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The Problem of Restitution of Property in the Legislative and Judicial Practice of the Second Republic in the years 1918-1939

Problem restytucji mienia w praktyce ustawodawczej i sądowej II Rzeczypospolitej w latach 1918-1939

The article details the nature of changes in property ownership before World War II in the context of restitution. Examples of nationalisation undertaken by the partitioned states are analysed. Attempts made in the Second Polish Republic to solve the problem of restitution in legislative practice and in the jurisprudence of the courts are also examined.

Key words: nationalisation, reprivatisation, property, legal history.

W artykule przedstawiono charakter zmian własnościowych przed II wojną światową w kontekście reprywatyzacji. Przeanalizowano przykłady nacjonalizacji podejmowanych przez państwa zaborcze. Zbadano także próby rozwiązania problemu reprywatyzacji w praktyce ustawodawczej i orzecznictwie sądów podejmowane w II Rzeczypospolitej.

Słowa kluczowe: nacjonalizacja, restytucja, własność, historia prawa.

Introduction

In the context of the problem of Restitution of Property in the Legislative and Judicial Practice of the Second Republic in the years 1918-1939, it should be borne in mind that the Second Republic, which was reborn

after 1918, was – frankly speaking – a new state, which had to assume the burden of responsibility for the decisions of its hostile powers and take appropriate measures at the level of legislative, executive and judicial powers to prevent their long-term effects. The first problem that the Polish state had to deal with was at least to delimit the subject matter of cases in which the Polish state could and should repair the damage caused to the estates of owners or their heirs who lost their property during the partitions.

The reborn Second Republic encompassed territories that had been under three different partitions and, consequently, five different orders, legal orders that differed significantly from each other, and often even contradicted each other in terms of specific regulations[1]. Therefore, the authorities of the Second Republic adopted the fiction that the thought of the laws of the partitioned states was to constitute Polish district laws. They also introduced conflict-of-laws norms, which allowed to determine the applicable law in a specific territory, because the laws of each district differed due to adaptation to a different degree of socio-economic development[2]. This separateness and incompatibility of the various legal orders, signaled above, proved to be of significance with regard to the possibility of a possible solution to the reprivatization problem by the authorities of the Second Republic, since the acts issued by the various partitioned states depriving property of their property also differed significantly from each other in legal terms. At this point, it should be emphasized that repressive actions carried out by means of property deprivation acts took place on a massive scale primarily in the territories of the Russian partition, since it was there that the most far-reaching property harassment was applied against those who took part in the independence uprisings, i.e., among others, participants in the Kościuszko Uprising, the November Uprising and the January Uprising[3].

The typical legal form for Russian expropriation acts was most often confiscation. The tsarist authorities distinguished it from the sequester as

[1] Among the legal orders that were in force in the territories of the reborn Second Republic, one should mention German (Prussian) law in the western provinces, Austrian (Galician) law in the southern provinces and Cieszyn Silesia, Russian law in the eastern provinces, the law of the former Kingdom of Poland in the central provinces, and Hungarian law in the parts of Spisz and Orawa that were annexed to Poland. In addition, there were also a number of local legal acts issued by the governing bodies of individual Polish territories in the period before the formation of a unified state authority in 1918.

[2] J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia ustroju i prawa polskiego*, Warszawa 2009, s. 581.

[3] See. R. Jastrzębski, *Reprywatyzacja w państwie polskim z punktu widzenia historii prawa, „Studia i Analizy Sądu Najwyższego. Materiały Naukowe. Reprywatyzacja w orzecznictwie sądów*", t. III, Warszawa 2016, s. 10.

a temporary administration by the public treasury[4]. *De jure*, confiscation was considered to be a transfer of assets including all assets and liabilities to the public treasury[5]. In practice, this meant that under confiscation, the rights of only the affected person passed to the public treasury, while the property rights of his spouse and children remained unaffected.

At the same time, as Robert Jastrzębski emphasizes, the most severe for Polish society were the confiscations after the November Uprising. At that time, according to data from 1838, 726 landed estates were seized, which were used primarily for donations to Russian officials or were incorporated into the treasury estate[6]. The repercussions affected residents of the Kingdom of Poland, as well as participants in the uprising from Lithuanian and Ruthenian areas. The pronouncement of the penalty of confiscation was due to the fact that after the collapse of the November Uprising, the Russian authorities – in the person of Czar Nicholas I – issued in 1832 the so-called Organic Statute for the Kingdom of Poland (Organic Statute of the Kingdom of Poland dated 14/26 II 1832), which was originally intended only to supplement the Constitution, but de facto abolished it, thus becoming the supreme legal act of the Kingdom of Poland[7]. The concept of confiscation as a punishment was provided by the tsarist authorities – for first-order state offenses – in Article 12 of the Organic Statute: "The penalty of confiscation of property shall be provided only for first-order state offenses, as shall be specifically designated in separate regulations"[8].

By virtue of these separate regulations, this punishment was intended to apply, among others, to those who took part in the November Uprising and those who left the territory of the Kingdom of Poland and subsequently went into exile in France, among other places, thus failing to return to the Kingdom within the timeframe stipulated by the ruling authorities. The introduction of the penalty of confiscation in the Organic Statute was intended to put in order the actual actions of the partitioning

[4] See. L. Żytkowicz, *Rządy Repnina na Litwie 1794–1797*, Wilno 1938, s. 347.

[5] W. Ćwik, *Prawo karne*, [w:] *Historia państwa i prawa Polski*, t. 3: *Od rozbiorów do uwłaszczenia*, red. J. Bardach, Warszawa 1981, s. 536–537.

[6] R. Jastrzębski, *Zagadnienia prawne reprywatyzacji w państwie polskim XX w., [w:] Problemy repry-watyzacji, red. A. Jarosz-Nojszewska, P. Legutko-Kobus, Warszawa 2017,* s. 42.

[7] Zob. m.in. T. Demidowicz, *Statut Organiczny Królestwa Polskiego w latach 1832-1856*, „Czasopismo Prawno-Historyczne" 2010, nr 1, s. 135-165

[8] *Dziennik Praw Królestwa Polskiego*, t. 14, nr 54, s. 172.

authorities, which were the result of Ivan Paskevich's decree of July 27, 1831 to impose sequesters on those who took part in the uprising[9].

As Tomasz Demidowicz points out at the same time, the penalty of loss of property provided for in Article 12 of the Organic Statute was not merely a threat by the Russian partitioner against the Polish population, but a real instrument of repression, for it involved not only the transfer of all property rights of the convicted person to the public treasury – the partitioning authority – but also the recognition of the convicted person as a civilly dead person unable to acquire any property under civil relations[10].

It is worth noting at this point that a significant part of the real value of the property confiscated by the tsarist regime was the property of people who were particularly wealthy and involved in patriotic activities, such as: Adam d. Czartoryski, Gen. Kazimierz Malachowski, Jan W. hr. Bieliński, Jerzy O. Szaniecki, Gen. Ludwik Pac[11]. The tsar's amnesty decree suspending the confiscations did not take place until 1860, three years before the outbreak of another independence uprising – January Uprising.

Indeed, the consequence of the fall of the January Uprising was further repressions of a property nature by the partitioning authorities. As Bartłomiej Starzec notes, still during the January Uprising, on March 13, 1863, a decree was issued imposing a sequester on the estates of those who took part in the uprising until the verdict was passed, as well as a decree of the Governor of the Kingdom of Poland on December 17, 1863, on the sequestration of movable and immovable property'[12].

The expropriation acts issued after the January Uprising, however, primarily affected residents of the former territories of Lithuania and Ruthenia, as it was there that the tsarist decree of December 10, 1865, was issued with the aim of expropriating the Polish landed gentry and restricting the acquisition of real property by its representatives. To a lesser extent, the property of those involved in the uprising in the former Kingdom of Poland was confiscated. This meant, therefore, that the Polish landed gentry did not suffer after the fall of the January Uprising to the same extent as after the fall of the November Uprising.

[9] B. Starzec, op. cit., s. 84-85.
[10] T. Demidowicz, op. cit., s. 149.
[11] Ibidem.
[12] B. Starzec, op. cit., s. 85.

However, the literature repeatedly mentions the famous confiscation of property that took place in the former Kingdom of Poland. It consisted of the entry under Russian military administration of Andrzej Zamoyski's palace on Nowy Swiat Street in Warsaw, from the windows of which an unsuccessful assassination attempt was made on September 19, 1863 against the tsarist governor – Count Fyodor Berg. According to Robert Jastrzebski's research – "after the end of World War I, the issue of the return of the building on Nowy Swiat Street was pursued in court by Zamoyski's heirs, at the same time becoming the subject of interest in the press of the time"[13]. This example of Zamoyski's palace brilliantly demonstrates that issues related to the recovery of property subject to confiscation by the Russian partition authorities very quickly emerged in the social and legal discourse of the Second Republic.

Significant influence on making property restitution a public matter was exerted not only by the heirs of confiscated property taking legal action, but also by the propaganda significance of the making of restitution by the authorities of the resurgent Polish state and by the equitable nature of the claims themselves. Therefore, a speedy resolution of the confiscated property issue initially seemed to be a matter for imminent resolution, if only because the confiscated property belonged to people of merit in insurrectionary and independence aspirations. However, as Piotr Makarzec notes, the solution to this problem was facilitated neither by the radical atmosphere born of wartime poverty and the ongoing revolution around Poland, nor by the struggle for borders, nor, finally, by the fierce political struggle over the shape of the regime of the nascent state[14].

