

**LAND RESTITUTION IN POST-
COMMUNIST EASTERN EUROPE:**

**A CRITICAL ANALYSIS OF THE
BULGARIAN SYSTEM**

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LAND RESTITUTION IN POST-COMMUNIST BULGARIA

by Leland Rhett Miller¹

I. INTRODUCTION:

“Complete (*napulna*) restitution has been accomplished in agricultural and forest and real estate that had been nationalized by the former communists.”

-Prime Minister Ivan Kostov, 24 April 2001²

“The Bulgarian government's position is that all properties have now been restored to their private owners.”

-former Prime Minister Philip Dimitrov, 18 April 2001³

The status of private property is a major difference, perhaps the major difference, between capitalism and communism. Over the last half century, millions of pages were published about the “inevitable” transition from capitalism to communism, yet virtually nothing was written about the reverse possibility. Yet that is exactly what Bulgaria, and the rest of the former “Soviet bloc,” has been facing since the early 1990s. The problem is crucial: how do you return property, especially real property expropriated in the aftermath of World War II two generations before, to its former owners and descendants?

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² Bulgarian Prime Minister Ivan Kostov, speech to Bulgarian-U.S. Business Council, Washington, D.C., 24 April 2001 [in Bulgarian].

³ Interview with Philip Dimitrov, Bulgarian Ambassador to the United States (as of this interview) and former Prime Minister of Bulgaria, (18 April 2001).

Bulgaria officially maintains it has solved the problem, steadfastly referring to the land restitution issue in the past tense. This insistence on closure is not surprising: Restitution efforts began in 1992, the application deadline for restitution claims expired by 1993, and, according to most government pronouncements, the program was considered “more or less wrapped up” by 1995.⁴ Even to a Bulgarian property lawyer, few aspects of restitution are any longer newsworthy:

Deadlines on applications for restitution have long expired. Some complex cases are still circulating the courts but are very few and mostly related to restitution claims within privatization projects. The issues now...are on the implementation side....⁵

International analyses have generally been laudatory of Bulgaria’s restitution efforts, painting them as part of an overall success story and yet another example of the country’s sharp break with communism.⁶ Yet, with the exception of a handful of reports on agricultural restitution (*zemedelski vuzstanovyavane*), usually in the context of an East European country comparison, analysis of Bulgaria’s “success story” is sorely lacking.⁷ Coverage has been particularly scant within the legal community; for example, out of over a hundred topics on Bulgaria published by the Central and East European Law Initiative (CEELI) over the past two years, not one has been written about Bulgarian land restitution.⁸ It seems the approbation Bulgaria has received from the international community is more a reflection of the Bulgarian government’s willingness to confront the problem than its ability to effectively deal with it.

In this area, Bulgaria has been a tireless self-promoter. Ensuring good reviews of the restitution effort has been essential for the Bulgarian government, both to reassure international organizations of the nation’s continued transformation into a property-valuing democracy, as

⁴ Interview with anonymous Bulgarian property law expert from the Bulgarian-American Enterprise Fund (BAEF), Washington, D.C., (24 March 2001) (on file with author).

⁵ Personal e-mail from Valentin Braykov, Bulgarian property lawyer, (13 April 2001) (on file with author).

⁶ Ironically, in late 2001 the country elected as president the leader of the Communist (renamed Socialist) Party, as will be discussed below.

⁷ See, e.g., “Property Restitution, Compensation, and Preservation: Competing Claims in Post-Communist Europe,” Hearing Before the Commission on Security and Cooperation in Europe (CSCE), 104th Congress, 2d Session, 18 July 1996, U.S. Government Printing Office [CSCE 104-2-15], p.15; also Alexander Stoyanov, “Economic Reform in Bulgaria,” *Economic Reform Today: Working Papers*, Number 3, p.4, at <http://www.cipe.org/wp/bul.html> (September 1994).

⁸ CEELI is sponsored by the American Bar Association.

well as to convince investors – who see the program as reflective of the privatization effort as a whole – that the stability of the system is no longer at risk. It seems that apart from poor people in their sixties and seventies, a group representing the vast bulk of restitution applicants but one inevitably lacking the resources to be a political force, it is not in anyone’s interest to criticize the system. This paper attempts to cut through the fiction and do just that.

Since the restitution process is primarily administrative (*administrativen*), not judicial (*yurisdicheski*) – that is, handled by the mayoral offices and not by the courts – this paper focuses not on those rare instances of judicial intervention but rather on the administrative apparatus that bears the overwhelming responsibility for the restitution process.⁹ Through the use of documents, court records, and interviews conducted by the author, including one with former Prime Minister Philip Dimitrov who served in office when the Restitution Laws were enacted, this paper endeavors to document the problems and shortcomings of a system that is considered such a courageous and worthy pursuit that few have been willing to criticize it. Particularly insightful are the affidavits of several experts in Bulgarian property law, including one who was a former Communist official and another who was a former “enemy of the people.” They give personal insights into the inner workings of the systems, both old and new. An interview with Valentin Braykov, described by both *Time* and *Newsweek* as the most prominent lawyer in Bulgaria, has provided valuable speculative analysis on the nation’s future.¹⁰

Essentially, this paper attempts to answer the question, not of whether Bulgaria’s restitution effort was able to do some good, but whether it could have done – and could still do – much better.¹¹

⁹ For the judicial side of this issue, see Milcho Doichenov, ed., *Zakoni za Sobstvenostta (Sbornik) [Laws of Property]*. (Sofia: KNSB, 1993), a compilation of all the official property laws as of 1993; also Boris Mihailov, *Resheniya na Vurhovniya Sud na Republika Bulgariya po Restitutsionni Zakoni na Nedvizhima Sobstvenost, 1991-1994 [Decisions of the Supreme Court of the Republic of Bulgaria on the Restitution Laws of Real Property, 1991-1994]*, (Sofia: Perfekt Konsult, 1995). Disappointingly, however, only one case in Mihailov’s collection, Decision 756 of 20 October 1992, pp.289-90, has any real relation to the subject of this paper.

