12-1-1992

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Claims of U.S. Nationals Under the Restitution Laws of Czechoslovakia

INTRODUCTION

On January 26, 1991, the Czech and Slovak Federative Republic (Czechoslovakia) began implementing a privatization process by auctioning off twenty small businesses located in Prague. The government expected to sell the restaurant Moskva for almost $600,000. At the last minute, however, the Moskva sale was postponed due to a claim by an individual who asserted that he, and not the state, held title to the restaurant and was its rightful owner.

Since then, the Czechoslovak government has enlarged the privatization process to encompass more types of property. This has allowed many former owners to assert claims for restitution. These claims may be complex and take years to settle. Clouded titles to property, in turn, may adversely affect the influx of foreign capital into Czechoslovakia and retard the country's economic transformation to a free market. As a result, the success of the Czechoslovak restitution process in returning property and encouraging foreign investment will be vital to the success of the entire Czechoslovak privatization program.

1 Dep't of State, European Affairs, Unclassified Memorandum on the Czech and Slovak Federative Republic Small Privatization Law of October 25, 1990, at 1 (Jan. 2, 1991) [hereinafter Dep't of State Memorandum]; see also Czechoslovakia Auctions Stores to Private Buyers, N.Y. TIMES, Jan. 27, 1991, at A10 [hereinafter Czechoslovakia Auctions Stores].
2 Dep't of State Memorandum, supra note 1, at 1.
4 See infra notes 93-136 and accompanying text.
5 See Czechoslovakia Auctions Stores, supra note 1, at A10.
7 See Karel Dyba et al., The Second Czech Revolution, FIN. TIMES, Oct. 18, 1990, at 48.
8 See Privatization of Czechoslovak Industry, FIN. TIMES, BUS. LAW BRIEF, Nov. 1990 (privatization of property subject to claims for restitution will be deferred); see also Czechoslovakia: Big Deals Begin Despite Legal Confusion, IMC BUS. COMM.—M & A EUR., Nov./Dec. 1990, at 60, available in LEXIS, Nexis Library, Current File (because uncertainty over property rights in Czechoslovakia is unavoidable, western lawyers and clients are worried about investing).
This Comment principally examines how the Czechoslovak restitution program will affect nationals of the United States who intend to reclaim property in Czechoslovakia. Part I summarizes relevant historical aspects of U.S.-Czechoslovak relations, beginning with the 1928 Treaty on Naturalization, following with the post-World War II Czechoslovak nationalization measures, and concluding with the 1981 Agreement settling claims of U.S. nationals based on the Czechoslovak nationalization measures. Part II then reviews the restitution laws, offering a glimpse into the process by which Czechoslovak citizens were able to state claims for restitution. Part III discusses the practical and legal problems of applying the Czechoslovak restitution program to foreign nationals who possess property interests in Czechoslovakia and offers potential solutions to these problems. Finally, this Comment concludes that the Czechoslovak restitution program currently discriminates against U.S. nationals and other foreign nationals and does not further the stated goal of adequately resolving the injustices committed by the former Communist government.

I. Relevant Historical Aspects of U.S.-Czechoslovak Relations

A. The 1928 Treaty on Naturalization

On July 16, 1928, the United States and Czechoslovakia signed a treaty governing naturalization issues (Treaty on Naturalization). The Czechoslovak government entered into the Treaty on Naturalization in order to, \textit{inter alia}, prevent its nationals from temporarily emigrating to the United States in order to avoid military duty. The Treaty on Naturalization has assumed importance today, however, because the recently-adopted Czechoslovak restitution program allows Czechoslovak nationals who emigrated to return to Czechoslovakia permanently and reclaim lost property.

Article I of the Treaty on Naturalization states that nationals of Czechoslovakia who are naturalized in the United States au-

\footnote{11} Law No. —/1991, on Extrajudicial Rehabilitation (Feb. 22, 1991) (U.S. Dep’t of State Translation, on file at B.C. Int’l & Comp. L. Rev. office) [hereinafter Large Restitution Law].
tomatically lose their Czech nationality.\textsuperscript{12} Nationals of either country who are naturalized while their country of origin is at war, however, do not lose their original nationality.\textsuperscript{13} In addition, article III of the Treaty on Naturalization provides that individuals who return to their country of origin intending to remain permanent residents shall lose citizenship previously acquired by naturalization.\textsuperscript{14} According to the treaty, individuals intend to remain permanent residents in their country of origin if they return and reside more than two years in that country.\textsuperscript{15} The Treaty on Naturalization, ratified by the U.S. Senate on January 26, 1929, was still good law as of October 15, 1991.\textsuperscript{16}

B. Post World War II Czechoslovak Nationalization Measures

The nationalization of private property in Czechoslovakia after World War II began with measures implemented by the government of the democratically-elected Eduard Benes and concluded with measures implemented by the Communist government. Ultimately, the entire Czechoslovak economy was nationalized. Few people received adequate compensation for the taking of their property interests, and many people fled the country. While the U.S. government obtained compensation from Czechoslovakia for its nationals in 1981, Czechoslovak citizens were generally deprived of compensation under the socialist theory of property rights.

1. The Benes Government's Property Reform Measures

The Benes government placed property considered essential to the national economy under national administration on May 19, 1945.\textsuperscript{17} Because the Benes government intended this action to be temporary, it was not considered a compensable taking under general principles of international law.\textsuperscript{18} In addition, the

\textsuperscript{12} Treaty on Naturalization, \textit{supra} note 9, at art. I.

\textsuperscript{13} Id.

\textsuperscript{14} Id. at art. III.

\textsuperscript{15} Id.

\textsuperscript{16} Id.

\textsuperscript{17} FOREIGN CLAIMS & SETTLEMENT COMM., DEP'T OF STATE, 1962 SEMIANNUAL REPORT 1, 178 (July–Dec. 1962) (referring to Decree No. 5/1945 of May 19, 1945) [hereinafter 1962 F.C.S.C. REP.].

