

1-1-1992

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Michael L. Neff

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Recommended Citation

Neff, Michael L. (1992) "Eastern Europe's Policy of Restitution of Property in the 1990s," *Penn State International Law Review*: Vol. 10: No. 2, Article 7.

Available at: <http://elibrary.law.psu.edu/psilr/vol10/iss2/7>

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Eastern Europe's Policy of Restitution of Property in the 1990s

My grandfather was walking to his factory after Poland had been invaded in 1949. When he arrived, the plant was all boarded up; military people were milling in front of it. As he approached, they stopped him, 'This no longer belongs to you; you do not work here anymore.' He brought a chair and stared at the factory for days. 'How can they do this to me; I built this with my own hands.' I went to Poland a few years ago and the factory remains. In fact the chimney still has my grandfather's initials on them. My uncles are still in Poland; they realize they will never see the lost profits, but they hope to regain title. It would be a fitting tribute to my grandfather.

—Les Kuczynski¹

I. Introduction

Such is the story told by Les Kuczynski, counsel for the Polish National Alliance in Chicago. Similar stories of heartache and pain can be told by thousands of people who have had their lives' work confiscated by Communist regimes in Europe.² Now, through restitution, many countries are trying to make amends for the pain that previous governments had caused them. However, the process is muddled by many difficult problems. Many bitter arguments threaten to divide groups that will need to work together in order to build a better future.

Due to the recent revolutions in East Germany, Czechoslovakia, Hungary, and Poland, Central Europe has become an experiment on establishing a market economy. A major step needed to transform the formerly state-run economies into market driven economies is the privatization of state property. Without the definitive establishment of protected property rights, foreign investors will be hesitant to invest any money. Without foreign capital to speed economic growth,

1. Telephone interview with Les Kuczynski, an attorney for the Polish National Alliance, Chicago (Sept. 26, 1991).

2. Jouzaitis, *Expatriates from Eastern Europe, Families Want What's Theirs: Communists Are Leaving, So Many Seek Restitution*, Chicago Tribune, Aug. 18, 1991, at 3, col. 3; Levy, *East Europeans in U.S. Reclaiming Lost Estates*, N.Y. Times, Aug. 13, 1991, at 11, col. 5; Swaney, *Former Countess, Now a Bakery Clerk, Hopes to Reclaim Castle*, The Reuters Library Report, (June 15, 1991) (LEXIS, Nexis library, Omni file).

the economic and political revival could take many years.³ Rapid growth is important; slow development may cause political unrest and further hinder economic progress. Since many people voted for such reforms not because they fully embraced capitalism, but because the privatization of property would dismantle the existing Communist power, the governments need to act quickly to gather support from the skeptics.⁴

The swiftness of the privatization process depends on the handling of the restitution issues: whether owners of land and property confiscated by the Communists should be compensated, and what the manner and amount of compensation should be. The fact that Poland, Czechoslovakia, and Hungary are so poor begs the question of whether restitution can be afforded.⁵ Some have even queried whether it is immoral to seek restitution from countries that are economically devastated. Is it right that heirs of emigrants seek money, while current citizens are so poor?

Each of these countries has considered offering restitution to former owners who have had their property expropriated. Each country has argued over the issues of who should be eligible to recover and how much should be returned. This debating process has slowed down privatization.⁶

The issues involved in restitution will be analyzed in this Comment. The history of restitution will be discussed, and the decisions of the United State's Foreign Claims Settlement Commission (FCSC) will be examined in order to see how these issues have been decided in the past. Although such claims have been judged by

3. Cornwell, *Polish Expert Urges Speedier East European Privatization*, The Reuters Library Report, (Apr. 26, 1991) (LEXIS, Nexis library, Omni file). Jeffrey Sachs, a Harvard professor serving as a consultant to the Polish government's economic reform, wrote in a paper submitted to the World Bank's Annual Conference on Development of Economies: "The need to accelerate privatization in Eastern Europe is the paramount economic policy issue facing the region." *Id.*

4. For information about how some Communist leaders have been able to maintain power, see Tift, *Forgotten but Not Gone*, TIME, Sept. 9, 1991, at 49. Only Germany could afford to thoroughly purge all Communists from government positions because of the infiltration of skilled people from West Germany.

In some countries, such as Romania, the Communist party merely renamed itself and ran its members in the free elections. In fact, Romanian Ion Iliescu, a Communist official under Ceausescu, won a two year term as interim president with 85% of the vote.

5. See THE 1991 WORLD ALMANAC, (1991) [hereinafter ALMANAC] In 1990, Poland's population was estimated to be 38,363,000. The 1986 Gross National Product (GNP) was \$276 billion, while its per capita income in 1986 was only \$2,000. *Id.* at 744.

Czechoslovakia's 1990 population was estimated at 15,695,000. It's 1988 GNP was \$158 billion. Its 1988 per capita income was \$10,130. *Id.* at 703.

Hungary's 1990 population was approximately 10,546,000. It's 1988 GNP was \$91.6 billion. The projected per capita income that year was \$8,650. *Id.* at 717.

6. Dempsey, *Time to Sort Out Who Owns What*, Financial Times, Apr. 16, 1991, at 18. Mr. Lajos Csepi, managing director of Hungary's State Property Agency commenting on the government's plan to allow former owners the first option to regain their property if they can provide evidence of title "will obviously slow down privatization. It would be disastrous. Foreign investors do not come because they do not know what is going to happen." *Id.*

courts not to have any legal effect, they remain an important method of solving international disputes and can be used as a base to analyze how these issues have been settled.⁷ Next, the restitution systems set up in Germany, Czechoslovakia, and Hungary will be explored. This Comment concludes with an examination of Poland, a country that has not been able to decide how to organize its restitution system. A comparison of existing systems will offer suggestions as to how Poland might proceed.

II. The History of Restitution

A. *The Foreign Claims Settlement Commission (FCSC)*

Since there usually is an absence of an international judicial system to adjudicate international claims, grievances against foreign countries must be handled through "espousal" by the government.⁸ The Foreign Claims Settlement Commission (FCSC or Commission) was created on July 1, 1954, to handle such espousal by United States nationals for loss of property in specific foreign countries.⁹ The FCSC is a small quasi-judicial federal agency empowered by Congress to provide for payment of awards financed by either liquidation of assets frozen in the United States or by a settlement with a foreign country.¹⁰ The FCSC adjudicates cases brought by American citizens who have lost property because a foreign country has nationalized it, or damage that has occurred during times of war or military conflict.

When a fund has been established, the FCSC announces through the media and Congressional offices that claims will be analyzed. After a written claim is submitted, it is presented to the Commission for a decision.¹¹ After reviewing the claim, the Commission issues a written proposed decision that is sent directly to the claimant or his attorney.¹² Decisions contain the reasoning, findings of fact, and conclusions of law for each aspect of the claim.¹³ The claimant has the right to object to the award by submitting new ad-

7. Note, *Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims*, 82 AM. J. INT'L L. 69 (1988) (authored by Richard B. Lillich & Burns H. Weston), (citing *Barcelona Traction, Light & Power Co., Ltd.* (1970 I.C.J. Rep. 4)). The court, in a rare international claims case, dismissed international claims agreements among countries as sources of general international law. *Id.* at 70.

8. *Id.* at 69.

9. FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES ANN REP, at 1 n.1 (1984) (hereinafter FCSC).

10. *Id.* at 1.

