



The Committee for the Defense of Tenant's Rights

Why Poland's Amendment of the Code of Administrative Procedure is not Anti-Semitic

In the last few days one can read many headlines in the foreign press about the latest amendment of the Code of Administrative Procedure (herein referred to by the Polish abbreviation, KPA). The sensationalist headlines read that Poland denies restitution to Holocaust survivors and refers, mistakenly to a Reprivatization Act or Restitution Act – neither or which were the subject of debate in the Polish Parliament. What was discussed was the implementation of a decision of the Constitutional Tribunal from 2015, which stated that having no statutes of limitations on reversing administrative decisions was a violation of Article 2 of the Constitution.

Article 2 guarantees that citizens can expect due process of the law and social justice. The Tribunal had decided this due to situations where administrative decisions were overturned many decades after being implemented and where another party had acquired rights stemming from the original decision which would be lost in the process.

Thus Article 156 of the Code of Administrative Procedure would have to be amended to introduce these statutes of limitations.

In most countries in the world, statutes of limitations are seen as something normal and obvious. They are put on crimes, civil claims and filing appeals on all sorts of decisions. In Poland, up until this amendment, this appeal of old administrative decisions was the only type which had no limit and which often referred to decisions made over 70 years ago, during the time of the post-war era. Even a murderer can expect a 30 year statute of limitation on that most serious of crimes.

The amendment has nothing to do with the nationality, religion or any other status concerning the people involved. It applies to everybody who brings an appeal of an administrative decision in the country. Articles and statements of politicians, journalists and commentators who claim that this is somehow particular to Holocaust survivors are based largely on misinformation and the political goals of a small but very vocal lobby of people of Polish-Jewish origin who feel uncompensated for the historic injustices which occurred in the country during the Nazi German occupation and later during the period of reconstruction as a country occupied by Soviet Russia and incorporated into its bloc.

This article does not wish at all to be dismissive of those issues but rather is a look at the facts which are usually eliminated in discussion.

In the historic context, Poland was severely affected by the Nazi invasion. This led to the loss of millions of lives and the destruction and/or confiscation of property. As we all know, Jews were especially targeted, but not only. 90% of Warsaw was destroyed, which means that people from all types of backgrounds were affected. Losses in Warsaw were calculated at \$48 billion PRE-WAR dollars – an enormous sum. Survivors were usually homeless and most buildings were completely or partially ruined and needed to be reconstructed. Whereas Nazi Germany could count on assistance for reconstruction through the Marshall Plan, there was no such plan for the victims of this vicious war and extermination. The reconstruction of Warsaw was done with public money, usually with people working on the buildings in return for housing in the newly constructed or reconstructed buildings.

The communalization of newly constructed and reconstructed housing in Warsaw did not necessarily concern either private houses or multi-family homes with 6 units or less. It referred to larger apartment blocks which prior to the war were usually owned by various landlords, or were bought on credit and still technically belonged to the banks. After WWII, many of these banks were closed, some records were lost and these mortgages remained unpaid.

In 1989, Poland had a regime change, so 40 years after such processes took place, a process of reprivatization claims started. This process was very controversial but this is rather the subject of a much longer text. Any person who had a legitimate property claim could thus either put in the claim to overturn the decisions made in the 40s and 50s and receive the property back or, as was often the case, could sell the claim to a speculator who would then pursue it themselves.

This process in no way excluded any people, especially it did not exclude people of Jewish origin who once held property in Poland. However, when reading foreign press reports, it is difficult to find any mention of the fact that Jewish people, Holocaust survivors (or, most often their heirs), have had the same opportunities for regaining property as anybody else.

Not only have many people of Jewish origin already received property back, but some were compensated decades ago. Between 1948-1971, bilateral agreements were signed to compensate foreigners who lost property. The 12 countries which signed such agreements with the People's Republic of Poland were the US (1960), France (1948), Switzerland (1949), Sweden (1949), Denmark (1949), the UK (1954), Norway (1955), Belgium and Luxembourg (1963), Greece (1963), Holland (1963), Austria (1970) and Canada (1971).

