrant economy, with Polish Jews highly enmeshed in the private sector. Nazi persecution of Polish Jews (and other targeted groups such as Roma and political dissidents) began at the time of the occupation. It is estimated that the Germans killed at least 3 million Jewish and 1.9 million non-Jewish citizens in Poland during World War II. In all, 90% of the Jewish population and 10% of the non-Jewish population of prewar Poland was murdered. However, the survival rate was exactly the reverse: 90% of the prewar non-Jewish population survived, while only 10% of the prewar Jewish population survived. Approximately 4,000 Jews live in Poland today.

Laws enacted immediately after World War II by the newly-installed Polish Communist regime gave Polish Jews and other groups who had been targeted during the Holocaust and the war a 10-year window to reclaim immovable property confiscated during the German occupation. After 10 years, it became property of the Polish state. In the case of Polish Jews the impact of the legislation could only be small, as 90% had perished in the Holocaust, more left the country never to return, and others who stayed were often threatened if they attempted to recover their property. Whatever property was returned under the 1940s legislation was soon subject to a second wave of widespread confiscations. Nationalization laws passed by the Communist regime in the 1940s and 1950s this time confiscated property from all Poles – regardless of race, religion or ethnicity.

Poland is the only country in the European Union that has yet to enact legislation dealing with restitution or compensation of private property nationalized by the Polish post-war

Communist regime. While strides have been made in the area of restitution of communal property, the absence of a legal regime for restitution of expropriated private property and heirless property (property belonging to persons whose entire family line perished during the Holocaust and World War II) has been a politically charged issue within Poland and amongst Jewish and non-Jewish owners, and their heirs, for years. A number of restitution bills have been introduced in the Polish parliament but none have made it into law. Opponents have argued that enacting a full restitution regime for private property nationalized by the post-war Communist regime would have a crippling effect on the Polish economy.

Private Property. Claims by some foreign citizens relating to property seized by the post-war Communist regime were settled through bilateral agreements with a number of foreign governments. Many of these agreements, however, specifically excluded compensation for property taken during the German occupation of Poland.[1] Immediately after World War II, laws were passed, which *de jure* reversed property confiscations carried out by the German occupiers. However, regaining *de facto* control of the property often proved difficult. Aggression, threats and death became commonplace for former Jewish owners when they tried to retake possession of their property from non-Jewish families who had moved in during the wartime Nazi occupation. The rationale behind the threats have been linked to both lingering anti-Semitism and also a general fear of homelessness on the part of non-Jewish families. The war had left a shortage of housing in Poland.

When property was confiscated a second time in the mid 1940s and 50s, certain nationalization laws contained clauses guaranteeing compensation or the right to long-term leases (perpetual usufruct) of the nationalized property. These clauses were not implemented. One recent exception is a special restitution regime established in the city of Warsaw. A law that came into effect on 17 September 2016 creates a six-month deadline for pre-World War II owners of property in Warsaw to reactivate previous claims made under a 1945 land decree, although there are a number of exceptions and limitations on who may apply and what property is covered.

For private property nationalized by the post-war Polish Communist regime that was either not located in Warsaw or not subject to the 1945 land decree, claimants from other countries and Polish citizens have only experienced restitution on an *ad hoc* basis. Those successful claimants have relied on a patchwork of Polish laws enacted since 1945 and long-standing provisions of the Polish Civil Code and of the Polish Administrative Procedure Code.

During a June 2016 visit to Israel, Polish Foreign Minister Witold Waszczykowski, commented on the status of restitution in his country and stated that "property restitution

[1] From a legal standpoint under international and domestic law, Poland's position is that because it was a German-occupied country during World War II, it is not responsible for the expropriations by the German-occupier and is only responsible for nationalizations carried out by the post-war Communist regime.

has been underway in Poland for well over two decades now […] Property restitution is a process in which claimants' ethnic or religious background is irrelevant: the Polish law treats everyone in the same manner. As far as private property is concerned, the existing legal system in Poland makes it perfectly clear that any legal or natural person (or their heir) is entitled to recover prewar property unlawfully seized by either the Nazi German or the Soviet occupation authorities, or by the postwar communist regime." (Eldad Beck, "Polish Foreign Minister: There's more to us than the Holocaust", ynetnews.com, 15 June 2016.) Thus, the result is for people to file individual domestic lawsuits for the return of property nationalized by the Communists, usually relying on some technicality that the nationalization laws were improperly applied. Claimants must proceed at their own expense and seek first, by way of an administrative proceeding, to nullify the nationalization decision on account of a technical error (e.g., that the property did not fall within a category permitted to be nationalized by a particular law) and, if successful, then seek compensation in the civil courts of Poland. The documentation required to successfully prove ownership and heirship is strict, and often not in the claimants' possession nearly seventy years after the initial taking. Even if proper documentation is presented to the court, proceedings can take years to resolve, with some cases still languishing two decades later.

Comprehensive data is not available for how many restitution claims have been filed and how many have been resolved. Anecdotal reports demonstrate that restitution or compensation is possible. Because of a complex legal environment, however, the process can be both expensive and time-consuming. Nevertheless, since the 1990s thousands of restitution or compensation cases have been successfully concluded in Polish courts. A majority of successful cases were filed by non-Jewish Poles residing in Poland but there are no current statistics to confirm the statement. Poland's use of European Union and Council of Europe legal standards has made restitution litigation comparatively more efficient in recent years.

Claimants have turned to the **European Court of Human Rights ("ECHR")** in Strasbourg for relief, but with limited success to date. In two key suits filed before the ECHR, the court decided that local remedies must first be exhausted in Poland before a restitution claim against Poland can be heard by the ECHR. However, there have been others where the ECHR has found violations of the right to fair trial and the right to property.

Claimants living in the United States have sought to have their Polish post-war property restitution claims heard in the United States, but so far no such court claim has been successful. At least two cases filed in the mid-2000s against Poland have been dismissed on the grounds of lack of jurisdiction.

A separate issue involves compensation for private property in pre-war eastern Poland ceded to the Soviet Union after the war. Poles who were forced to abandon these lands because they were repatriated to the new borders of Poland have been seeking compensation for decades. These are the so-called **Bug River claims** because the properties are located east of the Bug River. Laws and agreements dating back to 1944

obligated Poland to provide compensation for the Bug River properties. After years of complicated restitution processes involving rarely-held public auctions and little available public land for restitution in kind, the ECHR held that Poland had effectively made it impossible to receive compensation for Bug River land. In response, in 2005 Poland enacted the Bug River Law – that has since withstood the scrutiny of the ECHR – providing for 20% of the value of the lost properties as compensation to be given in cash or credit to be applied to properties sold at public auction.

Communal Property. The large pre-war Polish Jewish community owned significant property in the form of synagogues, cemetery land, and all types of other communal properties. All were confiscated during World War II.

Poland has enacted specific restitution legislation for communal property, the **1997 Law on the Relationship Between the State and Jewish Communities.** The law has made possible the restitution or compensation of some communal property to the reemerging Jewish communities of Poland. However, the law contains exclusions. Property in the eastern Bug River borderlands is not covered. Restitution *in rem* but not compensation was offered for Jewish cemeteries (many of which were in need of funds for their maintenance). Only properties historically registered in the name of the Jewish community and Jewish religious legal entities are eligible for restitution. According to the **World Jewish Restitution Organization ("WJRO")**, as of 2012 less than 40% of the approximately 5,000 communal property claims had been adjudicated.

The Polish government emphasizes that as of 2013 over PLN 82 million (approximately USD 21 million) had been given in compensation to Jewish organizations when the property in issue cannot be returned. Many of the successfully adjudicated claims relate to the physical return of cemeteries, most of which are in a state of disrepair and require immediate upkeep. The private non-profit **Foundation for Preservation of Jewish Heritage ("FODZ"),** a partnership of the **Union of Jewish Communities in Poland** and the **WJRO**, is authorized to pursue communal property claims for those areas of Poland that do not have an active Jewish presence. The organization manages property and compensation received from those claims and is also supported by private donations.

Heirless Property. The often-wholesale extermination of families in Poland during the Holocaust era had the effect of leaving most expropriated property without heirs to claim it. Principles enshrined in documents such as the 2009 Terezin Declaration, 2010 Guidelines and Best Practices, and 2015 Statement at the Conclusion of the International Conference on Welfare for Holocaust Survivors and Other Victims of Nazi Persecution, emphasize that heirless property from victims of the Holocaust should not revert to the state but instead should be primarily used to provide for the material needs of Holocaust survivors most in need of assistance.

In Poland, the only laws relating to heirless or unclaimed property are those from the 1940s declaring that if "abandoned" property was not claimed by 1955, it would become property of the Polish State. Since approximately 90% of Polish Jews perished during the

war, many leaving no heirs, reversion of ownership to the state of such heirless properties is contrary to the plans envisioned for heirless property following the war.

Poland endorsed the Terezin Declaration in 2009. In 2010, 43 of the countries that endorsed the Terezin Declaration approved nonbinding Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazi, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II ("Terezin Best Practices"). Poland initially agreed to the Terezin Best Practices but then withdrew its support.

Poland is one of a handful of countries with a government office dedicated to Jewish Diaspora and post-Holocaust issues. As of March 2016, Mr. Sebastian Rejak holds the post of Special Envoy of the Polish Minister of Foreign Affairs for Relations with the Jewish Diaspora.

As part of the European Shoah Legacy Institute's Immovable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and heirless property was sent to all 47 Terezin Declaration governments in 2015. As of 13 December 2016, no response from Poland has been received.

B. POST-WAR ARMISTICES, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY

In 1939, Nazi Germany invaded Poland from the west while the Soviet Union invaded Poland from the east. Germany annexed western Poland by incorporating the region into new and existing German provinces. The central portion of Poland became the General Government (administratively autonomous part of the Third Reich) and was governed by a German civilian administrator. Eastern Poland went to the Soviet Union. Poland remained an occupied country for the duration of World War II (between 1939 and 1945) and was divided until Germany invaded the Soviet Union in 1941, taking eastern Poland from the then-occupying Soviets.

At the time of the Nazi invasion and occupation, Poland's Jewish population was the largest in Europe, constituting 7 to 10% of the country's overall population and over 40% of the population of Warsaw. (*See* Monika Krawczyk, *Restitution of Jewish Assets in Poland – Legal Aspects*, Justice No. 28, Summer 2001, p. 24 ("*Krawczyk I"*).) To put this into perspective, it is estimated that the Germans killed at least 3 million Jewish and 1.9 non-Jewish citizens in Poland during World War II. In all, 90% of the Jewish population and 10% of the non-Jewish population of prewar Poland was murdered. However, the survival rate was exactly the reverse: 90% of the prewar non-Jewish population survived, while only 10% of the prewar Jewish population survived. Currently, approximately **4,000** Jews live in Poland.

At the end of World War II, as an occupied country Poland was not a party to an armistice agreement or any treaty of peace. However, the geographical territory of Poland was a subject of multiple agreements between the Allied powers. These agreements

included the **February 1945 Yalta Conference** - between President Franklin D. Roosevelt (United States), Prime Minister Winston Churchill (United Kingdom) and Chairman of the Council of Peoples' Commissars Joseph Stalin (Soviet Union) – and the **July 1945 Potsdam Conference** – between President Harry S. Truman (United States), Churchill (and later Prime Minister Clement Atlee) (United Kingdom) and Stalin (Soviet Union). The three powers – the United States, the United Kingdom and the Soviet Union – met at these two conferences to negotiate terms for the end of the war.

Section VI of the report of proceedings from the **1945 Yalta Conference** and **Section IX** of the report of proceedings from the **1945 Potsdam Conference** specifically addressed Poland. The three powers agreed (1) upon the establishment of a Polish Provisional Government of National Unity, (2) that the eastern border of Poland "should follow the Curzon Line . . . " (according to agreements reached at **Yalta**) and (3) upon provisional geographic boundaries for Poland in the north and east, but agreed that a final determination of Poland's accessions should await a final peace settlement agreement.

Poland was not a party to these two conferences but at the **1945 Potsdam Conference** the President of the National Council of Poland and members of the Polish Provisional Government of National Unity fully presented their opposing views regarding the revision of Poland's borders in the north and west.

Poland ultimately suffered a net loss of 20% of its territory through these border revisions, losing a vast amount of prewar territory in the east to the Soviet Union, but also gaining some land in the west that was previously part of Germany and the Free City of Danzig (Gdansk).

Poland became a Communist state in 1947 after elections that are widely believed to have been rigged by the Soviets. Upon coming to power, the Communists began a process of massive nationalization of the economy that affected all Poles.

Poland remained a Communist state until 1989. After 1989, Poland began the process privatization and denationalization and the complex task of dealing with the Communist legacy.

Poland became a member of the Council of Europe in 1991 and ratified the European Convention on Human Rights in 1993. As a result, suits against Poland claiming violations of the Convention are subject to appeal to the European Court of Human Rights (ECHR). Poland became a member of the European Union (EU) in 2004.

1. Claims Settlement with Other Countries - Overview

In the years following the war, between 1948 and 1971, Poland entered into lump sum settlement agreements or bilateral indemnity agreements with a number of countries. These agreements pertained to property seized by the Polish Communist state after World War II from foreign nationals (natural and legal persons) by the Republic of Poland, and later, the Polish People's Republic. They included claims settlements reached with:

- **France** on 19 March 1948 (3.8 million tonnes of coal);
- **Denmark** on 12 May 1949 and 26 February 1953 (DKK 5.7 million);
- **Switzerland (and Lichtenstein)** 25 June 1949 (CFH 53.5 million);
- **Sweden** on 16 November 1949 and 19 January 1966 (~SEK 116 million);
- **United Kingdom** on 11 November 1954 (GBP 5.4 million);
- **Norway** on 23 December 1955 (mutual offset of Polish assets in Norway and Norwegian assets in Poland);
- **United States** on 16 July 1960 (USD 40 million);
- **Belgium and Luxembourg** (jointly) on 14 November 1963 (BEF 600 million);
- **Greece** on 22 November 1963 (USD 230,000);
- **The Netherlands** on 20 December 1963 (NLG 9 million);
- **Austria** on 6 October 1970 and 20 January 1973 (ATS 71.5 million); and
- **Canada** 15 October 1971 (CAD 1.2 million).