11. *Id.* at 3. The FCSC's jurisdiction is granted from two statutes: the War Claims Act of 1948, as amended by 50 U.S.C. App. §§ 2001-16 (1948) and the International Claims Settlement Act of 1949, amended by 22 U.S.C. §§ 1621-44 (1950).

12. *Id.* at 3.

13. *Id.* at 4.

ditional evidence or arguments.¹⁴ The claimant may also request an oral hearing.¹⁵

The FCSC's decisions are final on all questions of fact and law, and they are not reviewable by any agency, department, or court of the United States.¹⁶ However, a case may be reopened upon the discretion of the Commission to allow a more favorable decision.¹⁷

Since most programs are not sufficiently funded, full satisfaction of awards is not possible.¹⁸ Hence, awards are paid on a pro rata basis by dividing the amount of money in the fund by the total amount of damages due for valid claims.¹⁹ The Commission has the duty to the other claimants to ensure that the awards are reasonable and based on the same criteria for everyone. However, the Commission's responsibility ends once it has made its final decision and has certified the award to the Secretary of the Treasury.²⁰

Occasionally, Congress will authorize adjudication of claims despite the fact that a fund has not been established.²¹ It does this in order to determine how many valid claims exist and to certify a total amount of damages to be sought. The total amount is given to the Secretary of State as a pre-settlement valuation, and it is used by the Department of State as a negotiation tool.²² Hence, the process can be risky for the claimant who invests attorney's fees with no guarantees of ever receiving a return. Although attorney's fees are statutorily limited to 10% of the disbursed amount, this is a private matter between attorney and client, and the FCSC often will not enforce this provision without a complaint.²³

In the following cases, the FCSC examined the following issues: how to determine proof of ownership; whether nationality requirements are satisfied; how to properly value a property taken; and whether the property was effectively taken by the foreign govern-

14. *Id.* at 3.

15. *Id.*

16. Else Kay, FCSC Decision No. G-2052. (Decisions of the FCSC are bound and kept at the Commission, 1111-20th Street, N.W., Washington, D.C., 20579; Telephone Number (202) 653-5883. In this case, the FCSC held it would reopen a claim on its own motion and reduce (or increase) award when new evidence warranting change was received after the proposed or final decision had been issued, but the final deadline for program completion had not expired.

17. FCSC, *supra* note 9, at 3-4.

18. *Id.* at 4.

19. *Id.*

20. *Id.* The Secretary of the Treasury is responsible for making payments from the fund.

21. *Id.* Such a program was established with the German Democratic Republic (GDR) in 1977. The FCSC began the program by setting a one year filing period beginning May 16, 1977. The program took four years to complete since the Commission received 3,898 claims. It eventually awarded \$77,880,352.69 plus interest to the 1,899 successful claims.

Preliminary discussions begun on June 30 and July 1, 1981. These talks led to negotiations that lasted nine years, but no agreements were ever achieved.

22. *Id.*

23. Telephone interview with David Bradley, Attorney for the FCSC. (Nov. 1, 1991).

ment. These issues are paramount because they will have to be handled by each country in each restitution case. The history of FCSC decisions provides a basis of knowledge on how these issues have been decided in the past.

1. *Proof of Ownership.*— The most persuasive pieces of direct evidence of ownership are a deed or a copy of the land register. However, these records, in many instances, have not survived the years. Fires, shoddy book keeping, negligence, and intentional destruction have depleted the land records of many of these countries.²⁴ The burden of proving ownership may be severe.

In these cases, the FCSC is very willing to consider indirect indications of ownership such as tax records and old telephone books. In addition, the FCSC also has sources that are unavailable to claimants, which are utilized to discover ownership records.²⁵ For example, treaties often contain clauses whereby foreign countries vow to assist in any means possible to determine ownership.

The claimant in *Susette F. Cross Newman*²⁶ established ownership of real property by submitting evidence consisting of statements from sources in Cuba, a report of two property appraisals, a report of property insurance coverage, copies of correspondence between claimant's husband and an attorney in Cuba, a bill and a receipt for construction, photocopies of canceled checks, six photographs, and claimant's own statement.

2. *Valuation.*—It is often very difficult to determine the value of confiscated property. One problem is whether the property should be valued according to its value at the time of taking or its value at the present time. The ensuing years may have resulted in the property's development to encompass a twenty story apartment building or, on the other hand, the property's demise into a landfill. Thus, traditionally, the FCSC is conservative in its valuation techniques. Although the FCSC determines value by determining the value at the time of taking plus 6% simple interest annually, most foreign governments are using current market value. It is important to remember that an important objective of the FCSC is to ensure that money will remain for all successful claimants.

In *Otto H. Lehmann May E. Boese*,²⁷ the Commission had to

24. Haffner, *The House We Lived In*, N.Y. Times, Nov. 12, 1991, at 32, col. 6.

25. Charles F. Goodley, FCSC Decision No. CU-3052, Even though the claimant failed to submit evidence of ownership and value of real property, the Commission may make determination concerning ownership on the basis of evidence gathered from independent sources available to the Commission.

26. Susette F. Cross Newman, FCSC Decision No. CU-0357, *reprinted in* 2 FCSC Index-Digest 4 (1963-1977).

27. Otto H. Lehmann and May E. Boese, FCSC Decision No. G-3294, *reprinted in* 3

evaluate apartment buildings and a large land estate confiscated by the German Democratic Republic (GDR) in 1952. In assessing the apartment buildings, the FCSC considered the tax assessment values; insurance values; a number of rental units and monthly rental income; amount of war damage and extent of postwar repairs; and relative location of properties in Berlin as evidence. In assessing the land, the FCSC considered the tax assessment value and appraisals; photographs of the land itself; tax assessment; and fire insurance values of the buildings as evidence. The FCSC's appraisal gave due weight to government indexes of property values and took into account the general rise in property costs in Germany from prewar to postwar years.

The *Lehman & Boese* case seems to be a common sense solution for a case where all the proper evidence was available. However, in *Stanko Stanley Plavsich, et al.*²⁸ the claimants could not submit any evidence relating to the value of the property. The Commission conducted independent studies and investigations of property value in Yugoslavia, including the area under consideration, in order to determine the value of the nationalized property.

The *Plavsich* decision addresses an important issue. Because of the Communist takeovers, many applicants will not have seen nor used their properties for many years. Since the property was state-owned, no real estate market has been established. Thus, offering evidence of current market value will be difficult. Will the poorer foreign countries be willing to expend the time and money on appraisals or will the claimant be required to fulfill the burden?

The Commission in *Fredrick Snare Corporation, et al.*²⁹ held that an expert appraiser's valuation of nationalized machinery and equipment was the method "most appropriate to the property and equitable to the claimant," as required by Section 503(a) of the Act. The *Fredrick* case approves the use of an appraisal. Applicants petitioning directly to the European countries for restitution may need to consider whether appraisers will be state certified. Incompetent or unscrupulous appraisers would cause great difficulty for all parties concerned.

In *International Group et al.*³⁰ the FCSC used the traditional accounting practice of original cost in valuing assets, and it omitted any intangible value that trademarks might possess. The FCSC re-

FCSC Index-Digest 54 (1977-1986).

28. *Stanko Stanley Plavsich, et al.*, FCSC Decision No. Y-S-0084AF, *reprinted in* 2 FCSC Index-Digest 1 (1963-1977).

29. *Fredrick Snare Corporation, et al.*, FCSC Decision No. CU-3602, *reprinted in* 2 FCSC Index-Digest 1 (1963-1977).

30. *International Group et al.*, FCSC Decision No. CU-0019A, *reprinted in* 2 FCSC Index-Digest 1 (1963-1977).

jected the argument that replacement value should be used, and instead, it continued its tradition of determining loss based on the value at the time of taking.