\textsuperscript{18} Deprivation of Property Rights without Direct Taking, 8 Whiteman, \textit{DIGEST OF INT'L LAW}, § 24, at 1012–13.
Benes government, pursuant to Decree No. 12/1945 of June 21, 1945 and Decree No. 108/1945 of October 25, 1945, authorized local authorities to confiscate property owned by Germans, Hungarians, and persons who were not loyal to Czechoslovakia during World War II.\(^{19}\) Under these decrees, local authorities could, and did, seize property without offering the owners compensation for their losses.\(^{20}\) The Benes government also nationalized certain industrial enterprises, banks, and insurance companies on October 24, 1945.\(^{21}\) These nationalization measures turned ownership of the enterprises, including all of their property, assets, and rights, over to the Czechoslovak state on October 27, 1945.\(^{22}\) These measures alone transferred title to almost 60 percent of Czechoslovak industry from private individuals to the state.\(^{23}\)

Finally, on July 11, 1947, the Benes government enacted Decree No. 142/1947 in an attempt to revise agrarian reform legislation originally passed in 1919 and 1920. Previous legislation limited individual holdings in certain tillable lands to 250 hectares;\(^{24}\) Decree No. 142/1947, however, prohibited individual ownership of more than fifty hectares of agricultural or forest land.\(^{25}\) In addition, land exempted under the earlier laws was now subject to the land reform program.\(^{26}\) Those whose property was confiscated under the Benes government's measures had their property taken either under a decree that authorized confiscation without compensation\(^{27}\) or under a decree which prom-

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\(^{20}\) See id.

\(^{21}\) Alan R. Rado, Czechoslovak Nationalization Decrees: Some International Aspects, 41 Am. J. Int'l L. 795, 795 n.1 (1947). Decree No. 100 concerned the nationalization of mines and certain industrial enterprises; Decree No. 101 concerned the nationalization of certain enterprises in the food industry; Decree No. 102 concerned the nationalization of banks; and Decree No. 103 concerned the nationalization of private insurance companies.

\(^{22}\) Id. Decrees No. 100 and 101 "reiterate that nationalization of the enterprises affect all immovable property, buildings and equipment serving and running of the nationalized concerns, including all rights (patents, licenses, trademarks, patterns, etc.), all bills, checks, securities, deposits, cash and assets belonging to the concerns, as well as all finished and unfinished products, semi-manufactured goods, stocks and materials belonging to the concern on the date when the decree came into force." 1962 F.C.S.C. Rep., supra note 17, at 175.


\(^{25}\) Id.

\(^{26}\) Id.

\(^{27}\) Id. Decrees No. 12/1945 of June 21, 1945 and No. 108/1945 of Oct. 25, 1945 ordered the confiscation of property owned by Germans, Hungarians, and persons disloyal to
ised payment of adequate compensation. Provisions for compensation were never successfully implemented.

2. The Communist Government and Property Rights

On February 25, 1948, Communist insurgents seized power, toppled the Benes government, and began creating a new socialist state. They enacted a new constitution and a new civil code. Whereas the right of an individual to own property was inherent and inalienable throughout Czechoslovakia before 1950, the 1950 Communist Civil Code established the guiding principle that citizens had only the rights that their government granted to them.

The Communist government did not grant the citizens of Czechoslovakia many property rights. The 1950 Civil Code created...
ated three classifications of property—socialist (state) property, personal property, and private property—and accorded different rights to holders of each type of property.35 These distinctions enabled the Communist government to reduce the remnants of private property,36 and to build a socialist state,37 without completely outlawing the legal notion of individual ownership of property.38

a. Socialist property

Under the 1950 Civil Code, socialist property consisted of property owned by the people as a whole (national property), and property owned by smaller groups of people (cooperative property).39 National property included natural resources and utilities such as sources of power, forests, minerals, and rivers. It also included means of industrial production, public transport, banks and insurance companies, broadcasting, schools, health facilities, and scientific institutions.40

qualifying private rights: first, the class structure of society; second, the class nature of the state as a political organization of society; third, the rule that the working people were led by the working class; and, fourth, the progressive regulation of property relations among citizens in order to build up socialism. Id.

35 Id. at 559.
36 Id. at 558. "Our civil law is an effective weapon for suppressing and restricting the remnants of capitalist private property which still exist in the country . . . ." Id.
37 Id. at 557. "[T]he progressive regulation of property relations between citizens which helps us to build up socialism to the widest extent is . . . the most important prerequisite of the constant realization of civil rights as decreed by the May 9, 1948 Constitution." Id.
38 Id. at 560.
39 Id. at 559.
40 Id.; see also 1962 F.C.S.C. Rep., supra note 17, at 176–77. The Communist government classified nearly all industrial concerns of more than a purely local character as national property. The Communist government passed several nationalization laws that essentially divided national property into two categories: first, property retroactively nationalized on January 1, 1948 and second, property nationalized on a date after February 25, 1948. These distinctions are important because the recently passed restitution laws do not allow individuals to reclaim property confiscated on a date before February 25, 1948.

Laws falling into the first category included:
(1) No. 114/1948 and 115/1948 (all industrial concerns);
(2) No. 118/1948 (all enterprises involved in wholesale and international trade);
(3) No. 120/1948 (all commercial companies employing more than 50 people);
(4) No. 121/1948 (the building and construction trade);
(5) No. 122/1948 (all travel agencies);
(6) No. 123/1948 (all printing plants);
(7) No. 124/1948 (all hotels, inns, and related enterprises);
The Communist government considered land joined together in one collective unit of production for purposes of cultivation as cooperative property. The actual title to land contributed to the cooperative remained in the names of its members. Control of the land, however, could be turned over to the cooperative if the local authorities deemed that the members had “not properly farmed” it.

b. *Personal property*

The 1950 Civil Code limited personal ownership rights to personal necessities purchased with an individual’s earnings. Small family houses and savings derived from labor were considered personal property. The ownership rights of these and other like items were theoretically inviolable, and the transfer of rights through inheritance was guaranteed. In practice, however, personal ownership of property was limited. In some cases, it was

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(8) No. 125/1948 (all natural curative springs, health resorts and similar private businesses).