The **Polish Ministry of Foreign Affairs** maintains a website with information on property restitution including the agreements described above. The original text of each of these agreements is available for download at the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

No bilateral indemnity agreements were reached between Poland and other Axis countries. (*See id.*)

According to the **Polish Ministry of Foreign Affairs,** Poland has performed its contractual obligations under each of the agreements. The agreed-upon settlement amounts were transferred to each country. (*See id,* at "Indemnity Agreements".)

2. Specific Claims Settlement Agreements between Poland and Other Countries

a. Claims Settlement with France

On 19 March 1948, Poland and France entered into a bilateral agreement, **Agreement on Compensation by Poland of French Interests Affected by the Polish Law of 3 January 1946 on Nationalization ("France Bilateral Agreement").** According to **Articles 2** and **6**, Poland would pay France 3.6 million tonnes of coal as compensation for the nationalization of French property located within Poland by the 3 January 1946 Nationalization of Industry Act.

As far as we are aware, the claims process under the **France Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement

agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement in French is available for download from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

b. Claims Settlement with Denmark

On 12 May 1949, Poland and Denmark entered into a bilateral agreement, **Protocol No. 1 Between Denmark and Poland on Danish Interests and Assets in Poland ("Denmark Bilateral Agreement I").** The **Denmark Bilateral Agreement I** stated that Poland was responsible for its pre-war debts and also was to indemnify those Danish parties whose (property) interests in Poland were affected by the 3 January 1946 Nationalization of Industry Act **(Article 1).** Claims falling under the **Denmark Bilateral Agreement I** were to be resolved by a Danish-Polish Mixed Commission composed of one representative of each government **(Article 10**), with compensation to be "fixed at an adequate figure and shall be effectively paid" (**Article 11**). The **Denmark Bilateral Agreement I** was declaratory in its nature and set out the obligations of the parties, but not the final amount of compensation due to Denmark.

On 26 February 1953, Poland and Denmark entered into a second bilateral agreement, **Protocol No. 2 Between Denmark and Poland on Danish Interests and Property in Poland ("Denmark Bilateral Agreement II").** The **Denmark Bilateral Agreement II** set out the specific amounts of compensation due: DKK 3.43 million for Danish properties affected by certain legislation and actions of the Polish state (**Article I(a)**), DKK 1.05 million to the firm Højgaard et Schultz (**Article I(b)**), and DKK 1.22 million to the firm Det Østssiatiske Kompagni **(Article I(c))**, for a total of DKK 5.7 million.

As far as we are aware, the claims process established under **Denmark Bilateral Agreements I** and **II** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)[2]

[2] Property in the centre of Warsaw was recently returned to a Danish citizen. The return of the property caused public uproar, even though the Polish government had stated that the Danish citizen had previously refused to accept payment by the Danish government under **Denmark Bilateral Agreements I and II** and therefore, had not waived his rights to recover the property. (*See* Iwona Szpala, "Reprywatyzacja w Warszawie. Co o zwrocie działki przy Pałacu Kultury wiedział ratusz?", Wyborcza.pl, 30 June 2016.)

The original text of these two agreements is available for download in French from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2"**.

c. Claims Settlement with Switzerland

On 25 June 1949, Poland and Switzerland entered into a bilateral agreement, **Agreement between the Swiss Confederation and the Republic of Poland concerning the exchange of goods and payments ("Switzerland Bilateral Agreement I")** for CFH 53.5 million. (The terms of the **Switzerland Bilateral Agreement I** were initially concluded in an exchange of letters between the chiefs of Polish and Swiss delegations during Polish-Swiss economic negotiations in Warsaw.)

Under the terms of the agreement, Poland would pay CFH 53.5 million to Switzerland in settlement of claims relating to Swiss nationalized property in Poland and Switzerland would transfer to the Polish government the assets contained in heirless Polish bank accounts in Switzerland. In particular, the accounts of Polish nationals who had perished or disappeared during World War II and had not left any successors would be closed within five (5) years from the conclusion of the **Switzerland Bilateral Agreement I**. In 1954, at the end of this time period, the money from the closed Swiss bank accounts was to be transferred to Polish National Bank. The **Switzerland Bilateral Agreement I** also obliged Poland to compensate the successors of the dormant Swiss bank accounts for any damage resulting from the transfer of money to the Polish National Bank.

Despite the obligations set out in the **Switzerland Bilateral Agreement I,** the money from the dormant accounts belonging to Polish nationals who had perished or disappeared during World War II was not transferred from the Swiss banks to the Polish National Bank in 1954. As a result, Switzerland concluded a second bilateral agreement in 1964 (**"Switzerland Bilateral Agreement II"**). Pursuant to that agreement, the money from the Swiss banks was finally transferred to the Polish National Bank on 15 August 1975.

In 1997, the United States Congress held hearings on Swiss Banks and Nazi Gold. One of the issues raised at those hearings was the fate of Swiss accounts belonging to persons (including Poles) who had perished or disappeared during the war.

Around the same time as these hearings, the then-Polish Foreign Minister Dariusz Rosati conducted an investigation into **Switzerland Bilateral Agreements I** and **II** and noted that they "contained many legal flaws . . . [were] not ratified by the Polish parliament . . . the way in which the money was accepted was unlawful as inheritance procedures were not carried out." (Isabel Vincent, *Hitler's Silent Partners: Swiss Banks, Nazi Gold and the Pursuit of Justice* (1997) (quoting Polish Foreign Minister Dariusz Rosati).) The Polish Foreign Minister also stated that the Polish government, with the help of Swiss authorities, would try to identify any beneficial owners of the dormant Swiss bank accounts used as part of the **Switzerland Bilateral Agreements I** and **II**. (*Id.*) Shortly

thereafter, the Swiss government gave Poland a list of the account holders whose funds had been transferred to the Polish National Bank in 1975 (pursuant to **Switzerland Bilateral Agreement II**). The Polish authorities used the list to return money to the successors of the original account holders, when possible. This procedure began in 1998.

In a 2001 case before the Warsaw Appellate Court (Case No. I ACa 1391/01), the Polish government declared that the money which had been transferred from Switzerland to the Polish National Bank in 1975 (pursuant to **Switzerland Bilateral Agreements I and II**) had not been used in any way and was still on account with the Polish National Bank.

As far as we are aware, the claims process under **Switzerland Bilateral Agreements I and II** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

As far as we are aware, none of the balances from the dormant accounts were used to pay compensation claims for Swiss property nationalized in Poland. Poland settled these through a separate payment.

The original text of this agreement in French is available for download from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

d. Claims Settlement with Sweden

On 16 November 1949, Poland and Sweden entered into a first bilateral agreement, **Agreement between the Polish Government and the Swedish Government on Compensation of Swedish Interests in Poland ("Sweden Bilateral Agreement I").** Pursuant to **Article 1** of the **Sweden Bilateral Agreement I,** Poland would pay Sweden SEK 116 million for rights and interests of Swedish nationals affected by acts or legislation of the Polish State.

On 16 November 1949, Poland and Sweden entered into a second bilateral agreement, **Agreement between the Government of the People's Republic of Poland and the Royal Government of Sweden concerning the Settlement of Certain Financial Interests related to Swedish Real Estate Located in Poland ("Sweden Bilateral Agreement II"). Sweden Bilateral Agreement II** provided for SEK 750,000 to cover all claims not included in the **Sweden Bilateral Agreement I.**

As far as we are aware, the claims process under both the **Sweden Bilateral Agreements I** and **II** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in French and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

e. Claims Settlement with the United Kingdom

On 11 November 1954, Poland and the United Kingdom entered into a bilateral agreement, **Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Polish Government regarding the Settlement of Financial Matters ("UK Bilateral Agreement").** According to **Article I,** Poland agreed to pay the United Kingdom GBP 5,465,000. Approximately one-half of the settlement amount (GBP 2,665,000) was for settlement of claims arising before the date the **UK Bilateral Agreement** came into force relating to property, which had been affected by Polish nationalization or expropriation measures. The other one-half of the settlement amount (GBP 2,800,000) was for settlement of debts owed to the government of the United Kingdom or its nationals, payment of which had been guaranteed by the Polish Government, as well as other pre-war banking and commercial debts**.**

Successful claimants had to be citizens of the United Kingdom as of the date the **UK Bilateral Agreement** was signed and also had to have been citizens of the United Kingdom at the time the claim arose (**Article 4).**

As far as we are aware, the claims process under the **UK Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in English and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

f. Claims Settlement with Norway

On 23 December 1955, Poland and Norway entered into a bilateral agreement, **Agreement Between the Government of the Polish People's Republic and the Royal Norwegian Government Relating to the Liquidation of Mutual Financial Claims ("Norway Bilateral Agreement")**. According to **Article 1**, certain Norwegian assets in Poland and Polish assets in Norway "shall be settled against each other and [] claims relating to these assets shall be considered finally liquidated" – essentially a mutual offset of claims. Each government was permitted to decide how to internally distribute the assets covered by **Article 1** (**Article 2).**

As far as we are aware, the claims process under the **Norway Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in English and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

g. Claims Settlement with the United States

On 16 July1960, Poland and the United States entered into a bilateral agreement, **Agreement Regarding Claims of Nationals of the United States ("U.S. Bilateral Agreement").** According to **Article 1** of the **U.S. Bilateral Agreement**, Poland would pay the United States USD 40,000,000 (over a period of 20 years) "in full settlement and discharge of all claims of nationals of the United States . . . against the Government of Poland on account of the nationalization and other taking by Poland of property and rights and interest in and with respect to property, which occurred on or before the entry into force of this Agreement."

Successful claimants had to have continuously owned the property in question and be nationals of the United States from the date of the nationalization (i.e., from the date the loss accrued or injury was suffered) to the date of entry into force of the **U.S. Bilateral Agreement.** (*See* **U.S. Bilateral Agreement, Annex, A.**) Thus, many Polish survivors of the Holocaust and World War II who later became United States citizens would have been excluded, if at the time of the taking of the property they were not United States citizens. However, everything depended on the circumstances of each expropriation and the interpretation made by the **Foreign Claims Settlement Commission ("FCSC")** who granted the indemnities. In certain instances, compensation was made to claimants who had left Poland just after the war and in other cases, the Commission accepted the date of

the factual takeover of property under the **1945 Warsaw Land Decree** (*see infra* **Section C.2.a.ii**) and not the date the law entered into force.

Compensation for property taken during the Nazi occupation of Poland was specifically excluded from the **U.S. Bilateral Agreement. Annex C** stated that "[c]laims based in whole or in part on property acquired after the application of discriminatory German measures depriving or restricting rights of owners of such property shall participate in the sum to be paid by the Government of Poland only for the parts of such claims which were not based upon property acquired under such circumstances." In other words, only those properties confiscated as a result of anti-Jewish or other discriminatory German measures instituted against groups (such as Roma), which were *later* nationalized by the Communist regime, were compensable under the **U.S. Bilateral Agreement.** Even then, compensation was paid only for the subsequent nationalization of the property by the Communist regime, not the original confiscation by the German occupiers. As an occupied country during World War II, Poland did not feel responsible for the property confiscations of the German occupiers and reversed the legal status of such properties to the pre-war *status quo ante*. Therefore, Jewish property informally taken over by non-Jewish Poles and not formally taken over by the Communist regime, could not obtain compensation under the **U.S. Bilateral Agreement.** Thus, where property losses occurred exclusively as a result of German discriminatory measures (and not subsequent nationalization), they could not be compensated under the **U.S. Bilateral Agreement.**

The **Polish Claims Program** was completed by the **FCSC** on 16 July 1960. In the end, out of 10,169 claims filed, the Commission issued 5,055 awards totaling USD 100,737, 681.63. However, according to the terms of the **U.S. Bilateral Agreement,** only USD 40 million was available for payment of the awards. Thus, successful claimants were only paid approximately 33% of the principal of their awards.

For more information concerning the **Polish Claims Program,** the **FCSC** maintains statistics and primary documents on its **Poland: Program Overview** webpage.

h. Claims Settlement with Belgium and Luxembourg

On 14 November 1963, Poland, Belgium and Luxembourg entered into a trilateral agreement, **Agreement between the Government of the People's Republic of Poland on the one hand and the Government of Belgium and the Government of the Grand Duchy of Luxembourg other hand Concerning Compensation for Certain Interests of Belgium and Luxembourg in Poland ("Belgium-Luxembourg Trilateral Agreement").** Under the **Belgium-Luxembourg Trilateral Agreement,** Poland was to provide Belgium and Luxembourg BEF 600 million (in annual installments) as compensation for Belgian and Luxembourgian property interests that before the date of the agreement, were affected by Polish nationalization measures and other measures affecting property rights.

As far as we are aware, the claims process under the **Belgium-Luxembourg Trilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in French and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

i. Claims Settlement with Greece

On 22 November 1963, Poland and Greece entered into a bilateral agreement, **Agreement between the Government of the People's Republic of Poland and the Royal Hellenic Government concerning Compensation of Greek Interests in Poland ("Greek Bilateral Agreement").** Under the **Greek Bilateral Agreement,** Poland was to provide Greece USD 230,000 as compensation for Greek property interests that before the date of the agreement, were affected by Polish nationalization measures and other measures affecting property rights.