The US however signed this \$40 million agreement on behalf of American citizens at the time of the confiscation, excluding Poles who later became naturalized US citizens. This included Poles of Jewish and non-Jewish origins.

In the question about property restitution and, in particular about Jewish property restitution, there are therefore many questions. If a party hasn't put in

any claim since 1989 – why not? What are they waiting for and do they expect that the property has not been used in the meanwhile? Was the property owned outright? Was it reconstructed using public funds? Was the claimant a citizen of a country which had received compensation?

In fact, even people who are specialists in the question of reprivatization cannot answer this because of a lack of definitive research into the question. The only thing we know as a fact is that property has been reprivatized for decades, and the process never excluded Jewish claimants. It even was the case that several lots or buildings were reprivatized when they shouldn't have been, as the owners were subject to an indemnization agreement.

As a founding member of a tenant organization, I have been involved in the question of reprivatization for more than a dozen years now and can speak of the realities of the process at great lengths. The problem with privatizing an apartment block is mostly that people have been living in them as their homes, often for decades. Some of the older ones had actually helped in the reconstruction process, rebuilding the ruins with their bare hands. The privatization of the buildings usually meant that there were raising of rents, evictions, selling out flats from under people. This, in a country with a great housing shortage, became a tragedy for hundreds of thousands of people across Poland, but most acutely affected my city of Warsaw where we helped scores of people who were now facing an uncertain future, many with no hope of receiving replacement housing and many who had put decades of work into maintaining the properties. Add to this fact that the procedures were poorly regulated and rights were transferrable. A mafia was born which specialized in buying claims and flipping acquired properties, often acting brutally to the inhabitants.

Since our organization was formed to protect the rights of tenants, it has been in our interest to stop the physical return of such buildings which are inhabited and have been for decades. Even those who want to respect property rights understand this procedure as „righting a wrong but creating more harm” and there has been much support for offering monetary compensation instead of property back. After many years of lobbying, the Parliament decided that inhabited buildings would not be restituted – although we see that this city also works to move tenants out, opening the road to the restitution of buildings.

The new statute of limitations, which we supported, means that if 30 years has passed, and one has not filed a claim yet for invalidating the original administrative decision, or any subsequent decision made later on, a claim on owning the property cannot be made. This statute of limitations also applies to ongoing claims. However, this does not exclude the right to claim monetary damages. As expected, there are some possibilities for clever lawyers to also challenge this limitation.

We are quite happy about this situation due to the impossibility of managing any property which had potential claims hanging over them. What this has meant in practice is, for example in Warsaw, that the city does not repair the buildings or make any investments in them, nor do they let new tenants live there. As a result, many buildings are full of empty flats, despite the housing

crisis with thousands of families waiting for affordable public housing. These housing units are literally in a state of limbo. If they are reprivatized, they are most often sold to developers who turn them into luxury flats, far beyond the reach of the average person and definitely beyond the reach of those who lived there for decades.

While some who lobby for inherited property rights see this as the pinnacle of social justice, others might have another concept. The situation is certainly complicated, but one thing is clear: whether property is restituted physically or compensation is paid out, this money is coming from the taxpayers of Poland. It is not coming from Germany, which has never been held accountable for its crimes in this country, nor is it coming from the now defunct Soviet Union. This fact causes great resentment in Poland. This is why many Polish politicians have responded to complaints about the situation with statements like „send your bill to Berlin“.

In our analysis, we don't see much social justice in the costly public financing of housing privatization, which has harmed hundreds of thousands of poor people, often to the benefit of a speculative mafia and less to the benefits of any inheritors. As we can see from the experience of Warsaw reprivatization, most inheritors do not want to live in the buildings they acquire but rather see this as a way to make some money, often by reselling so the process of monetary compensation has had more social support than actual restitution of physical property. After much exposure about who really became rich on this process, even the process of monetary compensation has often been questioned. So far, nearly 2.5 billion USD has been paid out in compensation, in addition to thousands of physical properties.

