

Unification and Property Issues (June 15, 1990)

Abstract

The regulation of property issues was among the most important topics in the negotiations between the Federal Republic of Germany and the German Democratic Republic in the summer of 1990. The principle “restitution before compensation” was settled upon, as was the controversial regulation declaring that the expropriations carried out during the Soviet occupation would not be reversed. This declaration and the Law on the Regulation of Open Property Issues of September 23, 1990, were incorporated into the Unification Treaty.

Source

Joint Declaration of the Governments of the Federal Republic of Germany and the German Democratic Republic on the Settlement of Open Property Questions, June 15, 1990

The division of Germany, the related migration from East to West, and the different legal systems in the two German states have led to numerous problems involving property rights; these problems affect many citizens of the GDR and the FRG.

In resolving existing property issues, both governments base their views on the assumption that it is possible to balance the various interests in a socially responsible manner. Legal certainty and legal clarity, as well as the right to property, are the principles guiding the governments of the GDR and the FRG in resolving the property issues facing them. Only in this way can peace under the law be permanently assured in a future Germany.

Both German governments agree on the following basic premises:

1. Expropriations on the basis of occupation law or occupational jurisdiction (1945 to 1949) cannot be reversed. The governments of the Soviet Union and the GDR see no possibility of revising measures taken at that time. The government of the FRG acknowledges this in view of historical developments. It is of the opinion that the right to make a final decision on possible state compensation must be reserved for a future all-German parliament.
2. Trusteeship administration [*Treuhandverwaltungen*] and similar measures limiting the use of real estate, businesses, and other property must be rescinded. With this, citizens whose property was taken into state administration as a result of flight [from the GDR] or for other reasons will regain control of their property.
3. In principle, confiscated real estate will be returned to the former owners or their heirs, taking account of the cases listed in a) and b):
 - a) The restitution of property rights to real estate and buildings whose use or function was changed – particularly when they were dedicated to public use, integrated into complex housing and development projects, employed for commercial purposes, or included in a new commercial unit – is not possible on account of the very nature of the matter. In such cases, compensation will be paid to the extent that it has not already been made under regulations applying to citizens of the GDR.

b) Provided that a citizen of the GDR has properly obtained ownership rights or usage rights to a property that is to be transferred back, a socially responsible settlement is to be made with the former owner through the exchange of property of comparable worth or through monetary compensation. This also applies to property sold to third parties by state trustees. Details remain to be clarified.

c) Insofar as former owners or their heirs have a claim to restitution, compensation may be chosen instead. The issue of compensation for changes in value will be dealt with separately.

The question of compensation for additions and improvements will be regulated separately.

4. The regulations under subparagraph 3 also apply to residential premises that were formerly administered by legitimate claimants themselves or on their behalf and were nationalized on the grounds of economic necessity.

5. Renter's protection and the existing usage rights of GDR citizens to real estate and buildings affected by this declaration continue to be preserved and are regulated in accordance with the relevant law of the GDR.

6. With enterprises under trustee administration, the existing limits on use are lifted; the owner assumes control over his business assets.

Enterprises and shareholdings that were nationalized in 1972 are covered under the Law of March 7, 1990, on the Establishment and Activity of Private Businesses and on Business Shareholdings. In these cases, Article 19, Paragraph 2, Clause 4 of the law is interpreted in such a way that the state-owned share must be sold to the private corporations upon request; the decision about the sale is therefore not at the discretion of the relevant authorities.

7. For businesses and shareholdings that were incorporated into national property through confiscation between 1949 and 1972, the former owner will be given – taking into account how valuable the business has become – the business as a whole or shares or stocks in the company, provided that he does not wish to take advantage of compensation. Details are still in need of further regulation.

8. If assets – including usage rights – were acquired through dishonest machinations (e.g., through the abuse of power, corruption, coercion, or fraud on the part of the acquirer), the acquisition of legal rights is not protected and must be reversed. In cases of proper acquisition, subparagraph 3.b) applies.

9. Insofar as confiscations of property occurred in connection with criminal prosecutions that were contrary to the rule of law, the GDR shall create the legal prerequisites for correcting them in a proper legal process.

10. Ownership interests by citizens of the FRG in the redemption bond for old accounts will be serviced, including interest, in the second half of 1990 – that is, after the currency conversion.

11. Insofar as limitations on foreign currencies in payment transactions still exist, they are abolished with the coming into force of the Monetary, Economic, and Social Union.

12. The assets of legal persons under public law that exist or existed on the territory of the GDR, and which have been under trustee administration by state agencies of the Federal Republic of Germany on the basis of the Legal Entities-Liquidation Law [*Rechtsträger-Abwicklungsgesetz*], will be handed over to the legitimate claimants or their legal successors.

13. Regarding implementation:

a) The GDR will immediately create the necessary legal provisions and procedural regulations.

b) It will announce where, and within what time period, affected citizens can file their claims. The deadline for claims will not exceed six months.

c) To satisfy the claims to compensation, the GDR will establish a legally autonomous compensation fund that is separate from the state budget.

d) The GDR will ensure that, until the expiration of the deadline specified in subparagraph 13.b), real estate and buildings will not be put up for sale if the question of ownership rights remains to be clarified – unless the parties involved agree that restitution is out of the question or is not requested. There will be a review of cases in which real estate and buildings were still sold after October 18, 1989, without the question of ownership rights having been clarified.

14. Both governments charge their experts with the clarification of further details.

Source: “Gemeinsame Erklärung der Regierungen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik zur Regelung offener Vermögensfragen, 15. Juni 1990”, *Bundesgesetzblatt* 1990 II, S. 1237–38.

Translation: Thomas Dunlap Portions of the English translation (up to subparagraph 3.c) were taken from “Joint Declaration on the Settlement of Open Property Questions, June 15, 1990” in Konrad Jarausch and Volker Gransow, eds., *Uniting Germany: Documents and Debates, 1944–1993*. Translated by Allison Brown and Belinda Cooper. Berghahn Books: Providence & Oxford, 1994, pp. 163–64. The remainder was translated by Thomas Dunlap.

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