¹⁰ The affidavits of Vitali Tadzher, Alexander Dzhherov, and Stefan Bagdatov were taken from the court filings by BAEF in *Novecon Ltd. v. Bulgarian-American Enterprise Fund*, 977 F. Supp 45 (D.D.C. 1997), *aff’d* by 190 F.3d 556 (1999), *cert. denied*, 529 U.S. 1037 (2000).

¹¹ In order to maintain a narrow focus, this paper will not discuss distantly-related topics such as forest restitution, nor will it deal with those technical issues that distinguish agricultural restitution from land restitution as a whole.

II. HISTORICAL BACKGROUND:

Over a quarter century after the liberation of Bulgaria in 1878, the nation's first law on real property rights, based on the French Civil Code, was adopted, the Law on Properties, Ownership and Servitudes of 1904. This replaced the country's legal system (based on the Ottoman Empire) with the general European "Roman Dutch" law codes.

After the Communist-led coup of 9 September 1944 and Russian occupation, the Bulgarian Communist Party (BCP) gradually instituted a legal system based on the Soviet model. As many changes concerning the ownership rights to all types of property were made, the private means of production were expropriated and state ownership became predominant in most spheres.¹² Most importantly, private ownership (*chastna sobstvenost*) was prohibited and replaced by the concept of public ownership, accompanied by some allowance for "personal ownership" (*lichna sobstvenost*). This allowed individuals to possess only certain limited real property and other objects needed specifically to satisfy their personal needs and that of their families.¹³

In 1951, a new Ownership Act was adopted¹⁴, formally replacing the earlier 1904 Law on Properties, and by 1956, the first agricultural cooperatives were organized and underway. In 1971, the old "Dimitrov" constitution of 1948 was replaced with a new version that contained

¹² The first nationalization law was initially used against those who had allegedly been involved in the pro-Nazi government which had led to the catastrophe [*katastrofa*] of 1944. In 1947-8, the second group of laws was passed, initiating the nationalization of private enterprises, including apartment buildings, and the expropriation of large, urban properties. In most cases, only after the affluent (and enemies of the regime) had been targeted were similar property restrictions instituted for the populace as a whole. Alexander Dzherov, *Veshtno Pravo* [*Property Law*]. (Sofia: *Academichno Izdatelstvo*, 3d ed. 1995), p.138. This book is considered one of the two or three primary legal texts in modern Bulgarian property law, along with the late Petko Venedikov's *Novo Veshtno Pravo* [*New Property Law*]. Despite being published during a decade of drastic changes in Bulgarian property law, Venedikov's book is surprisingly limited, essentially representing a treatise on Dutch Roman law with only the barest of references to changes in the post-communist period. See Petko Venedikov, *Novo Veshtno Pravo*. (Sofia: Izdatelstvo SIBI, 1995), pp.7, 29-30.

¹³ According to the Law of Citizens' Property of 1973, a person and his family could possess only one dwelling of not more than 120 square meters (1292 square feet) and the possibility of a separate country residence or "dacha" of one to one and a half stories with the building dimensions of not more than 60 meters (646 square feet). See *Zakon za Sobstvenostta na Grazhdanite* [Law of Property of Citizens], 30 March 1973, *Durzhaven Vestnik* (D.V.) [State Gazette], broi 26, found in Milcho Doichenov, ed., *Zakoni za Sobstvenostta (Sbornik)* [Laws of Property]. (Sofia: KNSB, 1993), p.55.

¹⁴ See *Zakon za Sobstvenostta* [Law of Property (Ownership Act)], 16 November 1951, D.V. 92, found in Doichenov, p.3.

articles specifically allowing the expropriation (*otchuzhdavane*) of property in a variety of instances.¹⁵ Though “personal property” was still theoretically allowed, in practice “the State could, based on the Build-up and Regulation Plan (BRP), expropriate any ‘personal property’ at any moment...even if this was the person’s only apartment.”¹⁶

In 1989, encouraged by the chain reaction of collapsing Communist regimes throughout Europe, political opponents of the Communists united in an alliance on environmental issues, then on a firmer political basis in an umbrella organization that eventually became the Union of Democratic Forces (UDF). On 10 November 1989, the quarter-century Communist dictatorship of Todor Zhivkov collapsed, and with it the almost half century of Communist dictatorial rule.¹⁷ The government that replaced him, led by his former foreign minister Peter Mladenov and other of Zhivkov’s long-time Communist associates, was left with little choice but to support reform measures in order to ensure its own political survival.¹⁸ By July 1990, Mladenov was forced out and replaced by the UDF’s Zhelyu Zhelev, who was later confirmed by the 1992 full presidential elections.¹⁹ Over the next decade, the National Assembly alternated in control between the Socialist Party (successor to the BCP) and the UDF, with neither able to secure a strong majority until 1996²⁰, when the UDF’s Peter Stoyanov was elected to succeed Zhelev as president and his party captured a strong parliamentary majority.²¹

Throughout this political maelstrom, Bulgaria continued on its transition from totalitarian dictatorship to democracy and from centrally planned system to free market

¹⁵ Const. of the Peoples’ Republic of Bulgaria (1971).

¹⁶ “The citizens were always given in compensation an equal piece of property in compliance with the legal norms on residential issues: one and two member families were given single-room apartments and three and four member families were given double-room apartments.” Dzherov Affidavit in *Novecon*, R.1280.

