

## Real Property in Warsaw Under Scrutiny



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In our [blog posting](#) back in February 2017, we wrote that the Polish Parliament had adopted a very controversial piece of legislation appointing an *ad hoc* Parliamentary Commission to review and deal with “reprivatization” decisions in Warsaw.

The term “reprivatization” refers to the real property that had previously been in private hands until the end of WWII, when it was nationalized by the state under the so-called “Bierut decree” (the Decree of October 26, 1945 on the Ownership and Usage of Real Property within boundaries of Warsaw, the “Decree”). After the fall of communism, the former owners, their heirs and those who purchased claims from them (very often called “real estate hunters”), sought to have such nationalization quashed and the property returned to them.

The situation has recently erupted in a large scandal, as the magnitude of the process and methods used by certain real estate hunters has come under intense scrutiny. Several persons engaged in this process have been arrested and members of the Warsaw regional government have been accused of negligence in their safeguarding of public property.

The Polish government has decided to deal with the situation through a new law, which provides a somewhat controversial solution by appointing a special commission, with the main goal of “removing the legal effects of reprivatization

decisions issued in violation of law". The Commission started the review process in July and called the President of Warsaw to appear as a witness. Ms. Hanna Gronkiewicz-Waltz refused to appear, claiming the new law was unconstitutional. The claim of "unconstitutionality" appears to be valid and was, in fact, raised at the very beginning of parliament's works on the new law. However, at this stage, the law is not subject of review by the Constitutional Tribunal.

The Commission has already decided to rescind the decision on reprivatization of the property at 70 Chłodna Street as well as the real property at Sienna Street. These were the property reprivatizations that caused a lot of public outcry in Warsaw.

It is likely that the entire process will be lengthy and complicated, and perhaps now is a good time to comment on the Commission's initial actions and any potential further developments.

First of all, it is subject to debate which real property will be subject to the Commission's scrutiny. The law establishing the Commission reads that it is "any real property that has been subject to the Decree, regardless who is the owner of the property at this moment". This means that a substantial number of real properties in Warsaw may be reviewed, regardless of whether the current owner purchased the property from a private owner or from the City of Warsaw, provided that the real property has been nationalized under the Decree in the first place and then either the perpetual usufruct right was established on such real property or it was returned after the authorities determined that the former owner was refused restitution groundlessly after the WWII. Thus, although the main purpose of new legislation was to put a halt to the practices of "real estate hunters", it opened the way to a much wider scale review of titles to real property in Warsaw. This may cause concern to anyone intending to invest in real property in Warsaw. Although owners who purchased the property "in good faith" should be protected, the definition of "good faith" is left for the Commission to judge.

Further, there are opinions presented that during the reprivatization process the officials of City of Warsaw failed to fully observe the law, particularly in cases of "real estate hunters". The Decree allowed former owners to apply for a perpetual usufruct right provided that (i) he/she filed a motion in appropriate time, (ii) the use of the property by the owner was in compliance with local zoning plan and (iii) the owner was in possession of the real property. The communist government very often violated this right, which led to many reprivatization claims. Now, there are claims that the City of Warsaw officials, while deciding on reprivatization, have never analyzed whether the former owner "was in possession of the real property". Therefore, it is argued that almost all reprivatization decisions issued by City of Warsaw should be rescinded. If accepted, this would lead to the reopening of the analysis of legality of title to over 2,000 pieces of real property. City officials strongly deny the allegations.

A decision of the Commission, if treated as any other administrative decision, should be challengeable before the Polish administrative courts. The law is silent on whether the parties to proceedings have the right to be heard by the court, but it does not exclude this either. Thus, the party to a decision that has been rescinded by the Commission may seek legal protection in the courts for the Commission's

decision to be either repealed or returned for another round of review. It will be interesting to see whether the argument on unconstitutionality of the law is also raised. The process will be lengthy (the full process of review by two instances of administrative courts in Poland may take 2-3 years, depending on the workload of the courts).

Finally, there are also rumors that the government is working on a comprehensive solution of the reprivatization issue in Warsaw while the details of such solution are not yet known.

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