Another important issue to consider in valuation is the form of payment for currency awards. Each country will use its own currency. Since the exchange rates in the developing countries are going to be difficult to forecast and are likely to fluctuate, the true value of the award may be difficult to determine. In *Alexis G. Gacic*³¹ the Commission converted its award, initially valued in Yugoslavian dinars, to United States dollars using the pre-World War II exchange rate. Without this action, which reflected a drastic depreciation in the value of the dinar brought about by the effects of nationalization and rapid post-war inflation, the claimant's value would have been greatly distorted.

3. *Property Effectively Taken by Country.*—All claimants have to prove that the manner in which their property was confiscated conforms with the requirements of the applicable law. For example, some laws will only offer restitution if property was effectively taken during certain periods. If the applicant is not able to prove that his property was taken during that time period, entitlement to compensation will not be established even if his property was wrongfully taken.

A clear illustration of this occurred in the case of *Geza Schwartz*.³² The claimant contended that his agricultural land should be held to have been taken by operation of a Czechoslovakian law which took effect in 1959. However, the FCSC analyzed the law that claimant cited, and it concluded that it was not self-executing; therefore his claim was denied. The FCSC reasoned that the record contained nothing to establish that the claimant's property was actually appropriated during the period covered by the claims statute. In addition to the importance of determining whether the date of taking meets one aspect of statutory restitution, the FCSC calculates interest damages from the effective date of expropriation.

In *Earl N. Reinsel*,³³ real property was confiscated by the Soviet Military Administration in 1945. The Commission granted the award for taking at that time, on grounds that Soviet actions in East Germany were subsequently ratified by The German Democratic Republic (GDR) after its establishment in 1949. Similarly, an order

31. Alexis Gacic, FCSC Decision No. Y-2-0001, reprinted in 2 FCSC Index-Digest 5 (1963-1977).

32. Geza Schwartz, FCSC Decision No. CZ-2-1062, reprinted in 3 FCSC Index-Digest 39 (1977-1986).

33. Earl Reinsel, FCSC Decision No. G-2674, reprinted in 3 FCSC Index-Digest 22 (1977-1986).

by the Soviet Military Administration placing property under administration of an East German government agency, which denied the rightful owner control of the property, constituted a taking by the GDR.³⁴

4. *Nationality Requirement.*— Proof of nationality will play an important role in some restitution statutes. The claimant must prove that he is of the required nationality or be excluded from the recovery process.

The requirement that the owner must have been a United States national at the time the property was taken is necessary in order for the United States (U.S.) to espouse a claim. In the *Ella Gross*³⁵ case, her claim for restitution was denied because she was not a U.S. national at the time that her property was taken. The GDR recovery statute was clear on its face as to the necessity of the nationality requirement in order for a claim to be found compensable by the Commission.

The requirement that the claimant must prove he was a U.S. national at the time of taking, is not an unconstitutional impairment of right of contract; it is a restatement of the well-settled "espousal" principle. Regardless, the claimant had no contract right whereby the GDR would be obligated to pay compensation. In international law, a claim for loss of property due to an action by a foreign government arises from the injury to the state, not the owner of the property. The U.S. government, not the owner, has standing to assert a right of compensation.³⁶

III. Germany

In analyzing the current restitution programs, Germany has the most extensive program offering relief. It extends relief for property taken from owners since 1933, and it is open to non-citizens.³⁷ Since West Germany had an established economy with many entrepreneurs, it was better able to offset the losses of East Germany.³⁸ It

34. Max Frank, Katharina Faibusch, Kate Frank, FCSC Decision No. G-2631, reprinted in 3 FCSC Index-Digest 22 (1977-1986).

35. Ella Gross, FCSC Decision No. G-2499, reprinted in 3 FCSC 9 (1977-1986).

36. Cornucopia, Inc., FCSC Decision No. G-1475, reprinted in 3 FCSC Index-Digest 9 (1977-1986).

37. Thomerson, *German Reunification—The Privatization of Socialist Property on East Germany's Path to Democracy*, 21 GA. J. INT'L & COMP. L. 123 (1991).

38. See ALMANAC, supra note 5, at 711-713. Germany now incorporates both East Germany and West Germany. In 1990 East Germany approximated its population to be 16,578,000; its 1988 GNP was \$207.2 billion; and its 1987 per capita income was roughly \$10,000. *Id.* On the other hand, West Germany's 1990 population was 60,977,000; its 1988 GNP was an \$1,208 billion; and its 1988 per capita income was an impressive \$19,750. *Id.* By comparing these figures to the ones cited earlier in note 5, it is easy to see Germany's economic superiority over the other countries who offer restitution. *Id.*

The United States 1990 population was 250,372,000; its 1988 GNP was \$4,800 billion;

also had many wealthy companies that could invest in local East German businesses. As a result, it was not as dependent on foreign investment; thus, it can afford to take more time to return property in the restitution process.

After Germany was defeated in World War II, it was divided into two countries, the Federal Republic of Germany (FRG), commonly known as West Germany, and the German Democratic Republic (GDR), commonly known as East Germany.³⁹ The FRG adopted a market economy that included the right to own property.⁴⁰ Meanwhile, the GDR operated on a centrally planned socialist economy similar to the Soviet Union in which property was controlled by the state in trust for the people.⁴¹

When Germany reunified, many new laws were established in the former GDR. For instance, the prohibition against owning private property was repealed on January 12, 1990.⁴² To implement this new plan, in March 1990 the newly elected GDR government created the Trust Institution to privatize state-owned properties.⁴³ In addition, the governments of East and West Germany executed an agreement on June 15, 1990, announcing that prior owners could expect the return of their property after meeting certain conditions.⁴⁴

To recover expropriated real estate, property rights, chattels, as well as businesses and bank accounts, claimants were required to submit their claims to the district magistrate office or city administration office where the property was located.⁴⁵ Claimants who resided in or whose main office was located outside of Germany, were informed to file claims with the German Justice Ministry in Bonn.⁴⁶ Valid claims included property taken from citizens who left East Germany without a permit; property seized by the state as foreign property; and property taken through the misuse of power, corruption, deception, or coercion.⁴⁷

The claim must have been written in German and filed before the deadline.⁴⁸ Applications also should have contained information on the type and scope of the property taken.⁴⁹ Other requirements

and its 1988 per capita income was \$16,444. *Id.* at 765.

39. Thomerson, *supra* note 37 at 123.

40. *Id.* at 123-124.

41. *Id.* at 125.

42. *Id.* at 126.

43. *Id.* at 128.

44. *Id.* at 128.

45. *Id.* at 130.

46. *Id.* at 128, n. 38.

47. Rowland, *Deadline Looms for Filing East German Compensation Claims*, N.Y. L.J. 1 (1990). Note that late filings will be accepted if claimant can prove it happened through no fault of his own and then requests the right to file without undue delay.