As far as we are aware, the claims process under the **Greek Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful. The **Polish Ministry of Foreign Affairs** has however stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in French and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

j. Claims Settlement with the Netherlands

On 20 December 1963, Poland and the Netherlands entered into a bilateral agreement, **Agreement between the Government of the People's Republic of Poland and the Kingdom of the Netherlands concerning Compensation of Dutch Interests in Poland ("Netherlands Bilateral Agreement").** Under the **Netherlands Bilateral Agreement,**

Poland was to provide the Netherlands NLG 9 million as compensation for Dutch property interests that before the date of the agreement, were affected by Polish nationalization measures and other measures affecting property rights.

As far as we are aware, the claims process under the **Netherlands Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in French and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

k. Claims Settlement with Austria

On 6 October 1970, Poland and Austria entered into a bilateral agreement, **Agreement between the Polish People's Republic and the Republic of Austria on the Regulation of Specific Financial Issues ("Austria Bilateral Agreement").** By the terms of the **Austria Bilateral Agreement**, it settled claims of Austrians against Poland arising out of nationalization regulations, legislation and judgments relating to deprivation of property. On 25 January 1973, Poland and Austria entered into an additional protocol to the **Austria Bilateral Agreement**. Through these two agreements, Poland paid Austria ATS 71.5 million.

As far as we are aware, the claims process under the **Austria Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in Polish only from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2".**

l. Claims Settlement with Canada

On 15 October 1971, Poland and Canada entered into a bilateral agreement, **Agreement Between the Government of Canada and the Government of the Polish People's Republic Relating to the Settlement of Financial Matters ("Canada Bilateral Agreement").** According to **Articles I and III,** Poland would pay CAD 1,225,000 (in a series of annual installments) to settle claims relating to property nationalized or otherwise taken by application of Polish laws or administrative decisions, which had arisen before the date the **Canada Bilateral Agreement** came into force.

Successful claimants had to be Canadian citizens as of the date the **Canada Bilateral Agreement** came into force and "who were or whose legal predecessors were Canadian citizens on the date of the coming into force of the legislation or of the other similar measures referred to in Article I or on the date on [sic] the relevant measure were first applied to their property, rights or interests" (**Article III)**. In practical terms this meant that the property in question had to have been continuously held by a Canadian citizen from the time the claim arose to the date of the **Canada Bilateral Agreement.** Therefore, in some situations, it was difficult for Polish survivors of the Holocaust and World War II, who came to Canada just after the war to make a claim under this Agreement. However, everything depended on the circumstances of each expropriation. In certain instances, compensation was made to claimants who had left Poland just after the war and in other cases, the **Foreign Claims Commission** accepted the date of the factual takeover of property under the **1945 Warsaw Land Decree** (*see infra* **Section C.2.a.ii**) and not the date the law entered into force.

In September 1972, pursuant to the **Appropriation Act, No. 9 1966**, the **Regulations respecting the determination and payment out of the Foreign Claims Fund of certain claims against the Government of the Polish People's Republic and its citizens** were enacted in Canada. These **Regulations** permitted Canada's **Foreign Claims Commission** to adjudicate claims that fell under the **Canada Bilateral Agreement**. The **Foreign Claims Commission** was only empowered to adjudicate claims where notice of the claim had been given on or before 15 October 1971 (the date of the **Canada Bilateral Agreement**).

As far as we are aware, the claims process under the **Canada Bilateral Agreement** is complete. We are not aware of how many claims were made under the agreement or how many claims were ultimately successful.

The **Polish Ministry of Foreign Affairs** has stated that Poland performed all contractual obligations, including payment of settlement amounts, relating to this settlement agreement. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2" (please refer to hyperlinked section on "indemnity agreements").)

The original text of this agreement is available for download in English and Polish from the website of the **Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Nationalization after WW2"**.

C. PRIVATE PROPERTY RESTITUTION

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II ("Terezin Best Practices") for the purpose of restitution, is:

> property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

The confiscation of immovable property from Polish Jews and other targeted groups (such as Roma, political dissidents, etc.) by the German occupiers during World War II (as a component part of the German plan to eliminate these groups from the region) is what sets their twentieth century experience vis-à-vis immovable property apart from other Poles. The immovable property of Polish Jews and other targeted groups was first confiscated pursuant to the laws of the occupying German forces. Shortly thereafter it was taken for a second time pursuant to generally applicable nationalization laws enacted by the Communist regime that affected the entire Polish population. All Poles share the second experience, but only Polish Jews and other targeted groups share both confiscation experiences.

Following the German incorporation of western Poland into the Third Reich in 1939, the region was subject to legislation promulgated by the Third Reich. In particular, western Poland was bound by German laws on property regulation. In central Poland – the administratively autonomous unit of Nazi Germany, known as the General Government – the population was subject to separate laws promulgated by the governing civilian authority. The laws in effect in both German-occupied regions provided legal cover for the confiscation and seizure of property belonging to Polish Jews and other targeted groups. (*See* Monika Krawczyk, "The Effect of the Legal Status of Jewish Property in Post-War Poland on Polish-Jewish Relations" *in Jewish Presence in Absence: The Aftermath of the Holocaust in Poland, 1944-2010* (Feliks Tych & Monika Adamczyk-Garbowska, eds., 2014) ("*Krawczyk II*"), pp. 792-802.)

Immediately after the end of World War II and as part of the country's shift from a market economy to a Soviet-style socialist economy, the Polish Commission of National Liberation (a provisional government of Poland established in 1944 by the Soviet Union and in opposition to the Polish government-in-exile in London) and the Provisional

Government of National Unity (created following decisions between the Allied Powers at the **Yalta Conference**) passed a series of laws affecting immovable property. The laws first addressed the return of property taken during the German occupation from Jews and other targeted groups. Shortly thereafter, the laws nationalized the property of all Poles.

1. Restitution of Private Property Confiscated During World War II

Legal acts promulgated by the German occupiers that resulted in private property confiscation, were contrary to **Article 46** of the **Hague Convention (IV) respecting the Laws and Customs of War on Land**, and its annex: 18 October 1907 **Regulation concerning the Laws and Customs of War on Land,** which states that "Private property cannot be confiscated". Shortly after the German invasion of Poland in 1939, private property confiscation was declared null and void by **Article 2** of the 30 November 1939 **President's Decree on the Invalidity of Legal Acts of Occupying Authorities** (issued by the Polish government-in-exile in London), which stated that all legal acts or orders of occupying authorities regarding any private or public property are null and void.

For a few years immediately following the end of the war, between 1945 and 1948, a series of decrees were passed in an effort to undo the unlawful takings of immovable property that had occurred as a result of the Nazi-occupation of Poland.

a. 1945 Decree on Judicial Decisions Made During the German Occupation

The 6 June 1945 **Decree on the Binding Force of Judicial Decisions Made During the German Occupation in the Territory of the Republic of Poland ("1945 Decree on Judicial Decisions Made During the German Occupation")** provided that all judgments delivered during the German occupation were invalid and had no legal effect.

The provisions of the **1945 Decree on Judicial Decisions Made During the German Occupation** were confirmed and developed in the 1940s and 1950s by Polish Supreme Court jurisprudence. The Supreme Court held that German notarial deeds drafted during World War II had no legal effect. The Decree invalidated the purchase-sale contracts of unlawfully seized property of Polish citizens, who purchased the property from administrators or occupier-appointed trustees via German notarial deed. (*Krawczyk II,* p. 813.) However, former owners still had to initiate administrative or court proceedings to invalidate the contract. Monika Krawczyk has noted that the law had rather minimal effects on the Polish Jewish population because most had either perished or left the country. Krawczyk further describes how people manipulated the Polish legal system in the early post-war years by getting false witnesses to confirm the deaths of former Jewish property owners so that persons who were not the rightful heirs could purchase the property. (*Id.*) These false acts prevented the real heirs from being able to make legitimate claims.

b. 1946 Decree Regarding Post-German and Deserted Properties

The 8 March 1946, the **Decree Regarding Post-German and Deserted Properties** (which superseded the 6 May 1945 Law on Abandoned and Derelict Property and 2 March 1945 Decree on Abandoned and Derelict Property) (**"1946 Decree Regarding Post-German and Deserted Properties"**) was adopted in an effort to provide order to the immovable property situation in war-torn Poland, where numerous property owners had perished or left the country.

The 1946 law regulated real property whose owners could not be identified or located as a result of the war. It gave property owners a fixed amount of time – 10 years after enactment – to recover lost property. In post-war Poland, homeless war victims and people forcibly resettled from the former Polish East, the so-called "territory east of the Bug River" (territory lost by Poland at the end of the war), were in need of housing. As a result, the Communist government considered the 10-year statute of limitations as sufficient for pre-World War II property owners or their successors to get their property back. Property not claimed during the time limit specified either escheated to the Polish State (or was legally transferred to those persons who were occupying the property).

While the **1946 Decree Regarding Post-German and Deserted Properties** and **1945 Decree on Judicial Decisions Made During the German Occupation** returned *de jure* control to former owners over their property, where the property was occupied by other people, the former owners (Jewish returnees) had to go through administrative or court proceedings to regain material control of the property. It was rarely as simple as going to court and having a judge issue an eviction notice to serve on the non-Jewish occupants of the Jewish returnees' property (i.e., the families that had moved in during the war). Krawczyk aptly describes the situation:

> After liberation from the German occupation, assets lost by the Jews during the war could be reclaimed. This was facilitated formally by the legislation passed in the early years of independence. However, it was far easier, in practical terms, for Jews returning from camps or from hiding to regain possession of their property in large towns and cities than in small towns and villages. Jews returning to their family homes tended to find other families already living there, and they were often met with aggression, death threats or even murder. Exhuming mass graves and stripping corpses was the final form of plunder of Jewish property by their Polish neighbors. Terrified by such behavior, Polish Jews would often decide to leave the country in search of a new future abroad.

(*Krawczyk II*, p. 814.) Halik Kochanski confirms Krawczyk's description and also elaborates on another layer of complexity to the post-war property situation for returning Polish Jews:

> The Jews were also uncertain of their welcome in Poland. There were numerous instances of anti-semitism among the Polish population directed towards survivors, which stemmed from a number of factors. There was a served shortage of housing because of the damage caused by war, and some of the reluctance of

> the Gentile Poles to vacate Jewish homes had its roots not in anti-Semitism but in a simple fear of homelessness. Indeed, the state passed a series of decrees during 1945, which placed 'abandoned and formerly German properties' under state administration, but many of these 'abandoned' properties had been owned by Jews, who faced the prospect of court action against the state to reclaim them.

(Halik Kochanski, *The Eagle Unbowed: Poland and the Poles in the Second World War*, (2012), p. 549.)

In the case where the former owner's property was abandoned or deserted (i.e., no one was occupying the property), the returning owners could simply retake possession of the property and did not have to initiate administrative or court proceedings. Retaking possession of the property stopped the running of the 10-year statute of limitations.

German property located in areas that were formerly part of the Third Reich and the Free City of Danzig but which became part of Poland after the war, was automatically nationalized as of 19 April 1946, except for property belonging to persons of Polish nationality or "other nationality persecuted by the Germans." (*See Krawczyk I,* p. 27.) A 1987 decision from the Supreme Court of Poland affirmed this presumption of escheat of property to the State.

We are not aware of how many properties have been returned during the ten-year period set out in the **1946 Decree Regarding Post-German and Deserted Properties** or of the properties returned, what percentage was truanted to the Polish Jews.

2. Post-War Nationalization of Property

There is no comprehensive Polish law that specifically addresses restitution for the next tranche of major property confiscations in Poland – the nationalization of property by the Communist regime. These nationalization measures affected all Poles – regardless of race, religion or ethnicity. Poland is the only EU country not to have enacted such a law. Instead, a patchwork of laws and court decisions promulgated from 1945-present address the following two general areas of private immovable property:

- The nationalization of property from private individuals by the Polish state and the possibility of return or compensation – including a specific legal regime for property located in the capital (Warsaw); and

- Compensation for property located in the so-called territory east of the Bug River (pre-war property that had been lost by Poles in eastern territories that became part of the Soviet Union).

a. Nationalization Laws

i. 1944 Decrees on Agrarian Reform and Takeover by the State Treasury of Ownership of Certain Forests

Under the Polish Commission of National Liberation's **6 September 1944 Decree on Agrarian Reform) ("1944 Agrarian Reform Decree")** and the **12 December 1944 Decree on Takeover by the State Treasury of Ownership of Certain Forests ("1944 Nationalization of Forests Decree"),** the Polish state nationalized certain forests and farmland. Under the **1944 Agrarian Reform Decree**, farms exceeding 100 hectares in overall area or 50 hectares of arable land were nationalized. Under the **1944 Nationalization of Forests Decree**, forest or forest lands covering an area of over 25 hectares were transferred to the state Treasury.

According to the Ministry of Foreign Affairs, administrative challenges may be lodged as to whether the property nationalized under the **1944 Agrarian Reform Decree** actually met the requirements set out in **Article 2.1(e)**. The appropriate authority with which to lodge the challenge is the voivode (government-appointed provincial governor), and appeals of those challenges are made to Minister of Agriculture and Rural Development. (*See* Republic of Poland – Ministry of Foreign Affairs, Property Restitution in Poland, "Claims Arising from the Decree on Agrarian Reform and the Decree on Takeover by State Treasury of Ownership of Certain Forests".)

If the conditions from the **1944 Nationalization of Forests Decree** were not fulfilled, the claimants may demand return of the property before the common courts.

We are not aware of how many properties have been returned under the procedures prescribed by the Ministry of Foreign Affairs.

ii. 1945 Warsaw Land Decree

The **Decree of 26 October 1945 on Ownership and Usufruct of Land in the Area of the Capital of Warsaw ("1945 Warsaw Land Decree")**, also referred to as the "Bierut Decree" (named after the Polish-Stalinist leader Bolesław Bierut, who was President of the Republic of Poland from 1947-1952), transferred ownership of all property within the prewar boundaries of Warsaw to the municipality of the Capital City of Warsaw. This included properties that had been seized from Jews living in Warsaw during the Holocaust.