Laws falling into the second category included:

1. No. 119/1948 (foreign trade and international transportation companies were nationalized on date decided by Minister of Foreign Trade);
2. No. 126/1948 (certain breeding enterprises nationalized on June 3, 1948);
3. No. 249/1948 (agricultural research institutions nationalized on November 19, 1948);
4. No. 311/1948 (all privately owned domestic transportation companies nationalized on December 22, 1948);
5. No. 185/1948 (medical and nursing institutions nationalized on January 1, 1949).

Kocvara, supra note 32, at 559.


Glos, supra note 29, at 245–46; Kocvara, supra note 32, at 560. The Communists considered personal ownership rights to represent “the full expression of the new concept of civil liberty in a socialist society, e.g., the full freedom of every working man, as obtained by deliverance of the working people from the yoke of oppressive exploiters, by the removal of the freedom to exploit others, and by coordinating the individual's interest with the interest of the community.” Kocvara, supra note 32, at 560.

Kocvara, supra note 32, at 560 (citing art. 10(1) of the 1960 Constitution).  
Id. (citing arts. 10(1) and 10(2) of the 1960 Constitution).

Id. at 562. This constitutional guarantee of property rights was limited by section 131 of the 1964 Civil Code, which revised the 1950 Civil Code. Section 131 states that “if an important interest of society is involved which cannot be otherwise satisfied, the object may be further used without the consent of the owner, but only temporarily, to a stated degree, and for compensation.” Id. (citing § 131 of the 1964 Civil Code). Yet, as one legal commentator wrote at about this time, “practice does not always respect the above principles, and the alleged interest of society often hides various erroneous principles, and the lawful interest of citizens are thereby impaired.” Id.
even nullified by the Communist government in an effort to create a uniform and expansive socialist state.\footnote{\textit{Id.} at 563. In a case where the owner of a small family house wanted to vacate it so that his widowed daughter could move in, the Regional Court refused to let him vacate the house and still retain title to it. The court stated that "the overriding consideration of this reasoning must be regard for the public interest . . . [and] from the viewpoint of the political goals of the working class." \textit{Id.} (quoting Decision No. 22Co 746/1957, Nov. 8, 1958, of the Regional Court in Prague).}

The Communist government carried out the gradual elimination of personal ownership rights by decree\footnote{See, e.g., \textit{id.} (citing Ministry of Justice Decree No. 179/1950 which conditioned ownership rights of small family houses upon fulfillment of Uniform Economic Plan).} and by delegation of administrative power to bureaucrats.\footnote{See \textit{id.} at 564; see also infra text accompanying notes 52 and 53 (tracing unlimited power of state notary).} For example, the 1964 Civil Code, which revised the 1950 Civil Code, imposed significant restrictions on the size of structures that were classified as small family houses.\footnote{Kocvara, \textit{supra} note 32, at 561. For example, section 128 of the 1964 Civil Code limited "small family houses" to buildings with no more than five dwelling rooms where at least two-thirds of the floor area serves dwelling purposes. In addition, the total floor area of the building could not exceed 120 square meters. \textit{Id.}} This eliminated ownership rights in all but the smallest of houses.\footnote{\textit{Id.}} In addition, although conveyance of title to a small family house did not require express approval of the state, the conveyance deed was invalid unless registered with the state notary.\footnote{\textit{Id.} at 564.} The notary was obliged to deny registration of the deed if he believed that such registration would conflict with the socialist interests of Czechoslovak society.\footnote{\textit{Id.}}

c. \textit{Private property}

While personal ownership rights were often restricted, the Communist government's laws and decrees most dramatically affected the right of an individual to own private property.\footnote{\textit{Id.}} The category of private property included means of production, houses, and land.\footnote{\textit{Id.}} Private property rights were listed and tolerated in the 1948 Constitution and in several laws passed within the first two years of Communist rule.\footnote{See generally \textit{id.} at 566 (section 146 of 1948 Constitution allowed means of production to be privately owned; Law No. 46/1948 allowed holding up to 50 hectares in private ownership).}
Nevertheless, the Communist government systematically deprived its citizens of these rights in an effort to build the socialist state.\textsuperscript{57} According to the 1948 Constitution, the means of production could be held by the state, people's cooperatives, or individuals.\textsuperscript{58} The 1948 Constitution also guaranteed private ownership of small and medium enterprises employing up to fifty people.\textsuperscript{59} By the early 1960s, however, the Communist government had completely nationalized all means and instruments of production, including small, single-person shops.\textsuperscript{60}

Similarly, the Communist government confiscated or nationalized many houses and banned many previous owners from the communities in which their houses were located. The Communist government did this even though private ownership of houses was not abolished.\textsuperscript{61} Many of those whose ownership rights survived these confiscatory measures nevertheless relinquished their rights. They did so because of laws that placed so many burdens on them that their property interests became worthless.\textsuperscript{62}

The Communist government also overturned all previous legislation dealing with the ownership of land.\textsuperscript{63} Law No. 44/1948 entirely confiscated residual estates formerly subject to the land reform laws of 1919 and 1920.\textsuperscript{64} Law No. 46/1948 provided that

\textsuperscript{57} \textit{Id.} at 571. Despite the constitutional guarantee, Law No. 73/1959 required even individual producers to enter into organizations that ran the local economy. Under similar laws, many artisans and traders had their property forcibly and unlawfully taken from them for "merely political reasons." \textit{Id.}

\textsuperscript{58} \textit{See id.} at 565–71.

\textsuperscript{59} \textit{Id.} at 570–71.

\textsuperscript{60} \textit{Id.} at 566. The success of the drive to abolish private property rights is borne out by the fact that neither the 1960 Constitution, which replaced the 1948 Constitution, nor the 1964 Civil Code, which replaced the 1950 Civil Code, define the concept of private ownership.