48. *Id.*

49. *Id.*

included the following: the form of relief requested, the circumstances under which the property was taken, the page and paragraph number from the German real estate registry, the identity of the person making the filing, and an explanation the ownership right to the property.⁵⁰

In special instances in which information was unavailable, a general claim was allowed with the intent to amend.⁵¹ However, such vagueness often prevented property's identification and it at times interfered with the sale of the property. Therefore, the eventual award may be money rather than restitution in kind. This same principle applied to property which was claimed after the deadline. If it had already been sold, only a monetary award was available, otherwise, restitution in kind is still available. In the event that monetary compensation was sought, the claimant was responsible for the submission of the valuation of the property.⁵²

Originally, the deadline for submitting the written claim was October 13, 1990, but this was later extended to March 31, 1991 for two classes of people. The first class eligible for the extension consisted of people who suffered from religious, racial, political, or ideological persecution from January 30, 1933 to May 8, 1945. The second class of people were those whose assets had been seized in connection with criminal proceedings offensive to a state based on proper rules of law.⁵³

In most cases, claimants have had the opportunity to request either the return of their property or its current market value in currency.⁵⁴ Most experts advised taking the land. Although property values in East Germany have not had the astronomical rise in value that West Germany has had, they are predicted to reach values relative to them in time.⁵⁵ Although the returned property is likely to carry with it a sizeable annual tax, tax revenues are expected to increase in order to pay for restitution costs.

In certain circumstances, restitution of the original realty was inappropriate and therefore not an option. These situations include confiscated real estate utilized for housing projects, business purposes, or new enterprises. In these circumstances the government would compensate with money, land of equal value, or shares of an enterprise.⁵⁶ These policies were implemented instead of the return

50. SUPPLEMENTAL NOTICE CONCERNING PROPERTY CLAIMS AGAINST THE FORMER GERMAN DEMOCRATIC REPUBLIC, ANN REP 3 (1991).

51. Rowland, *supra* note 47.

52. Doman, *Options for Those Filing Compensation Claims in Germany*, N.Y. L.J. 1 (1991).

53. *Id.*

54. Rowland, *supra* note 47, at 1.

55. Doman, *supra* note 52.

56. *Gemeinsame Erklärung*, Ga. Jour. Int'l. L. 128 n.38 (1991) [hereinafter

of the actual property to prevent the chaotic impact on other people's lives. However, existing rent control and usage rights remained in effect.⁵⁷

Also excluded from the restitution is property acquired prior to October 18, 1989, by a third party in good faith. This third party must have been a natural person, non-profit organization, or religious organization in order to qualify for the exclusion.⁵⁸

Furthermore, Germany has blocked the sale of property when ownership rights are unclear.⁵⁹ Prior ownership conditions must unequivocally prove that the property was never expropriated. The issues that must have been resolved prior to sale include the following: whether after October 6, 1949, the real estate was transferred to the East German government through state administration, or a state trust administration (if sold to a third party), and whether claims have been filed against the property.⁶⁰ Property could not be transferred until these issues were resolved.

Since 1972, the United States State Department has been seeking restitution for the losses of American citizens during World War II.⁶¹ In 1981 the FCSC initiated claims proceedings against the GDR despite the fact that no agreement had been reached regarding payment of the claims.⁶² Although the FCSC ruled that there were 1,900 valid claims worth approximately \$78 million, no one was ever compensated.⁶³ Negotiations continued for several years but were eventually terminated. Then on November 5, 1990, German Foreign Minister Hans-Dietrich Genscher agreed to renegotiate.⁶⁴ However, a key issue was whether claimants may choose to obtain restitution through the German program if they filed before the deadline.⁶⁵ Although the U.S. government reserved the right to settle all claims covered by the FCSC's program, many individuals would prefer the return of their property rather than a cash settlement. Although an agreement would preclude double recovery, the German program most likely would offer larger returns than the conservative FCSC. Claimants with smaller claims may not want to bother with the time, cost, and irritation of dealing with the foreign bureaucracy. However, in instances such as the International Telephone & Tele-

Gemeinsame].

57. *Id.*

58. Rowland, *Compensation for Jewish Victims Of the Nazi Regime*, N.Y. L.J. 1 (1990).

59. *Gemeinsame*, *supra* note 56, at 129.

60. *Id.*

61. *Id.*

62. *Id.*

63. Moore, *Reviving Old Claims in East Germany*, 23 NAT'L J. 2157 (1991).

64. *Id.*

65. *Id.*

graph Corporation has a \$6 million claim pending,⁶⁶ they may be better off refiling directly with Germany and seeking return of their property.

IV. Czechoslovakia

The November 1989 revolution ended forty-one years of Communist rule in Czechoslovakia.⁶⁷ Although the country has made steady progress toward establishing democracy and free enterprise, it has many hurdles to leap.⁶⁸ One of the most important objectives of its reformation to a market economy is the privatization of state assets.

On February 21, 1991, Parliament approved a bill for restitution.⁶⁹ The measure called for the return of all real estate that had been illegally seized by the Communists between 1948 and 1989.⁷⁰ The law provided for either a return of land to former owners or to their heirs, or for government compensation in the form of bonds or adjustment of social security payments.⁷¹

Currently, in implementing these forms of compensation, Czechoslovakia's procedure requires the "entitled person" to initiate a claim directly to the "obligated person" for the return of property.⁷² The entitled person must be a physical person, rather than a corporation or business, a citizen of Czechoslovakia, and a permanent resident of Czechoslovakia.⁷³ In case of the death of the entitled person, his heir must also be a Czech citizen.⁷⁴ The property was to be surrendered to the entitled person in the condition it is in on the day the request is received.⁷⁵ The entitled person may demand a monetary reward if the property has deteriorated to the point of be-

66. *Id.* Germany recently paid Poland \$260 million to settle reparations from World War II. This settlement may indicate a new willingness by Germany to finally end this issue. See *Germany to Pay Poles for Forced War Labor*, *The Wash. Post*, October 17, 1991, at A4, col 2.

67. Pechota, *Privatization and foreign investment in Czechoslovakia: the legal dimension*, 24 *VAND. J. TRANSNAT'L L.* 305-24 (1991).

68. For information on Czechoslovakia's economic reform, see, Hermann, *Czechs set the pace on reform*, *The Fin. Times*, June 13, 1991, § 1, at 10; *Czechoslovakia: Implications of economic reform*, 112 *Business America* 28, May 20, 1991. Factors such as Czechoslovakia receiving most favored nation trade status, favorable agreements with the United States government, and the establishment of a more liberal economic environment have increased the interest of United States (U.S.) companies in Czechoslovakia's investment potential. *Id.*

69. Law on Extrajudicial Rehabilitation, *CZECH STATUTE* (Feb. 22, 1991).

70. See *Media, Land, Enterprise Bills Passed*, *Facts on File: World News Digest*, March 28, 1991, at 225.

71. *Id.*

72. See *Czech Law*, *supra* note 69. See art. 3, The Entitled Person, and art. 4, The Obligated Person.

73. *Id.*, art. 3, §1.

74. *Id.*, art. 3, §2.

75. *Id.*, art. 7, §1.

ing non-usable.⁷⁶

Claimants are required to file within six months of the announcement of the law on February 21, 1991.⁷⁷ The obligated person, normally the state or a municipality, is to relinquish the deed to the original owners who file a claim.⁷⁸ In addition, the obligated person is to enter into a contract with the entitled person and surrender the item to that person within thirty days.⁷⁹

When a dispute arises, the entitled person has one year to submit his claim to court.⁸⁰ For situations in which property cannot be returned in kind, approximately \$750 million of Czechoslovakian currency has been allocated for cash compensation to the original owners or their heirs, and the balance of compensation will be paid in government-issued bonds.⁸¹

If the property has been developed in the interim, the land will not be surrendered.⁸² If the real estate has appreciated in value, an agreement in which the entitled person remits the difference in value must be formulated so as to prevent unjust enrichment.⁸³ Normally, the property has seriously depreciated in value over the forty years. State ownership destroys the individual's incentive to take conscientious care of the property.