¹⁷ See “History” section of the Bulgarian government’s webpage at <http://www.gov.bg>; also “Bulgaria,” *Atlapeia Online*, at <http://www.atlapeia.com/online/countries/bulgaria.htm> (last updated 2000).

¹⁸ See, e.g., Blaine Harden, “Bulgaria Orders End to Protests,” *The Washington Post*, 24 July 1990.

¹⁹ Chuck Sudetic, “Bulgarian Opposition Leader to Become President,” *The New York Times*, 2 August 1990.

²⁰ “Bulgaria’s UDF Cruises to Parliamentary Majority,” *Reuters*, 20 April 1997.

²¹ It should be noted that over the past several months, the political landscape of Bulgaria has changed dramatically. In June 2001, former King Simeon (II) Koburg-Gotha was elected prime minister, followed in October 2001 by the election of the Socialist Georgi Purvanov as president. Despite ideological differences, however, it is extremely doubtful that this administration will take a different stance on restitution than its predecessor. According to one long-time political observer in Bulgaria, “The government has repeatedly declared that restitution is a done deal. It makes no sense for Purvanov to bring back such a problematic issue from the dead.” Interview with Frank L. Bauer, President & CEO of the Bulgarian-American Enterprise Fund (BAEF), 15 January 2002 (on file with author).

economy. In 1990, the Bulgarian Constitution, as well as the Ownership Act, were amended and supplemented, and in July 1991, replaced by a new Constitution.²² Within two years, a process for the privatization of state-owned properties was initiated and referred to under the blanket name of “restitution” (*vuzstanovyavane*).²³ On 9 April 1992, the so-called Restitution Laws were formally enacted, restoring to former owners²⁴ or their descendants property nationalized by the Communists during 1946 or later.²⁵ This was no small task: in 1989, cooperatives and state farms held 99 percent of Bulgaria’s farm land and by the end of October 1992, over 51,000 applications for restitution had been received.²⁶

Until 1990, the Bulgarian judiciary, like the legislature, was under the complete control of the State Council and the parallel Communist Party system. The Supreme Court, with jurisdiction in both original and appellate cases, controlled the activities of all lower courts. Its Chief Justice, together with the state’s Chief Prosecutor (the head legal official in Bulgaria), was responsible for providing absolute BCP control of the judicial system. There was no effort to even imply judicial independence. In the 1971 Constitution, the Chief Prosecutor and the court system were expressly labeled “weapons of the dictatorship of the proletariat” and the orchestrated “elections” of all judicial officials further guaranteed state control.²⁷ In 1991, the new constitution guaranteed an independent judiciary and effectively replaced the three-stage judicial system with a four-stage model.²⁸ The fourth (and highest) level, the Constitutional

²² The distinction between the normally-elected National Assembly and a specially-called Grand National Assembly is important. A Grand National Assembly [*Veliko Narodno Sobranie*], nearly twice the size of a normal one [*Narodno Sobranie*], is elected for the special purpose of adopting a new constitution. The regular Assembly has no such constitutional authorization, a provision dating back to the Turnovo Constitution of 1879 and retained in the current Constitution. See Charles A. Moser, *Theory and History of the Bulgarian Transition*. (Sofia: Free Initiative Foundation, 1994), pp. 112-3.

²³ The word “restitutsiya” is also used in Bulgarian for restitution.

²⁴ All claimants or applicants for restitution are generally referred to as “former owners” or “former owners’ descendants” in the legal papers without consideration to the actual merits of their claims. (Bagdatov Affidavit in *Novecon*, R.1274.) Incidentally, this was an issue of material importance in the *Novecon* case.

²⁵ The designation of the year 1946 is no accident; rather, it allows property taken from former pro-Nazi elements (victims of the very first wave of expropriations) to be excluded from restitution.

²⁶ Kostadin Stoilov, “Dokude sme s restitutsiyata?” [*Where are we with restitution?*]. *Statisticheski barometur* [*Statistical Barometer*], 28 January 1993, cited in Moser, p.148.

²⁷ Const. of the Peoples’ Republic of Bulgaria (1971); also “Bulgaria Country Reports on Human Rights Practices – 2000,” Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/index.cfm?docid=705> (February 2001).

²⁸ See Lyuben Velinov, *Sudebnata Struktura v Bulgariya* [*The Court Structure in Bulgaria*]. (Sofia: *Svobodna Initsiativa* [Free Initiative Foundation], 1995), p.44.

Court, is separate from the rest of the court system²⁹ and empowered to invalidate legislation determined to be unconstitutional.³⁰

Despite the gradual improvement of the contemporary court system, the process of restitution has primarily been made an administrative matter, operated under guidelines set by the National Assembly. The restitution of expropriated real properties has been largely carried out in accordance with two laws, collectively referred to as the Restitution Laws of 1992: the Law for the Reinstatement of Expropriated Real Properties (“LRERP”)³¹, and the lengthy-titled Law on Reinstatement, Expropriated in Accordance with the Law on Territorial and Urban Development, the Law on Planned Development of Communities, the Law on Improvement of Communities, the Law on State Owned Properties, and the Ownership Act (“LRP”).³² According to the “LRERP,” restitution was considered effective *ex lege* on 24 February 1992.³³

Today, the ownership rights over real properties are described in several legal acts, such as the Ownership Act; the Law on Ownership and Use of Agricultural Lands; the Territorial, Urban and Rural Development Act; the Law on State Ownership; the Law on Municipal Ownership; and many other special laws on forests, roads, and cultural monuments.³⁴ The governing constitutional provisions are found in Articles 17, 18, and 22 in the Constitution and have been further articulated and reinforced by several decisions of the Constitutional Court.³⁵

²⁹ The Constitutional Court consists of a panel of judges one-third elected by the legislature; one-third appointed by the President; and one-third appointed by judges in the supreme courts. John Bell, *Bulgaria in Transition*. (Boulder: Westview, 1998), p.124.