The Problem of Restitution of Property in the Legislative Practice of the Second Republic in the years 1918–1932

Poland's regaining of independence in 1918 – which was, in fact, a gradual process – carried with it a moral obligation to honour those individuals who had suffered harm as a result of their patriotic activism (whether in form of armed struggle in national uprisings or some other

[13] R. Jastrzębski, *Zagadnienia prawne…*, s. 42-43.

[14] P. Makarzec, *Rewindykacja dóbr popowstańczych w II Rzeczypospolitej*, „Studia Iuridica Lubliniensia" 2007, nr 10, s. 124.

form of opposition to the partitioning states). At the same time, those involved in independence campaigns during the 123 years of partition were subjected to numerous repressions by the partitioning authorities, not only in terms of property. Therefore, one should recall that the mere loss of property as a result of confiscation was only one of many other manifestations of repression, albeit undoubtedly a significant one.

The need to legally address the issue of property confiscated by the partitioning authorities arose after the declaration of Poland's independence on 7 October 1918 by the Regency Council of the Kingdom of Poland, then acting as head of state.[15] Thus, in the justification of the *Decree of the Regency Council on donation estates* of 4 November 1918 concerning estates created under the tsarist decree of 4 October 1835 from former national estates and estates confiscated for participation in the November Uprising, it was already stated that since "considerable areas of property, owned by the Polish treasury, were at various times, by edicts of the Russian Emperors, given for the purpose of propagating in Poland foreign nationality and faith and counteracting our national and freedom aspirations into the possession of persons who had distinguished themselves in the struggle against the Polish Nation, [then – M.S.] (...) these estates should return to the rightful order of the Polish government and serve the purpose of enabling the landless farmers, workers and small farmer, and in particular the victims of war and soldiers of merit for the Homeland, establishing their own farms"[16].

At a normative level, the Regency Council's decree stated that all donation estates would pass into state control, but did not mention the recovery of lost property by former owners; it only refereed to the statute of limitations regarding the filing of claims to such property, and therefore the need to file them within a certain period of time (within one or three years) from the issuance of the decree. Subsequently (i.e. after the Regency Council was dissolved and Józef Piłsudski was appointed Interim Chief of State on 14 November 1918), the forced state control was also extended to abandoned property (mainly that previously held by the Russians, including property owned by representatives of the partitioning authorities and church estates), by virtue of a decree issued by Józef Piłsudski on 16 December 1918[17]. These measures were justified

[15] *Dodatek nadzwyczajny. Rada Regencyjna do Narodu Polskiego*, "Monitor Polski" 7 October 1918.
[16] Decree of the Regency Council of 4 November 1918 on donation estates (JoL of 1918, no. 15, item 35).
[17] Decree of the Chief of State of 16 December 1918 on state control (JoL of 1918, no. 21, item 67).

by the need to rebuild the Polish state as quickly as possible using the property resources left behind in the country by the former partitioners.

The issue of confiscations carried out by the partitioning states then became the subject of the work of the Legislative Assembly operating between 1919 and 1922. One of the first actions taken in this regard was by a group of socialist members of parliament (led by Marian Malinowski) who tabled a motion on 27 May 1919 to restore the rights of citizens of the Polish Republic who had been convicted of political crimes by the partitioning governments[18]. The motion demanded that the Legislative Assembly pass a comprehensive law that would assure the restitution of all rights that had been taken away from these convicted Poles. The motion therefore also concerned the property rights taken away, even though this was *de facto* not the original aim of the socialist members of parliament[19].

When Member of Parliament Malinowski raised this motion, the relevant legislative work was undertaken in the Ministry of Justice, headed at the time by Leon Supiński, and a bill was drafted regarding the restoration of the rights of convicted political and military offenders, which, on the basis of a resolution of the Council of Ministers of 4 July 1919, was sent on 12 July 1919 to the Legislative Assembly[20]. Regarding the issue of property rights lost by Poles as a result of being convicted of political and military offences – for example, resulting in the confiscation of property – this draft assumed the adoption of a regulations based on a fictional assumption through the appropriate application of the regulations concerning a missing person who is proven to be alive. At the same time, it should also be emphasised that this draft was intended to apply to property rights lost by Poles under Russian rule during the partition period. In the next step of the legislative procedure, the government's bill on the restoration of the rights of people convicted of political and military offences was referred to the Committee on Legal Affairs of the

[18] Motion of interim deputy Malinowski and his comrades on the restoration of rights to citizens of the Polish Republic convicted of political offences by the governments of the partitioning states (Paper no. 581), Assembly Paper no. 999, Legislative Assembly of the Second Polish Republic (1919-1922).

[19] For, as P. Makarzec notes, "The paradox was that the first to raise (...) this issue [of the return of property – M.S.] in parliament, albeit on a very limited scale, were the socialists, known after all for their doctrinal aversion to private property. However, members of the Polish Socialist Party were primarily concerned with overturning convictions for revolutionary-independence activities, especially those from the period 1905-1907". P. Makarzec, *Rewindykacja…*, p. 126.

[20] Legislative Assembly of the Polish Republic, Assembly Paper no. 831, Legislative Assembly of the Second Republic of Poland (1919–1922).

Assembly headed by Zygmunt Marek. The rapporteur was one of the socialist activists, Kazimierz Pużak. Subsequently – as part of the detailed work of the Committee on Legal Affairs finally completed on 18 March 1920 – the draft law underwent numerous and quite significant transformations as compared to the original proposal of the Ministry of Justice.

The most significant of the changes introduced by the Committee was the temporal limitation of property claims, for, under the draft, the obligation to return property was to apply only to property lost within 30 years prior to the entry into force of the act. In the report of the Committee on Legal Affairs, this authoritative decision was justified on the grounds that the draft law "is particularly intended ... to deal with a matter of urgency, i.e. the deprivation of property rights of those political and military offenders whose conviction occurred more or less within a period of thirty years, counting backwards from the present time. Cases extending beyond the aforementioned time period – insofar as the restoration of property rights is concerned – still require detailed study and consideration from various angles. In particular, as far as the question of the struggles undertaken in 1831 and 1863 against the partitioning power is concerned, this question can only be settled in connection with the provisions of the peace treaty that will eventually be concluded between the Polish Republic and the Russian state"[21].

The rationale for such a decision was also seen in other aspects, because, as P. Makarzec points out, "Kazimierz Pużak, the deputy who reported on the project, argued that if one wanted to regulate all the confiscations of property in a similar way, there would be a huge chaos and confusion, the courts would be overloaded with excessive work, and in many cases there would be a great problem as to how to revindicate the possible property rights"[22]. Tomasz Kulicki, on the other hand, sees potential justification for the choice of the above-mentioned time limitin the fact that it was in line with the provisions defining the institution of time limitation in force at that time on the territory of the reborn Second Republic, since the period of thirty years was the longest statute of limitations period provided for by the civil codes of the partitioning

[21] Report of the Committee on Legal Affairs on the draft law submitted by the Government on the restoration of rights to citizens convicted of political and military offences (paper no. 831) and the motion of interim deputy Malinowski and his comrades on the restoration of rights to citizens of the Polish Republic convicted of political offences by the governments of the partitioned countries (Paper no. 581), Assembly Paper no. 999, Legislative Assembly of the Second Polish Republic (1919–1922).

[22] P. Makarzec, *Rewindykacja*…, p. 126.

states, inter alia by § 195 of the German Civil Code of 1896 (BGB), § 1478 of the Austrian Civil Code of 1811 (ABGB) and Section Art. 2262 of the Napoleonic Code[23].

Another important change introduced by the Committee on Legal Affairs in the text of the original draft of the Ministry of Justice was to extend the validity of the Act to include the territories under the Prussian partition before the restoration of independence – and thus to increase the subjective scope of the future beneficiaries of the act – by referring to the provisions of the Act of 20 January 1920 on citizenship of the Polish State.[24] Finally, the committee abandoned the legal fiction placed in the draft of the Ministry of Justice about the appropriate application of the regulation on proving the survivorship of a person declared dead as a general rule for the restoration of property rights. Instead, the committee replaced it with a norm based on the principle of unjust enrichment, declaring the person obliged to return the property to be its bona fide possessor until he was required to return it[25].

Following the completion of the work undertaken by the Committee on Legal Affairs, the draft bill on the restoration of the rights of convicted political and military offenders was referred to the Legislative Assembly. It was submitted for adoption by the Legislative Assembly together with drafts of two other symbolic resolutions. The first of them called for the enactment of a law securing the livelihood of "indigent former political convicts who have lost their health and ability to work while serving their sentences"[26]. On the other hand, by adopting the second resolution, the Legislative Assembly was to symbolically condemn and recognise as unlawful the confiscation of the property of those involved in the struggle for independence within the framework of the national uprisings, and to call on the government to present, as soon as possible, a bill that would regulate the property situation of their heirs. This resolution was adopted in the form of a resolution by the Legislative Assembly on 4 May 1920 without discussion and unanimously for it had no legal consequences, and its final wording was as follows:

[23] T. Kulicki, *Reprywatyzacja? Ale to już było?*, [online:] www.temidium.pl/artykul/reprywatyzacja_ale_to_juz_bylo-4616.html, 07.2018, [accessed: 30 December 2018].