\textsuperscript{61} \textit{Id.} at 569.

\textsuperscript{62} \textit{Id.} For example, Law No. 80/52, which took effect on January 1, 1953, compelled owners of leased buildings with annual rental income of more than 15,000 crowns to deposit all rental income into special accounts. 1962 F.C.S.C. REP., \textit{supra} note 17, at 179. About 50 percent of the rent went to a real property tax, about 30 percent went to a building repair account and the rest was subject to inheritance taxes. In addition, Law No. 67/1956 placed so many burdens on the owner that the repair and maintenance costs would exceed the income received from the property, causing many buildings to fall into disrepair. Kocvara, \textit{supra} note 32, at 569. As a result, Law No. 71/1959 was enacted, authorizing the local people's committees to repair houses held in private ownership at the expense of the owner. If the claim resulting from this repair, along with the claims of other socialist organizations, exceeded two-thirds of the value of the house before its repair, the title of the house was automatically conveyed to the state.

\textsuperscript{63} 1962 F.C.S.C. REP., \textit{supra} note 17, at 171.

\textsuperscript{64} \textit{Id.}
the state would purchase all other lands owned by one family that exceeded fifty hectares.\textsuperscript{65} Title to these lands would then transfer to government-owned farms or small farming cooperatives.\textsuperscript{66}

Moreover, the 1948 Constitution provided that if individuals owned fewer than fifty hectares and if they tilled the land themselves, their ownership rights in that land would be guaranteed.\textsuperscript{67} From the early 1950s onward, however, the Communist government relentlessly sought to deprive those whose ownership rights were protected by this constitutional guarantee from owning their land and from farming it.\textsuperscript{68} Thus, the Communist government prohibited the transferring, leasing, and dividing of real property unless the people’s committee of the county in whose jurisdiction the property was located gave the owner its permission.\textsuperscript{69}

C. The U.S. Government’s Response to the Czechoslovak Nationalization Measures

In November 1946, the Benes government reached an agreement with the government of the United States to pay adequate and effective compensation to U.S. nationals for properties it had nationalized.\textsuperscript{70} The Communist government breached this agreement because it did not believe paying compensation for confiscated property was, or should be, the accepted norm of international law.\textsuperscript{71} Although the Communist government eventually agreed to settle all outstanding claims of U.S. nationals through a lump sum agreement, little progress was made toward an acceptable financial settlement in these negotiations.\textsuperscript{72}

By 1954, the U.S. government became dissatisfied with the slow pace of negotiations. As a result, it sold machinery and other
property ordered by the Benes government in 1947. The machinery had been held in the United States as a penalty for the Communist government's unwillingness to settle the outstanding claims. The proceeds of this sale were placed in U.S. banks for transfer to Czechoslovakia, but were blocked pending settlement of the outstanding claims. By 1958, with no settlement in sight, the U.S. government established the Czechoslovakian Claims Settlement Program (Claims Program). Under the terms of the Claims Program, Congress placed the proceeds of the sale into a fund that would partially satisfy the claims of U.S. nationals. Congress then ordered the Foreign Claims Settlement Commission (F.C.S.C.) to accept claims from U.S. nationals. The F.C.S.C. had the power to determine which claimants in fact had compensable injuries to their property rights, and how much money, if any, each claimant should receive.

By September 15, 1962, the F.C.S.C., in accordance with controlling principles of international law, had issued 3,976 decisions in which 2,630 awards were made for a total of $113,645,205. The other 1,346 claims were denied. The awards, however, were not fully paid out; the sale of Czech assets located in the United States brought in only $8,540,768 for initial payment. This left almost $111 million in unsatisfied claims, $72 million of which was principal.

Over the next fifteen years, the U.S. Department of State and the Communist government twice reached tentative agreements
on settling the outstanding claims. In 1963, the U.S. government was prepared to settle for less than 20 percent of the $72 million in principal. In 1974, the U.S. government nearly settled for 40 percent of principal, to be paid by the Communist government over a period of twelve years without interest. Neither agreement was approved by Congress.

In 1981, the two governments signed the U.S.-Czechoslovak Claims Settlement Agreement (Claims Agreement). Under the terms of the Claims Agreement, the U.S. government withdrew its objection to the release of 18,400 kilograms of gold belonging to Czechoslovakia which had been held since World War II by the Tripartite Commission for the Restitution of Monetary Gold. In return, the Communist government paid $81.5 million to the U.S. government in satisfaction of claims of nationals of the United States whose property rights in Czechoslovakia were impaired by nationalization measures in place from the end of World War II until 1981.

Congress appropriated the $81.5 million in the following manner: $74.5 million to the individuals who were awarded compensation in 1962 but had not yet received it; $1.5 million to claimants whose property was nationalized after August 8, 1958—the cutoff filing date under the Claims Program; and $5.4 million to U.S. nationals who lost their property under the Benes government's nationalization measures but were not yet U.S. nationals when the property was taken. Every holder of an outstanding

83 Pechota, supra note 70, at 642 n.18.
84 Id.
85 Id.
86 See id.
89 Pechota, supra note 70, at 640.
90 Czechoslovakian Claims Settlement Act of 1981, Pub. L. No. 97–127, 95 Stat. 1675, supra note 87, at sections 4(b1–b3), 6(a–b). The U.S. negotiators expressly intended that the Claims Agreement would cover only Benes claimants who were U.S. nationals on the date of seizure. See Final Negotiations and Settlement of Claims Against Czechoslovakia: Hearings and Markup on H.R. 5125 Before the Subcomm. on Europe and the Middle East and the Subcomm. on International Economic Policy and Trade of the Comm. on Foreign Affairs, 97th Cong., 1st Sess. 22–23 (1982) (statement of Ambassador Ridgeway). The negotiators believed that allowing claims of people who were Czechoslovak nationals at the time of seizure would contradict an important principle of international law. That principle requires the claimant to be a national of the state espousing the claim on the date the property is nationalized. Telephone Interview with Julie Haughn, International Attorney Advisor, Office of International Claims and Investment Disputes, Dep't of State (Nov. 27, 1990). Congress,
claim was not fully compensated under the terms of the Claims Agreement;\textsuperscript{91} however, every possible claim for compensation for property nationalized prior to 1982, held by individuals who were U.S. nationals as of February 26, 1948, has been fully and finally adjudicated.\textsuperscript{92}

