



THE PLATTA LAW FIRM, PLLC

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New York, October 14, 2015

MEMORANDUM OF LAW

This legal opinion refers to a letter addressed to John Kerry, the Secretary of State of the United States (Annex No 1), by 46 American Congressmen, dated June 29, 2015 and a letter addressed to the Prime Minister of the Polish Government by Comptrollers of the City and State of New York and the Treasurer of the State of California, dated July 30, 2015 (Annex No 2).

The purpose of this legal opinion is to assess the current status of legal obligations and mutual settlements between Poland and US citizens of Jewish origin, concerning the restitution of property lost by them during World War II as a result of the Holocaust carried out by the Nazis. In particular, the analysis includes the existing acts of international and national law governing the issues raised by US politicians in their letters.

I. FACTS

In the letter dated June 29, 2015, the US Congressmen formulated the following allegations against Poland:

- 1) The Polish government and private owners (Poles) remain in unlawful possession of property abandoned by the Jewish community in Nazi-occupied Poland during World War II;
- 2) Poland has not conducted a full restitution of Jewish communal, private and heirless property seized by the Nazis during the Holocaust;
- 3) Poland has no law on private property.

On the other hand, in the letter addressed to the Polish Prime Minister, Comptrollers of the City and the State of New York and the Treasurer of the State of California alleged that Poland is the only member state of the European Union without a law to restore or compensate victims for the property seized by the Nazis during World War II or nationalized by Communist governments. In addition, they summoned Poland to fulfill its obligations to victims of the Holocaust.

II. APPLICABLE LAW

- Agreement between United States of America and Poland regarding claims of nationals of the United States, dated July 16, 1960, *the American Journal of International Law, Vol. 55, No. 2 (Apr., 1961), pp. 540-544* (Annex No 3)
- The Act of February 20, 1997 – The Relation of the State to Jewish communities in the Polish Republic, *Journal of Laws 1997, No. 41, item. 251* (Annex No 4)
- The Act of April 23, 1964 - Civil Code, *Journal of Laws 2014, No 0, item 121*
- The Act of November 17, 1964 - Code of Civil Procedure. *Journal of Laws 1964, No 43, item 296.*





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III. LEGAL ANALYSIS

In accordance with the international practice existing after World War II, Poland has signed several international agreements regulating compensation for private property nationalized by the communist government or property confiscated by the Nazi in occupied Poland during World War II.

Under international law an individual lack an independent legal status. Therefore, governments had to be legal parties to these agreements, acting on behalf of their citizens. Poland has concluded such agreements to pay compensation for property seized during the Nazi occupation and release its liability towards citizens of the signatory countries, as well as their heirs, who held title to claims and debts.

Any matters regarding reparations for property lost during World War II by American citizens, especially those of Jewish origin, were settled in the Agreement concluded between Poland and the United States of America on July 16, 1960 (hereinafter "Agreement", Appendix No 3). Pursuant to Art. 1(a) thereof, the Polish Government paid the sum of \$ 40,000,000.00 (forty million US dollars) to the United States Secretary of State, in full settlement and discharge of all claims on nationals of the United States against the Government of Poland on account of the nationalization and other taking by Poland of property and of rights and interests in and with respect to property. In Art. IV of the Agreement, the Government of the United States have obliged that will neither present to the Government of Poland nor espouse claims of nationals of the United States against the Government of Poland. The sum paid to the Government of the United States was to be distributed at the discretion of the American side. The Foreign Claims Settlement Commission of the United States was the authority responsible for reviewing applications. Applicants willing to obtain a compensation for lost property had to submit to the Commission a statement of intent wherein they waived any claims and transferred to the Polish Government all rights and title to the property. The statement filed with the Commission included the following: („[...] *do hereby release, renounce and transfer to the Government of Poland all my right, title and interest in such of the items of property upon which the award is based* [...]”). Once the application and the declaration of intent were filed, the Commission made a decision on the payment of compensation disbursed from the funds transferred by the Polish Government to satisfy property claims of American citizens against Poland. Poland had no influence on distribution of compensations.

In accordance with the principles of international law, the Agreement is recognized by the governments of both countries as final, irrevocable, valid and binding. Poland fulfilled its obligation in its entirety by transferring the amount agreed in the Agreement to the Government of the United States. The Agreement was reached regardless of whether people initiated relevant claims.

Moving on to the analysis and restitution of communal property belonging to the Jewish minority before the outbreak of World War II, it should be noted that in Poland the restitution of Jewish communal and religious property has been regulated by The Act of February 20, 1997 – The Relation of the State to Jewish communities in the Polish Republic (hereinafter "**Act**", Annex No 4). Pursuant to Art. 30.1 thereof, a free of charge regulatory proceedings on appropriation of property is initiated at the request of a Jewish municipality. The proceedings applies to property which on September 1, 1939 (the day of invasion of Poland by Nazi Germany) belonged to Jewish municipalities or other religious Jewish legal entities existing on the Polish territory, provided that on the property located were, among





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others, Jewish cemeteries or synagogue, buildings which formerly were used as headquarters of the Jewish communities and buildings previously used for religious purposes. With respect to such property, the main purpose of the regulation is to transfer a full title to the property, and only if the transfer of ownership faces difficulties which are too burdensome to overcome, another remedies apply, i.e. appropriation of an adequate replacement property or compensation established under the expropriation provisions.