[24] Act of 20 January 1920 on the citizenship of the Polish state (JoL of 1920, no. 7, item 44).

[25] B. Starzec, op. cit. p. 93.

[26] Annex 2 to Assembly Paper no. 999, Resolution I, Legislative Assembly of the Second Polish Republic (1919 – 1922).

1. The Assembly remembers with honour and appreciation the participants in the struggle for the Nation's independence who gave evidence of their dedication and passionate love of the Fatherland in the Polish-Russian War of 1831 and in the uprisings of 1848 and 1863.
2. The Assembly states that all confiscations of the property of people who fought for the freedom of Poland, carried out by the governments of the former partitioning states, regardless of the form in which they took place, were acts of violence and unlawfulness.
3. The Assembly calls on the government to submit to the Assembly as soon as possible a bill that would, in accordance with a sense of justice, compensate for the injustices suffered by the participants in the struggle for freedom and their successors from the governments of the partitioning states[27].

However, it is also worth remembering that, as R. Jastrzębski pointed out, the original wording of the resolution quoted above was different. For example, the paragraph "The Assembly states that all confiscations of the property of people who fought for the freedom of Poland, carried out by the governments of the former partitioning states, regardless of the form in which they took place, were acts of violence and unlawfulness" was followed by a sentence that the Assembly "(...) expresses a deep conviction that the Polish Government will annihilate these acts and their effects", but this passage was eventually deleted[28].

However, from the point of view of the issue of restituting property to former owners in the Second Republic, the key issue at that time was that the members of the Legislative Assembly, apart from the symbolic dimension expressed in the resolution, which, as already emphasised, did not have the force of binding law, did not forget about the normative dimension either and on 4 May 1920 unanimously adopted the law on the restoration of rights in the version created by the Committee on Legal Affairs, without discussing the controversy concerning the time period that the revindication of property was to cover[29]. Importantly, the law entered into force on the date of promulgation and, by virtue of its Art.

[27] Act of the Assembly of the Polish Republic of 4 May 1920 (JoL of 1920 no. 39 item 229).
[28] R. Jastrzębski, *Reprywatyzacja*…, p. 11
[29] Act of 4 April 1920 on the restoration of rights, lost as a result of political and military offences (JoL of 1920, no. 39, item 230). According to the attached report, in the title of the law "on the restoration of rights, lost due to political and military offences", instead of "Act of 4 April 1920", it should read: "Act of 4 May 1920".

4, the obligation to reimburse only referred to property lost within the last 30 years from the date of the action, setting a cut-off date of 1890: "The obligation to reimburse (...) shall apply only to property lost within the last 30 years, counting backwards from the time when reimbursement under this Act was requested"[30].

The adoption of the act in this form thus meant, on the one hand, that the authorities of the Second Republic brought about at least a partial solution to the problem of the return of confiscated property, but on the other hand, it gave rise to a sense of injustice among the heirs of those who had lost their estates as a result of repression by the partitioning authorities for their activities in the national uprisings. For, as P. Makarzec notes: "The inclusion in the revindication of only property confiscated in the last thirty years excluded insurgent confiscations, while all major expropriations took place before that date. After 1890, property was also confiscated, but to relatively indigent people, so returning it did not cause much difficulty"[31].

As a result, the law passed by the Assembly on the restoration of rights lost as a result of political and military offences could not redress the grievances felt by veterans who were still alive at the time (for example, veterans of the January Uprising), nor their heirs, and the heirs of participants in earlier national uprisings, nor could it offer them any sense of justice. For this reason, the removal of the criminal consequences of sentences handed down in connection with the convicts' patriotic activities was regarded in the circles of victims of Russian confiscations as a purely symbolic gesture, while the provisions of the law itself were received rather unfavourably. However, it was still hoped that, in accordance with the solemn wording of the resolution passed by the Assembly, the authorities of the Second Polish Republic would return in the near future to the problem of the return of property taken from participants in national uprisings by the authorities of the partitioning states and settle the issue legally, instead of postponing it *ad acta*[32].

Some hope for a favourable turn of events could have been offered by a law adopted by the Legislative Assembly shortly afterwards – on 16 July 1920 – restoring property rights unlawfully taken away from

[30] Ibidem.
[31] P. Makarzec, *Rewindykacja…*, p. 127.
[32] See in more detail: A. Suligowski, *Bezprawia i konfiskaty pod rządami rosyjskimi*, Warszawa 1928; J.A. Święcicki, *Rewindykacja konfiskat popowstaniowych w świetle cyfr, etyki i celowości*, Warszawa 1931.

them earlier by the Russian authorities[33]. The enactment of this law was linked to the intention to compensate for the injustices inflicted on them by the Tsarist regime, which adopted as part of its religious policy the use of emergency ordinances of a repressive nature aimed at inducing the Uniates to join the Orthodox Church. According to the regulations contained in the text of this law, the Polish state was obliged to return the Uniate estates taken from their rightful owners as part of the tsarist repressions by obliging them to be bought back at the expense of the state treasury from those who had bought them back using the privilege of being Orthodox. In turn, in the event that those who had acquired such property in good faith were unable to return it, those victimised by the tsarist regime had the option of obtaining restitution either in the form of a parcel of land in the immediate vicinity of the confiscated property or in the form of appropriate compensation.

Unfortunately, unfavourable political circumstances at the time, related to the Bolshevik military offensive and the necessity for the army of the reborn Polish Republic, whose independence and sovereignty was at stake, to put up armed resistance to it, meant that neither in the summer nor in the autumn of 1920 was a suitable law adopted – despite the earlier adoption by the Assembly of the resolution discussed above to restore the property rights of the insurgents or their heirs. Nevertheless, this issue was returned to in the Second Republic after the actual end of the Bolshevik war and under the conditions of a different socio-legal reality, as this return already took place after the adoption on 17 March 1921 of the Constitution of the Polish Republic, as well as after the Polish state concluded the peace treaty in Riga on 18 March 1921.[34] In legal discourse, the return to this issue was justified by the adoption of the principle of legal continuity of the Polish state in the March Constitution, which made it possible to settle the issue of property confiscated by the partitioning authorities as repression for participation in national uprisings.

For this reason, on 1 July 1921, a group of members of the People's National Union, motivated by a "sense of justice and the conscience of the nation", put forward an emergency motion and submitted, to the then Speaker of the Assembly, a draft of a comprehensive law on the restitution of property rights to participants in struggles for Poland's

[33] Act of 16 July 1920 on restoration of property rights to the Uniates (JoL of 1920, no. 89, item 583).
[34] Act of 17 March 1921 – Constitution of the Polish Republic (JoL of 1921, no. 44, item 267); Peace Treaty between Poland and Russia and Ukraine of 18 March 1921 (JoL of 1921, no. 49, item 300).

independence in the Polish-Russian war of 1831 and in the uprisings of 1846 and 1863, which in its assumptions would realise the resolution of 4 May 1920 passed by the Legislative Assembly[35].

This project provided for a detailed regulation of the problem of restitution of property taken from insurgents and, at the level of the scale of the assumed restitution, was quite ambitious. In the light of Articles 1 and 11 of the draft submitted by the members of parliament, the personal scope of persons who could claim the restitution of seized property was limited to those convicted by the courts of the former partitioning states for acts committed for political motives in 1831, 1846 and 1863, as well as their descendants and heirs up to and including the fourth generation[36]. In order to be able to make a claim, these persons had to have Polish citizenship under the Act of 20 January 1920 on citizenship of the Polish state[37]. In addition, the claim for the return of assets or the return of profits should have been filed under the law within five years of its promulgation[38].

With regard to the material scope of possible restitution envisaged in the draft, the proposers decided that this scope included the restoration to the owners or their heirs of landed estates confiscated by the partitioning states, insofar as they were located within the borders of the present Second Republic. At the same time, there would be specific rules for the return of assets, varying according to who still owned the assets. Thus, in the case of property under state administration, the method of restitution would be, in order, for the entitled person to apply to the competent court where the property was located, for the person to present evidence and then, if found to be valid, for the court to order the property to be returned to that person free of charge.

On the other hand, in the case of property in the hands of private individuals, the method of property restitution described in the draft was not so straightforward because, as B. Starzec, the project applicants, notes, "(...) they probably guessed that they were treading on shaky ground. This is because they were faced with the task of fulfilling the principle of justice without compromising the security of legal transactions. Indeed,

[35] Emergency motion of members from the People's National Union on the law on the restitution of property rights to participants in struggles for Poland's independence in the Polish-Russian war of 1831 and in the uprisings of 1846 and 1863, Assembly Paper no. 2888.
[36] See B. Starzec, op. cit., p. 97.
[37] Act of 20 January 1920 on the citizenship of the Polish state (JoL of 1920, no. 7, item 44).
[38] R. Jastrzębski, *Reprywatyzacja*…, p. 13.

there are cases in which several decades have passed since the seizures, which means that the legal status of many properties has changed several times. Goods changed owners and were often acquired by people who did not know their past, all the more so because mortgaging real estate was only obligatory for landed estates and houses in Warsaw and provincial cities. It was therefore necessary to protect the good faith of the purchasers"[39].