II. The Czechoslovak Restitution Laws of 1990 and 1991

On November 17, 1989, the Velvet Revolution\textsuperscript{93} culminated with the resignation of the Communist government and the installation of Vaclav Havel, a noted playwright, as President. On June 8, 1990, the people of Czechoslovakia elected Havel President and selected a new Parliament. The Havel government has begun dismantling the Communist system in an effort to create a democratic government and a free-market economy.\textsuperscript{94}

One visible aspect of this transition is the Havel government’s privatization program, of which the restitution program is a vital part.\textsuperscript{95} The Czechoslovakian Parliament has passed two laws dealing with the restitution of property: the Small Restitution Law of October 2, 1990;\textsuperscript{96} and the Large Restitution Law of February 21, 1991.\textsuperscript{97} Through these laws, the Havel government will compensate all former owners of non-agricultural property and their

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\textsuperscript{92} 1984 F.C.S.C. Rep., supra note 88, at 23. The Benes claimants provisions in the Claims Agreement caused the F.C.S.C. to reexamine all of the decisions previously issued to see if a claim or a portion of a claim was denied in 1962 because the person stating the claim was not a U.S. national on the date of the taking. \textit{Id.} at 13, 15. After this review, the F.C.S.C. made new awards of $43,906,382 to 147 individual claimants. \textit{Id.} at 23. The fund set aside by Congress, however, totalled only $5.4 million. \textit{Id.}

In addition, the F.C.S.C. considered over 700 new post-1958 claims after the Claims Agreement was signed in 1981. \textit{Id.} at 26–27. The F.C.S.C. made awards of $5,120,927 in 327 claims to 483 individuals. \textit{Id.} at 35. Again, the fund set aside by Congress was inadequate, totalling $2.1 million—the $1.5 million originally set aside plus interest. \textit{Id.}

\textsuperscript{93} \textit{Id.} at 12.

\textsuperscript{94} The term “Velvet Revolution” describes the uniquely peaceful manner by which the Communist government was overthrown and the new government installed in late November 1989.


\textsuperscript{96} \textit{Id.} at 51–52.

\textsuperscript{97} See \textit{generally} Large Restitution Law, supra note 11.
heirs residing in Czechoslovakia who had their property taken by the Communist government after February 25, 1948. 98

A. The Small Restitution Law

On October 2, 1990, the Czechoslovak Parliament adopted Law No. 403/1990, which took effect on November 1, 1990 (Small Restitution Law). 99 The Small Restitution Law approved returning property to its former owners if it was expropriated pursuant to certain laws, decrees, or governmental decisions issued between 1955 and 1959. 100 Claimants held the burden, however, of proving to the party or organization which possessed the property that it was the claimants' property and that it was taken pursuant to one of these measures. 101

Claimants were initially required to prove that they were "entitled person[s]." 102 In all cases, the chain of entitled persons began with the person who was the record owner on the date of expropriation. 103 Thereafter, the claimant was required to present legal proof that the property was expropriated pursuant to a decree issued between 1955 and 1959. 104 Unless the claimant completed an application before May 1, 1991, the claim would be deemed invalid. 105 If the claimant did successfully prove a right to the property, the party possessing it was required to enter

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100 Id. at art. 1. Any natural or legal person whose property rights were abrogated under government decree No. 15/1959 on measures relating to certain property used by organizations in the socialist sector, or under law No. 71/1959 on measures relating to certain private residential property, could state a claim for restitution under this law. In addition, one could also state a claim for property nationalized after 1955 by a governmental ministry which cited certain 1948 nationalization laws as authority for the taking.
101 See id. at art. 6(1).
102 Id. at art. 3.
103 See id. at art. 3(1). If the original owner has died, the line of succession starts with the owner's testamentary heir(s). If the testamentary heir(s) was not alive on November 1, 1990, the owner's children and their descendants may claim the expropriated property. If the children or their descendants were not alive on November 1, 1990, then the owner's parents living at the time of the owner's death could claim the property. Finally, if none of the above mentioned individuals are alive, the owner's siblings or their children were entitled to claim the expropriated property. Individuals who claim property are required to submit a certificate attesting to their relationship to the owner.
104 Id. at arts. 6(1), 6(2a).
105 U.S. Dep't of State, Office of the Legal Adviser, Notice Concerning Claims Against Property in Czechoslovakia, at 1.
into a contractual arrangement with the claimant whereby title and possession would be transferred.\footnote{Small Restitution Law, \textit{supra} note 96, at arts. 6, 19(2). Article 19(1) required the claimant to provide the local District Committee holding the property with a written request to release it.}

Article 10 of the Small Restitution Law stated that property was to be returned to the claimant in the condition it was on the date the claimant and the party possessing the property agreed to transfer it.\footnote{\textit{Id}. at art. 10.} If property included a building, and that building was unfit for use without immediate repairs, the claimant was also entitled to financial compensation.\footnote{\textit{Id}. at art. 10(2).} Furthermore, if the land upon which an expropriated building sits was not itself expropriated, the original owner could not claim the building or the land, but could only receive financial compensation.\footnote{\textit{Id}. at art. 10(4).}

