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WORKSHOP 1

**ROUND-TABLE:  
PROPERTY RESTITUTION/COMPENSATION:  
GENERAL MEASURES TO COMPLY WITH THE  
EUROPEAN COURT'S JUDGMENTS**

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Bucharest, Howard Johnson Hotel,  
5-7 Calea Dorobantilor Dist. 1, Bucharest, 010551 Romania

**Presentation prepared  
by Mr Tomasz Kuchenbeker, Poland**

*The views expressed are those of the author only*

**MINISTRY OF TREASURY OF THE REPUBLIC OF POLAND**  
**conference materials**  
**ROUND-TABLE**

**PROPERTY RESTITUTION / COMPENSATION: GENERAL MEASURES TO COMPLY  
WITH THE EUROPEAN COURT'S JUDGMENTS**

Bucharest, 17 February 2011

Polish experience in the implementation of the European Court of Human Rights judgements  
on restitution of property

**I. Issues regarding compensation for property left outside the present borders of Poland (the so-called Bug River property).**

From the Polish experience in the implementation of ECHR's decisions on property restitution claims, one of the most significant judgements was passed on 22 June 2004 in the case *J. Broniowski v. Poland* (application no. 31443/96).

The case was brought before the Court to verify whether the Polish laws regulating compensation issues for Bug River property violate the right of ownership set forth in Article no. 1 Protocol no. 1 to the European Convention of Human Rights and Fundamental Freedoms of 4 November 1950 (the Convention).

Having reviewed the case, the Court ruled that this principle was violated. Successive laws passed by the Polish regulatory authorities granted Polish citizens only the right to claim compensation for Bug River property by offsetting the value of the property against the sale price of property bought from the State by some individuals after the War. The Court held that due to the introduction of other regulations this procedure did not set up an effective and appropriate mechanism to implement the compensation rights of Bug River claimants.

Under the Court's pilot judgement, Poland was obliged to effectively satisfy compensation claims in accordance with the private property principle set forth in Article no. 1, Protocol no. 1 to the Convention. To comply with this obligation, legislative efforts were put in place to find a legal solution that would successfully resolve the property restitution issues.

***The legislative works lead to the adoption of the Act of 8 July 2005 on execution of compensation rights for property left behind the current borders of Poland (further referred to as the Act).***

The Act provides that:

1. The provisions of the Act apply to Polish citizens who have or have not partly exercised their compensation rights under the previous regulatory framework.
2. The Act applies mainly to property left behind in the territories of the present-day Belarus, Ukraine and what is now Lithuania which were within the Polish borders before World War II. Under the so-called Republican Agreements concluded in 1944 between the Polish authorities and The Union of Soviet Socialist Republics Polish citizens were repatriated from those territories to settle within the present borders of Poland. The Republican Agreements required Poland to compensate persons who were repatriated from the territories beyond the Bug River and had to abandon their property there.

3. The final date for the submission of compensation applications was fixed at 31 December 2008.
4. Claimants could choose between the two types of compensation:
  - a) non-monetary compensation – offsetting the amount corresponding to 20% of the value of property left behind the Bug River against the price of real property sold by the Polish Treasury;
  - b) pecuniary compensation – a single disbursement from the Compensation Fund amounting to 20% of the value of Bug River property.
5. The Act and the related executive provisions provide for:
  - a) establishment of provincial registers of individuals entitled to compensation for Bug River property maintained by Voivoids which serve as administrative bodies of first instance for proceedings conducted pursuant to the Act,
  - b) establishment of the central register, maintained by the Minister of Treasury who also serves as the body of second instance, updated monthly with data transferred from the provincial registers,
  - c) establishment of the Compensation Fund (special state fund) responsible for disbursing payments to Bug River claimants. The assets managed by the Compensation Fund include funds derived from sales of public property from the Agricultural Property Stock of the Treasury (properties with a total area not less than 400,000 ha) which are transferred in advance to the Fund's account on a quarterly basis. In case of insufficient funds, the Act provides for a state budget loan, the amount of which would be specified in the budget.

The following activities were implemented by the Government in order to streamline the reimbursement process for Bug River claimants:

- Increased staff in the Voivoidships and the Ministry of Treasury contributing to faster processing of compensation claims,
- developing a computer system for operating the records. The system became operational at the end of 2008.

It should also be noted that in order to ensure professional disbursement of monetary compensations from the Compensation Fund (currently the most popular form of compensation among the claimants), an agreement was signed with the Polish National Economy Bank (state owned bank) under which:

- the bank receives monthly data from the central register on applicants entitled to compensation;
- pays out compensations to eligible applicants (in cash or by bank transfer, as requested by applicants)
- the bank indexes the amount of compensation payment (specified in a decision/certificate stating that the applicant is eligible for payment of compensation) according to the consumer price index as at the day of payment,
- the bank indicates on the decision/certificate that the payment has been effected.