All this meant that the solution to this problem envisaged by the applicants had to address two situations. The first, assuming that the confiscated estates would pass into the hands of a third party, would entitle the rightful owners to claim from the first purchasers of the estates and their heirs the return of the profits they made from the sale of the estates. The court's task would therefore be to determine the amount of compensation, and the good faith of third parties would be protected by law. On the other hand, in a situation where the confiscated assets were in the hands of persons who had bought them from the partitioning authorities, these persons or their heirs would be obliged to return them under the law. At the same time, the heirs of the former owners could only claim reimbursement from the rightful owners for the cost of acquiring the property. The adoption of such a solution in the draft act on the restoration of property rights to participants in struggles for Polish independence in the Polish-Russian war of 1831 and in the uprisings of 1846 and 1863 therefore meant, as B. Starzec emphasises, the introduction of a kind of "presumption of knowledge of the manner in which the Russian state entered into possession [of estates – M.S.]", whereas "the defectiveness of this possession affected (...) the heirs of the purchasers, while it did not extend to third parties".[40]

However, the bill submitted by some members from the National People's Union was not passed by the then majority of the Assembly and the solution to the problem of property restitution was postponed despite the urging of members from the National Christian Workers Circle for the presentation of a comprehensive bill.[41] In the following months, similar hopes for the creation of a favourable legislative conjuncture that

[39] B. Starzec, op. cit. p. 97.
[40] Ibidem.
[41] Emergency motion of the members from the National Christian Workers Circle to submit to the Assembly a draft bill on compensating the wrongs of the participants of the struggle for freedom and their successors, Assembly Paper no. 3015.

could influence the regulation of the problem of the return of property to the heirs of insurgents were seen in the enactment by the Legislative Assembly of the Act of 2 December 1921 on contracts for the purchase of real estate, drawn up in the name of substituted persons, and on the redemption of estates sold due to restrictions on Polish nationality.[42] However, these hopes also remained unfulfilled at the legislative level and the Legislative Assembly failed to pass a corresponding law restoring the property confiscated from the insurgents or their heirs.

However, the above-discussed legislative omission, which should rather be regarded as a conscious and deliberate act of the authorities of the Second Republic, resulted in the emergence of many voices of opposition to the policy pursued by the authorities, and these were vociferously expressed by representatives of the legal discourse of the time. The literature emphasises that they emerged especially during the First Congress of Polish Lawyers, which took place in Vilnius on 8–10 June 1924[43]. At that time, the return of property confiscated by the Russian authorities was the subject of a lecture by Franciszek Bossowski entitled *Estates Seized After 1863*.[44] The conclusion of this speech was the lecturer's statement that "the current state of affairs threatens the Treasury with a whole series of difficult and complicated lawsuits with a doubtful outcome and it is therefore a pressing necessity to enact the law as soon as possible"[45].

The stance on the need to enact a law regulating the issue of property confiscated from insurgents, expressed this way, gave rise to many political and legal polemics during the Congress; one of the authoritative opinions on the subject is presented by R. Jastrzębski, who quotes a well-known political activist and barrister with a rather pro-Russian attitude, Aleksander Lednicki, according to whom "Polish Republic cannot give sanction to the confiscation of property by the Russian Government from insurgents of all epochs", while "the heirs, by way of an individual assessment of their rights, are in principle entitled to fair compensation for the

[42] Act of 2 December 1921 on contracts for the acquisition of real estate drawn up in the name of substituted persons and on the redemption of estates sold due to restrictions on Polish nationality (JoL of 1921, no. 106, item 77).
[43] See R. Jastrzębski, *Reprywatyzacja*…, p. 14.
[44] See F. Bossowski, *W sprawie majątków zabranych po roku 1863 (Referat na Zjazd Prawników w Wilnie)*, appendix to "Gazeta Administracji i Policji Państwowej" 8–10 June 1924.
[45] F. Bossowski, op. cit., p. V.

confiscated property", because "it is difficult to talk about restitution, but one has to think about compensation"[46].

In addition, the First Congress of Polish Lawyers also reported on the urgent need for an inventory of confiscated assets with an assessment of their factual and legal situation. The aim of this initiative was to establish the number, or at least the scale of the estates that could be recovered by the heirs of the former insurgents, who, in the face of the failure of the authorities of the Second Republic to enact a comprehensive law, were left only the judicial route, which may or may not have encouraged certain abuses. This was the state of affairs until 1932, when the authorities of the Second Republic enacted the law of 18 March 1932 on property confiscated by former partitioning governments from participants in the struggle for independence[47].

The Problem of Restitution of Property in the Judicial Practice of the Second Republic in the years 1918–1939

As a consequence of the legislative vacuum created in the Second Republic – which resulted from the lack of a statutory regulation of the problem of the return of property confiscated from insurgents – the judiciary discretionary power increased, as it was the judges who decided whether to grant insurgents or their heirs a return of property in kind or to award appropriate compensation for lost property. It should therefore be noted that the insurgents and their heirs (or rather the heirs themselves, as almost a century had passed since the November Uprising and fifty years since the January Uprising) took advantage of the legislative vacuum created in this way to bring more and more actions before the Polish courts, in which they demanded – both from the State Treasury represented by the General Prosecutor's Office and from private individuals – the return of the unlawfully confiscated property. Thus, in the case of suits over property remaining state property, the lawyers of the General Prosecutor's Office had to, representing the economic interest of the State Treasury, present their arguments against the arguments of

[46] R. Jastrzębski, *Reprywatyzacja…*, p. 14.

[47] Act of 18 March 1932 on property confiscated by former partitioning governments from participants in the struggle for independence (JoL of 1932, no. 24, item 189).

the insurgents and their heirs (whose interests were expressed, among others, by the Board of the Association of Veterans of 1863) about the equitable nature of their claims for the return of confiscated property. The mode of argumentation of the representatives of both sides was already reconstructed in detail in the inter-war literature[48]. In contrast, a contemporary reconstruction of this dispute was made by P. Makarzec, whose view was that lawyers working for the General Prosecutor's Office argued that:

No other state [than Poland – M.S.] has decided to restore property titles lost as a result of major ownership transformations. Not even the Bourbons, having returned to the French throne in 1814, did so, although they had previously considered the changes in ownership made by the revolutionary authorities and Napoleon to be illegal;

1. The estates [confiscated by the partitioning authorities – M.S.] had already managed to pass, in good faith anyway, into the hands of third parties;
2. A lot of land was parcelled out and no one would dare take it away from the peasants;
3. Any compensation would require a great deal of money, which was still lacking in the meagre state treasury;
4. (...) the immovable assets of the state balance sheet are based on national assets, largely consisting of confiscated estates and edifices;
5. (...) it is not worth supporting the owning classes.

In contrast, representatives of the bourbons Board of the Association of Veterans raised counter-arguments that:

1. During the Bourbon Restoration period, high compensation was paid for the loss of estates;
2. No one was planning to take back the land parcelled out to the peasants;
3. The aggrieved parties only demanded the return of estates held by the State Treasury [and which – M.S.] almost exclusively consisted (...) of forest spaces not affected by the agrarian reform;
4. The Treasury would have much more income from stamp duty, industrial taxes, land taxes, income taxes, estate taxes, alienation taxes and

[48] J.A. Święcicki, op. cit.

inheritance taxes than it has now [that is, in the absence of the return of confiscated estates];
5. [It is untrue to say that – M.S.] the state balance sheet was based in large part on national assets, consisting of the confiscated edifices and estates[49].

It should also be noted that lawsuits filed by heirs of former insurgents before Polish courts led to the emergence of a few high-profile lawsuits in Poland in the 1920s, which, after going through several instances, eventually reached as far as the Supreme Court, which was guided in its decisions – as emphasised by R. Jastrzębski – by the general principle that "when the Polish state regained its independence, entitled persons (heirs) could assert their rights to the confiscated property, in particular its return, if it was in the possession of the then State Treasury".[50] That is why the trials before the Polish courts usually ended with the heirs of insurgents harmed by the seizures obtaining favourable settlements for them in the form of restitution of property in kind or compensation. Moreover, an additional effect of the publicity of the major revindication trials was that the issue of the return of confiscated property was widely discussed in legal, political and journalistic circles.

In the literature, the case brought by Stefan Szumkowski against the heirs of Nikolay Rubtsov for the return of property that had been confiscated by the Russian authorities from the plaintiff's father, Alojzy Szumkowski, for his participation in the January uprising of 1863, is most often cited as an example of a revindication trial that had the greatest – even precedent-setting – impact on the political and legal system of the erstwhile Second Republic. After the seizure by the partitioning authorities, this property was not given to anyone as a donation, but was sold in 1874 to the defendants' testator, Nikolay Rubtsov, who at the time served as head of the chancellery of the Governor-General Mikhail Muravyov.

The case had been pending before the Polish courts for several years, and both the district court (first instance) and the appeal court (second instance) ruled in favour of Stefan Szumkowski. The legitimacy of the claim raised by the insurgent's son was, moreover, emphasised in its reasoning by the Court of Appeal, which heard the case between 13–27

[49] P. Makarzec, *Rewindykacja*…, pp. 128-129.
[50] R. Jastrzębski, *Zagadnienia prawne*…, p. 45.

