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## **An Open Letter to US Senators Concerning Property Restitution in Poland**

From Warsaw organizations involved with issues concerning reprivatization and restitution  
and some members of the Verification Commission

To the Honorable US Senators: Tammy Baldwin, Marco Rubio, Charles Schumer, Ted Cruz, Benjamin L. Cardin, John Cornyn, Jack Reed, John McCain, Bill Nelson, Tom Cotton, Michael Rounds, Cory A. Booker, Cory Gardner, Richard Blumenthal, Chuck Grassley, Christopher A. Coons, John Hoeven, Edward J. Markey, Rob Portman, Ron Wyden, John Boozman, Kirsten Gillibrand, Steve Daines, Dianne Feinstein, Pat Roberts, Catherine Cortez Masto, David A. Perdue, Maria Cantwell, Thom Tillis, Gary Peters, Jerry Moran, Elizabeth Warren, Roger F. Wicker, Joe Manchin III, Susan M. Collins, Chris Van Hollen, Todd Young, Amy Klobuchar, Tim Scott, Margaret Wood Hassan, Ben Sasse, Thomas R. Carper, Johnny Isakson, Robert P. Casey, Mike Lee, Sheldon Whitehouse, James Lankford, Doug Jones, James M. Inhofe, Michael F. Bennet, John Kennedy, Tina Smith, Dean Heller, Debbie Stabenow, Lindsey Graham, Mark R. Warner, Heidi Heitkamp and Bob Menendez

Dear Senators,

As non-governmental organizations dealing with the effects of reprivatization, we have decided to address issues raised by a group of US Senators in a letter addressed to the Polish government on March 26, 2018, concerning some of the problems related to property restitution, and in particular, to the draft bill on reprivatization presented by the government in the fall of 2017. Our intention is to present some of the more complicated nuances of the situation and to promote better understanding of the issues which must be faced.

Our attempts to reach out are now supported by some members of the Verification Commission which has been examining cases of illegal restitution and their effects. All of us are interested in resolving issues concerning this complicated matter.

We are deeply concerned that the current situation is taking a bad turn in terms of relations between all the victims of the various historic events that lead up to the current problems. Our organizations have many tenants of buildings formerly owned by private persons, including Jewish families. These people have often been severely affected by the lack of a comprehensive law on reprivatization and are the reason that we have been lobbying for years that one be passed. We believe that it would be useful to present more facts on the other side of the situation, that is, about the injustices that these people face. With this in mind, we would like to open a dialogue with interested parties and invite representatives of the US Senate to Warsaw where we could show you more exactly the problems we are facing. Alternatively, we would be willing to travel to Washington to make a presentation, should the Senators be willing to open a dialogue with social organizations from Poland.

Below we present some facts about the case of our city, Warsaw, for your consideration.

## **The Current State of Reprivatization and the Genesis of the Issue**

First, we wish to point out that many properties have been in fact returned to either pre-war owners, the heirs, or purchasers of their claims. As you probably know, Warsaw was almost completely destroyed by Nazi Germany during WWII. With nearly 90 percent of buildings destroyed completely or to a significant degree, Warsaw faced a severe housing crisis. Hundreds of thousands of survivors of the war took part in the rebuilding of the city.

In the postwar chaos, the fate of some owners of surviving buildings was unknown. Furthermore, as it turns out, some property changed hands during the war, often in dubious transactions. In any case, as housing was scarce, people were quartered in remaining buildings while others were guaranteed flats in exchange for taking part in rebuilding. This was often at the cost of the State Treasury or sometimes of the individuals involved. On plots of land where buildings were destroyed, new ones were constructed.

The Bierut Decree allowed state and municipal organs to take possession of land in order to deal with the housing crisis. The political system at the time did not foresee monetary compensation to all land owners, although compensation was paid to some American citizens, through the agreement signed in 1960 between the United States and the Republic of Poland.

It must be pointed out that this state of affairs concerned Poles, Jews and others and was never related solely to Jewish property, which is the conclusion that some might draw from the references to this group of people. Owners of land which was nationalized under the Bierut Decree were able to file claims to these properties for a limited period of time and in 1947-1949, approximately 17,000 such claims were submitted.

Beginning in 1990, the year after regime change in 1989, people started to file claims to invalidate previous decisions which denied them ownership of these lands. Over 7000 such claims were filed in Warsaw and this resulted in the return of more than 4000 properties and well over 1 billion zloties in monetary compensation. Thousands of claims are still pending in the courts.