In addition to the state being an obligated person, a person who had acquired property or the right to use property from the state within the definition of Article 6 of Extrajudicial Rehabilitation, is also an obligated person. Article 6 describes the instances in which an entity acquired property in a illegal manner. For example, lands "donated" under duress, sold under duress, and confiscated without compensation, are all acquired illegally.⁸⁴ In each instance, the entitled person may reclaim his property.

Not all situations give rise to restitution in Czechoslovakia. For instance, the February 21, 1991 law neither applies to property nationalized between May 1945 and February 1948. Nor does it extend to either agricultural land in general or to property taken from churches after February 1948 because claims to these categories of property were to be covered by other legislative action.⁸⁵

Comprehensive restitution is seen as essential by the govern-

76. *Id.*, art. 7, §3; *See also* art. 13.

77. *Id.*, art. 5, §2.

78. *Id.*, art. 5, §1.

79. *Id.*, art. 5, §3.

80. *Id.*, art. 5, §4.

81. *Id.*, art. 8, §5; *See also* art. 13.

82. *Id.*, art. 8, §3.

83. *Id.*, art. 7, §4.

84. *Id.*, art. 6 §1 (a-k).

85. Pechota, *supra* note 67, at 311, n.13. Property taken from 1945-1948 is returned under a special procedure in §47 of the Act of February 26, 1991.

ment because it demonstrates that Czechoslovakia is serious about upholding property ownership rights. However, in implementing the restitution procedures, the fact that Czechoslovakia is a relatively poor country is one main consideration to complete restitution as quickly as possible so that remaining land could be sold to investors. The income gathered from foreign investors will help speed economic growth.

In fact, the Czech government decided that restitution claims will take priority over the privatization process. As a result, prior to privatizing a parcel of property, the management of a business must examine the records of the registry of deeds to determine whether there was a private owner prior to 1948. If a private owner did exist, the action to privatize should be deferred until the six months expires.⁸⁶ No notice to the owner is required; therefore, after six months, privatization can begin.⁸⁷

The political reality of Czechoslovakia's restitution policy is that it is not universally accepted.⁸⁸ Many argued that since the property was taken forty years ago, most owners are either dead or have emigrated. Since the heirs have little, if any, personal attachment to the property, they would most likely sell or lease their newly acquired property. Many have argued that the state should sell the properties to the highest bidder. Also, since the debt would be paid by the current citizens of Czechoslovakia, restitution would injure a generation of people who were innocent of wrongdoing.⁸⁹

However, these arguments did not persuade the Federal Assembly. Actually, they supported the federal government's view that restitution was needed to do justice and create an entrepreneurial class. The fact that foreign investors would be able to contribute knowledge as well as capital could not be underestimated or overlooked. In contrast to Poland and East Germany's socialism, where small business presence was tolerated in manufacturing and service sectors, the Czechoslovakian Communist government nationalized practically all businesses to the state or operated these businesses in the form of co-operatives.⁹⁰

Because even small businesses were nationalized, the govern-

86. *Id.* at 312.

87. *Id.*

88. *See Papers Warn Against Too Extensive Return of Property*, CTK National News Wire (Feb. 12, 1991) (LEXIS, Nexis library, Omni file).

89. Galuska, *Informal Opinion Concerning the law of February 21, 1991 on non-judicial rehabilitation* (April 12, 1991) (available at the Embassy of the Czech and Slovak Federal Republic, 3900 Linnean Avenue, N.W. Washington, D.C. 20008).

90. *See* Speech of Vaclav Havel, President, the Czech and Slovak Republic to the National Press Club Luncheon, National Press Club, Washington, D.C. (October 23, 1991) (available from the Federal News Service) The state sector until 1989 produced 97% of goods added value. The Parliament has since passed a transformation act that requires 70% of all economic activities to be produced by the private sector.

ment decided to implement privatization in two stages.⁹¹ The first stage provided for the privatization of small businesses, while the second stage privatized medium and large businesses.⁹²

The First Restitution Act of October 2, 1990,⁹³ provides for the return to the original owners, or their successors, of any property expropriated by the socialist state in accordance with certain laws and decrees adopted in 1955 and 1959.

The First Act encompasses only a small portion of the private property confiscated by the Czechoslovakian Communist government. The bulk of the properties included in the First Act were small businesses owned by individuals, and many were in the service sector.⁹⁴ Former owners were given six months in which to claim their property after the law was enacted November 1, 1990.⁹⁵ The First Act does not shut out non-citizens but does disqualify those who had their claims satisfied through a bilateral treaty such as the 1981 U.S.-Czech treaty which remunerated U.S. nationals through the FCSC.⁹⁶ Should the property already have been sold to a bonafide purchaser, the Czechoslovakian government promises equitable compensation.⁹⁷

Small-scale privatization began on December 1, 1990; it allowed Czechs and former Czech citizens as well as legal entities formed by Czech citizens to bid on unclaimed small industrial, business, or service establishments.⁹⁸ Despite arguments that the businesses' employees should be given the opportunity to purchase at a discount, the organizations are being sold to the highest bidder.⁹⁹ This has sparked a lot of controversy because the only people with the money and knowledge of the value of the business and its assets are oldtime Communists or people who made money illegally. It is ironic that many of the people who fought capitalism for so long are the first ones to cash in on it.¹⁰⁰

91. Pechota, *supra* note 67, at 308.

92. *Id.*

93. *Id.* at 309.

94. *Id.* at 310.

95. *Id.*

96. *Id.* In 1981 Congress established the Czechoslovakian Claims Settlement Act, Pub. Law No. 97-127. For more information about the 1981 program, See FCSC, *supra* note 9, at 11-36.

97. *Id.* at 310.

98. *Id.* at 312-13.

99. Echikson, *Czechoslovakia's Great Sell-Off*, The Christian Science Monitor, Oct. 16, 1991, at 12. "There are . . . well known faces, which you can see at these auctions each time," admits Jindrich Kebrle, director of the Prague auctions. *Id.* However government officials have to be practical; it is better that the money is put to good use in helping to build the economy rather than hidden.

100. Telephone interview with Vratislav Pechota, International lawyer (Oct. 10, 1991). Mr. Pechota is a graduate of Rutgers Law School and practices international law in Princeton, New Jersey. Of fifty people Mr. Pechota consulted with, only one went back to Czechoslovakia. His father, Vratislav Pechota, is a professor of law at Columbia and author of the law

The Second Restitution Act of February 21, 1991 (Second Act) was passed after long and acrimonious debate in the Federal Assembly. The Second Act provides for the transfer of wealth on an unprecedented scale, valued at over \$10 billion. The Act authorizes the return of the private property nationalized, confiscated, or otherwise expropriated, in the period from the Communist takeover on February 25, 1948, to December 31, 1989.¹⁰¹ Only individuals that are Czechoslovakian citizens and are permanent residents who had property taken between the years 1948 and 1990 are eligible for restitution.¹⁰² Foreigners, corporations, and other legal entities are not entitled to recover.¹⁰³

In the United States, great dissatisfaction has been present in the Czech and Slovak communities.¹⁰⁴ Members of these communities realize they are not eligible under the law because of a rare type of Naturalization treaty in 1928 between the United States and Czechoslovakia that does not allow dual citizenship.¹⁰⁵ Once becoming American citizens they forfeited any right to Czech citizenship. However, a potential loophole exists, since all that is required for the claim is showing proof of Czech citizenship and permanent residence.¹⁰⁶ A U.S. citizen could apply for Czech citizenship, travel to Czechoslovakia, establish a residence, and apply for restitution. The problem is that the process of establishing residence could take days, weeks, or months because of problems in dealing with the bureaucracy. Therefore, this option often is not taken because of the fear that such a claim would cause problems with American citizenship.