October and on 10 November 1925, stating that "the decrees of the partitioners, which aimed at the deprivation and oppression of Poles, lost the actual force of law with the resurrection of the Polish statehood; they are null and void 'ab initio' and therefore cannot be legal sources of private legal acts consciously based on them in bad faith"[51]. At the same time, the heirs of Nikolay Rubtsov disagreed with the decisions of the courts of first and second instance, filing a cassation appeal with the Supreme Court through their attorney Sergiusz Kułakowski, who was the guardian of their estate. They justified their position on the grounds that the confiscation decree issued by the tsar had the rank of a law, while Polish courts had no right to examine the validity of laws that were duly promulgated. The case was therefore heard on 11–12 May 1928 by the Supreme Court by a full panel of 15 judges, chaired by Bolesław Pohorecki, chairman of the Civil Chamber. After hearing the case, the Supreme Court upheld the previous verdicts, ruling in favour of Stefan Szumkowski on 12 May 1928 and thus dismissing the arguments of Nikolay Rubtsov's heirs. The reasoning of that ruling stated that:

1. the legal relations created by violence and lawlessness, such as all the confiscations of property of people who fought for Poland's freedom by the governments of the former partitioning states, could only exist as long as the political and legal state of affairs at the time existed and there was an authority capable of enforcing the continuation of such a state of affairs;
2. all acts of the Russian authorities, whether legislative or executive, on which such confiscation was based and by means of which such confiscation was carried out, were not acts of law, but manifestations of illegality, resulting from the denial to the Polish Nation of its most essential right, which is the right to an independent state. However, with the resignation of that authority, the collapse of that regime and the regaining of Poland's independence, such illegally created legal relations also collapsed, as they were contrary to the public and private legal state that had existed since then, while the rights and titles of the legal owners of confiscated property were revived – insofar as, naturally, they had not been forfeited in a manner corresponding to the new legal order in the State;

[51] Idem, *Reprywatyzacja*…, p. 14.

3. the defendant may not defend himself by reference to the period of the statute of limitations if, by the time the competent Polish court came into being, there was, as a result of the political and legal situation at the time, a legal obstacle to the defence of his rights by bringing a lawsuit;
4. the present possession of the confiscated assets could only gain a further legal existence either by virtue of the statute of limitations or by virtue of the express will of the Polish legislator (...) such a legislative act had not, however, been passed either by the date of the contested judgement or even by the present day[52].

In conclusion, it is important to highlight in the above decision of the Supreme Court several important aspects related to the return of property confiscated from insurgents. Firstly, the Supreme Court held that the title to the confiscated property itself did not constitute an act of law, but a manifestation of illegality, and thus could neither constitute a legitimate source of property rights in the Second Republic nor produce binding legal effects. Secondly, the Supreme Court stated that the statute of limitations for claims for the return of confiscated property runs not from the moment of confiscation, but from the emergence of the actual possibility of seeking the return of confiscated property before the Polish courts, since in the Russian partition based on the principles of self-rule, the courts would never have recognised the repression of the January insurgents as illegal. Thirdly, the Supreme Court noted that the property confiscated by the partitioning authorities could only remain in the hands of the current owners as a result of the statute of limitations of the claim or the will of the Polish legislature. Finally, the Supreme Court referred to the legislative passivity of the Polish authorities, stressing that in the absence of a comprehensive law, the proper way to obtain restitution of lost property is through the courts. Thus, the decision handed down by the Supreme Court – as B. Starzec notes – continued the previously adopted line of jurisprudence[53].

Another famous lawsuit concerning property confiscated after the January Uprising, but with less strictly legal implications, was that relating to the aforementioned seizure of the property belonging to Count

[52] SN I KCl no. 48 of 11–12 May 1928.
[53] B. Starzec, op. cit. p. 99.

Andrzej Zamoyski, namely the townhouse building at 67/69 Nowy Świat Street in Warsaw, as a form of repression by the Russian authorities for the bombing of tsarist governor Fyodor Berg from the townhouse windows on 19 September 1863. Until the end of the Partitions period, this townhouse remained in the hands of the Russian partitioner authorities. After Poland regained its independence, the building was taken over by the Polish state and remained under its management. Therefore, convinced of the legitimacy of their claims, the successors of Count Andrzej Zamoyski sent an appropriate summons to the Head of State, Józef Piłsudski, demanding the immediate return of the lost property, justifying their claim with the fact that the building of the tenement had not been confiscated in the eyes of the law, as the Russian authorities had never issued an appropriate confiscation order in this regard. Following that, the request was forwarded to the Ministry of Agriculture and State Property (responsible at the time for administering the properties taken over by the Polish state) to determine whether the former owners' right to compensation was not time-barred. However, in the position of the Ministry of Agriculture and State Property quoted by P. Makarzec, it was stated that "settlement of this matter will be withheld for the time being and until the Legislative Assembly passes a resolution on the subject of property confiscated by the partitioners"[54].

As a result of the failure to satisfy their revindication claims, the heirs of Count Andrzej Zamoyski decided to file a lawsuit for the return of the townhouse building with the District Court[55]. Two positions clashed during the process. The first one – presented by the General Prosecutor's Office – assumed that the Polish State held a mortgage-certified legal title to the townhouse building as the legal successor to the Russian partitioning authorities, and that the claims raised by the plaintiffs were time-barred under civil law. The second position – presented by the attorneys of the heirs of Count Andrzej Zamoyski – claimed that the takeover of the townhouse was unlawful, as it was not carried out on the

[54] P. Makarzec, *Rewindykacja*…, p. 130.

[55] This action – as P. Makarzec points out – aroused a great deal of controversy due to the different attitude of Polish society towards the possible return of this property: "*Kurier Warszawski* published an article entitled 'Redde quod debes' (Give back what you should), which provoked voices of indignation stating that 'the rich begin their relations with the liberated homeland by litigating', which is immoral in view of the prevailing poverty. According to the socialist *Robotnik*: 'Independence became a way of reclaiming the townhouse. The heirs' demands were regarded as 'insolent and scandalous' even by the National Socialist *Myśl Niepodległa*". See Ibidem, p. 131.

basis of the confiscation regulations in force at the time, and that the statute of limitations could be counted only from the cessation of the obstacle, which was the exercise of power by the Russian partitioner in the Polish lands.

As if fearing the emergence of a precedent that would enable the claims of other heirs suing the Polish State for the return of lost properties to be recognised, the Regional Court hearing the case at first instance upheld the position of the General Prosecutor's Office in its decision and recognised the legality of the mortgage entry in favour of the State Treasury, thereby dismissing the claim of the heirs of Count Andrzej Zamoyski. The Regional Court justified this position by stating that "[...] it should be concluded that there was a law under which title to the real estate questions was transferred to the State Treasury and there was no infringement in the execution of this law in relation to the power of attorney granted to the governor, and therefore the title based on this law is not subject to revocation by the court, and the previous entry in the name of the plaintiffs' testator should be regarded as non-existent in the mortgage sense. Equally, an entry in the name of the board of military intent cannot be considered invalid"[56].

However, the heirs of Count Andrzej Zamoyski exercised their right and appealed to the Court of Appeal, citing, inter alia, the equitable nature of the resolution of the Legislative Assembly of 4 May 1920. However, the Court of Appeal, acting as a court of second instance, upheld the decision unfavourable to them, stating – correctly, by the way – that the resolution did not have the force of binding law, but only symbolic value. It was only the above-discussed judgement in the case of Stefan Szumkowski that brought a breakthrough on the return of the townhouse building at the Nowy Świat Street in Warsaw to the former owners; it was then that the successors of Count Andrzej Zamoyski, citing the precedential nature of the above-mentioned judgment, lodged a cassation with the Supreme Court, which at a hearing on 17 October 1930 overturned the judgment of the Court of Appeal and remitted the case to this instance for reconsideration.

In the context of analysing lawsuits regarding the return of property confiscated from insurgents after the January Uprising, attention should also be drawn to the case – widely discussed in the public discourse – of

[56] Quoted after: Ibidem, p. 132.

Maria Uszycka, who brought a lawsuit against the Polish state demanding the return of the Witwiniec estate, located in the Brest district and confiscated by the Russian authorities from her father for his participation in the January Uprising. As emphasised by R. Jastrzębski, the Supreme Court, hearing this case at the last instance, in its verdict of 14 February–4 March 1930, upheld the decisions of the courts of first and second instance (the District Court in Pińsk and the Court of Appeal in Vilnius), confirming that "real estate which belonged to a Pole and was confiscated by the former Russian government for his participation in the Uprising and which is now in the possession of the Polish State Treasury shall be returned to its previous owner or his heirs"[57].

The pendency of Maria Uszycka's case before the Supreme Court proved – quite apart from the legal sphere related to the Witwiniec estate, which remained rather in the background – to be a significant event in the public life of the Second Republic at that time. Previously, some politicians and members of the Polish press had found no justification for the conduct of the representatives of the General Prosecutor's Office representing the State Treasury in similar trials before the Supreme Court, who – constructing a line of argumentation against the return of property – proceeded on the assumption that the Second Republic constituted a *de facto* new state, which, in legal terms, would mean that the property belonging to the Russian state had been acquired by the Polish treasury in an original manner, and therefore its return was impossible, as the transfer of property had taken place in accordance with all legal principles and regulations. The representatives of the General Prosecutor's Office were thus accused of being unpatriotic and of sharing the position of those Germans who perceived the Second Republic as a new state – existing only by virtue of the Treaty of Versailles and in the shape which, after all, had been imposed top-down on the defeated Germans.