Under **Article 7** of the **1945 Warsaw Land Decree,** former property owners had the right to apply for perpetual usufruct – a 99-year lease on the newly nationalized land or on another plot of land of comparable size. If the municipality dismissed the application for perpetual usufruct, ownership of all buildings on the land was transferred to the municipality and then the State Treasury. A majority of the applications were rejected and many others were never processed. (*Krawczyk II,* p. 810.) Rejected claims could be

appealed by seeking to have the decision declared invalid pursuant to **Article 156** of the **Polish Administrative Procedure Code.** (*Id.*) Thousands of claims remained open.

If no perpetual usufruct was granted to the owner for the land in question or for a plot of land of comparable size, the owner was entitled to an indemnification payment in municipal bonds. However, none of these bond payments were ever issued. In fact, no ordinances governing how compensation would be calculated have ever been issued. (*Id.*, p. 811.)

In recent years, some individuals with property in Warsaw have successfully claimed damages for the loss of their property without having to challenge decisions made pursuant to the **1945 Warsaw Land Decree.** This has been achieved by submitting a damages claim directly to the Mayor of the Warsaw under the **Articles 214** and **215** of the **21 August 1997 Law on Real Property Management.** We are not aware of how many properties have been returned under this process.

On 25 June 2015, the Polish Parliament (Sejm) passed legislation (**Law on an Amendment to the Law on Real Estate Management and the Law – the Family and Guardianship Code**) aimed at making it even more difficult to seek return of property seized under to the **1945 Warsaw Land Decree**. (*See* WRJO website on "Property Restitution in Warsaw: Information for Holocaust Survivors and their Heirs" for an informal English translation of the new law.) After an unsuccessful challenge to the law at the Polish Constitutional Tribunal, the law came into effect on 17 September 2016.

The new law creates a six (6)-month deadline for pre-World War II owners of property in Warsaw – who had previously filed claims under the **1945 Warsaw Land Decree** and whose claims remain open to date – to reactivate their claims. The law does *not* create a new restitution process for people who failed to file claims under the **1945 Warsaw Land Decree.** The law also excludes from the claims process a number of categories of property that are in public use.

Pre-World War II owners with open claims under the **Decree** who do not come forward within six (6) months of the City of Warsaw publishing an announcement about their property in in a Polish newspaper and online will forever lose their right to claim the property. If a claimant comes forward during the six (6) month window and files certain paperwork, he then has three (3) months to prove his rights to the property. If the claimant takes no action before the deadline, the claim is terminated and ownership of the property in issue is transferred permanently to either the state treasury or the City of Warsaw.

A database launched by the **World Jewish Restitution Organization (WJRO)** in December 2016 has made the search for family ownership of the more than 2000 properties in issue under this new legislation, easier. The City of Warsaw originally published a list of 2,613 street addresses in Warsaw that can be claimed under the law but did not match the properties with the names of the original owners. The **WJRO's** database now matches the street addresses specified by the City of Warsaw with the

names of the pre-war owners found in historical records. (*See* WJRO, "Property Restitution in Warsaw: A Guide for Holocaust Survivors and their Heirs".) Although the precise number is unknown, it is thought that a number of the properties belonged to Jewish owners. ("Database Helps Holocaust Survivors Reclaim Warsaw Property", N.Y. Times, 6 December 2016.)

iii. 1946 Nationalization of Industry Act

The **January 1946 Act on the Nationalization of Basic Branches of the State Economy ("Nationalization of Industry Act") –** required the State to compensate property owners for nationalized property. According to **Section 1** of the **Nationalization of Industry Act,** "in order to ensure the planned rebuilding of the state economy, the economic sovereignty of the State and to foster the general well-being, the State shall take over ownership of enterprises on the conditions laid down in this law."

Sections 2(1) and **3(1)** of the **Nationalization of Industry Act** identified those properties that could be nationalized. The Polish state could nationalize, *inter alia,* (A) all mining and industrial enterprises in the following sectors of the state economy: mines and mining leases subject to mining law; oil and gas industry – including mines, refineries, gasoline production and other processing plants, gas pipes and synthetic fuel industry; companies that generate, process or distribute electricity or gas; water supply companies serving more than one municipality; steelworks, aviation and explosives industry; armaments, aviation and explosives industry; coking plants; sugar factories and refineries; industrial distilleries, spirit refineries and vodka production plants; breweries with an annual output exceeding 15,000 hectolitres; yeast production plants; grain plants with a daily output exceeding 15 tons of grain; oil plants with an annual output exceeding 500 tons and all refineries of edible fats; cold stores; large and medium textile industry; printing industry and printing houses; (B) industrial enterprises not listed in (A) if they are capable of employing in the production more than 50 persons on one shift; and (C) all transport enterprises (standard gauge and narrow-gauge railways, electric railways and aviation transport enterprises) and communication enterprises (telephone, telegraph and radio enterprises).

The **1946 Nationalization of Industry Act** provided that owners of these entities would be compensated by the state.

Section 7 set out the general principles by which compensation would be paid, including that owners of nationalized enterprises "shall receive compensation from the State Treasury within one year on which a notice of final determination of the amount of compensation due has been served on him" as determined by special commissions, whose rules and procedures would be determined by a Cabinet Ordinance. However, these special commissions were never set up during the Communist era. The post-Communist governments have also never set up the commissions.

The non-passage of the Cabinet Ordinance has been the subject of many legal actions initiated in domestic courts and the **European Court of Human Rights ("ECHR")**.

When the conditions of nationalization under the **Nationalization of Industry Act** were not fulfilled or when the procedural requirements during the nationalization were not met, the claimants may lodge the petition to the Minister of Economy to annul the nationalization decision. When the Minister in its decision states that the nationalization decision is null and void it is possible to demand the return of nationalized property and if the Minister declares only that the decision was issued contrary to law it is possible to seek compensation before the common courts.

b. Annulling Nationalization Decisions and Seeking Damages Under the Polish Administrative Procedure Code

It is not possible in Poland today to directly challenge nationalizations that were legally carried out pursuant to the country's nationalization decrees (such as the **1946 Nationalization of Industry Act** or the **1945 Warsaw Land Decree**). However, it is possible to bring civil actions in Polish courts seeking compensation/restitution of improperly nationalized property.

A 28 November 2001 Polish Constitutional Tribunal decision (Case no. SK 5/01, published in the compendium of Constitutional Tribunal judgments, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy*, 2001, no. 8, p. 266) also effectively foreclosed constitutional challenges to: the country's nationalization laws, including questioning the constitutionality of the confiscations and nationalizations under the laws; the enacting Communist government (the PKWN); and the laws themselves. One set of commentators described the court's decision in the following manner:

> The[] [court] held that despite the illegitimacy of the Communist regime in Poland, its organizations, and its policies, the subsequent influence of those activities on the formation of Polish society has been so extreme, that to overturn them now would unhinge the ownership infrastructure and legal framework of property relations in many spheres of Polish life. "The time that has passed cannot be ignored from the legal perspective", the Tribunal held, "since it made these relations last, today they constitute the basis of the economic and social existence of a major part of Polish society."

(Max Minckler & Sylwia Mitura, "Roadblocks to Jewish Restitution: Poland's Unsettled Property", Humanity in Action, 2008 (last accessed 23 September 2015).)

The effect of the Constitutional Tribunal's decision has been crushing for claimants seeking the return of nationalized immovable property. Absent the enactment of restitution legislation by the Polish government, claimants must proceed on an individual basis by filing administrative and civil court actions in Poland to recover their property.

During a June 2016 visit to Israel, Israel Foreign Minister Witold Waszczykowski, sat down for an interview and offered his perspective on Poland's restitution process:

> The difficulty and complexity of the matter lies in the fact that Poland was

> severely ravaged during World War Two. Its borders changed dramatically, which, in turn, resulted in a mass resettlement of populations living on Poland's territory. That also affected the question of property and ownership. Nevertheless, property restitution has been underway in Poland for well over two decades now.
>
> Restitution should not be regarded as an element of international politics. Nor should it be seen as a problem in Polish-Jewish relations. This is because only approx. 15% of those potentially interested in restitution are Jews now living outside of Poland. The remaining 85% are current non-Jewish Polish citizens. Property restitution is a process in which claimants' ethnic or religious background is irrelevant: the Polish law treats everyone in the same manner. As far as private property is concerned, the existing legal system in Poland makes it perfectly clear that any legal or natural person (or their heir) is entitled to recover prewar property unlawfully seized by either the Nazi German or the Soviet occupation authorities, or by the postwar Communist regime. Claimants may use administrative and/or court procedure to demonstrate that their property was unlawfully seized and to recover it.

(Eldad Beck, "Polish Foreign Minister: There's more to us than the Holocaust", ynetnews.com, 15 June 2016.)

Legal challenges in Poland referred to by the Foreign Minister are made principally using **Articles 156, 157** and **160** of the **Polish Administrative Procedure Code.**

Articles 156 and **158** relate to the ability to have an administrative decision (i.e., the postwar Communist government's decision to nationalize an applicant's property) declared annulled or issued contrary to law (*see, e.g.,* **Article 156 § 1**). Administrative challenges to nationalization decisions occur at the agency level. The administrative action merely determines if the property was taken in violation of one of the nationalization laws (meaning that a procedure was not followed or the property was not of the type permitted to be nationalized under the law).

If there is a positive administrative outcome and the decision that permitted the nationalization of the claimant's property is either declared null and void or issued contrary to the law, then only at that point may the claimant file a civil action for compensation or restitution in the common (civil) courts pursuant to **Article 160**.

Specifics of **Articles 156**, **158** and **160** are described as follows:

Article 156

Under Article 156, an application to declare the administrative decision null and void shall be accepted by the organ which made it if the decision: (1) has been issued in breach of the rules governing competence, (2) has been issued without legal basis or with manifest breach of law, (3) concerns a case already decided by means of another final decision, (4) it has been addressed to a person who is not a party to the case, (5) was unenforceable at the day of issuance and has been unenforceable ever since, (6) its

enforcement would effect in crime, (7) it has a flaw making it null and void by the force of law. However, if 10 years have expired from the date of its service or promulgation or the decision has produced irreversible legal effects, it shall not be declared null and void for all the abovementioned reasons except (2) and (5). (*See e.g.*, Case no. P 46/13, published in the compendium of Constitutional Tribunal judgements, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy,* 2015, no. 5, p. 1.)

Article 158

Article 158 states that where a decision cannot be declared null and void because of the grounds laid out in **Article 156 § 2,** the decision shall only be declared "issued contrary to the law."

Article 160

Article 160 sets out principles for compensation, which apply equally to both decisions declared "null and void" (**Article 156)** *and* decisions "issued contrary to the law" (**Article 158)**. Thus, even if a decision cannot be called "null and void", if it is "issued contrary to the law", the same compensation principles apply.

Article 160 was repealed in 2004. The repeal was done pursuant to the **Law of 14 June 2004 on Amendments to the Civil Code and Other Statutes ("2004 Amendment")** in force since 1 September 2004**. Article 160** of the **Administrative Procedure Code** was replaced by an expanded **Article 417** of the **Polish Civil Code**, which describes instances of the state's liability in tort.

However, the transitional provisions of the **2004 Amendment** state that **Article 160** can still be used to seek compensation for "events and legal situations" that subsisted before the entry into force of the **2004 Amendment**.

As a result, in those narrow instances where a claimant seeks to have a decision issued prior to 1 September 2004 (such as a final nationalization decision made by the postwar Communist government) declared "null and void" or "issued contrary to the law" under **Articles 156** or **158, Article 160** can still be used to seek compensation. When the claimed damage was caused on or after 1 September 2004 the general rules of the **Polish Civil Code** apply (i.e., that the damage must be claimed within three (3) years from when the victim learned about the damage but no longer than within ten years from when the damage occurred).

A claimant who is successful in getting the nationalization decision declared invalid or issued contrary to law then has three (3) years to claim damages under **Article 160**. In addition, according to Supreme Court case law, persons who did not take part in the annulment proceedings (pursuant to **Articles 156 and 158**) can still claim damages under **Article 160**.

While the Ministry of Foreign Affairs states that for the last 35 years Poland's administrative law "has provided for the possibility, **in perpetuity**, to challenge administrative decisions (including decisions of property deprivation)", according to our information, these administrative and civil actions are routinely costly and drag on for years. (*See* Republic of Poland - Ministry of Foreign Affairs, Property Restitution in Poland, "Private Property" (emphasis added).) The actions also require extensive documentation (including for example, proof that the claimant owned the property on the very date of the taking, civil status documents, official proof of succession), which is not likely in the possession of Holocaust and World War II survivors and victims' heirs.

We are not aware of the precise number of properties have been returned or compensated for under **Articles 156, 158** and **160** of the **Polish Administrative Procedure Code** or what percent of claimants were former Jewish owners. Nevertheless, we understand that since the 1990s thousands of restitution or compensation cases have been successfully concluded in Polish courts. Most, however, were brought by non-Jewish Poles still living in Poland.

c. Litigation at the European Court of Human Rights Concerning Nationalized Property

Two **ECHR** decisions, ***Ogorek v. Poland*** and ***Pikielny and Others v. Poland,*** both issued on 18 September 2012, address lingering issues of restitution/compensation relating to Poland's 1946 **Nationalization of Industry Act**. (*See Ogorek v. Poland*, ECHR, Application No. 28490/03, Decision of 18 September 2012 ("*Ogorek*"); *Pikielny and Others v. Poland*, ECHR, Application No. 3524/05, Decision of 18 September 2012 ("*Pikielny*").) ***Ogorek v. Poland*** was filed with the **ECHR** in 2003 and ***Pikielny and Others v. Poland*** was filed with the **ECHR** in 2005. Both cases were ultimately declared inadmissible for failure to exhaust domestic remedies.