On the basis of that legislation, Poland has granted Jewish minorities broad decision-making powers, as these regulatory proceedings were carried by the Regulatory Commission for the Affairs of Jewish Communities, which consists of representatives appointed in equal numbers by the Polish Minister of Internal Affairs and Administration and the Board of the Union of Jewish Communities (Art. 32.1).

Based on the above mentioned procedure, the Jewish organizations regained many public facilities, including real property with special religious and cultural significance. In addition, the Regulatory Commission granted Jewish faith-based organizations pecuniary compensation for property that cannot be physically returned in the form of restitution.

With regard to the last allegation directed against Poland by the US Congressmen, i.e., the alleged lack of private property law, it should be noted that private property in Poland, including inheritance matters, is regulated by provisions of the Civil Code (hereinafter "CC"). Every person, regardless of nationality or ethnic religion, may enforce its property and inheritance rights before Polish courts under rules of civil proceedings codified in the Code of Civil Procedure (hereinafter "CCP"). It should be noted that, in accordance with Art. 925 CC, an heir acquires an inheritance at the time of opening of the inheritance. Consequently, the decision of the court as well as the deed certifying succession are declarative in nature, i.e., they confirm the status existing from the moment of opening of the inheritance. In accordance with Art. 1025 § 1 CC, the court at the request of a person having an interest, declares the acquisition of inheritance by the heir. Thus, in order to initiate the inheritance proceedings in Poland you file a request for a declaration of inheritance with the court. The competent court to declare the acquisition of the inheritance is the court of inheritance, which is the district court of the last domicile of the testator, and if his/her place of residence in Poland is not possible to establish, the court for the place where the property, or part of it, is located. In the absence of the above grounds, the inheritance court is the district court for the capital city of Warsaw (Art. 628 CPC). Proceedings before the court may be conducted through proxies - there is no obligation to appear in person. The proxy can not only submit an application for a declaration of inheritance, but also participate in the procedure, receive correspondence and submit any declarations.

In Poland, as in the United States, in the absence of a will and heirs as a spouse and relatives entitled to inherit by the law, the inheritance escheats to the State Treasury. To be more specific, in Poland it escheats to the municipality of last residence of the deceased as a statutory heir, and if the last place of residence in Poland of the deceased cannot be determined or the last place of residence of the deceased was abroad, the inheritance escheats to the State Treasury as a statutory heir (Art. 935 CC).





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IV. CONCLUSION

Pursuant to the international indemnification agreement concluded over 50 years ago, Poland paid to the United States \$ 40 million for a total settlement and discharge of all claims of US citizens. Consequently, Poland has complied with all obligations towards American citizens of Jewish origin whose property was seized by the Nazis during World War II or nationalized by the communist government. Any complaints regarding the non-payment of compensation in that scope, may not be directed against Poland, because the US federal government entirely took over responsibility for allocation of the compensation. Therefore, such allegations and claims may be directed only to the federal government of the United States, including the Congress (and Congressmen) in Washington.

The US government has pledged in the Agreement not to provide or not to support any claims of American citizens directed in this matter against Poland. This also applies to the demands and allegations of the US Congressmen. It is worth noting that US congressmen in their letter call upon the Secretary of State to support their statements, and thus violate an international agreement concluded between the United States and Poland.

Additionally, Poland almost 20 years ago enacted law on restitution of Jewish communal property, which established procedures and its enforcement by competent authorities in cooperation with the Jewish religious organizations.

Property left in Poland without heirs, even after the Nazi Holocaust, as in most democratic legal systems (including United States), escheats to the State Treasury.

The statement of US congressmen that Poland does not have laws regulating private property is completely untrue. Property and inheritance law is governed in Poland by superseding national laws, and based on these acts each person with a legal interest may enforce their property rights.

Sincerely,

THE PLATTA LAW FIRM, PLLC

Slawomir W. Platta, Esq.

ATTACHMENTS:

1. Letter of 46 Congressmen addressed to the US Secretary of State John Kerry, dated June 29, 2015;
2. Letter of Comptrollers of the City and the State of New York and the Treasurer of the State of California addressed to the Prime Minister of the Polish Government Ewa Kopacz, dated July 30, 2015;
3. Agreement between United States of America and Poland regarding claims of nationals of the United States, dated July 16 1960, the American Journal of International Law, Vol. 55, No. 2 (Apr., 1961), pp. 540-544;
4. The Act of February 20, 1997 – The Relation of the State to Jewish communities in the Polish Republic, Journal of Laws 1997, No. 41, item. 251.