This is why Maria Uszycka's lawsuit became the flashpoint leading to the outbreak of the already smouldering conflict. The case was heard before the Supreme Court on 14 February 1930, and the arguments presented by the representatives of the Public Prosecutor's Office led to an escalation of anger in the press. A vehement protest was voiced at the time by, for example, the Mutual Aid Association of Participants in the 1863/64 Uprising. A detailed description of the tense atmosphere that

[57] R. Jastrzębski, *Reprywatyzacja*…, p. 15.

accompanied these events is provided by B. Starzec, who analysed the press headlines of the time:

> (...) never before has the civil hall of the Supreme Court seen such a large crowd as there was at the case of Mrs Uszycka against the State Treasury for the return of property confiscated by the Russian authorities for participation in the uprising. Maria Rodziewiczówna, who was present in the courtroom, commented in the pages of *Ekspress Poranny* on the speeches of the attorneys of the General Prosecutor's Office: "listening to the speeches of the representatives of the offices of the Polish Republic, I asked myself whether these people speaking Polish were actually Polish, because the statements I heard could not have come out of the soul of a Pole".

Wacław Komarnicki, the then head of the Department of State Law and Science at the Stefan Batory University, described, in turn, the attitude of the General Prosecutor's Office as "fiscal pseudo-patriotism". The indignation knew no political boundaries, the National Socialist *Gazeta Warszawska* wrote that "government officials, paid from the funds of Polish citizens (...) dared at a session of the Supreme Court to publicly vilify our past and our compatriots who fought for national ideals". *Ilustrowany Kurier Codzienny*, Poland's largest pre-war newspaper, stated in its pages that "even prosecutors, who, precisely by virtue of their office, should above all be impartial and fair, must not tarnish sanctity with impunity". The well-known Romanist, Professor Franciszek Bossowski was also highly critical of the actions of the General Prosecutor's Office[58]. At the same time, a strong objection to the criticism against the actions of the General Prosecutor's Office was given by its long-standing chairman, Stanisław Bukowiecki, whose opinion was that "the articles of the press and the statements of some social organisations did not limit themselves (...) to quoting factual arguments, but in a scathing manner defamed the arguments of the defenders of the Treasury, who perform in these cases a disinterestedly hard, and under the present circumstances even very hard duty in the service of the Republic".[59] Stanisław Bukowiecki's argumentation for the rightness of the actions of the representatives of the General Prosecutor's Office was as follows:

[58] B. Starzec, op. cit. p. 102.

[59] S. Bukowiecki, *Z rozmyślań nad sprawą procesów konfiskacyjnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1932, vol. 12, no. 1, p. 1.

1. Poland took this [property previously confiscated by the Russian partitioner – M.S.] into its ownership in the factual, economic and legal state it was in at the time. In particular, the legal titles on which the Russian state's sovereignty was based were of no relevance here, and the Polish government had neither the obligation nor the right nor even the actual ability to investigate on what basis any state property in large areas of the country had fallen into the hands of the Russian state, with a view to possibly returning it to the alleged lawful holder. (...) Thus, all post-Russian property became an integral part of Polish state property;
2. A capital legal objection that exists against the recognition of the return of confiscated assets is the statute of limitations. (...) it was said long time ago that the statute of limitations is one of the cornerstones of social order. If this institution did not exist, if everything could be revindicated at any time, no one would be sure of their property;
3. The demand for the surrender of this property is based on a single legal principle common to all cases, and it must be decided uniformly for the entire state whether or not this principle is adopted. The spatially and temporally divergent treatment of it, depending on the view of one or other executive holder, seems entirely inappropriate. This is a matter of such legal, moral and economic importance that it can only be dealt with on the basis and within the limits of a law, i.e. only the will of the people, expressed in such a law, can decide on the surrender of a given set of properties to the persons who claim ownership of these properties;
4. Today, not a single victim of Russian insurgent confiscations is alive, at least not a single action for the return of confiscated property has been brought by the person directly affected, nor by his or her spouse. Very few lawsuits are brought by children of those affected by confiscation. (...) it is fair to ask whether there is any moral justification, independent of formal-legal considerations, for the claims of claimants who are not children, or at most grandchildren in a direct line of victims of confiscation? Is it right that these people, so far removed from the person of the insurgent who was wronged and from his property, and who certainly never thought of recovering it, should now take advantage

of the fact that the Polish State has been established in order to wrest from its treasury the ownership of the property in question?[60].

From the point of view of the cross-cutting nature of this study, it should also be mentioned that in the interwar period, cases for the return of property confiscated by the tsar, pending before the Polish courts, regarded not only confiscations after the January Uprising, but also after the November Uprising. The lawsuit for the return of the Świsłocz estate confiscated after the November Uprising by the Russian partitioning authorities[61] can serve as a representative example of such proceedings. This property was subject to confiscation because its owner was Count Tadeusz Tyszkiewicz – head of the national insurgent government in Lithuania – who emigrated from the Kingdom of Poland after the fall of the uprising. Subsequently, despite the pardon of the insurgents by Tsar Nicholas I, the partitioning authorities returned Count Tyszkiewicz only the Balwierzyszki estate, leaving the Świsłocz estate of much greater value in Russian hands. At the same time, after Poland regained independence in 1918, the successors of Count Tadeusz Tyszkiewicz did not claim the whole of the property rights taken from their ancestor (including the palace and farmland), but only a part of it in the form of 24,000 hectares of the Świsłocz Forest. Although the Supreme Court upheld the claim in this form in its entirety, Head Office of the State Forests, which administers these forest areas, delayed implementing this judgement for quite some time, which led to further lawsuits for damages.

In summarising the consideration of judicial practice regarding the problem of the return of property confiscated from insurgents, several aspects of the judicial model of revindication should be noted. First of all, it is important to note the selective nature of the restitution of property on the basis of court rulings – for only those heirs who brought the appropriate action and substantiated their claim before the court could recover property. In addition, the high degree of discretion left to the adjudicating judges in deciding whether or not to return confiscated assets led to cases of a revindication nature very often coming all the way to the Supreme Court as the final instance. Lastly, it should also be noted – a point that comes through especially in the tensions between

[60] S. Bukowiecki, op. cit., pp. 2-3.
[61] See in more detail: P. Makarzec, *Rewindykacja…*, p. 133.

the General Prosecutor's Office and the heirs of the insurgents – that it was not always in the interest of the State Treasury of the then Second Republic to return property to its rightful owners or their heirs, as this generated enormous costs for the state budget.

The number of revindication lawsuits pending in the 1920s and in the first half of the 1930s against the State Treasury was estimated at a total of around 112 cases[62]. It is estimated that the area of confiscated property claimed by the insurgents' heirs was around 100,000–150,000 ha[63]. Other sources, however, state that it was even 215,000 ha[64]. At the same time, according to Adolf Suligowski, only a few people had recovered their confiscated property by the time the Revindication Act of 18 March 1932 was passed: "the successors have in many cases already received into their possession, by virtue of court judgements, the estates confiscated from their testators. Such successors to the insurgents include: Maria Uszycka already in possession of the Witwiniec estate in the Polesie region (...) Dr. Ludwik Gorecki, who took possession of the Dusinięta estate in the Vilnius Region, Maria Wysłouchowa, who took possession of the Krotów estate in the Pińsk Region, and the Jabłoński family, who already have the Lendo Wielkie estate in the Siedlce Region"[65].

The Problem of Restitution of Property in the Legislative Practice of the Second Republic in the years 1932–1939

The failure to legislatively resolve the issue of the return of property confiscated from insurgents meant that the problem was shifted to the Polish judiciary. In turn, the consequence of this omission was that the Supreme Court at the end of the 1920s started to deliver precedent-setting judgements – such as in the case of Stefan Szumkowski – awarding insurgents or their heirs the return of confiscated property in kind, or

[62] S. Bukowiecki, op. cit., p. 7.
[63] B. Starzec, op. cit. p. 105.
[64] See the following papers: General Prosecutor's Office to the Minister of the Treasury of 20 October 1931; Ministry of Agriculture to the General Prosecutor's Office of the Polish Republic of 17 October 1931, Archive of New Files, General Prosecutor's Office of the Polish Republic in Warsaw 1919-1939, ref. 9, k. 42, 45.
[65] A. Suligowski, *Uwagi do projektu ustawy o nadaniu gruntów z dóbr skonfiskowanych przez byłe rządy zaborcze*, Warszawa 1931, p. 8.

alternatively awarding the heirs appropriate compensation for their lost property. Further delay in the introduction of the Revindication Act by the authorities of the Second Republic could have therefore resulted in more lawsuits at enormous cost to the state treasury, so the idea of a comprehensive legislative regulation of this problem, which had previously been evaded despite the adoption of a relevant resolution by the Legislative Assembly on 4 May 1920, was revisited. Actions leading to the enactment of the Revindication Act were also supported by the political changes that took place in the Second Republic after the May Coup of 1926 and the seizure of power by the Sanation camp centred around Józef Piłsudski. This was manifested – as P. Makarzec observes – by the fact that "after the May Coup, Piłsudski clearly sought rapprochement with the landed gentry and conservatives. The government listened more carefully to the demands of this community, including those related to the compensation of wrongs suffered from the partitioners"[66]. In addition, the patriotic values shared by the Sanation camp made the passing of a law restoring property confiscated by the partitioners to its rightful owners a necessity, as the insurgents themselves were regarded as national heroes.