³⁰ “Bulgaria Country Reports on Human Rights Practices – 2000,” Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/index.cfm?docid=705> (February 2001).

³¹ *Zakon za Vuzstanovyavane Sobstvenostta vurhu Odurzhaveni Nedvizhimi Imoti* [Law for the Reinstatement of Ownership of Expropriated Real Properties], 21 February 1992, DV broi 15, found in Doichenov, p.69. Throughout this paper, this law (“LRERP”) will be the more relevant of the two laws cited since the other (“LRP”) deals more with issues such as agricultural restitution.

³² *Zakon za Vuzstanovyavane Sobstvenostta vurhy Nyakoi Otchuzhdeni Imoti...* [Law for the Reinstatement of Ownership over Certain Expropriated Properties...], 21 February 1992, DV broi 15, found in Doichenov, p.74.

³³ Tadzher Affidavit in *Novecon*, R.1247.

³⁴ It is interesting to note in the *Novecon* affidavits the subtle discrepancy between leftist Tadzher’s explanation of private property and rightist Dzherov’s. According to Tadzher, in contemporary Bulgaria, “All forms of ownership are treated equally.” Tadzher Aff., R.1246. Contrast this with Dzherov’s assertion that “private property [is not only] again recognized in our country...it is put in first place [*purvo myasto*].” Dzherov, *Veshtno Pravo* at 133.

³⁵ “The basis for our legal doctrine has been set forth by the Constitutional Court in such decisions as Decision [*Reshenie*] No.19 of 1993, Decision No.14 of 1995, and Decision No.23 of 1995.” Alexander Dzherov, *Veshtno Pravo*, p.136.

III. A CRITICAL ANALYSIS OF THE RESTITUTION SYSTEM

PROBLEM #1: A Limited Remedy

There are significant differences between the general definition of the word “restitution” and its meaning within the context of Bulgarian land reform. In Bulgaria, “restitution” does not stand for the process of returning all property seized or expropriated by the Communists during their rule; legislators concluded this option was logistically impossible. Rather, the restitution process has been a narrow, and arguably arbitrary, program designed to provide compensation for certain sections of the populace who are able to satisfy several necessary preconditions. A sizable number of Bulgarians who apply for restitution cannot meet this heavy burden.³⁶

During Communist rule, there were three basic methods by which the State obtained real properties:

The first way is by way of an Order of Expropriation for one’s property... [T]he second is by way of adverse possession, or, as we call it in Bulgaria, by seizing or taking by force. The third way is that the State simply acquires the property as any private person would do such as by purchase or by gift.³⁷

In designing the Restitution Laws of 1992, legislators concluded that because of “the problems of proof after so many years,” it would have “caused chaos” to have permitted *all* of

³⁶ Most of the government sources that offer statistics on this percentage are so varied that they do not even merit documentation. According to one expert on Bulgarian property law, government statistics on restitution likely represent what the government wants the world to believe rather than the reality of the situation; such duplicity, the expert adds, “is certainly not a tactic used only by the Communists.” Interview with anonymous Bulgarian property law expert from BAEF, Washington, D.C., (24 March 2001) (on file with author). Braykov seems to agree: “Official figures are higher than the situation on the ground and this discrepancy is becoming an election issue.” Personal e-mail from Valentin Braykov, Bulgarian property lawyer, (13 April 2001) (on file with author).

³⁷ Dzherov Aff., R.1278-9; *see also* Tadzher Aff., R.1250.

the property seized by the state to be eligible for restitution.³⁸ Instead, they settled on a seemingly counter-intuitive dichotomy. In cases where the State instituted a legal “taking,” and documentation was available to prove it, the owner of the property qualified for restitution.

In cases where property was illegally seized, however, usually with little or no warning (and unlike a legal “taking,” without compensation), legislators determined that state actions fell under the so-called “ten years possession rule,” which states that “[i]f possession over [a] property [is] exercised for over ten years, with the intention to be acquired, the State becomes owner.”³⁹ Thus, even though seizure represented an illegal act, the State nevertheless legally acquired ownership of the seized properties through adverse possession once ten years had gone by. Landowners were afforded no legal remedy.

In cases where there is no documentation proving a “taking,” but one is alleged to have occurred, the formula gets much trickier. According to Vitali Tadzher, former Dean of the Law School of the University of Sofia, “[t]he presumption, upon presenting [a] complaint in court, [is] that there [is] an Order of [E]xpropriation.”⁴⁰ However, in practice, it is highly questionable whether former owners are actually extended this privilege. The practical reasons supporting such a presumption are obvious: Under the Communists, since the state viewed land titles as meaningless, recording systems often fell into disuse, or in some cases may never have been set up in the first place.⁴¹ In other cases, deeds were frequently lost or intentionally destroyed if they were evidence that a family had belonged to the landowning class.⁴² According to one expert familiar with Bulgarian restitution procedures, even if such documents did survive the Communist era, it is not uncommon for recalcitrant state authorities to arrange for them to illegally “disappear” when it suits their purposes.⁴³

³⁸ Dzherov Aff., R.1283.

³⁹ *See Zakon za Sobstvenostta* [Law of Property], 16 November 1951, D.V. 92, Art. 79, found in Doichenov, p.3.

⁴⁰ Tadzher Aff., R.1251.

⁴¹ Moser, p.154.

⁴² A. L. Strong, “Restitution of Farm Land in Bulgaria,” unpublished article, accessed 2 April 2001 at <http://www.ssc.penn.edu/east/spring95/strong.html> (January 1995) (copy on file with author).

