

“Minor” property restitution act – analysis of the law

A long legislative path had to be passed before the so-called minor property restitution act, i.e. the act of 25 June 2015 amending the property management act and the act – Family and Guardianship Code, can finally come into force in the middle of September.

The entry into force of the act is the culmination of efforts led by the communities associated with the Warsaw authorities that were undertaken to regulate, at least to a minimum extent, the rules governing the restitution of real estate taken from the former owners pursuant to the Decree on the Ownership and Use of Land in Warsaw of 26 October 1945 (Journal of Laws No. 50, item 279), the so-called Bierut Decree. The fact is that the practice of trading in claims at prices vastly diverging from market values was widespread in Poland's capital. On top of that, it was also often the case that the claims were filed for return of properties located in the inner districts of the city. Concerns were also raised by the issue surrounding the return of properties on which public buildings have been constructed or persons acting on behalf of former owners who passed away a long time ago or of their heirs.

The bill amending the property management act and the Family and Guardianship Code was prepared by the senators of the Civic Platform party and Marek Borowski, an independent senator, during the former term of the Polish parliament. On 25 June 2015, the bill was passed by the Sejm and, subsequently, by the Senate, which did not make any amendments thereto. However, President Bronisław Komorowski did not sign the act and forwarded it for review by the Constitutional Tribunal as a measure of preventive control so as to check the amended act's compliance with the Polish Constitution.

On 19 July 2016, the Constitutional Tribunal in the case designated court docket No. Kp 3/15 confirmed the compliance of the adopted changes with the Constitution, which opened the track to the signing of the act and its coming into force. The act was signed by President Andrzej Duda on 17 August 2016, and it was promulgated on the following day. The Act will come into force after 30 days of the promulgation date.

The “minor” property restitution act regulates issues related to returning of Warsaw properties by amending two legal acts – the property management act of 21 August 1997 and the act of 25 February 1964 – the Family and Guardianship Code. The changes to the property management act are primarily aimed to govern the issue of trading in claims and reduce the possibilities for restitution-in-kind of land properties expropriated after the Second World War. In the first place, the “minor” property restitution act vest the State Treasury or the capital city of Warsaw with the right of first refusal for purchase of the claims. The applicable provision applies to the sale of rights and claims specified in the Bierut Decree, claims for restitution of properties pursuant to Art. 214 of the property management act and perpetual usufruct right established as a result of the enforcement of the claims. Moreover, the amended act imposes the obligation to conclude an agreement concerning the claims in the form of a notarial deed, which is expected to strengthen the control over the sale of claims.

In principle, the right of first refusal will be vested in the capital city of Warsaw, while the Mayor of the capital city of Warsaw will exercise the right. The State Treasury will have the right of first refusal with respect to properties managed by the State Treasury Minister or the Agricultural Property Agency (ANR), the Military Property Agency (AMW) or the Military Housing Agency (WAM).

The property management act was also expanded to include essential provisions which allow for refusal to restitute the property (Art. 214a) to the former owners for a number of reasons, such as the sale or establishing a perpetual usufruct right on the property to a third party or when the State Treasury or the local authorities erected a building on the land property whose value is significantly higher than the value of the land or when the city or the State Treasury rebuilt the prop-

erty over 66% of which had been destroyed. Restitution of property can also be denied in the event of concerns surrounding the division of the property in accordance with the effective spatial order regulations. The provision is aimed to regulate the status of many properties in Warsaw and, in particular, to retain the city's ownership of properties which it built or rebuilt using its own resources. It will also be possible to discontinue the proceedings if the relevant parties or their addresses may not be identified. Currently, numerous proceedings have been put on hold because there is no contact with former property owners or their heirs because they have passed away or live in another country. The regulation will allow the city to free many properties from a legal limbo into which they slipped because of their legal status being unclear. As a result, many buildings have been left to fall into ruin because the Warsaw authorities refused to incur spending on them. The authorities have vowed that the situation would change upon the entry into force of the amended law.

Furthermore, the “minor” property restitution amends the Labour and Guardianship Code by eliminating the option to establish a guardian for a person if the person can be declared dead. The provision is meant to rule out situations where people appointed as guardians for former property owners – who would have to be over 100 years old if they were to be still alive – would go to the courts and authorities to assert their claims.

The amendment will apply to pending cases where no final decision has been reached. It will help regulate the legal status of Warsaw properties while not infringing upon the interests of the former owners and their heirs who make efforts to have expropriated properties recovered. The Constitutional Tribunal ruled that the act sufficiently protects the interests of the parties, though opinions to the contrary have also surfaced. Before a complete regulatory framework is ready for the area in question, the issue of compensation for former owners and their legal successors still needs to be addressed.

Julia Kulikowska

Kancelaria Adwokatów i Radców Prawnych Miller, Canfield, W. Babicki, A. Chełchowski i Wspólnicy Sp.k.