The need for a revindication law was noticed in government circles as early as in November 1929. It was then, during a meeting of the Polish government, that Stanisław Car, Minister of Justice, presented to the Prime Minister and the assembled ministers his position, in which he justified the need for a comprehensive regulation of the problem of property confiscated by the Russian government from participants in the war of 1831 and the uprisings of 1848 and 1863[67]. The views he had expressed at the time were insightfully reconstructed by B. Starzec and R. Jastrzębski:

> "[Minister of Justice Stanisław Car – M.S.] in a memorial presented [to the government – M.S.] wrote: " the Ministry of Justice is not in a position to collect accurate material [on the scale of the claims – M.S.], because all sources, both official and private (literature and data provided by individuals and associations), have proved so incomplete in this regard that the final result could, with great reservation, estimate the area of land and forests (together) subject

[66] P. Makarzec, *Rewindykacja…*, p. 135.

[67] See Proposal of the Minister of Justice to the Council of Ministers on the estates confiscated by the former Russian government to the participants of the war of 1831 and the uprisings of 1848 and 1863, Archive of New Files, General Prosecutor's Office of the Polish Republic 1919-1939, ref. 8.

to possible restitution at 100,000 to 150,000 hectares; moreover, there is absolutely no data at all on urban properties". He then stated that confiscated property fell into two categories: property owned by the Polish state under the Riga Treaty and property owned by private individuals. The problem of the claims concerned both categories, but the proposed legislation would only apply to properties in the former category. Stanisław Car went on to warn that "the reduction of state property by 150,000 hectares and the disposal of income from these areas could entail an economic shock that would be too strong and then this sense of justice referred to in the Assembly resolution [of 4 May 1920 – M.S.], taken only in relation to the insurgents, could become, a defeat for this state, for which these same insurgents had sacrificed their lives". He subsequently presented his proposals: the establishment of a special fund from confiscated estates to pay fixed salaries to insurgents, their widows and their heirs. He also considered the possibility of enacting a law returning estates in kind with the area restrictions indicated in the Land Reform Act. He believed that only individuals could be entitled to returns, and that returns themselves should be limited to landed estates only"[68].

In addition, the Minister of Justice, Stanisław Car, pointed out in his application that:

"even the Assembly, in its resolution, does not consider that the compensation of wrongs in accordance with the sense of justice means the return of confiscated property in its entirety, [for, by following the provisions of the Riga Treaty, – M.S.] the Assembly unreservedly adopted Article XII of the Treaty, establishing the Polish State's title to the confiscated property, so that in no way could the Polish State be regarded as 'non-rightful possessor' in relation to the confiscated property covered by this Article"[69].

Following the presentation of the position of the Minister of Justice at the aforementioned cabinet meeting, it was decided to set up a special commission to deal with the problem of compensation paid to Polish citizens for property confiscated by the partitioning authorities. The Minister

[68] Quoted after: B. Starzec, op. cit. p. 100.
[69] Quoted after: R. Jastrzębski, *Reprywatyzacja…*, p. 16–17.

of Justice was elected as chairman of the Commission, while the Minister of the Treasury and the Minister of Agrarian Reform and Agriculture were appointed as its members. The composition of the Commission was subsequently supplemented by the President of the General Prosecutor's Office. Unfortunately, actions taken by the Commission did not lead to the enactment of a revindication law. The tardiness which occurred in works on this act was, was raised in June 1930 by Stanisław Bukowiecki, acting President of the General Prosecutor's Office. He expressed the opinion that "unfortunately the commission (...) is working at a very slow pace and has not met even once since 14 January 1930"[70].

At the same time, R. Jastrzębski cites the contents of a letter from Stanisław Bukowiecki to the Prime Minister dated 14 September 1931, in which the President of the General Prosecutor's Office not only defends the opinion that "the Supreme Court has established a jurisprudence that is contrary to the position of the Government and the General Prosecutor's Office, and which is now applied uniformly by the courts", but also ads that "the properties considered with legal disputes represent an enormous value, amounting to hundreds of millions of Polish zloty, which means that losing these lawsuits, together with the obligation of the Treasury to return the estates and to pay the very high litigation costs, would be a great material loss to the State"; he therefore calls for a bill to be drafted as soon as possible, and then for it to be submitted to the Polish Sejm.[71] This demand was fulfilled at the time, as the Council of Ministers adopted, by resolution, a draft revindication law, which was brought to the Sejm by the Minister of Justice on 25 September 1931, but the law itself was still not adopted.

The actual bill on property confiscated by the former partitioning governments from participants in the struggle for independence was finally submitted to the Sejm by members of the Nonpartisan Bloc for Cooperation with the Government as late as on 11 February 1932. Subsequently, this project became the subject of the Sejm deliberations culminating in the adoption by the members of parliament on 18 March 1932 of a law on property confiscated by former partitioning governments from

[70] Letter of the President of the General Prosecutor's Office of the Polish Republic to the Minister of the Treasury of 5 June 1930, Archive of New Files, General Prosecutor's Office of the Polish Republic 1919–1939, ref. 9.

[71] Archive of New Files, General Prosecutor's Office of the Polish Republic in Warsaw 1919–1939, ref. 9, ch. 1–5.

participants in the struggle for independence.[72] It enabled the systemic restitution of assets unlawfully taken from them. At the same time, the entry into force of this law on the day of its promulgation meant the suspension of all court cases pending at the time concerning the restitution of property confiscated by the partitioning authorities, closing, as it were, the judicial route for many insurgents' heirs. However, the act provided that if, within one year from the date of the claim for the return of the property under the act, an appropriate decision had not been issued or had been refused in whole or in part, there still was the option to resume the suspended proceedings.

The Law on Property Confiscated by Former Partitioned Governments to Participants in the Struggle for Independence contained only 13 articles expressing systemic solutions to the problem of returning property to its rightful owners, while imposing certain conditions on this return. Article 1 of the law stated that "the property confiscated by the former partitioning governments from the participants in the struggle to regain independence between 1830 and 1864, the participants in those struggles, their spouses and descendants may be received within the limits of the rights, delineated by this law".[73] Subsequently, in Article 2 of the Act, the subjective scope of the entitled persons was made more specific, as the entitled persons to submit claims were: participants in the struggle to regain independence in the years 1830–1864, and in the event of their death, the surviving spouse and direct descendants, provided that they were citizens of the Polish state and had not been punished for crimes against the Polish state. At the same time, Article 2 of the Act provided for a time limitation on the filing of property claims by the beneficiaries. In those parts of the former Russian partition where the governing law was Volume X part 1 of the Code of Laws of the former Russian Empire, they could claim the return of their confiscated property by way of legal action against the state treasury, provided these claims were brought by them before 15 January 1931. In the case of property located in other parts of the Polish state, on the other hand, the cut-off date for bringing claims was 9 March 1932.

Subsequently, Article 3 of the Act provided that property directly taken over by the Polish state from the partitioners was subject to restitution,

[72] Act of 18 March 1932 on property confiscated by former partitioning governments from participants in the struggle for independence (JoL of 1932, no. 24, item 189).
[73] Ibidem.

provided that the property was in its possession. This meant that only those properties that were still owned by the state and not by private individuals were given away. At the same time, these estates were to be handed over to the beneficiaries in the same condition as at the time of surrender. The entitled persons could therefore receive the residential and farm buildings permanently connected to the land confiscated from them earlier, but without livestock or dead stock. If the object of the property confiscated from them was urban property, the entitled persons were to receive a certain proportion of the value of that property (the entire amount in the case of the spouse of a participant in the struggle for independence, three-quarters of the amount in the case of his children and half of the amount in the case of his grandchildren or further descendants). Moreover – by virtue of Article 4 of the Act – those entitled had to submit their claim to the Ministry of the Treasury within three months of the act coming into force. The article also stipulated the requirements for the claim presented to the Ministry.

In the light of Article 5 of the Act, the Minister of the Treasury, in consultation with the Minister of Justice and the Minister of Agriculture and Agrarian Reform (in the case of urban property, the Minister of the Treasury together with the Minister of Public Works and the Minister of Justice) was to decide on the allocation of lost property to persons entitled to it. In doing so, the decision issued by the Minister constituted the title to the property, and the actual delivery of the property to entitled persons was to take place upon payment or due security for the special tax, the assessment of which was set out in Article 9 of the Act. The basis for this tax was therefore the pure value of goods above 10,000 Polish zloty, while the scale of this tax was to increase progressively, amounting to a minimum of 4% if the value of the goods was between 10,000 and 20,000 zloty, and a maximum of 30% if the value of the goods was above 50 million zloty. The imposition of a progressive tax on the return of goods confiscated from the insurgents – under Article 9 of the law – caused huge controversy and criticism among representatives of the government opposition. As P. Makarzec notes, "in the discussion preceding the passage of the law, it was even regarded as a renewed contribution imposed on the insurgents, made all the more painful by the fact that it was enforced by the domestic, Polish authorities. Defenders of the bill, however, were adamant. They claimed that they were defending the interests of the State Treasury, and derived the moral right to such

a settlement from the times of the former Polish Republic, when a citizen, recovering property snatched from the Tatars, paid a tithe to the army for their toil and assistance"[74].

Another accusation formulated against the government's law in the camp of the then National Democrats and Christian Democrats circles was that it made only some of the property confiscated from the participants in the struggle for independence subject to restitution, while the insurgents and their heirs – as the only legitimate owners – should have received all of the property they had lost. In contrast, there were arguments among socialists and some representatives of peasant parties that the law proposed by the government was too much of a concession to the interests of the landed gentry. It is therefore very clear from this example that the optics of these two ideological parties were mutually exclusive, rendering any agreement between these two camps impossible against the government side, which had the upper hand in the Sejm anyway.