Two provisions of the Small Restitution Law prevented U.S. nationals from claiming property covered by this law.\footnote{See \textit{id}. at arts. 4, 20.} First, article 4 prevented both enterprises with foreign ownership participation, and commercial companies who lost property before October 1, 1990, from reclaiming that property.\footnote{\textit{Id}. at art. 4.} Second, article 20 allowed foreign nationals who otherwise met the requirements under this law to state a claim for restitution only if their rights had “not been disposed of” through an “interstate property agreement.”\footnote{\textit{Id}. at art. 20.} Most U.S. nationals had their claims “disposed of” through the Claims Agreement.\footnote{This article has particular importance to U.S. nationals in light of the two settlements between Czechoslovakia and the United States, referred to in this Comment as the Claims Program and the Claims Agreement. For a complete discussion of this issue, see \textit{supra} notes 70–95 and accompanying text.} Thus, they were unable to state viable claims for restitution under this law.\footnote{Small Restitution Law, \textit{supra} note 96, at art. 20.}

\section*{B. The Large Restitution Law}

On February 21, 1991, after tense debate, the Czechoslovak Parliament passed Law No. ___/1991 which took effect on April 1, 1991 (Large Restitution Law).\footnote{1984 F.C.S.C. Rep., \textit{supra} note 88, at 12.} The Large Restitution Law returned property expropriated by the Communist govern-
ment from February 25, 1948 to January 1, 1990 to the previous owners or their heirs.116 If property was expropriated by the Communist government under the decrees issued from 1945 to 1948 by the Benes government, however, the law provided the previous owners or their heirs with a right to compensation only under "another law."117

The Large Restitution Law did not return property nationalized by the Benes government.118 Thus, Hungarians, Germans, and others deemed disloyal to Czechoslovakia after World War II, as well as owners of most industrial and Church property, were unable to state claims for restitution under this law.119 Unlike article 20 of the Small Restitution Law, which stated that foreigners whose property interests had been disposed of through an interstate property agreement did not qualify for restitution, the Large Restitution Law contained no such provision.120

Only "entitled persons" could state claims for restitution under the Large Restitution Law.121 An entitled person was a natural citizen and permanent resident of Czechoslovakia.122 Individuals who had emigrated from Czechoslovakia to other countries and intended to claim property in Czechoslovakia were required to return to Czechoslovakia, reacquire Czech citizenship if they had lost it, and become permanent residents of Czechoslovakia.123

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116 Large Restitution Law, supra note 11, at art. 1. Essentially, any entitled person, whose property the state came to possess through coercion, obtained the power to reclaim the property.
117 Id. at art. 2(3). On September 26, 1991, however, the Czechoslovak Parliament rejected a bill that would have returned property nationalized by presidential decrees issued before February 25, 1948 but actually taken after that date. Parliament Fails to Approve Amendment to Bill on Rehabilitation, CTK Nat'l News Wire, Sept. 26, 1991, available in LEXIS, Nexis Library, Current File. Thus, contrary to the terms of the Large Restitution Law, these property owners apparently will not receive compensation for their lost property interests.
118 See Large Restitution Law, supra note 11, at art. 1(1).
119 Papers Warn Against Too Extensive Return of Property, CTK Nat'l News Wire, Feb. 12, 1991, available in LEXIS, Nexis Library, Current File. The drafters of the restitution program were pressured to avoid allowing those who lost property before the Communists gained power in 1948 to state claims. For example, the newspaper Lidove Noviny wrote that those who want to go beyond 1948 "cannot ignore the property of Slovak Jews, transferred Germans" and all the other confiscations going back to 1620, and asked rhetorically, "How far is there to go to absurdity?" Id.
120 See generally Large Restitution Law, supra note 11.
121 Id. at art. 3(1).
122 Id.
Neither foreign nationals nor Czechoslovak citizens permanently residing abroad could obtain restitution.\textsuperscript{124}

Like the Small Restitution Law, the Large Restitution Law required the claimant to negotiate and contract directly with the party possessing the property.\textsuperscript{125} It required the claimant to send a written request by October 1, 1991 to the party possessing the property, requesting that the property be returned.\textsuperscript{126} If the claimant presented a valid claim, the party possessing the property was required to return the property by November 1, 1991.\textsuperscript{127} If the property was not returned by that date, or if the parties have not yet reached an agreement, the claimant has until April 1, 1992 to file a claim of right in court.\textsuperscript{128}

Even if one had a valid claim for restitution, however, one's rights in the property may nonetheless have been altered.\textsuperscript{129} Where the building either decreased in value so that it could no longer be used for its intended purpose or where the building increased in value so that it substantially exceeded its original value, the claimant was entitled to elect financial compensation instead of restitution.\textsuperscript{130} In contrast, where the building was fundamentally reconstructed so that it lost its original character, where a new building was constructed on the claimed property since confiscation, or where a right of personal use was established over the land since confiscation, the entitled person was only entitled to financial compensation.\textsuperscript{131} Finally, the Large Restitution Law provided the current occupiers of claimed property engaged in diplomatic, health, educational, cultural, or rehabilitational activities with the right to maintain their use of the property for up to ten years after the property is transferred to the entitled person.\textsuperscript{132}

\textsuperscript{124} See Large Restitution Law, \textit{supra} note 11, at art. 3(1); Pechota, \textit{supra} note 123, at 311.
\textsuperscript{125} Large Restitution Law, \textit{supra} note 11, at art. 5.
\textsuperscript{126} Id. at art. 5(1).
\textsuperscript{127} Id. at art. 5(3).
\textsuperscript{128} Id. at art. 5(4).
\textsuperscript{129} Id. at arts. 7(3), 8(1), 8(3), and 8(4).
\textsuperscript{130} Id. at arts. 7(3) and 7(4).
\textsuperscript{131} Id. at arts. 8(1), 8(3), and 8(4).
\textsuperscript{132} Id. at art. 12(2). These individuals "acquire the right, with regard to the entitled person, to the closing of an agreement on the utilization" of the property. Id. The entitled person "may not withdraw from this agreement" before April 1, 2001, and this obligation applies to subsequent purchasers from this person. Id. If the parties cannot reach an agreement regarding rent, the state will fix the price. Id. at art. 12(3).
C. Early Results of the Restitution Program

Claimants seeking restitution of property covered by the Small and Large Restitution Laws were required to submit completed claims by September 30, 1991. All claims submitted after September 30, 1991 are invalid. As of August 15, 1991, the Ministry of Privatization of the Czech Republic had received approximately 50,000 claims for restitution. The number of claims for property in Slovakia was not announced. At this time, it is too early to determine how many of these claims are valid, how many have been successfully settled, and how many claims have been filed by U.S. nationals.