It should be emphasised that the restriction applied by the Polish State limiting the maximum amount of compensation to 20% of property value motivated by socio-economic considerations was approved by the European Court of Human Rights. In a decision issued on 4 December 2007 (50003/99) on *Wolkenberg and others v. Poland*, the Court emphasised that:

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

**According to the Court, in the view of an urgent need for a compromise between the claimants' expectations, the State's budgetary constraints and financial obligations towards other persons who had suffered considerable material losses due to nationalisation or expropriation of their property under the totalitarian regime, applying the statutory ceiling of 20% Polish authorities maintained a fair balance between the protection of the ownership rights and the interest of the general public in compliance with Article no. 1 Protocol no. 1 to the Convention.**

**Setting up a 20 % ceiling for compensation was approved by Polish Parliament in the law and was caused as a balance between the rightful expectations of the individuals and financial possibilities of the State and its obligations towards other social groups.**

The legitimacy and legality of the statutory provisions limiting the maximum compensation to 20% of property value was also confirmed by Polish courts which dismissed claims for full compensation lodged by Bug River claimants, indicating that the Act of 8 July contains regulations providing for comprehensive resolution of Bug River claims.

**The most relevant data relating to the execution of Bug River claims for 2010:**

- Outstanding compensation claims: 70 thousand
- Ongoing proceedings to confirm the right to compensation: approx 40 thousand
- Total number of decisions/certificates proving the right to compensation: approx 19 thousand,
- Total monetary compensations paid to claimants: approx PLN 1,5 billion.

The process of reviewing the claims is still underway. Reimbursements are made depending on the length of the administration procedures for individual claims.

**II. Issues concerning claims for property due to nationalisation and expropriation under the communist regime**

The proceedings before the European Court of Human Rights include other cases: *Pikielny and others v. Poland* (application number 3524/05) and *K. Ogórek v. Poland* (application number 28490/03). As in the case of *J. Broniowski*, the applications concern violation by the Polish State of the ownership rights set forth in Article 1 of Protocol No. 1 to the Convention.

Since the European Court of Human Rights is yet to adjudicate on the above applications, it is not possible to refer to the practice of implementing ECHR judgments.

In order to briefly describe the issues covered by the above cases, the following information should be pointed out:

1. First - In 2008, the Ministry of Treasury prepared a bill on *monetary compensation to individuals whose real property was confiscated by the state*, covering instances of expropriation under decrees and acts issued in the years 1944-1962.
2. Second - The entities entitled to receive compensation provided for in the act are individuals who:
  - **on the day of expropriation by the state were legal owners of the property and were Polish citizens**, irrespective of their nationality, and
  - **are heirs of original owners, irrespective of nationality and place of residence.**
3. Third - The draft was based on the assumption that all Polish citizens should be treated equally irrespective of nationality and religion. It applies to owners whose property was first confiscated by the Nazis and then nationalised by the communist authorities, as well as to those

who managed to retain their property during the Nazi occupation but the communist authorities of post-war Poland confiscated it under nationalisation laws.

4. The draft applies to real property confiscated by the state (nationalised).
5. The draft provides for identical form of redress that is **monetary compensation** for all entitled individuals.
6. As part of the preparatory work, the total amount of the estimated compensation claims was assessed at approx. PLN 100 bn. The estimation methods included surveys on property confiscated by the state. Following adoption of the bill, the final value of the nationalised real estates will be confirmed after completing the first implementation stage, i.e. once the final decisions have been issued by Province Governors, confirming the right to receive monetary payments.
7. These regulations do not specify the percentage limit to compensation payments provided for in the act which will be determined by dividing the total funds allocated for compensation (**approx. PLN 20 bn**) by the total value of the confiscated property, based on the decisions issued by Voivoids. According to the bill, payments will be made in instalments over the next 15 years.
8. The bill on *monetary compensation to individual whose real property was confiscated by the state* was categorised as draft legislation with no specified time limit and will be part of the Government's legislative work in 2011.

It should be noted that despite the lack of a comprehensive legal framework regulating compensation issues concerning assets confiscated in Poland, Polish laws provide for the possibility of obtaining compensation for such property. This applies to cases where property was nationalised without any legal basis or in breach of the laws effective at that time. Funds allocated for compensation derive from, inter alia, the Reprivatisation Fund established for this purpose. From mid 2001 to the end of 2010 the total amount of disbursements from the Fund amounted to around PLN 600 million which was distributed to some 2,300 beneficiaries.