In conclusion, it should be considered that the Act of 18 March 1932 was a certain compromise, taking into account, on the one hand, the equitable nature of the claims of the heirs of the insurgents repressed by the partitioners, and, on the other hand, the financial capacity of the State Treasury, which would not be able to bear the obligation to return all the estates lost by the landowners, especially as the act was passed during a period of great economic crisis. To supplement the above considerations, it should also be added that, seeing the need to detail the regulations envisaged by the Act of 18 March 1932, the Sejm adopted on 14 April 1937 a second revindication law on property confiscated by the former partitioning governments from participants in the struggle for independence and held by local government associations.[75] It was intended to complement the Act of 18 March 1932, but its adoption was forced by the unfavourable Supreme Court ruling of 23 May–14 June 1934, which in practice would have forced local government associations to return property confiscated by the invaders, which could have caused serious financial losses.[76] It should also be mentioned that one of the last proposals before the start of World War II was a bill on property

[74] P. Makarzec, *Rewindykacja*…, p. 136.

[75] Act of 14 April 1937 on property confiscated by former governments from participants in the struggle for independence and held by local government associations (JoL of 1937, no. 30, item 221).

[76] Supreme Court decision of 14 June 1934 ref. IC 2940/33, OSN(C) 1935, item 59; TSO 1935, item 85.

confiscated by former partitioning governments from participants in the struggle for independence between 1792 and 1795[77].

Conclusions

Reprivatisation began in Poland with the restoration of the independence of the Polish state after World War I. This is because Poland's regained independence in 1918 led the emerging society of the Second Polish Republic to a belief in the possibility of regaining estates successively seized by the partitioning authorities starting from the end of the 18th century and the collapse of the Kościuszko Uprising. This was particularly relevant to property lost by the owners as a result of repression by the partitioning states for Polish uprisings and other national revolts aimed at regaining independence. Hope for the recovery of property seized by the partitioning states resulted from the settlement adopted by the authorities of the Second Polish Republic for determining the legal continuity of the state. From the point of view of restitution, it brought the possibility of determining the entity responsible for acts of nationalisation, which would be obliged to repair the damages resulting from these acts. Decisions on nationalization were issued by the authorities of the partitioning states and led to a significant change in property relations in the territories of the First Polish Republic. The measures taken in the inter-war period were not limited to symbolic action in the form of special parliamentary resolutions, as was the case in the Third Republic. In the Second Republic, an attempt was made to solve the problem of reprivatisation systemically by means of a law which, although criticised on many sides, nevertheless provided some resolution to a matter that undoubtedly required it.

[77] See the bill submitted by deputy Jan Ipohorski-Lenkiewicz on estates confiscated by former partitioning governments from participants in the struggle for independence in the years 1792-1795, Sejm Paper No. 448.

References

Literature:

Bardach J., Leśnodorski B., Pietrzak M., *Historia ustroju i prawa polskiego*, Warszawa 2009.

Bossowski F., *W sprawie majątków zabranych po roku 1863 (Referat na Zjazd Prawników w Wilnie)*, appendix to "Gazeta Administracji i Policji Państwowej" 8–10 June 1924.

Bukowiecki S., *Z rozmyślań nad sprawą procesów konfiskacyjnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1932, vol. 12, no. 1.

Ćwik W., *Prawo karne*, [w:] *Historia państwa i prawa Polski*, t. 3: *Od rozbiorów do uwłaszczenia*, red. J. Bardach, Warszawa 1981.

Demidowicz T., *Statut Organiczny Królestwa Polskiego w latach 1832-1856*, „Czasopismo Prawno-Historyczne" 2010, nr 1.

Jastrzębski R., *Reprywatyzacja w państwie polskim z punktu widzenia historii prawa, „Studia i Analizy Sądu Najwyższego. Materiały Naukowe. Reprywatyzacja w orzecznictwie sądów",* t. III, Warszawa 2016.

Jastrzębski R., *Zagadnienia prawne reprywatyzacji w państwie polskim XX w.,* [w:] *Problemy repry-watyzacji, red. A. Jarosz-Nojszewska, P. Legutko-Kobus,* Warszawa 2017.

Makarzec P., *Rewindykacja dóbr popowstańczych w II Rzeczypospolitej*, „Studia Iuridica Lubliniensia" 2007, nr 10.

Suligowski A., *Bezprawia i konfiskaty pod rządami rosyjskimi*, Warszawa 1928.

Suligowski A., *Uwagi do projektu ustawy o nadaniu gruntów z dóbr skonfiskowanych przez byłe rządy zaborcze*, Warszawa 1931.

Święcicki J. A., *Rewindykacja konfiskat popowstaniowych w świetle cyfr, etyki i celowości*, Warszawa 1931.

Żytkowicz L., *Rządy Repnina na Litwie 1794–1797*, Wilno 1938.

Legal Acts:

Act of 4 April 1920 on the restoration of rights, lost as a result of political and military offences (JoL of 1920, no. 39, item 230).

Act of 14 April 1937 on property confiscated by former governments from participants in the struggle for independence and held by local government associations (JoL of 1937, no. 30, item 221).

Act of 20 January 1920 on the citizenship of the Polish state (JoL of 1920, no. 7, item 44).

Act of 16 July 1920 on restoration of property rights to the Uniates (JoL of 1920, no. 89, item 583).

Act of 17 March 1921 – Constitution of the Polish Republic (JoL of 1921, no. 44, item 267).

Act of 18 March 1932 on property confiscated by former partitioning governments from participants in the struggle for independence (JoL of 1932, no. 24, item 189).

Act of 2 December 1921 on contracts for the acquisition of real estate drawn up in the name of substituted persons and on the redemption of estates sold due to restrictions on Polish nationality (JoL of 1921, no. 106, item 77).

Act of the Assembly of the Polish Republic of 4 May 1920 (JoL of 1920 no. 39 item 229).

Annex 2 to Assembly Paper no. 999, Resolution I, Legislative Assembly of the Second Polish Republic (1919 – 1922).

Dziennik Praw Królestwa Polskiego, t. 14, nr 54.

Dodatek nadzwyczajny. Rada Regencyjna do Narodu Polskiego, "Monitor Polski" 7 October 1918.

Decree of the Regency Council of 4 November 1918 on donation estates (JoL of 1918, no. 15, item 35).

Decree of the Chief of State of 16 December 1918 on state control (JoL of 1918, no. 21, item 67).

Peace Treaty between Poland and Russia and Ukraine of 18 March 1921 (JoL of 1921, no. 49, item 300).

Writings:

Archive of New Files, General Prosecutor's Office of the Polish Republic in Warsaw 1919–1939, ref. 9, ch. 1–5.

Bill submitted by deputy Jan Ipohorski-Lenkiewicz on estates confiscated by former partitioning governments from participants in the struggle for independence in the years 1792-1795, Sejm Paper No. 448.

Emergency motion of members from the People's National Union on the law on the restitution of property rights to participants in struggles for Poland's independence in the Polish-Russian war of 1831 and in the uprisings of 1846 and 1863, Assembly Paper no. 2888.

Emergency motion of the members from the National Christian Workers Circle to submit to the Assembly a draft bill on compensating the wrongs of the participants of the struggle for freedom and their successors, Assembly Paper no. 3015.

General Prosecutor's Office to the Minister of the Treasury of 20 October 1931; Ministry of Agriculture to the General Prosecutor's Office of the Polish Republic of 17 October 1931, Archive of New Files, General Prosecutor's Office of the Polish Republic in Warsaw 1919-1939, ref. 9, k. 42, 45.

Legislative Assembly of the Polish Republic, Assembly Paper no. 831, Legislative Assembly of the Second Republic of Poland (1919–1922).

Letter of the President of the General Prosecutor's Office of the Polish Republic to the Minister of the Treasury of 5 June 1930, Archive of New Files, General Prosecutor's Office of the Polish Republic 1919–1939, ref. 9.

Motion of interim deputy Malinowski and his comrades on the restoration of rights to citizens of the Polish Republic convicted of political offences by the governments of the partitioning states (Paper no. 581), Assembly Paper no. 999, Legislative Assembly of the Second Polish Republic (1919-1922).

Proposal of the Minister of Justice to the Council of Ministers on the estates confiscated by the former Russian government to the participants of the war of 1831 and the uprisings of 1848 and 1863, Archive of New Files, General Prosecutor's Office of the Polish Republic 1919-1939, ref. 8.

Report of the Committee on Legal Affairs on the draft law submitted by the Government on the restoration of rights to citizens convicted of political and military offences (paper no. 831) and the motion of interim deputy Malinowski and his comrades on the restoration of rights to citizens of the Polish Republic convicted of political offences by the governments of the partitioned countries (Paper no. 581), Assembly Paper no. 999, Legislative Assembly of the Second Polish Republic (1919–1922).

Sentences:

SN I KCl no. 48 of 11–12 May 1928.

Supreme Court decision of 14 June 1934 ref. IC 2940/33, OSN(C) 1935, item 59; TSO 1935, item 85.

Websites:

Kulicki T., *Reprywatyzacja? Ale to już było?*, [online:] www.temidium.pl/artykul/reprywatyzacja_ale_to_juz_bylo-4616.html, 07.2018, [accessed: 30 December 2018].