⁴³ Interview with anonymous Bulgarian property law expert from BAEF, Washington, D.C., (24 March 2001) (on file with author).

Nevertheless, Tadzher's talk of a judicial "presumption" is puzzling. In a civil code state such as Bulgaria, for a "presumption" to exist, it must be explicit in the law itself. However, in none of the various restitution laws (or amendments) is there any mention of it, leaving as the only possibility a rather curious contradiction: a common law tradition in a civil code state. Regardless, such speculation may be irrelevant because it appears that this so-called presumption is rarely, if ever, followed. In *Novecon*, Tadzher's own testimony demonstrates the circuitousness – and contradictory nature – of this enigmatic and apparently fictional concept:

[In *Novecon*,] despite this presumption [of the Order existing], there was no evidence proving the existence of such [an] order presented to the court. Thus, the court issued the right decision refusing restitution under the premise that what does not exist cannot be annulled.⁴⁴

It is unclear whether Tadzher's explanation is a misstatement, a mere personal observation, or perhaps a bizarre interpretation of the word "presumption" that might also be shared by his compatriots in the Bulgarian judiciary. In any case, the recent example of *Novecon* demonstrates that if no official documentation such as an Order of Expropriation can be found, courts are often inclined to rule that no legal "taking" ever took place, thus eliminating the possibility of restitution. The result has been that with the exception of those able to afford competent counsel, a restitution applicant with anything but a well-documented, clear-cut case is very likely to fail.

PROBLEM #2: Exceptions Dominate the Rule

⁴⁴ In other words, Tadzher asserts that even with a presumption of the existence of an Order, if there is no evidence to later back it up, the Order must not exist. One must then ask, what function did the so-called "presumption" serve? See Tadzher Aff., R.1251; also *Novecon*, 977 F. Supp. at 49-50.

Under ideal circumstances, where a piece of property, legally expropriated, still exists in more or less its original form *and* is still owned by the state, the restitution laws allow for a remedy: direct restitution to the original owner or his descendants.⁴⁵ However, seldom do circumstances follow this model scenario, thus the restitution laws are often inapplicable. For example, if the state has sold the expropriated property to a private individual, unless it can be proven that the new owner used his Party status to purchase the property for an unseemly price, the property remains with the current owner.⁴⁶ Ineligible to seek restitution, the former owner's only options are to try to get the state to provide a substitute property elsewhere or else seek financial compensation.⁴⁷

This decision not to return ownership of a property to the former owner, even if unjustly taken, highlights an important distinguishing feature of Bulgarian law. In most Western jurisprudence, stolen property when located is returned to the original owner, even if in the meantime it has been sold in good faith to a purchaser who was unaware that the property was stolen. In Bulgaria, "property rights remain with the later purchaser, even though one may surmise that the property was immorally, if not illegally, acquired by the state which sold it to him."⁴⁸ As a result, when a property has been sold to a private individual, just as when it is illegally seized, restitution is unavailable.

Theoretically, in cases where restitution is not allowed, the owner is legally entitled to ask for other (either land or financial) compensation (*obezshenie*). Seldom, however, is this a viable option. Despite its promise to compensate, the state "does not possess very many

⁴⁵ *Zakon za Vuzstanovyavane Sobstvenostta vurhu Odurzhaveni Nedvizhimi Imoti* [Law for the Reinstatement of Ownership of Expropriated Real Properties], 21 February 1992, DV broi 15, found in Doichenov, p.69.

⁴⁶ See discussion in Moser, pp.144-5.

⁴⁷ In cases where property has been nationalized and cannot be given back to its former owners, the *Indemnification of Nationalized Property Owners Act* provides for the former owner to be provided with so-called compensation stocks. These compensation stocks can be used to purchase other land in municipal or agricultural land auctions, although such auctions have reportedly failed to attract large quantities of compensation stocks because of the "lack of any really attractive real estates." Theodora Vassileva and Plamen Radkov, "Great Supply of Compensation Stocks Keeps Prices Down," *Capital* (online), a Sofia newspaper, accessed 17 January 2002 at <http://www-us.capital.bg/old/weekly/00-49/13-49.htm>. According to the National Statistical Institute of Bulgaria, as of late 2001, 46,878 claims had been filed for indemnification under the Act. Of these claims, 25,177 were settled and 58,520 temporary certificates for owning compensation stocks were issued. See Bissera Staneva, "More Than 58,000 Property Estates Returned To Their Owners," *Capital* (online), a major Sofia newspaper, accessed 17 January 2002 at <http://www-us.capital.bg/old/weekly/01-02/20-2.htm>.

⁴⁸ Furthermore, even if it is proven that the current owners obtained the property through the use of their position within the Party, they are given three years to vacate, a considerable departure from the two days owners were given when their property was expropriated under Communist rule. See *id.* at 145.

equivalent properties which it can make available to the formerly dispossessed, and financially it is nearly bankrupt, so that it simply cannot make financial compensation [either].”⁴⁹ “Claimed land” exceeded the supply of land in at least 40 percent of the country, in part because considerable amounts of rural acreage had been urbanized over recent decades and was thus unavailable for restitution.⁵⁰ To compound the situation, individuals who formerly worked in agricultural cooperatives but did not contribute any land were still among those eligible to file claims.