As I pointed out before, these complex questions of compensation or restitution of property are not limited to people of Jewish descent. This is why the treatment of the question, which applies equally to Jews, Poles and anybody else, is not a matter of national or religious discrimination.

The World Jewish Restitution Organization has as a goal the restitution of formerly Jewish-owned properties in countries which after WWII were part of the Eastern Bloc. Their webpage provides information which shows that several countries of the former Eastern Bloc took little or no action for restitution or that their restitution laws had limitations which, for example, excluded non-citizens. However, it is not clear how reliable the information given is. The webpage claims that Poland is the only major country that has taken no action for the restitution of property. However, this claim is blatantly untrue. Property restitution, for Jews, Poles and others, has been happening since the 90s. Thousands of addresses have been reprivatized in Warsaw alone – including several to the local Jewish community and a significant number to private owners of Jewish descent (although sometimes these owners sold their claims to local speculators or speculators acted on their behalf).

The Union of Jewish Religious Communities was set up in Poland to recover properties confiscated by the Nazis in 1939 such as synagogues, old school houses, cemeteries and the like. Between 1997 and 2000 it submitted numerous claims around Poland. Other Jewish communities did likewise and the

number of claims reached more than 5500 such properties (excluding apartment buildings.) Approximately half of the claims have been settled. Some claims were rejected, others were settled by restitution or compensation. Admittedly, the process is slow in Poland however this relates to any type of legal proceedings as the court system is in disarray, understaffed and poorly organized.

It should be noted that in this case of filing claims for return of such communal properties, the Jewish community were given a 15 year term for filing, which is different than the filing requirements for owners of heirs of other, individually or family-held properties. Up until the amendment of the KPA, there was no deadline for filing.

With the current KPA, if a claim has already been filed, it will run out after 30 years. Again, this does not exclude the right to claim monetary compensation.

Over the past years, our organization has participated several times in Parliamentary Commissions seeking to discuss legislation regarding reprivatization. People representing all points of views and interests were invited. As the situation is extremely complicated and as different sides sometimes expressed their unwillingness to compromise in their interests, Poland has not managed to pass any Reprivatization Act, despite the fact that the foreign press often mistakenly refers to it. Proposed compensation to the heirs of pre-war owners is rarely to their satisfaction, despite the obvious fact that the public budget cannot afford to meet their expectations. The reprivatization lobby expects ever-growing sums and often compensation for lost rental income for decades – even when the property was actually physically destroyed and did not exist after the war.

We can't see any sense of social justice if one side receives a windfall inheritance and another loses their home of many decades.

As difficult as this question is and as problematic as the lack of more decisive legislation has been, one thing is clear: this is an issue that effects numerous parties, most of all being the people who live in Poland now, who are faced with different possibilities, such as a costly compensation which most people perceive as something that should be borne by the much wealthier government of Germany, which really bear the moral responsibility for the destruction. The reconstruction or reassignment of property, most of which was destroyed, was an absolute necessity in post-war conditions, especially in Warsaw where 90 percent of housing was destroyed and people were living in rubble on the street. It would be safe to say that the average person sees foreign reporting on the situation, which is informed by a well-organized lobby, as being biased and willing to present only one side of the issue, sometimes in a mistaken or misinformed way. This type of international pressure does not bring the intended effect. As a matter of fact, anti-semitism – which has long been a problem in this country – is fueled by the reactions of the states of Israel and the US, as people perceive them as not having the interests of the local citizenry in mind. We know that a number of local Jewish activists have also expressed criticism of this issue, but they are generally ignored by the foreign press.

Our sadness about the historic tragedies that befell Poland and the people in it is great – but it cannot be greater than our concern about the people whose lives have been ruined or even have died in the chaotic reprivatization process. Just as we recognize that many historic injustices from the past – such as how native Americans were treated in the US, or how native Palestinians were treated in Israel – are not easy to compensate due to the time that has passed and the conflict of interests that would arise if restitution was really on the table. We hope that this article will be a starting point of more reflection for foreign readers who many only have heard one point of view on the topic.

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