However, this fear may be unfounded. In *Vance, Secretary of State v. Terrazas*,¹⁰⁷ the Supreme Court held that in order to relin-

review article cited *supra* note 67. Mr. Pechota mentioned that he makes a point of asking Czechoslovakians with whom he does business about their past. He actively avoids doing business with people with ties to the Communist government.

101. Czech Law, *supra* note 69, art. 1, §1

102. Czech Law, *supra* note 69, art. 1, §1.

103. See Pechota, *supra* note 69, at 311, n.12. Foreigners, corporations, and other legal entities are not entitled to recover under the Second Restitution Act. This may be a violation of the principle of equality and non-discrimination that is a part of the international human rights instruments mentioned in Section 1(1) of the Act on Extrajudicial Rehabilitation and Article 11(1) of the Czechoslovak Bill of Rights. The Czechoslovak Bill of Rights states that "(t)he ownership right of all owners has the same statutory content and enjoys the same protection." *Id.* Section 2 of the Constitutional Act Instituting the Charter states that "international treaties on human rights and fundamental freedoms, ratified and promulgated by the Czech and Slovak Federal Republic are universally binding on its territory and supersede its own laws." *Id.*

104. Galuska, *supra* note 89.

105. *Id.*

106. Telephone interview with Vratislav Pechota, International lawyer (Oct. 10, 1991).

107. *Vance v. Terrazas*, 444 U.S. 252 (1979). This case expanded the original premise of *Afroyim v. Rusk*, 387 U.S. 253 (1966). In *Rusk*, Afroyim was a naturalized American citizen who lived in Israel for ten years. While in that nation, Afroyim voted in a political election and was stripped of his American citizenship. The Supreme Court overruled the loss when it held Section 1 of the Fourteenth Amendment is "most reasonably. . . read as defining

quish U.S. citizenship, the person must clearly show an intent to do so. In this case, the claimant would be applying for Czech citizenship merely for restitution purposes. Hence, he would not show the requisite intent to lose U.S. citizenship.¹⁰⁸ Despite the loophole, in cases in which U.S. citizens had relatives remaining in Czechoslovakia, attempts are being instituted to have them file for restitution.¹⁰⁹

Large scale privatization has been an area of endless debate and controversy. The new federalism in Czechoslovakia strongly favors the republics and limits the power of the federation and the two constituent republics, the Czech Republic and the Slovak Republic.¹¹⁰ According to a constitutional amendment adopted in December 1990, most state enterprises have become the property of the republics. The process of privatization will be influenced substantially by the laws and policies adopted by each.¹¹¹ This independent existence of the republics is similar to America's historical distrust of centralized power. It will be interesting to see if Czechoslovakia eventually evolves into a government that has a greater emphasis on federal power, as the U.S. did.¹¹²

V. Hungary

On June 26, 1991, Hungary joined the growing number of countries offering restitution for property that was illegally seized by Communist countries.¹¹³ However, Hungary's system is quite different from Germany or Czechoslovakia's because it makes no returns of property and offers no money back. Instead, Hungary offers indemnification vouchers that are paid on a fixed percentage basis depending upon the value of the confiscated property.¹¹⁴

a citizenship which a citizen keeps unless he voluntarily relinquishes it." Rusk, 444 U.S. 252, 260, *citing*, 387 U.S. at 262 (1980).

Terrazas ruled that the Constitution allows Congress to prescribe the standard of proof to be used since loss of citizenship is a civil, not criminal action. *Id.* at 264-265. Hence, the standard of presumption of voluntariness is not a constitutional violation. Intent can be proven by a preponderance of evidence.

108. *Id.* In *Terrazas*, the Court held that signing a paper that explicitly states that one has renounced rights as a American citizen, was held to have sufficiently shown intent of citizen to relinquish citizenship.

109. Telephone interview, *supra* note 100. Mr. Pechota felt the lower standard of *Terrazas* may have frightened some people from taking the chance of losing citizenship.

110. Pechota, *supra* note 67, at 311-314.

111. *Id.*

112. See V. Havel, President, Speech to National Press Club Luncheon, Washington, D.C., (Oct. 23, 1991). Czechoslovakia's current political climate is presently turbulent because their is a faction seeking a separation of the Czech and Slovak states. A referendum is being sought as to decide the future of Czechoslovakia as a common state. This controversy increased the importance of the local municipalities playing a role in restitution.

113. HUNGARIAN LAW No. 25 (1991) (hereinafter HUNGARIAN LAW) Proposal to settle ownership conditions for the partial indemnification of damages caused by the state in the property of citizens. It was adopted by the National Assembly at its June 26, 1991 Session, *Id.* at 21. (legislative intent).

114. *Id.* §4 (2).

The law declares a right to be compensated for property taken after May 1, 1939. However, the current law only considers property taken after June 8, 1949. A later law will address how the earlier property owners will be compensated.¹¹⁵

Although over 1.5 million people were expected to be eligible¹¹⁶ for indemnification, only 53,821 claims have been made.¹¹⁷ A total of 20 billion forints will be issued through vouchers for indemnification purposes.¹¹⁸ The vouchers will be traded on the Budapest stock exchange as state securities in the first quarter of 1992.¹¹⁹ The certificates have been available since the end of November 1991.¹²⁰

The estimated value of the state property to be privatized is 1,800 billion forints. When the property is privatized, the local governments will share 300 billion forints and the social security system will receive 100 billion forints. The state budget will have 1,400 billion forints to service state debt. However, any amount returned during restitution would increase state debt.¹²¹

In order to avoid disputes over damage calculations, a fixed rate applies. Only those people whose property was worth less than 200,000 forints (approximately \$2,700) will be granted full restitutional value. Since the budget does not allow full value reimbursement for every applicant, a regressive index of repayment has been established. For property valued from 200,001 to 300,000 forints, restitution is 200,000F plus 50% of the amount over and above 200,000F. For property worth 300,000-500,000 forints restitution is 250,000F plus 30% of amount over and above 300,000F. For any amount over 500,000 forints, the owner receives 310,000F plus 10% of any amount over and above 500,000F.¹²² Additionally, the owner is entitled to seek restitution for all property under the same claim; however, the maximum amount returnable is 5,000,000F (approximately \$70,000).¹²³ Included within these evaluations is the value of movable property that related to the land at the time of taking.¹²⁴

These vouchers are issued by the office having jurisdiction over the land and are guaranteed by the state.¹²⁵ They can be used to

115. *Id.* §1 (3).

116. *Parliamentary debate on restitution in Hungary*, MTI Hungarian News Agency (Feb. 5, 1991) (LEXIS, Nexis library, Omni file).

117. *Compensation certificate to be issued soon*, MTI Hungarian News Agency (Oct. 10, 1991) (LEXIS, Nexis library, Omni file).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Parliamentary debate*, MTI Hungarian News (Feb. 5, 1991) (LEXIS, Nexis library, Omni file).

122. HUNGARIAN LAW, *supra* note 112, §4 (2).

123. *Id.*, §4 (3).

124. *Id.* at 24 (legislative intent).