Even if the government had the financial resources for reimbursement, few claimants would apparently be satisfied. Fueled by the hope that their land might offer the possibility of future appreciation, fewer than 0.5 percent of restitution applicants have reportedly preferred alternative compensation, a predictable trend further magnified by Bulgaria’s high unemployment, continued inflation, and low productivity.⁵¹ In other words, even among those claimants who actually qualify for restitution, the state is usually unable to arrange for equivalent, or even adequate, compensation.⁵²

PROBLEM #3: Procedural Problems

According to the “LRP”, if a former owner files for restitution, “[t]he procedure is [that] the city mayor’s office must decide whether the conditions are met, namely proper prior ownership and unrealized public purpose;⁵³ if so, the mayor is supposed to restore the property to the landowner or his descendants.” If the verdict is unsatisfactory, “[t]he Mayor’s decision may be appealed in the respective second instance court, [which in turn] may be appealed before the Supreme Court.”⁵⁴

⁴⁹ *Id.*

⁵⁰ Strong, “Restitution of Farm Land in Bulgaria.”

⁵¹ *Id.*

⁵² The Bulgarian government does claim to be trying. According to *Capital*, “[m]unicipalities and ministries are still compensating restitution claims although the number of [compensation] stocks issued has gone down considerably.” Theodora Vassileva and Plamen Radkov, “Great Supply of Compensation Stocks Keeps Prices Down,” *Capital* (online), accessed 17 January 2002 at <http://www-us.capital.bg/old/weekly/00-49/13-49.htm>.

⁵³ This second condition is relevant because if a property, regardless of ownership, is deemed to have a substantial public purpose, then restitution can be refused because the state could legally exercise its right of eminent domain anyway. See Const. of the Republic of Bulgaria (1990), Article 17(5).

⁵⁴ Dzherov Aff., R.1271.

In practice, the restitution scheme has few similarities with this glossy portrayal of efficiency. The fact that the system⁵⁵ is administrative rather than judicial has not resulted in a diminished backlog, and instead has meant that there are few channels through which rejected claimants may appeal.⁵⁶ While an appeal process for disgruntled claimants does exist, the “courts of second instance” that Dzherov speaks of are usually administrative mechanisms, not proper judicial tribunals. Furthermore, the various authorities within each system are so thoroughly interconnected that the chances of overruling an earlier judgment are relatively minute. Ostensibly, the responsibility for decision-making lies with each district mayor, all of whom are at least theoretically responsible to a head mayor (Sofia for instance has twelve district mayors subordinate to the chief mayor of Sofia.) However, it is virtually inconceivable that the head mayor would overrule, or involve himself whatsoever, in the decisions of the district mayors, who themselves have delegated the major responsibilities to committees (called Land Commissions.) Since officials realize that every case granted an appeal contributes further to the backlog, such verdicts are handed out extremely rarely.

While a system responsible for processing and adjudicating tens of thousands of cases is bound to be overworked, the unnecessarily short application period only made the problem much worse.⁵⁷ It also provided a tremendous, and presumably intentional, burden for Bulgarians living abroad, many of whom were unavailable to return to the country in time to apply. Further complicating matters, property boundaries in many cases had been obliterated with the formation of the vast state farms, and surveying to establish old boundaries or set new boundaries has proven to be expensive, inaccurate, and time-consuming. These problems are compounded by the fact that land records have often been destroyed and thus every dimension of a property effectively becomes an issue of contention. Testimony from village elders in some cases represents the sole means within a community of deciding who had once owned what.⁵⁸

⁵⁵ The use of the word “system” must be qualified. Since the program is decentralized and applied through mayoral offices, not through a national program, the restitution effort is probably more aptly described as a collection of individual systems, each inefficient in its own way.

⁵⁶ Dzherov Aff., R.1271.

⁵⁷ The original deadline was 24 October 1992, although the legislature later extended the deadline in certain cases.

⁵⁸ Strong, “Restitution of Farm Land in Bulgaria.”

Governmental corruption in Bulgaria is also a serious problem. While corruption within the restitution system has surprisingly not been a major concern, the system is still not immune to the run-off effects of *skrita privatizatsya* (“crony privatization.”)⁵⁹ When privatized plots are illicitly handed-out to associates, the restitution system is impacted in two major ways: First, the land is taken off the market, decreasing the overall supply available. Second, once a state-owned property is transferred to private ownership, it is no longer eligible to be restituted. The provision allowing restitution claims in cases where properties are obtained through Party influence is usually non-applicable, since in most cases the participants are now *former* Party cadres who have become businessmen with a proficiency in stockpiling former state assets.⁶⁰

The Notary system is another aspect of the restitution process particularly vulnerable to unscrupulous tactics. In Bulgaria, Notaries are an exalted position and are the part of the judicial branch charged with reviewing all deeds to real property.⁶¹ Generally, the owner presents all evidence of ownership to the Notary, who is supposed to carefully check the substance of all the documents, including the new notary deed. If he finds something that is incorrect, he is required to reject the request and refuse to sign the new notary deed. If he believes that things are correct, the parties and the Notary sign the new deed and upon delivery to the Office of Registry, title is officially transferred.⁶² According to Dzherov, however, “If the owner wishes to attempt to pull a fast one, the system has its weaknesses. The Notary checks only those documents referred to in the proposed notary deed. If, for example, the purported owner sold the property five years before, the Notary will not find that document.”⁶³ Similarly, with the approximately one hundred or so registers located throughout the country not linked to each other, it is nearly impossible to verify if a piece of property is being used as collateral for several loans at the same time, a circumstance that could have serious repercussions if ownership of the property is later transferred.⁶⁴

⁵⁹ See Stefan Stoichev, *Konstitutsiyata ot 1991 Godina (Kritichen Analiz)* [*Constitution of 1991 (Critical Analysis)*] (Sofia: Free Initiative Foundation, 1994), p.14.

⁶⁰ Interview with anonymous BAEF representative, Washington, D.C., (24 March 2001). However, recent legislation has designated property obtained in such ways as no longer immune from restitution.

⁶¹ Notaries in Bulgaria, and in Europe in general, play a much broader role than a Notary in the United States, who simply takes oaths of truth from individuals and does very little substantive work.

