

Nationalized Jewish property: Warsaw's restitution problem



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Poland was one of 47 countries to sign the Terezin Declaration on Holocaust Era Assets and Related Issues, but the country has never followed up with legal regulations. Few believe US pressure will alter the situation.

On the 75th anniversary of the liberation of Auschwitz, Poland remains the only EU country that has not legislated on property restitution. And that rankles. "For many years, Holocaust survivors and their families have waited for Poland to provide them with a measure of justice for the taking of their property as well as recognition of the losses of those who perished," Gideon Taylor, the World Jewish Restitution Organization's (WJRO) director of operations, told DW.

"While their property was first taken by the Nazis during the Holocaust, the Polish communists then nationalized the property of Jewish and non-Jewish owners and the Polish economy continues to benefit from these nationalizations," Taylor says.

Before World War II, 3.5 million Jews lived in Poland, making up 10% of the population; in Warsaw the figure was estimated at about a third of the then 1 million population. More than 90% of them were killed in the Holocaust, and their property was looted by German Nazis or nationalized by the postwar communist government.

Heirless property taken over by the communist regime that ruled Poland until the end of the Cold War in 1989 had a combined value of about \$30 billion (€26.3 billion), according to experts commissioned by the Israeli government 14 years ago. They estimated that there were about 170,000 private properties held in Poland wrongfully seized from Jewish victims of the Holocaust and nationalized by the communist government.

Others say there are no definite estimates for the current value of private properties held in Poland, seized from Jewish victims of the Holocaust and nationalized by the communist government, says Daniel Schatz, visiting scholar at New York University's Center for European and Mediterranean Studies. The National Radical Camp (ONR), a far-right anti-Semitic group, has claimed there is more than \$300 billion at stake.

It's complicated

When the Red Army entered Warsaw in January 1945 over 90% of the city's dwellings had been destroyed by the retreating Germans. "Architecture is mixed with politics, urban planning with ideology," says Jaroslaw Trybus, director of the Warsaw Museum. "All of this combined with the real dramas of evicted tenants, enormous compensation payments which were awarded from our tax money to be paid to those who represent the previous owners and slogans condemning the reconstruction chanted by those who long for a prewar Warsaw which they have never seen, create an explosive cocktail."

About 4,000 formerly city-owned properties or plots of land in the capital have already been transferred back into private hands since 1989 through a legal process known as reprivatization, but the communists' so-called Bierut Decree of 1945 remains in legal force, which means Warsaw city authorities have been inundated with thousands of claims for the restitution of property and land. According to data from 2016, about 40,000 to 60,000 tenants from different Warsaw neighborhoods are at risk due to the reprivatization of 3,000 tenement buildings.

Warsaw's City Hall has estimated that between 2007 and 2016, 447 properties made up of 4,479 occupied dwellings were returned as a result of the decree. In 2013 as many as 40 downtown schools, and 100 in the city, had claims laid against them. The problem is that such claims are based on plots of land as they were in prewar Warsaw, often with no connection to the city of today.

In 1997, Poland passed a law for restitution of communally owned properties, but by 2012 a majority of over 5,000 claims for such property had not been resolved and most of the resolved claims had not led to restitution or compensation, the WJRO said.

In October 2017, the Polish government recognized the importance of addressing the issue by publishing draft legislation which would have enabled claims to be made by some original owners and their families (while excluding Holocaust survivors and their families). At that time, Polish Deputy Justice Minister Patryk Jaki said he was "ashamed" that Poland had not introduced legislation in the 28 years since the fall of communism. "This should have been taken care of a long time ago," he said.

The proposal put forward by the Polish Ministry of Justice in October 2017 would have provided partial compensation of 20% of the value of properties (or 25% in bonds) and would have limited distribution of payments each year based on the government's determination of what is possible financially.

But no new legislation has emerged. Lawyers told news agency Reuters recently that it was in fact getting more difficult for Holocaust survivors to get restitution as the government refuses to simplify the rules and courts grow more skeptical. An opinion poll in 2019 showed more Poles were against restitution than for, which has made some courts and administrators even more reluctant to address restitution.

The opposition-run City of Warsaw has, however, enacted a Holocaust-era property restitution law and said it plans to publish the list of properties eligible to be claimed. The WJRO has also tracked down most of the names of the prewar owners and posted them on its website. The WJRO has written to the mayor of Warsaw urging the city to inform former owners and their families of their opportunity to pursue claims and providing recommendations for how the city can assist claimants. The WJRO also has a designated webpage to inform former owners and their families about the legislation.

When the properties have been published in a Polish newspaper or on the city's website, the owners have just six months to file a claim and another three to prove ownership. Property not reclaimed in time reverts back to the city.

"On Jewish communal property, Poland did pass legislation in 1997 to enable claims for certain types of properties. However, 20 years after the claim filing deadline, a majority of claims have still not been resolved and most of the resolved claims have not led to restitution or compensation. The government's regulatory commission has completed a review of just over half of 5,504 claims filed for Jewish communal property. Further, the regulatory commission has applied a narrow interpretation of the law to exclude many Jewish properties. Of the claims that have been adjudicated (in full or in part), fewer than half were positive decisions or settled by agreement, which led to the return of the contested property or related compensation," Taylor said.