125. *Id.* at 23 (legislative intent).

purchase pieces of property; to buy stock and business shares sold in the course of privatizing state property; and for the acquisition of arable land property.¹²⁶ In addition, the holder of the voucher may use it as a method of payment for state-owned housing units;¹²⁷ for collateral on small business loans;¹²⁸ or for annuity payments for the entitled person's life.¹²⁹

The following people are eligible to indemnification:¹³⁰ any present Hungarian citizens; former Hungarian citizens who had suffered damages; and non-Hungarian citizens who, in a manner akin to carrying on their livelihood, resided in Hungary as of December 31, 1990.¹³¹ The law also applies to descendants of owners or to former owners' surviving spouses. However, property taken from a former owner before his death cannot be inherited through a will. Thus, the claim itself does not pass through inheritance. The reasoning is that allowing this would unfairly expand restitution.¹³²

If recommended by the State Property Agency (SPA), the government may suspend purchases made by indemnification vouchers for a period not to exceed six months per year.¹³³ This would be accomplished by freezing the use of bonds owned by a portion of the holders as identified by their bond serial numbers. The law permits this to be done only for the first five years of the process; subsequently, the vouchers can be used without restriction. This provision was enacted to ensure an adequate cash and property flow for the government during the privatization process. This is very important because the property subject to privatization serves as collateral for indemnification vouchers.¹³⁴ The government does not want too many vouchers pursuing too little land. It is feared that if the certificates are issued faster than the pace of privatization, the papers would quickly lose their value due to inflation.¹³⁵

Although the vouchers may not be totally liquid during the first five years, the government has granted interest to be paid on the vouchers at a $\frac{3}{4}$ percentage rate of the current central bank rate. Interest accrues at the inception of the law and continues through the first three years of the law. The relatively low rate was intended to encourage the holders to quickly make use of their vouchers.¹³⁶

126. *Id.*, §7 (1).

127. *Id.*, §7 (2).

128. *Id.*, §7 (3).

129. *Id.*, §7 (4).

130. *Id.* at 23 (legislative intent).

131. *Id.*, §2 (1).

132. *Id.* at 23, (legislative intent).

133. *Id.*

134. *Id.*, §8 (1).

135. *Id.* at 26 (legislative intent).

136. *Parliamentary debate*, MTI Hungarian News Agency, (Feb. 5, 1991) (LEXIS, Nexis library, Omni file).

The person entitled to indemnification does hold pre-purchases rights when his former property is to be sold. Exceptions would include rental housing units owned by a local government, property belonging to a corporation, or the sale of a corporation that owned property by the SBA.¹³⁷ This pre-purchase right granted to the former owner is the least powerful of that in any of the countries offering restitution. However, the stated intent of this law is partial indemnification, not reprivatization.¹³⁸ The fewer the privileges granted, the quicker the process will continue.

Persons entitled to compensation may submit petitions in writing for indemnification within ninety days from the effective date of this law.¹³⁹ This time period is the shortest one seen. Legislative intent suggests it was done to speed the process and to prevent legal uncertainty.¹⁴⁰ However, it seems that the time period might not be long enough to enable interested parties to become aware of restitution. Therefore, the legislative intent provides that one acting without fault may apply after the deadline.¹⁴¹

The county office where the petition is filed has a deadline of six months from receipt of the petition to make a decision. Documents that verify entitlement should be included with the application.¹⁴² Should the original application be submitted incorrectly, an extension of time would be granted to refile.¹⁴³ This deadline can be extended once for a period of no longer than three months.¹⁴⁴ Special rules apply for arable land because of its limited supply and special income potential; therefore, arable land must be sold at auction to entitled persons.¹⁴⁵

The county office decides whether the petition for restitution should be granted; its decisions are appealable to the national damage claims office. The law provides for judicial review of final decisions rendered by the national office through courts which are empowered to review and change decisions in full.¹⁴⁶

VI. Poland

The Polish Parliament hoped to have a restitution law passed in mid-February 1992, however, parliament is still debating the law.

137. HUNGARIAN LAW, *supra* note 113, at 25 (legislative intent).

138. *Id.*, §9.

139. *Id.* at 27 (legislative intent).

140. *Id.*, §11 (1).

141. *Id.* at 28 (legislative intent).

142. *Id.* at 12, §12 (legislative intent).

143. *Id.*, §12 (2).

144. *Id.*, §12 (3), §13.

145. *See id.* §12-30, *See also id.* at 22 (legislative intent) *See also* Robinson, *Year of record crops-Agriculture*, *The Financial Times*, Oct. 30, 1991.

146. HUNGARIAN LAW, *supra* note 113, at 28 (legislative intent).

Since the original draft released on April 3, 1991, the law has been revised almost weekly. The process has created much confusion about who eventually will be entitled to benefit, and to what extent applicants might be compensated by the nearly bankrupt government.

The Polish government's original position of compensating only the owners and heirs of property illegally confiscated between 1944 and 1960 was presented by the Ministry of Ownership Transformation.¹⁴⁷ The original plan was to compensate victims with special bonds entitling them to buy shares in newly-privatized companies that were formerly state-owned.¹⁴⁸ These capital vouchers would allow owners to buy preemptive shares in their own business or other businesses, as well as shares in trust funds or land from the state land fund.¹⁴⁹

However, former property owners protested. Outraged, Polish citizens marched on government headquarters when the policy was announced. They accused the government of perpetuating the Communist-era contempt for privacy and of imposing a "phony" statute of limitations on a process which should correct previous injustices.¹⁵⁰

As of May 1991 there were fifty-two associations of former landowners, hoping to help regain their constituents property.¹⁵¹ The people want their property back, not bonds. The group of property owner's president Miroslaw Szypowski demanded immediate return of the 18,000 Warsaw properties taken under a 1945 decree, or the extension of compensation for them. He stated: "What investor will invest in a city where 18,000 people have been illegally deprived of their property?"¹⁵²

In response, Privatization Minister Janusz Lewandowski claims that Poland can not afford to repay former owners fully and in kind for land and property worth an estimated 114 trillion zloties (12 to 14 billion dollars).¹⁵³ Former property owners claim a total of 2.4 million acres of land and more than 2000 factories — roughly 6% of the Polish industry.¹⁵⁴ The actual amount to be remitted during the

147. Cydejko, *Reprivatization: To Give or Not to Give?*, The Warsaw Voice (April 21, 1991) (LEXIS, Nexis Library, Omni file).

148. *Id.*

149. *Id.*

150. Battiata, *Issue of Seized Property Divides Poles; Ex-Owners Prospects Founder in Financial Straits of the New Rule*, The Wash. Post, May 5, 1991 at A35.

151. *Id.*

152. Trevelyan, *Storm Over Polish Plan to Compensate Postwar Property Seizure*, The Reuters Library Report (Apr. 3, 1991) (LEXIS, Nexis library, Omni file).

153. Battiata, *Issue of Seized Property Divides Poles; Ex-Owners Prospects Founder in Financial Straits of the New Rule*, The Wash. Post, May 5, 1991 at A35.

154. *Id.*

next three years will be determined by the Sejm.¹⁵⁵ It will be a fixed percentage to be decided by the Polish Parliament from privatization revenues received over the next three years.

