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# Soviet 'Property Rights' in Germany

By Erimar von der Osten

A shameful chapter of Germany's unification saga is back in the headlines. On Thursday, the European Court of Human Rights (ECHR) conducted a hearing into who had property rights at the time of unification to lands confiscated under Soviet occupation from ten of thousands of farmers, craftsmen and entrepreneurs in eastern Germany between 1945 and 1949. Many landlords were not only robbed of their property but persecuted and sent to communist concentration camps. Thirteen years after unification, they are still waiting for restitution from German authorities. To add insult to injury, the German government claims it is the rightful owner of their property and has been busy over the years selling it. The federal trustee still holds a stock of one million or so hectares of land and 7,700 buildings.

The original owners and their heirs, who were offered compensation worth only a tiny fraction of the true value, claim that the government has no proper legal title to these lands and appealed to the Federal Constitutional Court. After a 4-4 split ruling in 2000 in Germany's highest court, the final chance for justice lies with the judges in Strasbourg. Most of the illegal state crimes against property of Germany's 20th century of horrors have been righted by German legislative acts: those expropriated by the Nazis before 1945 have the right to restitution or compensation, as do those expropriated by the East German communists after 1949. Only those wronged between 1945 and 1949 are still left out in the cold.

How did this happen?

To answer this question we have to go back to those fateful years that led to the collapse of the Soviet Union and the Communist regimes in Eastern Europe. The former government of Chancellor Helmut Kohl claimed the non-restitution of these properties was the Soviet Union's precondition for German unification. In other words, the government said it had to sacrifice otherwise sacrosanct property rights on the altar of a historic chance to unify the country. So in 1991, the government hastily pushed through an amendment to Germany's constitution, which together with the reunification law essentially suspended the property rights of the 1945-1949 expropriation victims. This was in full breach of the Hague Convention on the Rules of Land Warfare, which considers expropriations in the Soviet occupied zone as null and void.

The government's version of the reunification negotiations has been shown to be nothing but fiction. Former Soviet President Mikhail Gorbachev and his foreign minister back then Eduard Shevardnadze have both said they never proposed such conditions. Former U.S. President George H.W. Bush said he cannot confirm the German government's version of events either.

U.S. National Security Adviser Condoleezza Rice, who also served the elder Bush, said she could neither recollect nor imagine the Soviet Union imposing such a precondition. Several years ago I asked Ms. Rice, who co-authored a book titled "Germany Unified and Europe Transformed," about this issue. "NATO, not German-German property issues, were at stake" she told me.

Even the German government's own files reveal the Soviet Union's interest was another. According to a foreign ministry protocol, Soviet ambassador Yuli Kvitsinski said on Aug. 13, 1990

the Soviet concern was merely not to run the risk of being challenged in court for those acts.

A recent book "Macht und Eigentum" (Power and Property) by Constanze Paffrath accuses the Kohl administration of political deception and Germany's Constitutional Court of political maneuvering. An academic and fellow party member of Mr. Kohl's Christian Democratic Union, Ms. Paffrath combed East German and ex-Soviet archives and concludes the Soviet Union did not insist on upholding the 1945-49 expropriations. In addition, she faults the Constitutional Court for accepting the government's statements at face value. British historian Norman Stone wrote in an earlier study of this issue of "the flimsiness of constitutional rights, and constitutional courts,

if a government is truly determined to have its wicked way."

If the other parties to the 1989-1990 negotiations steadfastly deny German reunification hinged on maintaining the 1945-49 expropriations, why did the German government insist on making this contention?

Statements by key figures of Mr. Kohl's government indicate the prime motivation may have been economic: The government hoped an asset windfall estimated at over €250 billion would help finance reunification, which even then appeared expensive (and today is a case study of hugely misguided economic development).

On May 23, 1990, Finance Minister Theo Waigel testified to parliament that "proceeds from potential sales shall be used for the settlement of obligations of the state." Surprisingly it was also Mr. Waigel's department of finance which ensured that all U.S.-victims of the wrongful confiscation received fair value compensation plus interest, thereby degrading German victims to 2nd-class citizens. Judge Roman Herzog, a Kohl loyalist, offered advice on how to cement the confiscation and later presided over the wrongful expropriation disputes as president of the German Constitutional Court in 1991.

The ECHR will now have to decide whether the 1990 constitutional amendment and the subsequent law violate property rights. Further, the court will have to take into account whether those expropriated between 1945-1949 are also victims of discrimination by post-unification Germany. That is because unlike others whose property has been confiscated, this group has been offered only tiny or no compensation at all, and retain no further right to the property.

Last week we saw in Strasbourg the prelude to potentially greater fiscal disturbances for Germany. The ECHR ruled in favor of applicants whose families received part of the land during the 1945-1949 expropriations. After German reunification, however, the land was transferred to the state without proper compensation. Only those who had continued to work in the agriculture, forestry or food-production sectors could claim their plots. The original owners of the land, who are still waiting to receive justice in their own cases, support this judgement.

The ECHR should use the occasion to revisit this matter in detail. It is a politically charged case, but it is when a state's interests collide with citizens' inalienable rights that a truly independent court is most needed. It is bad enough that Germany, where Prussia's Frederick the Great once coined the term "Rechtsstaat" (a state bound by law) tries to bend the law to the state's will. It would be worse if the Strasbourg judges were to uphold this injustice. Meanwhile many victims died, lending partial truth to Mr. Kohl's assessment that this issue will resolve itself biologically.

Mr. von der Osten's family was one of the victims of confiscation between 1945-1949.

*The government's version of the story is nothing but fiction.*



Helmut Kohl