The US steps in

The US government has long been a leader in the effort for justice for Holocaust survivors. In August 2019, an overwhelming 88 US Senators signed a bipartisan letter urging Secretary of State Mike Pompeo to "act boldly and with urgency" to encourage Poland to resolve the issue of private property restitution to Holocaust victims.

Under the JUST (Justice for Uncompensated Survivors Today) Act, the US government is required to inform Congress about the progress countries are making on restitution legislation following the Terezin Declaration. Pompeo last year called for "complex legislation on the restitution of private property" of Polish Jews. The US State Department's special envoy for monitoring and combating anti-Semitism, Elan Carr, said the act only obliged the US government to prepare a report on compliance with the Terezin Declaration and it was up to Poland to decide how it would comply.

The US State Department is expected to issue a report to Congress this year required by the JUST Act. "It is clear that Congress and President Trump have placed high importance on pursuing justice for Holocaust survivors. They are getting increasingly frustrated with Poland's refusal to deal with this issue. This can undoubtedly impact the future of the otherwise strong US-Polish relationship," Schatz says.

Is the Polish right wrong?

Restitution claims are "a big threat," to Poland, said Krzysztof Bosak, a newly elected member of Parliament from the hard-line nationalist Confederation Liberty and Independence party. "We believe we need to strengthen legal protection of Polish property as we fear behind-the-scenes negotiations [between Polish officials and international organizations] pertaining to restitution claims," Bosak said. Polish far-right opposition party Kukiz'15 has floated a bill that would restrict restitution lawsuits by Jews over property confiscated and stolen during the Holocaust. In May 2019, to coincide with Israel's Holocaust Remembrance Day, the Polish parliament debated a bill proposed by Kukiz'15 lawmakers, who hold 42 of the parliament's 460 seats, which was aimed to "prevent demands for Polish property [in cases] without heirs" and thwart "frivolous suits over property."

Just days ahead of the May 26 European Parliament elections, PiS leader Jaroslaw Kaczynski said "Poland has no obligations resulting from the war, neither legally nor morally." He said Poland also suffered from the war and should be the one receiving compensation. "Some countries west of Poland owe us hundreds of trillions of euros or more," Kaczynski said, addressing Polish reparations demands on Germany. As long as PiS is in power, not a single Polish zloty will be spent on compensation without justification, because "one must adhere firmly to the historic truth," said Interior Minister Joachim Brudziński. Polish Prime Minister Mateusz Morawiecki has said he opposes paying restitution to Jews who survived World War II. "If we reach a situation in which Poland pays compensation for World War II, it would be a victory for Hitler. As long as our party is in power it will not happen," Morawiecki said.

Poland cancelled a visit by an Israeli delegation over their intention to raise the issue of the restitution of Jewish properties seized during the Holocaust. Israel and Poland have also seen diplomatic tensions over Polish officials' rejection of any culpability by the nation for anti-Semitic atrocities of the past. The government has also introduced a law that forbids blaming the Polish nation for Nazi crimes, though the legislation was softened following Israeli pressure to remove punitive measures.

Fairness

"It is very sad that this basic issue of fairness is being misrepresented by Polish extreme elements by using inflated and baseless estimates of the value of Jewish property," Taylor said, adding, there was no basis for figures that have been thrown around.

"Irrespective of the value of their properties, it is time Poland honors the memory of the past by passing comprehensive legislation providing for the complete restitution of assets stolen by the Nazis and the communist governments," Schatz says. "Time is of the essence here. The advanced age of remaining Holocaust survivors makes the matter all the more urgent and the need to act all the more pressing."

Schatz notes that many Eastern European countries have made significant efforts to comply with the Terezin Declaration, irrespective of their financial situation. "Using the funding argument for not addressing the restitution issue — which is fundamentally a moral question — is short-sighted and an inaccurate perspective on this issue. At its heart, efforts of survivors to recover their properties is about memory and about repairing a historical injustice: their homes are often the last physical connection to a lost family and lost world," Schatz says. "Other countries who have dealt with restitution have addressed the property issue while providing protections for good faith property owners or tenants so that they are not removed from their homes."

The issue has been framed and weaponized by the far-right in Poland, especially the new political grouping, Confederation, which used it as a key part of election campaign last year, says anti-racist campaigner Rafal Pankowski. "They are activating anti-Semitic prejudice through this issue," he says, noting that many non-Jews also owned property in Poland before the war and lost it as a result of nationalization by the communists after 1945. "But where do we start and where do we stop," Pankowski asks. "Germany lost a huge chunk of what is now western Poland, should they be compensated for that? Many Poles worked as slave labor in Germany, how to put a value on that?"

<https://www.dv.com/en/nationalized-jewish-property-warsaws-restitution-problem/a-52156875>