In effect, former owners will have to write off the balance of value not restituted as a "patriotic donation" to the state, according to Wojciech Goralczyk, the government official in charge of restitution.¹⁵⁶ "Our first priority is to build a market economy rapidly and that clashes with property rights of former owners," said Lewandowski.¹⁵⁷ Lewandowski emphasized that the legal tangles over ownership could not delay the government's privatization drive. "You cannot turn history back. You must take into account the time factor, the budget factor, the need to stimulate foreign investment."¹⁵⁸ Meanwhile, Polish officials said they wanted to avoid a situation similar to the experience of Czechoslovakia, where a sweeping restitution bill recently was enacted. Polish Finance Minister Leszek Balcerowicz stated, "It's time to learn from someone else's mistakes, not our own."¹⁵⁹

Poland's plan was to sell everything quickly and then distribute the money proportionally. The government planned to limit in kind returns to unused municipal and state treasury buildings, as well as small flour mills, distilleries, and other plants, workshops, and forests seized by the state after the war.¹⁶⁰

Although the government would prefer full restitution, it has resigned itself to the partial restitution. Led by liberal Prime Minister Jan Krzysztof Bielecki, it favors inviolable property rights. Jerry Grohman, Walesa's special official for reprivatization, claims that society has no right to property confiscated by the Communists. He feels that Poland should only use what was created as a result of the work and exploitation of all citizens.¹⁶¹

In addition, Lech Walesa has supported a plan that seeks restitution in kind for small businesses and capital vouchers for large.¹⁶²

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* In April 1991 the Polish government released a report stating that it could not afford to give restitution in kind. The rationale being that restitution in kind would bankrupt the government and interfere with the process of selling the businesses to owners who knew how to make a profit. In addition, restitution would be limited to Poles and Polish re-emigrants. The report was considered to be conclusive at the time but has been hotly debated since then.

160. *Id.* See also *Privatization Rubicon*, Polish News Bulletin (Sept. 6, 1991) (LEXIS, Nexis Library, Current file.) [hereinafter *Privatization Rubicon*].

161. *Id.*

162. Battiata, *supra* note 150. See also *Privatization Rubicon*, Polish News Bulletin, Sept. 6, 1991. The PSL, a peasant's political party, and the Parliamentary Club of Democratic Left have been very critical of mass-reprivatization documents submitted by the government. *Id.*

It would not touch any of the 4.2 million acres of farm land that the Communists distributed to private farmers. Further, it would honor all sales (usually apartments) made during the first Solidarity government of Tadeusz Mazowiecki.

Many Poles have mixed feelings on large scale restitution, fearing that it will restore inequitable prewar social order.¹⁶³ Others doubt that prewar owners have more claim to factories than the workers who have been there forty years. To illustrate this, a recent poll indicated that a majority supported the idea of restitution, but an almost equal number thought land should be returned only in instances in which the Communists had violated their own confiscation laws.¹⁶⁴

In fact, the Solidarity movement is in favor of only limited restitution. In April 1991 its leadership asked former property owners to renounce their claims for the sake of the country.¹⁶⁵ The union also demanded that any return of factories to prewar owners be accompanied by job guarantees.¹⁶⁶

Amidst all the controversy, the Polish Parliament has considered different bills regarding restitution. Once the bills are passed, people seeking restitution must work their way through tangled bureaucracies, for the laws usually call for applying directly to the authorities in the locality where the property was seized. It appears that the government will extend a one year period in which to file a claim. Late filings are unlikely to be accepted.

The possibility of a reprivatization negotiation was an important issue in the October 27, 1991 Parliament election. It was expected that the old-line Communists will not be re-elected. As a result, it has been difficult to project how the new group will view the restitution issue. A major issue to be decided is how the procedure and process of restitution will be implemented.

There is discussion that a national fund will be established along the lines of a mutual fund.¹⁶⁷ Previous owners of land will be given shares of stock in a nationalized or private company, if the company succeeds, the stocks will have value. Mr. Les Kuczynski of the Polish National Alliance in Chicago stated: "This would be a fair and equitable way to establish growth in Poland and not bank-

Some of the important issues that have been debated have been the criteria of selecting state businesses to be privatized, how to procure guarantees of efficient management, the danger of monopolization of the economy, and the political aspects of how procedure is to work.
Id.

163. Battiata, *supra* note 150.

164. *Id.*

165. *Id.*

166. *Id.*

167. Information from telephone interview with Mr. Les Kuczynski, counsel for Polish National Alliance, Feb. 5, 1992.

rupt the country."¹⁶⁸

People with Polish or dual citizenship, such as with the United States, will be classified differently than those who have established citizenship in other countries.¹⁶⁹ Originally, it appeared that people who left Poland would not be able to reclaim their property. However, if direct title can be proven, then the country will probably allow claims.¹⁷⁰ If the property has been unimproved, returning it would be a simple process. However, if any improvement has occurred, it appears that bonds will be issued. Presently, the claims that have been filed by now have been in court and are waiting for Parliament's decision.

VII. Conclusion

While it appears that Czechoslovakia and Hungary have effectively barred foreigners from recovering their property, Germany has 1.3 million applications from people throughout the world.¹⁷¹ It appears that Germany has realized that its open door policy will have huge economic consequences in monetary and time terms. Only 3.3% of the more than two million claims have been resolved. Many expect the process to take over ten years.¹⁷² One eastern German politician, Detlaf Dalk, committed suicide in March 1992 to protest the current restitution system. Many are calling for a reversal of the policy giving restitution priority over restitution.¹⁷³ Regardless, it will be many years before the process can be completed.

Czechoslovakia has offered generous opportunities to its citizens for restitution in kind. However this emphasis on the return of property has put a temporary hold on the development of the real estate market. More than 300 claims have been filed every day since the commencement of the restitution process.¹⁷⁴ Paolo Vanca, a partner of the Price Waterhouse office in Prague, stated, "The big difference is that in Poland and Hungary they decided to forget restitution. They decided to go directly ahead into the future and say, 'We're sorry what happened before,' but here we decided to clean the past."¹⁷⁵ Czechoslovakia is currently debating over the restitution of church property.

Regardless, Hungary expects the cost to be approximately \$1.5

168. *Id.*

169. *Id.*

170. *Id.*

171. Peel, *More than 2 Million East German Restitution Claims Filed*, Financial Times (Jan. 25, 1992) (LEXIS, Nexis library, Current file).

172. Eisenhammer, *Germans Facing a Long Wrangle over Property*, The Independent, Mar. 11, 1992, at 18.

173. *Id.*

174. Echikson, *supra* note 99.

175. *Id.*

billion.¹⁷⁶ The process is also expected to lead to a crunch of legal disputes as successive owners claim the same piece of property. The process of restitution may be more difficult than the revolution that defeated the Communists. Hungary has established the simplest and the most limited in terms of paybacks. The fact that the return rates are minimal probably has a great deal to do with the unexpectedly low application numbers.

Poland is the wild card; no one is sure of what its exact move will be. Although it has not yet announced its intentions, the country would be hard pressed to offer much in restitution because of political and economic constraints. Although it can learn from the "mistakes" of Germany and Czechoslovakia, it must avoid being too independent.¹⁷⁷ In addition, it must make a move quickly or risk that the issue become bogged in Parliament. As Deputy Andrzej Kern stated: "We have now come to the Rubicon which we may, or may not, cross. This is a Rubicon which separates the world of economic fiction and illusion from the world of normalcy and market economy."¹⁷⁸

In regard to all the formally Communist countries, regardless of whether any Americans can directly benefit economically, the process of restitution is one of significant importance. With the advent of the European Economic Community, the international economic market is becoming fiercely competitive. Companies are looking for new markets in which to establish footholds. The countries profiled in this comment are part of the new economic frontier. How quickly and efficiently restitution proceeds may determine how quickly foreign countries can establish themselves in the world market.

Michael L. Neff

176. *Parliament to Debate Controversial Law on Church Restitution*, CTK National News Wire (Mar. 12, 1992) (LEXIS, Nexis library, Omni file).

177. Tift, *supra* note 4.

178. *Privatization Rubicon*, *supra* note 160.