⁶² Dzherov Aff., R.1276.

⁶³ Dzherov Aff., R.1274.

⁶⁴ “Bulgaria: Economic Freedom,” Freedom House Survey of Economic Freedom 1995-96, *available at* <<http://www.freedomhouse.org>>.

Worst of all, even when a property properly qualifies for restitution in a “model scenario,” a separate lawsuit is usually necessary in order to eject the local government from the area where its services are currently being rendered, even when that government service is only a garage or playground.⁶⁵ Likewise, “[a]s a legal matter, the [former owner] will be obligated to compensate in advance the city for the then current value of the development of the property.”⁶⁶ This means that the city must be compensated for all of its alleged “improvements,” even if they detract from the use of the property and even if their actual effect is to significantly diminish the property’s value.

PROBLEM #4: The Battle Over Tenants’ Rights

Renewed legislative debates on how to balance the conflicting rights of current tenants and former owners have further prolonged the already exorbitant waiting periods allowed before a restitution transfer is required. The result has been an unhappy medium in which both parties have seen their rights under the Restitution Laws seriously undermined.

Initially, the Restitution Laws of 1992 envisaged not only a generous three-year time period for tenants to vacate houses that are subject to restitution, but also provided that municipalities provide substitute housing for these affected tenants. In most cases, however, municipalities by the expiration of the three-year periods had failed to provide the housing they were expected to. In Sofia alone there were reportedly some “2,000 families slated to be kicked out into the street the moment the moratorium on restitution expires...”⁶⁷

This provoked a rare constitutional crisis in 1995. Faced with demonstrations and near-rioting by soon-to-be-expelled tenants, the BSP-dominated legislature passed an amendment to the restitution laws providing that tenant-owner contracts for property subject to restitution to go into effect (allowing ownership to be transferred) only after local administrations provide substitute housing for tenants facing eviction. President Zhelev, declaring that the amendment “does not solve the problem but just postpones the solution,” vetoed the amendment but was

⁶⁵ Dzherov Aff., R.1278.

⁶⁶ Bagdatov Aff., R.1319.

⁶⁷ “Amendments to the Restitution Act Passed,” *Bulletin of News from Bulgaria*, Bulgarian Telegraph Agency (published by the U.S. Embassy of Bulgaria), at <http://www.hri.org/news/agencies/bta/95-09-15.bta.html> (15 September 1995).

forced to endorse it when the legislature passed the amendment a second time.⁶⁸ For many thousands of former owners who had been promised the return of their land, yet another obstacle seemed to stand in their path to reclamation.

In July 1995, however, the Constitutional Court, responding to a claim lodged by UDF representatives, ruled the amendments unconstitutional, proclaiming that:

From the point of view of the constitutional provision for the inviolability of private property, it is inadmissible to extend temporary restrictions or introduce new ones when ownership on property has already been restored. Once ownership is restored, lawmakers have no right to infringe on the inviolability of private property.⁶⁹

By stepping into the debate, the Court made clear the constitutional parameters by which the legislature had to abide. But it offered no solution, just confirmation of the fact that such problems did still exist and were not likely to go away on their own.

IV. CONCLUSION: Prospects for the future

As this paper has shown, the Restitution Laws of Bulgaria offer only a limited number of former owners the opportunity for restitution. Even in those cases where restitution is granted, exorbitant waiting periods are normal and additional lawsuits are often needed to free the land from the grip of the state. In some cases, not enough evidence exists to prove former boundaries; in others, the state's supply of land is simply insufficient to follow through with land it has already agreed to return. The promise of alternative compensation is often so unreliable, it is generally not considered a realistic option.

One of the few groups to have offered a solution to these problems has been the Socialist Party, which has proposed solving the shortage of land available for restitution by only delineating "ideal," rather than real, boundaries.⁷⁰ While the BSP plan is based on a valid

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ The abstract concept of "ideal" restitution has precedent in Bulgarian land law, albeit under the Communists. Under the collective farm system, each peasant who joined lost title to his land but maintained theoretical ownership of a certain quantity of undelineated land. In other words, "he was transformed from the owner of land

premise, namely the recognition that few properties subject to restitution still exist in a form resembling that in which they were taken, the measure stands absolutely no chance of getting enacted.⁷¹ It has been vigorously opposed by other legislators who see the “ideal” land designations, quite accurately, as nothing less than a *nouveau* system of virtual cooperatives.⁷²

Instead, the legislature has chosen to wait out the slow and inefficient process while occasionally using “plum” legislation to reward former owners for their wait. Over the past several years, the Assembly has enacted a number of new laws that are decidedly pro-“owner.” In 1997, the legislature passed a provision entitling former owners to restoration of their property in cases when the new owners are found to have acquired the property in violation of a law or through abuse of office. In March 2001, the Law on Amendments and Supplements of the Law on Compensation of Owners of Nationalized Properties was adopted, giving current and former “restitutents” priority in purchasing minority shares of already privatized state enterprises.⁷³ Yet another law, still in its draft stages, allows “anyone who was sentenced under [the 1946 laws of speculation and prices and supply] [to] be pardoned and...get their property back or receive other compensation.”⁷⁴

Nevertheless, two things remain clear: First, restitution is not a “done deal” as has been suggested by prime ministers Kostov, Dimitrov, and others;⁷⁵ and second, the efforts have not

in real boundaries to the owner of land in ideal boundaries.” See Asen Nikolov, *Pozemlenata reforma v Bulgariya* [Land Reform in Bulgaria]. (Sofia: Free Initiative Foundation, 1993).

⁷¹ See extended discussion in Moser, pp.144-156.