The **ECHR** in ***Sierminski v. Poland, Plechanow v. Poland*** and ***Sierpiński v. Poland*** addressed property claims relating to the **1945 Warsaw Land Decree.** (*See Sierminski v. Poland*, ECHR, Application No. 53339/09, Judgment of 2 December 2014 ("*Sierminski*"); *Plechanow v. Poland*, ECHR, Application No. 22279/04, Judgment of 7 July 2009 ("*Plechanow*"); *Sierpiński v. Poland,* ECHR, Application No. 38016/07, Judgment of 3 November 2009 ("*Sierpiński*").) ***Sierminski*** is emblematic of many Polish cases before the **ECHR** regarding the **Article 6** (of the **European Convention on Human Rights**) right to fair trial. ***Plechanow*** and ***Sierpiński*** address an additional issue facing many Polish expropriation cases – the temporal jurisdiction of the **ECHR**. Poland is has been a Contracting Party to the **European Convention of Human Rights** since 19 January 1993 and to the **Additional protocol to the Convention (Protocol No. 1)** (whose **Article 1** guarantees the right to property ("the peaceful enjoyment of his possessions")) since 10 October 1994. As a result, generally only cases regarding the expropriations that occurred after 10 October 1994 can be successfully lodged before the **ECHR**. Nevertheless, in the cases concerning nationalizations made by the Communists in Poland after World War II, temporal jurisdiction of the Court can be established when

applicants prove there is a continuing situation or continuing violation of their right to property.

Contained within the **ECHR's** decisions are detailed English-language chronologies of the Polish domestic legislation and decisions relating to (1) nationalization and (2) the administrative proceedings available today in Polish courts**.** The **ECHR's** detailed recitation illustrates the difficult legal process encountered by claimants seeking restitution in Polish courts.

i. ***Ogorek v. Poland*** **(1946 Nationalization of Industry Act)**

The ***Ogorek*** case relates to compensation/return of property improperly nationalized under the **1946 Nationalization of Industry Act**. The case was filed with the **ECHR** in 2003 and the Court did not issue a decision until 2012. (*See Ogorek v. Poland*, ECHR, Application No. 28490/03, Decision of 18 September 2012.)

In ***Ogorek,*** applicants were non-Jewish Polish nationals whose father had owned a limestone plant and limestone deposits in Poland before, during, and after World War II. (*See Ogorek,* ¶ 4.) The limestone plant was nationalized by a decision from the Ministry of Industry and Commerce in 1948 ("**1948 decision**") pursuant to the **Nationalization of Industry Act.** (*Id.*) According to the terms of the decision, applicants' father was to be compensated for the nationalization. (*Id.*)

In 1990, applicants requested that the Ministry of the Economy declare the **1948 decision** null and void pursuant to **Article 156** of the **Polish Administrative Procedure Code**. In 2001 and 2002 the Minister for Economy denied the request and applicants' request for reconsideration. (*Id.,* ¶ 6.)

In 2002, applicants challenged the decision by the Ministry of the Economy in the Supreme Administrative Court, which then referred the matter to the Warsaw Regional Administrative Court. In 2004, the Warsaw Regional Administrative Court quashed the decision of the Ministry of the Economy on the grounds that the Ministry had failed to establish whether the limestone plant was legally nationalized under the **Nationalization of Industry Act** (i.e., whether the plant was capable of employing more than 50 persons per shift as per **Section 3(1)** of the Act). (*Ogorek,* ¶ 8.)

In 2007, in response to the Warsaw Regional Administrative Court's decision, the Minister for Economy declared the **1948 decision** null and void because at the time of the nationalization, the plant had suffered war damage and could not employ more than 42 people per shift (not more than 50, as was required by the **Nationalization of Industry Act**). The plant therefore was not subject to the nationalization law. (*Id.,* ¶ 9.)

Between 2003 and 2005, while the above proceedings were taking place, applicants filed administrative and constitutional court actions and applications to the Prime Minister alleging inactivity on the part of the Prime Minister for failing to enact the Cabinet's Ordinance described in the **Nationalization of Industry Act**. The Ordinance was meant

to set out rules for compensation for nationalized enterprises. (*See supra* **Section C.2.a.ii**.) All of these efforts were dismissed, and in 2005 the Warsaw Regional Administrative Court held that applicants' interests are protected by **Article 417** of the **Civil Code**, which "makes it possible to seek damages caused by the legislative omission of the State Treasury", i.e., the failure to enact the Cabinet Ordinance. (*Id.*, ¶ 23 (quoting language from Warsaw Regional Administrative Court Decision).)

However, a 2006 decision by the Warsaw Regional Court, in an action by applicants for damages, came to the opposite conclusion. The Regional Court found that the civil law applicable at the material time did not provide for the State Treasury's liability for legislative inactivity (i.e., the new language on legislative omissions contained **Article 417** introduced 1 September 2004, would not apply retroactively). (*Id.*, ¶ 31.)

This same principle of non-applicability of **Article 417** to nationalization compensation claims was also discussed in Supreme Court decisions from November 2005 brought by ***E.K.*** and from a December 2007 claim lodged by a limited liability company, ***Lubelska Fabryka Maszyn i Narzędzi Rolniczych "Plon".*** The Supreme Court said that **Article 417** of the **Civil Code** did not apply to events and situations existing before its entry into force, "even if this state of affairs continually existed until the present day" (*Id.*, ¶¶ 45-48.) Thus, as interpreted by the Polish Supreme Court in 2005, **Article 417** could not serve as a mechanism for redress for the government's failure to ever enact the Cabinet Ordinance setting out rules and procedures for compensation under the **Nationalization of Industry Act.**

Applicants then filed a second claim for damages in the Warsaw Regional Court in 2009 seeking damages arising out of the nationalization of the limestone plant. Relying on **Article 160** of the **Polish Administrative Procedure Code,** the Court granted applicants' claim in its entirety and awarded each of the two applicants PLN 8,378,114.25 (approximately USD 2 million) plus interest. The Court held that applicants had sustained a loss and should be compensated and that the loss was the value of the plant at nationalization, the value of the limestone deposits exploited by the state, and the costs associated with rehabilitating the nationalized land. (*Id.*, ¶ 34.)

In an appeal to the Warsaw Court of Appeal by the State Treasury, the Court of Appeal affirmed the compensation for the value of the buildings and equipment but postponed the examination of the value of the limestone deposits pending a new expert opinion. (*Id.*, ¶ 36.)

In its decision, the **ECHR** stated:

> In the present case the applicants were awarded partial compensation for the actual damage caused by the nationalisation of their enterprise, corresponding to the value of the limestone plant, i.e. destroyed buildings, machines and technical equipment. The proceedings concerning the remainder of their claim are still pending before the Warsaw Court of Appeal [. . .]

> In these instances, the Court finds that the application is premature and that, in accordance with the subsidiarity principle, it cannot accept it for substantive examination. This ruling is without prejudice to the applicants' right to lodge a fresh application under Article 34 of the Convention if they are unable to obtain appropriate redress in the domestic proceedings.

(*Id.*, ¶¶ 69-70.) Thus, given the positive decision by the Warsaw Court of Appeal and the then still-pending action relating to the value of the limestone deposits, the **ECHR** determined the applicants' application to the **ECHR** was premature and dismissed it without prejudice.

We are not aware of the current state of the domestic *Ogorek* proceedings in Poland or how much ultimately was paid, if anything, to the *Ogorek* claimants (including the previously-awarded approximately USD 2 million for the limestone plant buildings, equipment, and for the additional value of the limestone deposits).

We note, however, that in July 2015, the ECHR issued a pilot judgment[3] in ***Rutkowski v. Poland***, unanimously holding that Poland was in violation of **Articles 6 § 1** and **13** of the **European Convention of Human Rights** "due to the unreasonable length of civil and criminal proceedings in Poland and in the Polish courts' non-compliance with the Court's case-law." (*Rutkowski and Others v. Poland*, ECHR, Application Nos. 72287/10 and 46187/11 and 591 Other Applications, Decision of 7 July 2015). One of the decisions listed in the Appendix for non-compliance is *Ogorek v. Poland.*

ii. ***Pikielny and Others v. Poland*** **(1946 Nationalization of Industry Act)**

Like ***Ogorek***, the ***Pikielny*** case also relates to rights to compensation for property nationalized by the **1946 Nationalization of Industry Act**. The case was filed with the **ECHR** in 2005 and no decision was issued by the Court until 2012. (*See Pikielny and Others v. Poland*, ECHR, Application No. 3524/05, Decision of 18 September 2012.)

Applicants' Jewish ancestors owned a textile manufacturing factory in Łódź, Poland, consisting of some 15 various buildings, mills, a plot of land and a garden. The applicants' grandfather founded the factory in 1889. Following the outbreak of World War II, the Nazis sent the factory owners and the applicants' other relatives to concentration camps or ghettos. The factory was taken over by Germans and throughout the war operated under a Nazi-appointed trustee. Two of the applicants and one of the owners survived the concentration camps and returned to Łódź at the end of the war.

[3] The pilot judgment procedure is a mechanism available to the ECHR to address a large number of identical or near-identical cases from a particular country arising from the same systemic problems within that country's legal system. In a pilot judgment decision, the ECHR resolves the claims of a particular case and also sets forth prescriptive guidance for the government of the relevant country to resolve similar cases. (*See* European Court of Human Rights, Pilot Judgment Procedure.)

They found the factory functioning largely as it had been during the Nazi occupation. (*Pikielny,* ¶ 36.)

On 12 February 1948 the factory was nationalized by a decision from the Ministry of Light Industry pursuant to the **Nationalization of Industry Act.** (*Id.,* ¶ 7.) The owners were neither notified of the nationalization nor compensated for it. (*Id.,* ¶ 8.)

In December 2004, applicants inquired into possible compensation for the factory. The Minister for Economy and Labor stated that no laws have been enacted regulating compensation for nationalized property (i.e., no Cabinet Ordinance describing the rules and procedure for compensation under the **Nationalization of Industry Act** had been enacted). The Minister also informed applicants this issue would be resolved once Parliament passed a restitution law. (*Id.,* ¶ 14.)

After December 2004, applicants did not file any domestic action for compensation for the factory. Instead, they complained to the **ECHR** that they had been deprived of their property in violation of **Article 1** of **Protocol No. 1** to the **European Convention on Human Rights**. They claimed their right to compensation, as laid down in the **Nationalization of Industry Act**, had not been satisfied although the legal basis for their claim was still in force.

Relying upon the same laws and cases as were described in ***Ogorek,*** the **ECHR** in ***Pikielny*** held that despite Poland's "continued failure to enact an ordinance setting out rules for compensation under the 1946 Act [for nationalized property] . . . the procedures under Articles 156 § 1 and 160 of the [Administrative Procedure Code] offer reasonable prospects of success . . ." for compensation. For this reason the **ECHR** dismissed the suit against Poland for failure to exhaust domestic remedies.

When the **ECHR** declared ***Ogorek*** and ***Pikielny*** inadmissible in 2012, applicants' remedies were to continue their actions in domestic courts. We are not aware whether the claimants in ***Pikielny*** have filed an action in Polish courts.

iii. ***Sierminski v. Poland*** **(1945 Warsaw Land Decree)**

The ***Sierminski*** case relates to compensation/return of property nationalized under the **1945 Warsaw Land Decree**.

The 2 December 2014 judgment in ***Sierminski*** (which became final on 2 March 2015), applied the panoply of **Polish Civil Code** and **Administrative Procedure Code** provisions discussed in ***Ogorek*** and ***Pikielny***, to another nationalization law, the **1945 Warsaw Land Decree.** (*See Sierminski v. Poland*, ECHR, Application No. 53339/09, Judgment of 2 December 2014.)

The applicant's parents owned land within the administrative borders of Warsaw, which was taken pursuant to the **1945 Warsaw Land Decree.** In accordance with the terms of the **1945 Warsaw Land Decree,** in 1949 the applicant's predecessor sought a perpetual

lease of comparable land. The request was denied by administrative decision in 1961. (*Id.*, ¶ 4.)

In 1993, the applicant requested that the 1961 decision be declared null and void pursuant to **Articles 156** and **158** of the **Polish Administrative Procedure Code**. In 1994, the Minister of Construction and Land Planning found part of the 1961 decision null and void and part of it issued contrary to the law (both of which have the same legal effect and allow an applicant to seek damages).

In 1994, the applicant then requested that authorities review the 1949 application for perpetual use with respect to the part of the land, which was declared null and void. As of the date of the **ECHR's** decision 20 years later, these proceedings were still pending. (*Id.*, ¶¶ 10-24.) The **ECHR** found that the length of proceedings in this case was excessive and failed to meet the "reasonable time" requirements of **Article 6 § 1** of the **European Convention on Human Rights.** (*Id.*, ¶¶ 62-67.) On account of the excessive length of proceedings, the **ECHR** awarded the applicant EUR 17, 000 in non-pecuniary damages. (*Id.*, ¶¶ 78-79.)

We are not aware of the current status of the ***Sierminski*** claimants' domestic proceedings.

iv. ***Plechanow v. Poland*** **(1945 Warsaw Land Decree)**

In ***Plechanow,*** the Court examined the applicability of **Article 1** of **Protocol No. 1** to the **European Convention on Human Rights ("Protocol No. 1")** – the right to peaceful enjoyment of one's possessions (right to property) – to claims relating to property taken under the **1945 Warsaw Land Decree**. (*See* *Plechanow v. Poland*, ECHR, Application No. 22279/04, Judgment of 7 July 2009.) Applicants in ***Plechanow*** alleged they had been deprived of compensation for illegal nationalizations because they had applied for compensation to the wrong government authority. Applicants also believed they were victims of repeated administrative reforms and inconsistencies with Polish domestic law, which made ascertaining the proper government entity difficult.

At issue in ***Plechanow*** was a building in Warsaw whose ownership had been transferred to the City of Warsaw under the **1945 Warsaw Land Decree.** In 1964, the Board of the Warsaw National Council denied the original owner's request to temporary ownership of the building, otherwise authorized by **Article 7** of the **1945 Warsaw Land Decree** so long as the land had not been designated for public use ("**1964 decision**"). (*Plechanow*, ¶¶ 8-10.)