In our opinion, the process of property restitution has been very problematic. In addition to legal problems of the claimants, the fact is that unfortunately a specialized reprivatization mafia took shape. This group cheated legitimate claimants and received possession of various properties in an illegal manner. Our organizations have been exposing these cases for years. The victims have been former owners and their heirs, but above all the people who have been living in these properties, sometimes since before the war themselves. We will explain more about their fate shortly.

We should point out that a number of people involved with this mafia were arrested and face various charges but some of the worst perpetrators are still at large. Thousands of people suffered tremendously through this process, which also saw a number of fatalities and at least one murder. Ms. Brzeska, a tenant activist was brutally murdered in 2011, most likely by this mafia. Those responsible have not been apprehended.

This organized group has also been responsible for taking advantage of many legitimate heirs, coming into possession of several properties belonging to Jewish families in illegal ways. Finally, they have also cheated at least a few American citizens, including Mr. Wlodawer, whose family owned several pieces of real estate in Warsaw.

Since there were so many cases of illegal reprivatization, a scandal broke out and a Commission to Verify the Effects of Warsaw Reprivatization was formed under the auspices of the Justice Ministry. We have worked with the inhabitants of many of the buildings which were examined by this Commission and we have complex knowledge of the different ways that illegal reprivatization has taken place. We would be able to supply more detailed information on this at another time, should you be interested.

However, there is not only a problem of the property which was illegally reprivatized. The fact is that thousands of properties were returned to former owners, heirs or people who had bought claims. When they were returned, they were given with tenants inside, all of whom had contracts which entitled them to regulated rent. Many of them are low-income people who cannot afford to pay market rates.

In Warsaw, where rental contracts were for an indefinite period and where the housing stock has never been sufficient, many people have lived in the same flat for decades or for generations. It is not uncommon for us to meet people who are 70, 80 and even 90 years old who have lived in the same building for all their life. Many of them live in buildings that are pre-war and became municipal. There are also many people who are younger but whose parents or grandparents lived there before the war or who moved there right afterwards. These parents or grandparents often helped in rebuilding the properties. Further, throughout the decades, people repaired their own flats, often installing toilets or bathrooms where there had been none. Or some sort of heating. Families invested a lot of money, heart and soul in maintaining the buildings which were often neglected by the city.

Imagine the situation when somebody sells their restitution claim to a specialized mafia lawyer and the next thing is that you find out that your building is now in the hands of a property developer that wants all the old tenants out and will use any means to accomplish that. Unfortunately, the restitution of property is most usually accompanied by attempts to monetarize it where the original heir actually receives very little, but some specialized firms make a fortune.

Whatever the case, the tenants who live there are usually forced to suffer unimaginable hardships. The city, which has a housing shortage it has not faced, has provided replacement housing for only a small fraction of these residents and does not consider it a breach of contract to simply leave the other tenants in the now private housing. Many low-income families and single people, especially senior citizens, have fallen into irreversible debt because they simply cannot afford the rent. It is a situation where the old owners benefit a little, the tenants don't benefit at all and a small group of speculators have made a fortune.

### **What Kind of Reprivatization Bill is Needed**

Reprivatization has not been stopped by the lack of such a bill, but it has been carried out in a chaotic way which benefited an organized group of criminals the most and which had extremely negative effects for tens of thousands of common people, residents of our city.

We agree with one criticism expressed in the letter by US Senators: compensation cannot be limited to Polish citizens. We believe that the government has understood the problem with such a provision and will probably amend this restriction.

However, we point out the terms of Article I of the Agreement Between the Polish People's Republic and the Government of the United States of America Regarding Claims of Nationals of the United States signed on July 16, 1960 (attached below). American nationals at the time were compensated.

Compensation is mostly a question for those who emigrated and obtained American citizenship at a later date.

Our organizations have been strong in lobbying for some time that any reprivatization bill would have to be based on two premises:

Firstly is that property cannot be returned (unless we are speaking of a single residence inhabited by the former owner or heirs). This is because of the irreversible effects, including many legal aspects such as tenancy or sale to third parties, or building public facilities on such lands. Returning property has also had many negative social effects for their residents, including being uprooted from lifetime homes and communities, being driven into poverty or even into homelessness.