III. Problems for U.S. Nationals and Other Foreign Nationals Seeking to Reclaim Property in Czechoslovakia

Only Czech citizens and permanent residents of Czechoslovakia qualified under article 3 of the Large Restitution Law to reclaim property confiscated by the Communist government. Neither Czechoslovak citizens residing in other countries nor foreign nationals residing in Czechoslovakia qualified to reclaim property. This limit on the ability of foreigners to reclaim property in Czechoslovakia is problematic for four reasons. First, the restitution process itself is cumbersome, making it virtually impossible for foreigners to return to Czechoslovakia and successfully reclaim lost property. Second, the stated purpose of the Czechoslovak restitution program—uniformly settling the past injustices committed by the Communist government—is not served by limiting the right of foreigners to reclaim property. Third, non-citizens and non-residents are explicitly discriminated against and thus the restitution program may conflict with certain international agreements on human rights and the Czechoslovak Bill of Rights. Finally, in conjunction with the Treaty on Naturaliza-

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133 Id. at art. 5(2).
134 Id.
136 See id.
137 Large Restitution Law, supra note 11, at art. 3(1).
138 Id.
139 See infra notes 144–53 and accompanying text.
140 See infra notes 154–55 and accompanying text.
141 Pechota, supra note 123, at 311 n.12; see also infra notes 156–64 and accompanying text.
tion, the Czechoslovak government could require Czech-born U.S. nationals to return to Czechoslovakia and live there for two years before declaring them permanent residents of Czechoslovakia.\textsuperscript{142} For these reasons, the Havel government should reconsider amending article 3 of the Large Restitution Law to allow foreign nationals to state claims for restitution or some type of compensation without requiring that they first establish permanent residency in Czechoslovakia.\textsuperscript{143}

A. Difficulties in Stating a Viable Claim for Restitution

The period to state a claim for restitution under the Large Restitution Law lasted from April 1, 1991 to October 1, 1991.\textsuperscript{144} The Large Restitution Law itself imposed minimal specific requirements on those who sought to state such claims.\textsuperscript{145} The administrative orders accompanying the Large Restitution Law, however, made it nearly impossible for a foreign national to state a viable claim for restitution within the limited timeframe.\textsuperscript{146}

Before U.S. nationals of Czech origin were allowed to present indicia of ownership to the current occupiers or users of the property, they were required to submit several items to the Czech-

\textsuperscript{142} See supra notes 9–16 and accompanying text and infra notes 165–69 and accompanying text.

\textsuperscript{143} Restitution Law May Be Amended to Suit Expatriates, Premier Says, CTK Nat’l News Wire, July 7, 1991, available in LEXIS, Nexis Library, Current File. Upon returning from Canada, Czech Premier Petr Pithart stated that he had encountered Canadian emigrants who opposed the residency requirement of article 3. Pithart stated that certain “injustice does occur and I expect that one day we will return to this legislation and will perhaps make some amendments.” \textit{Id.}


\textsuperscript{144} Large Restitution Law, \textit{supra} note 11, at arts. 5(2), 35.

\textsuperscript{145} \textit{Id.} at art. 5(1). The article states that “[t]he obliged person will surrender an item following the written request of the entitled person, demonstrating his or her right to the transfer of the item, and showing the way in which the item came into the property of the state.” \textit{Id.}

\textsuperscript{146} Memorandum from Vladimir Galuska, Advisor on Privatization at the Czechoslovak Embassy in Washington, D.C., to potential claimants under the Czechoslovak restitution laws (on file with the \textit{Boston College International and Comparative Law Review}) [hereinafter Galuska Memorandum].
oslovak Embassy in Washington. These items included an application for temporary or permanent residency in Czechoslovakia, four photographs exactly passport size, and a letter explaining one’s life story with specific explanation of one’s financial assets, education, training, skills, and occupational experience.147 These claimants were also required to submit a detailed family tree, describing all relatives, their dates of birth, citizenships, and their occupations, and a notarized letter from a person who agreed to assume responsibility for the claimant’s housing and medical expenses when the claimant returned to Czechoslovakia.148 Finally, if the claimant had emigrated from Czechoslovakia because of crimes that had purportedly been committed, the claimant was required to submit evidence of the punishment given by the Communist government and a request that such punishment be stricken from the government’s records.149

Once these items had been submitted to the Czechoslovak Embassy, they still had to be approved by the Czechoslovak government.150 One claimant was told that it would take at least three months for the residency application to be processed.151 After the application was approved, the claimant was required to certify possession of good title to the property.152 Unless the claimant possessed the title deed, this generally required the claimant to hire a local lawyer to search the land records to confirm the status of the property.153

These time-consuming processes made it especially difficult for foreign nationals of Czech origin to state claims for restitution. Those with insufficient funds to travel to Czechoslovakia and hire a local lawyer to search the land records were effectively precluded from stating viable claims for restitution. In addition, those claimants who had no relatives in Czechoslovakia who would or could assume responsibility for their welfare were effectively precluded from stating viable claims for restitution. Thus, even if a Czech-born U.S. national was technically eligible

147 Id.
148 Id.
149 Id.
151 Id.
152 Id.
153 Id.
to state a claim for restitution, the process was such that it was nearly impossible to do so.

B. Failure to Advance the Purposes of the Restitution Program

Several Czechoslovak officials have stated that the primary purpose of the restitution program is to attempt, as best as possible, to correct the wrongs committed by the Communist government. In addition, by providing a limited period for stating restitution claims, the officials apparently desired to settle such claims quickly and thereby encourage foreign investment.