Applicants were heirs of the original owner of the building. Between 1975 and 1992, the state Treasury sold several apartments in the building to third parties. (*Id.*, ¶¶ 6-7, 11.)

On 30 November 1999, the Local Government Board of Appeal declared the 1964 Decision "null and void" with respect to the part of the property still in government control. With respect to the other portion, which had since been sold to third parties, the

Board declared the **1964 decision** was issued in breach of law. The Board further stated applicants were entitled to compensation for damages caused by the **1964 decision** having been issued in breach of law ("**1999 ruling**"). (*Id.*, ¶ 17.)

On 21 December 2000, applicants lodged compensation claims pursuant to **Article 160** of the **Administrative Procedure Code** with the Warsaw Regional Court against the Warsaw municipality. On 21 March 2002, the Regional Court dismissed the claim. It acknowledged applicants damage as a result of the **1964 decision**, but found that the state Treasury, not the municipality should have been sued. (*Id.*, ¶ 23.) The Regional Court found that the Supreme Court decision of 7 January 1998 – relied upon by applicants – stating the municipality was the proper party in compensation actions, had become obsolete in light of later interpretation of Section 36 of the Local Government (Introductory Provisions) Act of 10 May 1990. The latter indicated that the state Treasury was the proper party. (*Id.*)

Between 2002 and 2005, the applicants challenged the Regional Court decision which declared they had sued the wrong party by lodging: an appeal with the Warsaw Court of Appeal that they lost; a cassation appeal with the Supreme Court that was dismissed without being entertained; and a complaint with the Constitutional Court that was discontinued.

The **ECHR** first considered whether it had temporal jurisdiction to hear the case. The Court's jurisdiction only covers the period after the date of ratification of the Convention and Protocols (10 October 1994 for Poland). However, it can consider facts prior to ratification if they are considered to have "created as continuous situation extending beyond that date . . ." (*Id.*, ¶ 78 (internal citations omitted).) The Court found that even if applicants' claim of entitlement to compensation was created by the original interference – the **1964 decision**, which was prior Poland's ratification of the **Protocol No. 1** – the **1999 ruling** enabled applicants to seek redress for the interference. (*Id.*, ¶ 79.) Accordingly, the Court found it had temporal jurisdiction.

The Court next determined whether applicants had any "possessions" within the meaning of **Article 1** of **Protocol No. 1**. Property rights can be "possessions" for the purpose of the provision and "possessions" can include claims where the applicant can argue that he has a "legitimate expectation" of obtaining effective enjoyment of the property right. (*Id.*, ¶ 83.) In the Court's view, the **1999 ruling** established that the **1964 decision** had been issued in breach of law and this fact entitled applicants to seek compensation for their damage. (*Id.*, ¶ 84.) Thus, applicants had a "legitimate expectation" that the claim would be processed in accordance with domestic laws and that they would receive compensation for their nationalized property.

Finally, the Court had to determine if there was an **Article 1** of **Protocol No. 1** violation. The Court reiterated that the protections under **Article 1** of **Protocol No. 1** include not just a state's duty not to interfere but also to give rise to positive obligations. (*Id.*, ¶ 99.) It found that the case law concerning who the proper defendant should be in compensation actions at the domestic level (municipality vs. state Treasury) – including at the Supreme

Court (whose job it is to resolve conflicts in lower court decisions) – "has often been contradictory." (*Id.*, ¶ 105.) In support of this finding, the Court referred to at least seven (7) conflicting resolutions, judgments and decisions from the Polish domestic courts on the issue. Further, the Court found that "shifting the duty of identifying the competent authority to be sued to the applicants and depriving them of compensation on this basis was a disproportionate requirement and failed to strike a fair balance between the public interest and the applicants' rights." (*Id.*, ¶ 108.) As a result, the applicants had been denied their right to property under **Article 1** of **Protocol No. 1**.

The Court did not decide as to whether the applicants' pecuniary and non-pecuniary damages claimed under **Article 41** of the **Convention** were warranted. The Court requested the Polish government submit its views on the issue**.**

The issue of damages in the initial judgment was thereafter stricken from the case in a subsequent 15 October 2013 judgment. The Court found that the domestic issue of the conflicting jurisprudence concerning the proper defendant in compensation actions in Poland had been resolved; that applicants were utilizing the new domestic procedure in a matter then-pending before the Warsaw Regional Court; and that the principle of subsidiarity (i.e., that Polish courts must have the opportunity to provide a solution for the alleged violations) should apply (*See* *Plenchanow v. Poland*, ECHR, Application No. 22279/04, Judgment of 15 October 2013.) Thus, the **ECHR** found that domestic courts were in the best position to assess the injury, to put an end to the violations of the **Convention,** and to redress the consequences. (*Id.*, ¶ 30.) As far as we are aware, the matter is pending before the Warsaw Regional Court

v. ***Sierpiński v. Poland*** **(1945 Warsaw Land Decree)**

The ***Sierpiński*** case, decided on 3 November 2009, includes facts strikingly similar to those described in ***Plechanow*** (decided four (4) months earlier). (*See* *Sierpiński v. Poland*, ECHR, Application No. 38016/07, Judgment of 3 November 2009.) Just as in ***Plechanow***, the Court in ***Sierpiński*** examined the applicability of **Article 1** of **Protocol No. 1** to the **European Convention on Human Rights ("Protocol No. 1")** – the right to peaceful enjoyment of one's possessions (right to property) – to claims relating to property taken under the **1945 Warsaw Land Decree**.

However, in ***Sierpiński***, applicants had sued the state Treasury for a plot of land that had been taken pursuant to the **1945 Warsaw Land Decree** (a decision declared to have been issued in breach of law on 14 June 2000), only to be told by the Warsaw Regional Court and the Court of Appeal that the municipality was the proper party for the action. Thus, the domestic decisions in ***Sierpiński*** were the exact opposite of what the domestic courts had said in ***Plechanow.*** This underscores the inconsistencies in domestic legislation on the issue of proper parties in compensation actions. The Supreme Court refused to hear applicant's cassation complaint on the issue.

Relying on the same reasoning from ***Plechanow,*** the **ECHR** in ***Sierpiński*** found that the applicant had "fallen victim of the administrative reforms, the inconsistency of the case-

law and the lack of legal certainty [in Poland] . . .” and “[a]s a result, the applicant was unable to obtain due compensation to which he was entitled.” (*Id.*, ¶ 79.) As a result, Poland had failed in its positive obligation to provide measures to project the applicant’s right to property under **Article 1** of **Protocol No. 1**.

In a subsequent 27 July 2010 judgment in the case, the Court noted that a friendly settlement was reached between the government and applicants for PLN 700,000 (approximately USD 180,000) for the claimed pecuniary and non-pecuniary damages. (*See* *Sierpiński v. Poland,* ECHR, Application No. 38016/07, Judgment of 27 July 2010, ¶ 8.) According to the terms of the settlement, the money would paid within 30 days of the **ECHR** striking the case from its docket, which the Court did in its 27 July 2010 judgment. (*Id*., ¶¶ 8-11.) In exchange for the payment by the government, applicants waived all future claims (in domestic and international forums) relating to the facts giving rise to the action. (*Id.*) We are not aware if the ***Sierpiński*** applicants received the settlement money.

d. Litigation in the United States Concerning Nationalized Property

i. *Haven v. Polska*

In 1999, two individuals filed an action in United States courts against the Republic of Poland, the State Treasury of the Republic of Poland and an insurance company, Powszechny Zaklad Ubezpieczen (“PZU”) in ***Haven v. Polska*.** (*See Haven v. Polska*, 215 F.3d 727 (7th Cir. 2000).) Plaintiffs filed the civil lawsuit in federal court in Chicago for the seizure of family lands by the state and the subsequent refusal by PZU (which was nationalized after WWII) to honor insurance contracts. (*Id.* at 730.)

The Polish defendants challenged the jurisdiction of the United States court by claiming it could not be sued there. In order to overcome the presumptive immunity of foreign states from the jurisdiction of the courts of the United States, a specific statutory exception under the **Foreign Sovereign Immunities Act (“FSIA”)** had to apply to the defendants. Plaintiffs relied upon the commercial activity exception, whereby the foreign state’s immunity is abrogated when the suit is “based upon” a commercial activity by the foreign State in the United States (28 U.S.C. § 1605(a)(2)).

The court found that the commercial activities alleged (PZU marketing insurance to customers in the United States on the internet) had no relation to the plaintiffs’ property nationalization claims. (*Id.* at 436.) (Plaintiffs’ other arguments as to why immunity was abrogated – including that a 1960 Settlement Agreement between the United States and Poland (**“U.S. Bilateral Agreement”)** expressly waived immunity and that a letter from the Polish Consulate in the United States to Plaintiff regarding service of process expressly waived immunity – were equally unpersuasive to the court.) Thus, the action was dismissed for lack of subject matter jurisdiction over any of the defendants.

ii. ***Garb v. Poland***

The same year – in 1999 – another a group of plaintiffs filed a class action in United States federal court in Brooklyn against the Republic of Poland and the Ministry of the Treasury in a case known as ***Garb v. Republic of Poland***. (*See Garb v. Poland,* 440 F.3d 579 (2d Cir. 2006).) Plaintiffs' claims arose in the context of "the mistreatment of Jews in Poland after the Second World War – mistreatment that [District Court] Chief Judge Korman properly described as "'horrendous' . . . In particular, plaintiffs challenge the Polish Government's expropriation of their property following the asserted enactment of post-war legislation designed for that purpose." (*Garb v. Poland*, 440 F.3d 579, 581 (2d Cir. 2006).) In particular, Plaintiffs sought redress for property taken from Jews under the post-war nationalization acts from 1946 and 1947 regarding abandoned and deserted properties. (*Garb v. Poland,* 207 F.Supp.2d 16, 17-19 (E.D.N.Y. 2002) (judgment vacated on other grounds by 440 F.3d 579 (2d Cir. 2006)).)

Just as in ***Haven v. Polska***, the Polish government defendants challenged the jurisdiction of United States courts by claiming it could not be sued there. In order to overcome the presumptive immunity of foreign states from the jurisdiction of the courts of the United States, a specific statutory exception under the **FSIA** had to apply to the Republic of Poland and the Ministry of the Treasury. Two statutory exceptions relied upon in the case included the commercial activity exception, in which the State acts as a commercial actor (28 U.S.C. § 1605(a)(2)) and the international takings exception, where the alleged taking of property occurred in violation of international law (28 U.S.C. § 1605(a)(3)).

The Court held that the **FSIA** precluded resolution of plaintiffs' immovable property claims arising in Poland in United States courts. With respect to the commercial activity exception, the Court found that "a State's exercise of its power to expropriate property within its borders is a decidedly sovereign act." (*Garb,* 440 F.3d at 588.) The takings exception was found to be equally inapplicable on more technical grounds relating to the location of property in issue as well as the character of the defendant. (*Garb,* 440 F.3d at 589-590.) However, while the District Court (affirmed on appeal) underscored:

> "that strong moral claims are [not] easily converted into successful legal causes of action", the complaint was dismissed "*not* because of a determination that the challenged conduct here is lawful . . . [t]he complaint is dismissed solely because the Republic of Poland and its Ministry of the Treasury may not be required to defend that cause of action alleged in the complaint in the United States. The dismissal places on the Republic of Poland the obligation to resolve equitably the claims raised here."

(*Garb,* 207 F.Supp.2d at 39 (internal quotations omitted and emphasis in original).)

As a result of the Court's decision, plaintiffs were unable to maintain their action in the U.S. court.

3. Property Located in the Eastern Territories or Beyond the Bug River

As a result of the significant shift in Polish borders after World War II, the property of many Polish citizens ended up being located in areas outside of the revised borders of Poland, in particular the area east of the Bug River (i.e., east of the Curzon line in the **Yalta Conference** agreements).

a. Bug River Laws 1944-1999

i. 1944 "Republican Agreements"

Through the so-called 1944 "**Republican Agreements**" between the Polish Committee of National Liberation (PKWN) (a provisional government of Poland established in 1944 fully sponsored by the Soviet Union and in opposition to the Polish government-in-exile in London) and the Communist governments of the former Soviet Republics of Lithuania, Belarus and Ukraine, Polish citizens were repatriated from those areas to live in what are now the present borders of Poland. In the **Republican Agreements,** the Polish State created for itself the obligation to compensate persons who were forced to abandon their property when they were "repatriated" from the "territories beyond the Bug River". (*See Broniowski v Poland,* ECHR, Application No. 31443/96, Judgment of 22 June 2004 ("*Broniowski"*), ¶ 11.) A similar **1945 Agreement** was also concluded between the government of the Polish People's Republic and the government of the Soviet Union. According to the Polish government, between 1944 and 1953, approximately 1,240,000 persons were "repatriated" pursuant to the terms of the **Republican Agreements** and a majority were compensated for their losses. (*Id.*, ¶ 12.)

Nearly 40 years later the Polish Communist state passed a series of laws that built upon the compensation obligations created by the **Republican Agreements**. These laws provided that repatriated persons were entitled to compensation for property abandoned in territories beyond the present borders of Poland. The question as to whether in practice compensation could feasibly be achieved has been the subject of a considerable number of lawsuits over the years.

ii. 1985 Bug River Law

The first law enacted was the **29 April 1985 Land Administration and Expropriation Act ("1985 Bug River Law"). Section 81** of the **1985 Bug River Law** provided that:

> (1) Persons who, in connection with the war that began in 1939, abandoned real property in territories which at present do not belong to the Polish State and who, by virtue of international treaties concluded by the State, are to obtain equivalent compensation for the property abandoned abroad, shall have the value of the real property that has been abandoned offset either against the fee for the right of perpetual use of land or against the price of a building plot and any houses, buildings or premises situated thereon."