⁷² Some bills providing for *voluntary* consolidation programs have nevertheless received surprising support. For instance, in late 2001, deputy Agriculture Minister Georgi Karkumov proposed a bill aiming to “stimulate the setting up of efficient co-operative farms” through a program of voluntary land consolidation. Bissera Staneva, “Consolidation of Agricultural Land To Be Regulated By Special Act,” *Capital* (online), accessed 15 January 2002 at <http://www-us.capital.bg/old/weekly/01-02/19-2.htm>. As of the publication of this article, no such program had yet been passed.

⁷³ See “Law on Amendments and Supplements of the Law on Compensation of Nationalized Properties,” Bulgarian Foreign Investment Agency, at <http://www.bfia.org/bnews2.htm> (26 March 2001).

⁷⁴ This law was devised to overcome the constitutional obstacles outlined in a 1998 Constitutional Court verdict that rejected an earlier, outright attempt to return the property (where the Court had ruled that parliament, with its right of amnesty, had to first wipe out the convictions before the property could be officially returned.) See “Restitution Effort,” *Trud* (Sofia newspaper), 29 January 1999, p. 1.

⁷⁵ Official statistics from the National Statistical Institute of Bulgaria claim that by the year 2000, 99.7% of land subject to restitution had been restituted, and 90.05% of owners of restituted land had already been handed title to their land. See “Restitution Land Percentages,” National Statistical Institute, (Sofia, Bulgaria), at <http://www.nsi.bg> (April 2001). These statistics seem to imply a “done deal.”

been an unqualified success story. Even Braykov, who remains supportive of the government's programs, admits that the results of the land restitution program have not all been positive:

What is beyond doubt is that restitution of land has not created a reliable market of land which is the core of the problem. New owners cannot afford the necessary farming equipment to make the land efficient, prices of farming land are ridiculously low due to almost no demand and that is how agriculture is sinking. [The g]overnment is afraid to allow foreign purchasing power to buy the cheap land because it will cause a social earthquake. They take comfort in the E[uropean] U[nion] accession in approximately 2008 as a legitimate delay in the liberalization of the land market. As a result of low land prices farmers cannot use a part of their land as collateral for bank loans, which is a diabolical circle.⁷⁶

Undoing the damage of over a half century of Stalinist totalitarianism and Soviet-style economics is not an easy task. But while the speed and boldness of Bulgaria's reform movement should be lauded, the worthiness of the restitution program's goals should not act as blinders to its faults, especially at the expense of some of the most underrepresented segments of society. It is only when Bulgaria, and the international community that influences it, become willing to take a hard and honest look at the shortcomings of the system that the problems of restitution will ever truly become a footnote in Bulgaria's past.

SELECTED BIOGRAPHIES OF SOURCES

Philip Dimitrov served as President of the Union of Democratic Forces (UDF) from December 1990 to December 1994. It was under his leadership as Prime Minister of Bulgaria (November 1991 to December 1992) that the Restitution Laws of 1992 were pushed through Parliament. In 1997 he was named the country's United Nations Representative and in 1999, Bulgarian

⁷⁶ Personal e-mail from Valentin Braykov, Bulgarian property lawyer, (13 April 2001) (on file with author).

Ambassador to the United States. He resigned in January 2002 after the ascension of the Socialist president Georgi Parvanov.

Alexander Dzherov is Dean of the Law School at the private New Bulgarian University and generally considered the foremost academic authority on Bulgarian property law. A former “enemy of the people,” he is also a member of the National Assembly and served as chairman of the Legislation Committee that authored the Restitution Laws of 1992.

Vitali Tadzher served as professor of property law at the University of Sofia Law School from 1959 until 1987 and Dean of the Law School from 1962 to 1964. His publications include *The State’s Property Rights* (1975); *Bulgarian Civil Law* in two volumes (1971 and 1973); and *Commercial Act and Possession* (1990). Since May 1995, he has served as chief of the private law section of the Legislation Council of Parliament.

Stefan Bagdatov is currently a boundary expert for the Supreme Court of Bulgaria, a post he has held since 1977. In his twenty years as an expert, he has given expert opinions in 600 to 700 different court cases involving land disputes, and in recent years about the restitution of State-acquired property.

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RELEVANT PROVISIONS IN THE BULGARIAN CONSTITUTION

Article 17 [Property]

- (1) The right to property and inheritance shall be guaranteed and protected by law.
- (2) Property is private and public.
- (3) Private property is inviolable.
- (4) The regime applying to the different units of state and municipal property is established by law.
- (5) Forcible expropriation of property in the name of state and municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance. [“Takings” Provision]

Article 18 [State Property]

- (1) The state shall enjoy exclusive ownership rights over the nethers of the earth; the coastal beaches; the national thoroughfares, as well as over waters, forests, and parks of national importance, and the natural and archaeological reserves established by law.
- (2) The state shall exercise sovereign rights in prospecting developing, utilizing, protecting, and managing the continental shelf and the exclusive off-shore economic zone, and the biological, mineral, and energy resources therein.
- (3) The state shall exercise sovereign rights with respect to radio frequencies and the geostationary orbital positions assigned by international instruments to the Republic of Bulgaria.
- (4) A state monopoly is establishable by law over railway transport, the national postal and telecommunication networks, the use of nuclear energy, the manufacturing of radioactive products, armaments, explosives, and powerful toxic substances.

(5) The conditions and procedure by which the state shall grant concessions over units of property and licenses for the activities enumerated in the preceding two paragraphs shall be established by law.

(6) The state shall utilize and manage all the state's assets to the benefit of citizens and society.

Article 21 [Land]

(1) Land, as a chief national asset, shall enjoy particular protection on the part of the state and society.

(2) Arable land shall be used for agricultural purposes only. Any change in purposes shall be allowed only in exceptional circumstances, when necessity has been proven, and on terms and by a procedure established by law.