Secondly, if compensation is to be paid, it should be on the value of the property at the time it was taken, minus whatever credit or other incumbrance was on said property. The reasons for this are complex and have been the subject of debate for more than two decades. We are afraid that the government of Poland would be simply unable to bear any more costs and that this is probably one of the reasons for never signing such a bill.

We would like to point out that many countries have opted for legal solutions which compensate for property by monetary compensation at a fractional rate and that the US Department of State has stated at various times that compensation is an obvious alternative to restitution of real property.

The US has positively viewed the establishment of compensation funds and other plans in other Eastern European countries. For example, the Czech Republic, in a five-year compensation program paid compensation of slightly over 4 million USD to around 500 claimants. Such levels of compensation obviously did not correspond to the real values of the property. Hungary issued vouchers for compensation, the bearers of which could buy shares in companies or land at auctions.

As for Poland, at this point, any demands to pay compensation based on current values or even a fraction thereof are simply untenable. There is also increased public tension over the issue, with many citizens not fond of the idea of paying high compensation for what they view as problems caused mainly by Nazi Germany. People look at the state of the budget and the fact that many essential public services are currently grossly underfunded. For such reasons, there is not widescale support for allocating an overwhelming part of the public budget for such purposes. Even at lower levels, the amount of money that would be needed for compensation is considerable.

Given that we have suffered a few decades of „justice” for property claimants that has resulted mostly in gross injustice for tenants and taxpayers, many people have had enough of reprivatization as it has been carried out and there is strong public support for making restitution and closing the matter once and for all.

We believe that the notion of justice cannot fail to include justice to the tenants and current owners of such properties (or units of such properties), or some economic justice for the current inhabitants of our city, who for the most part are in no way to blame for the tragic situation and cannot bear the financial consequences so many years on.

We would finally like to present a positive aspect of the proposed bill and respond to another criticism made by the Senators.

According to the current laws, people who did not file a claim to a property in statutory period (for example, 1947-1949), cannot successfully claim title to that property. As we know, some people, in

particular those who left Poland in that period, did not file claims. The proposed bill actually would ensure the former owners or their heirs the right to file a claim, regardless of whether they fulfilled such a requirement. Although some of us are critical of any legislation that would introduce the possibility of new claims, we think those who fall into this category would be in favor of such a change.

Regarding the limitation of the legal heirs, we would like to comment on one aspect of this situation. If the circle of heirs is not limited, this means that all heirs have to be taken into consideration for a decision to be issued. If only part of the heirs present a claim, it cannot be decided until the interests of all heirs are presented. This has often posed problems in practice. An additional problem is the fact that many apartment buildings were owned by multiple persons or families, which makes claims more difficult. With this in mind, we can understand this aspect of such limitations.

Finally, we have to admit that we do not know the scale of potential claims from the US, nor do we know all the histories. From our side, we would be interested to find out what the barriers have been for submitting claims. We see that some people have successfully restored their property rights while others have sold claims to the reprivatization mafia. We do not know how many people from the US are currently waiting on decisions because that information is not a matter of public record. Nor do we know if there is a considerable group of US citizens who have not initiated their claims.

We think that it would be useful to get an orientation regarding the scale of the problem as it can help inform the debate in our country.

Finally, as the situation is very complex, we understand that this letter cannot provide the detailed explanation of all the problems in much detail. However, we think it is important that the people of our city, especially those who have directly confronted the problem, also have a voice in the debate. We support, in most part, the most important postulates of the Reprivatization Bill, with some exceptions, such as the exclusion of foreigners. We know that there have been many voices in Poland which have spoken out on this point and we are certain that this aspect can be resolved.

We would like to repeat our invitation to US Senators to please visit our city and to speak to its residents about the importance of this Act. We are sure that representatives of the municipal and national government would also appreciate the chance to voice their opinions and concerns.

This issue is of extreme importance to us and we would welcome any initiative from your part to promote a more positive resolution to this problem. In order to accomplish this, we think it is essential to learn more about the social effects of the issues and we would welcome any chance to be able to present these in more depth, in person or through correspondence.

Sincerely,

Jakub Żaczek, L.C. Akai, Activists - Committee for the Defense of Tenants' Rights  
(Komitet Obrony Praw Lokatorów)

Jan Śpiewak, City Counselor - Warsaw Free City Association (Wolne Miasto Warszawa)

Adam Zieliński - Member of the Commission for the Verification of Reprivatization in Warsaw -  
recommended by Kukiz'15