(*Broniowski*, ¶ 46 (quoting 1985 Bug River Law Section 81).) Essentially, the **1985 Bug River Law** gave persons the right to apply the value of their abandoned property to the purchase of a perpetual lease on property located in Poland.

iii. 1997 Bug River Law

The **21 August 1997 Land Administration and Expropriation Act ("1997 Bug River Law")** repealed the **1985 Bug River Law**. The **1997 Bug River Law** contained similar property offset language to the **1985 Bug River Law**. However, **Section 213** of the **1997 Bug River Law** included a new provision that made the law inapplicable to any property held by the state Treasury's Agricultural Property Resources. (*Broniowski* ¶ 49 (quoting 1997 Bug River Law, Section 213).)

The **Cabinet's Ordinance of 13 January 1998** (**"1998 Ordinance")** laid out procedures for the implementation of the **1997 Bug River Law.** The effect of the **1998 Ordinance** was that compensatory property or perpetual usufruct could only be enforced through a public auction. This meant that repatriated persons were not given priority over the purchase of state land. (*Id.*, ¶ 52.)

iv. 1990 Local Self-Government Act

The **Local Self-Government Act of 10 May 1990 ("1990 Local Self-Government Act")** also reduced the amount of property available for compensation. The **1990 Local Self-Government Act** reestablished municipalities in the country and transferred most of the state Treasury's land to the municipalities. This reduced the amount of property available for compensation to repatriated persons because, according to the **1985** and **1997 Bug River Laws**, eligible property came from the state Treasury. (*Broniowski*, ¶ 53.)

v. 1994 Law on Russian Federation Property

The **10 June 1994 Law on the Administration of Real Property Taken Over by the State Treasury From the Army of the Russian Federation** (**"1994 Law on Russian Federation Property"**) provided that repatriated persons were supposed to be given priority over this property. However, in reality, the resources left by the Russian Army had already been exhausted. (*Broniowski*, ¶ 57.)

vi. 1996 Military Property Law

The **30 May 1996 Law on the Administration of Certain Portions of the State Treasury's Property and the Military Property Agency** (**"1996 Treasury and Military Property Law"**) provided that the Military Property Agency could organize competitive bids for the sale of real property, but Bug River repatriates had no priority under this law over other bidders.

A **21 December 2001** amendment to the **1996 Military Property Law** further stated that *no* property administered by the Military Property Agency could be designated for the purpose of compensation for abandoned Bug River property. (*Broniowski,* ¶¶ 58-59.)

b. Litigation in Domestic Courts Concerning the Bug River Laws 1944-1999

On 5 July 2002, the Ombudsman, acting on behalf of repatriated persons, asked the Polish Constitutional Tribunal to declare unconstitutional certain portions of the Bug River laws that restricted the compensation rights of repatriated persons. The Ombudsman focused on laws stating that repatriated persons could not apply for compensation from agricultural and military property.

i. 8 January 2003 Constitutional Tribunal Decision

The Polish Constitutional Tribunal, in a 19 December 2002 decision (Case No. K 33/02, published in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw Rzeczypospolitej Polskiej*), 2003, no. 1, p. 15) held that **Sections 212(1) and 213** from the **1997 Bug River Law** were unconstitutional, insofar as they excluded the possibility of offsetting the value of property abandoned abroad against the sale price of state agricultural property. (*Id.,* ¶ 80.)

The Constitutional Tribunal's landmark decision further described that the **Republican Agreements** gave rise to an obligation to award compensation, but they were not a "direct basis for repatriates to lodge compensation claims" and the legislature was therefore left to decide how the compensation would be provided. (*Id.,* ¶ 81 (quoting judgment of Constitutional Tribunal).) The Tribunal further stated that repatriated persons had a "right to credit", which was not simply an expectation of compensation, but a property right protected by the Constitution (*Id.*)

ii. 2003 Cracow Regional Court Decisions

In early 2003, several repatriated persons sued the Polish state Treasury in two different actions in the Cracow Regional Court for damages under tort law and the **Republication Agreements.**

Case 1

In the first case, the plaintiffs alleged that tortious conduct by the state made it impossible to exercise the right to credit and that the state had created a "defective, illusory and ineffectual" mechanism for carrying out entitlements pursuant to **Section 212** of the **1997 Bug River Law.**

The facts as alleged in the first case were that between 1991 and 1998, the Cracow District Office organized 22 auctions for the sale of property in which Bug River repatriates could participate. Yet, for certain auctions, only those persons who had made

applications for compensation prior to 26 May 1990 could participate. Further, in 2002, the Mayor of Cracow began holding auctions, but only two (2) were held that year.

In its 2 April 2003 decision, the Court found that the auctions excluded Bug River repatriates in their entirety, or limited participation to persons who resided in the districts where the auctions were held, or the property offered could not satisfy the plaintiffs' claims, given the value of his/her entitlements. Further, in situations where Bug River repatriates were *not* excluded, prices for property went for multiple times their market value, owing to the small stock of property available and the large group of auction participants. The Court found that the damage sustained by the plaintiffs and the Bug River repatriates was the difference between what they should have been able to have with their entitlement under **Section 212** of the **1997 Bug River Law** and what they actually had in practice as a result of the State's "wrongful manner" of implementing the law.

The state Treasury (defendant) appealed this action to the Cracow Court of Appeal in August 2003. While the lower court's findings of fact were upheld, the Court of Appeal revised the ruling on the merits. The Court of Appeal found that the right to credit was a contingent right and the plaintiffs should only have obtained compensation if they had proved it was impossible to obtain any compensatory property within the entire territory of Poland. As a result, according to the Court of Appeal, the plaintiffs had not yet exhausted all of their remedies, because they had not actually participated in auctions and had refused property offered to them by the government (the property offered was either in disrepair or came with a requirement that plaintiff immediately build a structure on the land when plaintiff had no means to do so). On 14 May 2004, plaintiffs lodged a cassation appeal. (*Broniowski*, ¶¶ 93-100 (quoting in part the decision of the Cracow Regional Court).)

We have no additional information as to the final outcome of this case.

Case 2

In its second decision, the Cracow Regional Court, composed of different judges from the first decision, addressed a complaint from a second group of plaintiffs regarding the State's failure to meet its obligations under **Section 212** of the **1997 Bug River Law.** Plaintiffs alleged that the state failed to secure the effective enjoyment of the right to compensation and also that it failed to discharge its legal duty to publish the **Republican Agreements** so as to allow plaintiffs to be able to rely on them as a legal basis for a civil claim for compensation. The court found that "the unlawful omission by the public authorities, consisting in not publishing the [**Republican**] Agreement in the Journal of Laws despite the application by [plaintiffs], made it impossible, as the plaintiffs could not enjoy their right to credit as a general right within the existing legal order, to obtain effective compensation in the maximum amount possible – name the value of plaintiffs' property abandoned in Ukraine, which they claimed on the basis of Article 3 § 6 of the Agreement with the Ukrainian SSR." (*Id.*, ¶¶ 101-102 (quoting in part the decision of the Cracow Regional Court).)

We have no additional information as to the final outcome of this case

iii. May 2003 Supreme Administrative Court Decision

On May 2003, the Supreme Administrative Court, heard an action brought by plaintiffs, including one from the second Cracow Regional Court decision (Case 2), concerning the Prime Minister's failure to publish the **Republican Agreements**. The Court found that the Prime Minister could not order publication of an international agreement without first receiving the recommendation of the Minister of Foreign Affairs. Moreover, in opposition to the Constitutional Tribunal judgment that became effective 8 January 2003 (Case 2), the Supreme Administrative Court found that the **Republican Agreements** "did not just contain a promise to act" but "related directly to the rights and obligations of repatriated persons". According to the Court, "[t]his is clear from Article 3 § 6 [of the Agreement with the Ukrainian SSR], since the value of the abandoned movable and immovable property was to be returned on the basis of an insurance valuation." (*Id.*, ¶¶ 103-106 (quoting in part the decision of the Supreme Administrative Court).)

iv. 21 November 2003 Supreme Court Judgment

On 21 November 2003, the Supreme Court issued a judgment in a case, which had originated in the Warsaw Regional and Appellate Courts. The plaintiff had brought an action against the state Treasury and Minister for the Treasury for pecuniary compensation for property abandoned Bug River property. This was considered a landmark decision for Bug River claims and the State's civil liability for the failure to enforce the right to credit. The Court held:

> In conclusion, [the Bug River claimants] may, under Article 77 §1 of the Constitution, seek pecuniary compensation from the State Treasury for the reduction in the value of the [right to credit] resulting from the enactment of legislation restricting their access to auctions … which either made it impossible for them to enforce their rights or reduced the possibility of enforcing those rights. …
>
> That does not mean, however, that it is possible [for the claimants] to obtain the full pecuniary value of the property abandoned in the Borderlands. It would be contrary to … section 212 of the Land Administration Act 1997, by virtue of which the legislature — acting within its legislative autonomy — laid down specific compensatory machinery. The crucial point is, however, that previous legislative action rendered [this machinery] illusory — as the Constitutional Court has unequivocally held. This had an impact on the actual value of the [right to credit]. Indeed, the value of this right was reduced since the legislature, on the one hand, excluded from the scope of section 212 … [certain] portions of State land and, on the other, through the application of this provision in practice (failing to hold auctions), made it unenforceable. [I]n consequence, the right to credit could not, and still cannot, be realised.

(*Broniowski*, ¶¶ 108-110 (quoting in part the decision of the Supreme Court).)

c. Amendments to the 1997 Bug River Law – The December 2003 Act

In the early 2000s, while Polish courts grappled with Bug River property issues, the Senate prepared a Bill with amendments to the **1997 Bug River Law**. The President signed the Bill and it became the **December 2003 Act.** Under the **December 2003 Act**, compensation for abandoned property beyond the present borders of the Polish State was offset by the price of state property or the fee for the right of perpetual use. Bug River claimants were exempted from paying a security before an auction for the sale of state Treasury and municipal property. Claimants were to receive 15% of their original entitlement.

On the date of entry into force of the **December 2003 Amendment**, the state Treasury's Agricultural Property Agency and Military Property Agency issued communications via the Internet announcing they had suspended all auctions for the sale of state property because they could not be held before numerous amendments to the legislation had been introduced. Although this conduct was condemned by the Supreme Court, nothing was done to change the decision of the state Treasury.

d. Litigation at the ECHR Concerning the Bug River Laws (*Broniowski v. Poland*)

In the context of the ongoing legal complications in Poland, applicant Jerzy Broniowski sued in the **ECHR** in 1996 for compensation for his family's Bug River property. Following years of hearings on admissibility and the subsequent relinquishment of jurisdiction in favor of the Grand Chamber, the Court issued a pilot judgment in ***Broniowski v. Poland*** on 22 June 2004. (*See* *Broniowski v. Poland*, ECHR, Application No. 31443/96, Judgment of 22 June 2004.)

Mr. Broniowski was a Polish national and claimed the state failed to satisfy his entitlement to compensation for property in Lwow (now Lviv in the Ukraine). The property belonged to his grandmother when the area was still part of Poland. Mr. Broniowski's grandmother was repatriated after Poland's eastern border was redrawn along the Bug River. After a thorough examination of all of the applicable laws (described *supra*), the Grand Chamber found that the state of Poland had violated **Article 1** of **Protocol 1** of the **European Convention of Human Rights** in requiring Bug River claimants to participate in property auctions (which were almost never run) without any priority over other bidders, and in only offering claimants compensation in the amount of 2% of the original property value. The Court held that the government had effectively made it impossible for Bug River claimants to receive compensation. The Court rejected the state's objections on the bases of its economic and social constraints, finding that the state, in adopting the **1985** and **1997 Bug River Laws**, reaffirmed its obligation to compensate Bug River repatriates, notwithstanding the fact that it faced social and economic constraints.

e. Poland's Response to the *Broniowski* Decision – The 2005 Bug River Law

In a subsequent 28 September 2005 Grand Chamber judgment in the ***Broniowski*** action, the **ECHR** announced a settlement had been reached between the government and applicants that included both individual and general remedial measures. (*See* *Broniowski v. Poland*, ECHR, Application No. 31443/96, Judgment of 28 September 2005.)

Broniowski applicants would receive PLN 213,000 (approximately USD 54,000) for pecuniary and non-pecuniary damages and PLN 24,000 (approximately USD 6,000) for costs and expenses. (*Id.*, ¶ 31.)

However, the Court noted that the original ***Broniowski*** decision affected not just the ***Broniowski*** applicants, but also 80,000 other similarly-situation persons. The remedial measures for the other affected persons came in the form of the **8 July 2005 Law on Exercising the Right to Compensation for Immovable Property Left Outside the Borders of the Republic of Poland ("2005 Bug River Law")**.

Pursuant to **Article 2** of the **2005 Bug River Law**, former owners of immovable property located outside of the present borders of Poland are entitled to compensation if they are:

(1) persons who were Polish citizens on 1 September 1939 and were settled at the time within the then existing borders of the Republic of Poland and were resettled from that territory for the reasons referred to in the Law (a 23 October 2012, Constitutional Tribunal decision found the residency requirement, as defined in **Article 2(1)**, to be unconstitutional. A 13 December 2013 Amendment to the **2005 Bug River Law** redefined the status of resident in **Article 2(1)** and reopened the claims process for persons previously excluded on account of the old definition); and

(2) persons who are citizens of Poland (at the time of the filing of the claim).

The single option auction scheme from the **1985** and **1997 Bug River Laws** was abandoned and instead the **2005 Bug River Law** permitted claimants chose between two (2) compensation options: a one-time payout from a newly-created Compensation Fund for an amount equal to 20% of the value of the original Bug River property, or a 20% offset of the indexed value of the original property against the sale price of state property acquired by competitive bidding. Funds for the Compensation Fund came from the sale of public property from the Agricultural Property Stock of the Polish Treasury. In the event that those funds were insufficient, the **2005 Bug River Law** provided for a state budget loan. (*See* Thomasz Kuchenbeker (Legal Advisor, Ministry of the Treasury), "Polish Experience in the implementation of European Court of Human Rights judgements on restitution of property", Round-table: Property Restitution/Compensation: General Measures to Comply with the European Court's Judgments, 17 February 2011.)

The claim filing process for the **2005 Bug River Law closed on 31 December 2008.** The 12 December 2013 **Amendment** to the **2005 Bug River Law** reopened the claims filing process for claimants excluded on the basis of the previous definition of residency in the former Polish territories, for a period of **six (6) months**.

f. Litigation at the ECHR Concerning the 2005 Bug River Law (*Wolkenberg and Others v. Poland*)

In ***Wolkenberg and Others v Poland*** in 2007, the **ECHR** again addressed the issue of Polish restitution legislation for property beyond the Bug River and examined the recently-enacted **2005 Bug River Law**. (*See* *Wolkenberg and Others v. Poland*, ECHR, Application No. 50003/99, Judgment of 4 December 2007 ("*Wolkenberg*").)

After the passage of the **2005 Bug River Law,** a government delegation examined all of the Bug River case files lodged with the **ECHR** and selected 75 applicants for participation in an accelerated compensation program on account of applicants' "age, health, or difficult personal situation". (*Id.*, ¶¶ 13, 20.) The ***Wolkenberg*** applicants were chosen for this accelerated program and they received 20% of the value of their original Bug River property, credited to their own bank accounts. (*Id.*, ¶ 17.) Through their complaint, applicants sought the remaining 80% of the value of their family's Bug River Property, pointing out that previous Bug River legislation provided for full compensation for property, whereas the **2005 Bug River Law** provided for only 20%, thereby depriving them of a "lawfully accrued right." (*Id.*, ¶ 26.) In denying their claim, the **ECHR** emphasized its previous views from ***Broniowski*** that:

> in a situation involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole, the national authorities must have considerable discretion in selecting not only the measures to secure respect for property rights but also the appropriate time for their implementation. The choice of measures may necessarily involve decisions restricting compensation for the taking or restitution of property to a level below its market value.

(*Wolkenberg* , ¶ 61.) Further, the Court found that "[t]he choice that the authorities made, in particular their decision to impose a statutory ceiling of 20% on compensation, does not appear unreasonable or disproportionate, considering the wide margin of appreciation accorded to them and the fact that the purpose of the compensation was not to secure reimbursement for a distinct expropriation but to mitigate the effects of the taking of property which was not attributable to the Polish State." (*Id.*, ¶ 64.) The Court concluded that the **2005 Bug River Act** as implemented, removed the legal obstacles to the "right to credit" that had been found in the ***Broniowski*** judgment. (*Id.*, ¶ 71.)

Pursuant to the **2005 Bug River Law,** as of 2012, 111,600 claims have been filed, 47,538 claims have been processed, and over PLN 2.3 billion (roughly USD 600 million) has been paid to successful Polish citizen claimants. (*See* ESLI, Property restitution/compensation in Poland, 2012, pp. 14-15.)

4. Unsuccessful Efforts to Enact Private Property Restitution Legislation

As power shifted from the former Communist regime to a new democratic parliamentary republic in Poland in 1989, the focus turned to property taken by the Communist regime's nationalization policy and not property taken from Polish Jews and other targeted groups during World War II.

Over the last 25 years, the Polish government and its officials have proposed over a dozen versions of draft laws pertaining to the restitution of property taken due to nationalizations made by the Polish post-war Communist regime. Legislation would serve to reduce mounting litigation in domestic, foreign and international courts but to date, no measures have been enacted. The most important efforts are discussed herein.

a. 1999 Restitution Bill

In 1999, a **Bill on the Restitution of Immovable Property and Certain Kinds of Movable Property Taken from Natural Persons by the State or by the Warsaw Municipality, and on Compensation** (**"1999 Restitution Bill"**) was introduced in Parliament (the Sejm). The Bill provided that persons whose property had been taken over by the state as a result of particular law under the totalitarian regime would received **50%** of the value of the property. However, according to the terms of the Bill, successful claimants would only be those who were Polish citizens as of 31 December 1999. Then-President Aleksander Kwasniewski, apparently on the grounds of the citizenship requirement, vetoed the **1999 Restitution Bill** by refusing to sign it. There was not enough support for the **1999 Restitution Bill** in the Polish Parliament to override the President's veto (three-fifths of the Parliament is required). (*Broniowski*, ¶¶ 62-65.)

b. 2005-2007 Restitution Bill

Between 2005 and 2007 the Parliament considered a number of versions of a **Bill on Compensation for Real Estate and Some Other Property Assets Seized by the State** (**"2005-2007 Restitution Bill").** According to the **WJRO,** this Bill offered no restitution *in rem* and instead offered compensation of 15% of the value of the property on 1 September 1939 to be paid in installments. Covered property included assets seized by the German occupiers and the Polish state. Criticism of the **2005-2007 Restitution Bill** included that the compensation amount was too low, that the procedure would be too complicated, and that no restitution *in rem* would be provided. (*Krawczyk II*, p. 815.) The bill expired in 2007 without having been enacted.

c. 2008 Compensation Bill

The most recent bill to address private property was the **2008 Compensation Bill**. It would have provided compensation of approximately 20% but not *in rem* restitution. The value of the claims that would have been covered by the law was estimated to be PLN 100 billion (USD 26.5 billion). A two-step claims procedure was proposed. Projections indicated that 80,000 applications would be submitted and that payment would be in

installments over a 15-year period. In 2010, the Minister of Finance issued a report stating that the **2008 Compensation Bill** would increase public debt by approximately 1%, and that the allocation of money for compensating nationalization claims "might result in Poland's exceeding the permissible limits of the national debt in relation to GNP as set by the European Union." As a result, the government decided not to enact the **2008 Compensation Bill.**

D. COMMUNAL PROPERTY RESTITUTION

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

> property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.

(Terezin Best Practices, para. b.)

Since 1989, Poland has set up a number of government commissions to manage the return of property belonging to religious associations. These commissions are a type of arbitration court and they address properties specifically belonging to:

- the **Roman Catholic Church** (pursuant to the 17 May 1989 Law on the Relationship between the State and the Roman Catholic Church in the Republic of Poland);
- the **Polish Autocephalous Orthodox Church** (pursuant to the 4 July 1991 Law on the Relationship Between the State and the Polish Autocephalous Orthodox Church);
- the **Evangelical Reformed Church** (pursuant to the 13 May 1993 law on the Relationship between the State and the Evangelical Reformed Church in the Republic of Poland);
- the **Evangelical Church of the Augsburg Confession** (pursuant to the 13 May 1994 Law on the Relationship between the State and the Evangelical Church of the Augsburg Confessions on the Republic of Poland);
- the **Evangelical Methodist Church** (pursuant to the 30 June 1995 Law on the Relationship between the State and the Evangelical Methodist Church in the Republic of Poland);
- the **Christian Baptist Church** (pursuant to the 30 June 1995 Law on the Relationship between the State and the Christian Baptist Church in the Republic of Poland);
- the **Seventh-day Adventist Church** (pursuant to the 30 June 1995 Law on the Relationship between the State and the Seventh-day Adventist Church in the Republic of Poland); and

- the **Jewish Religious Communities** (pursuant to the **20 February 1997 Law on the Relationship Between the State and Jewish Communities ("Jewish Communities Law")**).

1. 1997 Jewish Communities Law

According to the **World Jewish Restitution Organization ("WJRO")**, about 1,200 cemeteries and 4,800 other communal properties have been identified as belonging to Poland's pre-war Jewish community.

The 1997 **Jewish Communities Law** addressed restitution of Jewish communal property, which had been property of the Jewish community or Jewish religious legal entities on 1 September 1939 within the territory of the Polish Republic **(Article 30**). Pursuant to the **Jewish Communities Law,** a **Commission for the Restitution of Property of Jewish Religious Communities ("Regulatory Commission for Jewish Property")** was established to adjudicate communal property claims. It is composed of both members of Poland's Ministry of Administration and Delegation as well as members appointed by the **Union of Religious Jewish Communities in Poland**.

In 2002, the **Union of Religious Jewish Communities in Poland (ZGWZ)** and the **WJRO** together created the **Foundation for Preservation of Jewish Heritage in Poland (FODZ)** (**"Foundation").** The **Foundation** is the only institution in Poland officially dedicated to the recovery, preservation and commemoration of physical sites of Jewish significance. (*See* Foundation for the Preservation of Jewish Heritage in Poland, "About us".) It was authorized to pursue communal property claims with the **Regulatory Commission for Jewish Property** for properties located in areas of Poland that did not have an active Jewish presence. In other areas of Poland with an active Jewish presence, the local Jewish communities submitted their own claims.

Up until **10 May 2002,** Jewish communities were allowed to file claims with the **Regulatory Commission for Jewish Property** for the return of property, which had belonged to Jewish religious groups as of 1 September 1939.

The **Jewish Communities Law** set out certain limitations on communal property recovery. First, only immovable, communal property was recoverable under this law. Restitution was available for synagogues or cemeteries (for cemeteries, only if title to the property was held by the State Treasury or a local authority), and compensation was available for synagogues or for other buildings or property used for religious, cultural, educational or charitable purposes that could not be returned (but not cemeteries). Property located in the eastern territories (i.e., beyond the Bug River and located in what is now Belarus, Lithuania, and Ukraine) was also non-compensable under the law. Property belonging to Jewish communities located in the so-called recovered territories in western Poland as of 30 January 1933 (territory that belonged German before World War II) was narrowly compensable under the law. Finally, only properties that had been historically registered in the name of the Jewish community or Jewish religious organizations (meaning that properties gifted by private persons to the Jewish community

but which had been registered under the name of a private person were excluded from compensation) were eligible for restitution. In the case of Jewish religious organizations, restitution was only possible if the original building existed as of the date of entry of the **Jewish Communities Law** (1997).

According to the **WJRO**, by the claims deadline, **11 May 2002**, the **Foundation** had filed approximately 3,500 claims and the local Jewish communities had filed more than 2,000 claims. As of February 2015, the **WJRO** found that just than 45% of the 5,550 total claims had been adjudicated by the **Regulatory Commission for Jewish Property**. However, a spokesman for the Ministry of Administration and Digitalisation stated that as of 2013, the **Regulatory Commission for Jewish Property** has granted PLN 82 million (approximately USD 21 million) in compensation to Jewish organizations for property that the State was unable to return.

A significant portion of the **Regulatory Commission for Jewish Property's** positive decisions pertain to the return of cemeteries and synagogues. These are generally properties of lower economic value, that are in severe states of disrepair, and upon return, which the Jewish community is immediately responsible for repair and upkeep.

No additional laws relating to the restitution of communal property have been passed since Poland became a signatory to the Terezin Declaration in 2009.

E. HEIRLESS PROPERTY RESTITUTION

The Terezin Declaration states "that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences." (Terezin Declaration, Immovable (Real) Property, para. 3.) The Terezin Best Practices also "encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators." Heirless immovable (real) property, as defined in the Terezin Best Practices, for the purpose of restitution is:

> property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.

(Terezin Best Practices, para. j.)

Currently, Polish law does not provide for the special treatment of heirless property from the Holocaust and World War II. In fact, according to the **8 March 1946 Decree**

Regarding Post-German and Deserted Properties (which superseded an 8 May 1945 Law on Abandoned and Derelict Property) (**"1946 Decree Regarding Post-German and Deserted Properties"**) property not claimed by private owners within the statute of limitations period (usually 10 years) became property of the Polish state.

1. 1946 Decree Regarding Post-German and Deserted Properties

The **1946 Decree Regarding Post-German and Deserted Properties** regulated real property whose owners could not be identified or located as a result of the war. The law gave property owners a fixed amount of time – 10 years after enactment – to recover lost property from government Liquidation Offices. Property not claimed during the time limit specified either escheated to the Polish State or was acquired by the then-occupant of the property. (*See* Piotr Stec, *Reprivatisation of Nationalised Property in Poland, in Modern Studies in Property Law Volume 1: Property 2000* (Elizabeth Cooke ed., 2001, p. 362.)

German property located in areas formerly part of the Third Reich and the Free City of Danzig but which became part of Poland after the war, was automatically nationalized as of 19 April 1946 (except for property belonging to persons of Polish nationality or "other nationality persecuted by the Germans.") (*See Krawczyk I*, p. 27.) A 1987 decision from the Supreme Court of Poland affirmed this presumption of escheat of property to the State.

We are not aware of how many properties have been returned during the ten-year period set out in the **1946 Decree Regarding Post-German and Deserted Properties**.

2. Polish General Succession Rules

Pursuant to the Polish succession laws in effect during the post-World War II period (**Decree on Succession Law dated 8 October 1946**) and the laws binding from 1965 to today (**Polish Civil Code**), when there are no statutory or testamentary successors, the municipality or state Treasury may be declared the successor of heirless property via ordinary succession proceedings in the common courts.

In order to be declared successor of the heirless property, the state Treasury must prove both that (1) the pre-war owners died and also that (2) they had no successors. The first prong can only be proved by presenting a death certificate of the pre-war owner of the property. For Holocaust victims and other victims targeted during the German occupation in Poland this proof of death is nearly impossible, either because the Germans buried the majority of civil status documents of Jews living in Poland during the war or because of a lack of other necessary information. In theory, there are some procedural solutions, such as appointing a guardian for an absent person. However, Polish courts are not willing to apply such a procedural solution today because it is no longer plausible to find that the Holocaust or other World War II victim if absent (or disappeared). Instead he/she is in all likelihood dead. Where the state Treasury cannot prove both prongs, it cannot be declared as the successor of the heirless property.

The result is that the legal characterization of heirless property in Poland remains in a suspended state benefitting neither the state nor the Jewish community.

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