These purposes, however, are not advanced by limiting the right to state a viable claim for restitution to those foreign nationals of Czech origin who agree to return permanently to Czechoslovakia. The wrongs committed by the Communist government are equally repugnant to all individuals, whether they were forced to leave Czechoslovakia, abandon their property, and live abroad, or whether they stayed in Czechoslovakia and had their property taken from them. Furthermore, many former owners of property in Czechoslovakia who now live abroad are elderly. Requiring them to return to Czechoslovakia and leave family and friends behind in order to claim property that is rightfully theirs is both impractical and unjust. Finally, denying foreign nationals the right to obtain restitution of property deters, rather than encourages, foreign investment. Foreigners who would have invested money to repair their property are given no other incentive to invest in Czechoslovakia at all. For these reasons, article 3 of the Large Restitution Law does not adequately address the stated concerns of Czechoslovak officials.

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C. Discriminatory Nature of Article 3 of the Large Restitution Law

One prominent commentator on Czechoslovak law, Dr. Vratislav Pechota, has suggested that article 3 of the Large Restitution Law may be of no legal effect. Article 3 provides resident citizens with the absolute right to restitution of confiscated property but fails to provide non-resident citizens, non-resident foreign nationals, and resident foreign nationals with the same such right. Thus, Dr. Pechota believes that article 3 may violate the principle of equality and non-discrimination as expressed in several international agreements, including the Charter of the United Nations and the Universal Declaration of Human Rights.

This provision may also conflict with several articles of the Czechoslovak Bill of Rights, which was adopted on January 9, 1991. For example, article 1 of the Bill of Rights states that “[a]ll people are free and equal in their dignity and in their rights.

156 Pechota, supra note 123, at 311 n.12.
157 Large Restitution Law, supra note 11, at art. 3. Speaking for the Havel government, Federal Premier Marian Calfa stated that Czechoslovaks living abroad have rights in the confiscated property, but that these rights are, in fact, different from the rights enjoyed by Czechoslovaks living in Czechoslovakia:

I would like to mention one more thing which is spoken of quite often—the property of people who are abroad and do not have Czechoslovak citizenship and a permanent residence in Czechoslovakia—the property of emigrants. The government thought that in the [Large Restitution Law] we should not deal positively with this matter, in particular because there is a difference in the legal procedure of returning property to people who live in Czechoslovakia and in returning property to people who live abroad and do not intend to come back to Czechoslovakia.

In my personal view, it is not [unjust toward them], because this is really a different legal procedure. On the other hand, the government said clearly at its session . . . that it would try to work out the material on this matter into a self-standing norm and find a certain way of recompense for this property. Here we do not speak about justice or injustice; what is involved is a different legal procedure, and the government will draw up a draft plan to recompense our emigrants—our citizens who live abroad. Therefore it is not right to say that we have done these people harm. This is not true. We only want to find a different legal procedure applicable to them from the one used with regard to people who live in Czechoslovakia.

158 Pechota, supra note 123, at 311 n.12.
Their fundamental rights and freedoms are inherent, inalienable, unlimitable and irrepealable.”160 Article 11, section 1 of the Bill of Rights then states that “[t]he ownership right of all owners has the same statutory content and enjoys the same protection.”161 The Preamble to the Bill of Rights states that all other Czechoslovak legislation must conform to the requirements of the Bill of Rights.162 Finally, section 2 of the Constitutional Act instituting the Bill of Rights states that “international treaties on human rights and fundamental freedoms, ratified and promulgated by the Czech and Slovak Federative Republic are universally binding on its territory and supersede its own laws.”163 Thus, although the constitutionality of article 3 of the Large Restitution Law had not been challenged as of October 15, 1991, its legal foundation is weak and may be vulnerable to attack.164

D. Problems for U.S. Nationals: Article 3 of the Large Restitution Law and the Treaty on Naturalization

Finally, Czech-born U.S. nationals who have returned to Czechoslovakia to reclaim their property could conceivably be hindered by article 3 of the Treaty on Naturalization.165 To state viable claims for restitution, claimants must first establish that they are citizens and permanent residents of Czechoslovakia.166 Article 3 of the Treaty on Naturalization provides that the intent to permanently reside in one’s country of origin may be established by one’s return to and residence in that country for more than two years.167

At this time, it appears unlikely that the Czechoslovak government would use this obscure provision in the Treaty on Naturalization to hinder U.S. nationals of Czech-origin from returning

161 Czechoslovak Bill of Rights, supra note 160, at art. 11(1); see also Pechota, supra note 123, at 311 n.12.
162 Czechoslovak Bill of Rights, supra note 160, at pmbl.; see also Cutler & Schwartz, supra note 159, at 532.
163 Pechota, supra note 123, at 311 n.12.
164 See generally supra notes 156–63 and accompanying text.
165 See supra text accompanying note 15.
166 Large Restitution Law, supra note 11, at art. 3(1).
167 See supra text accompanying note 15.
and claiming property in Czechoslovakia. Nevertheless, the Czechoslovak government is not inclined toward liberalizing the restitution program for foreign nationals. Therefore, the U.S. government should seek to abrogate the Treaty on Naturalization to ensure that this provision is not used to hinder the interests of Czech-born U.S. nationals.

**Conclusion**

The Czechoslovak restitution program is currently the most extensive such program adopted by the formerly Communist countries of Eastern Europe. It is still too early to determine whether this program has been implemented successfully. The requirement that foreign nationals establish Czechoslovak citizenship and permanent residency in Czechoslovakia before being able to state claims for restitution, however, appears to be problematic and could retard the Czechoslovak privatization process.

The Havel government should allow foreign nationals whose property was confiscated by the Communist government to state viable claims for restitution without having to obtain Czechoslovak citizenship and return permanently to Czechoslovakia. This would further the stated objective of addressing all injustices committed by the Communist government's expropriation of property without compensation. It also would preclude the possibility that article 3 of the Large Restitution Law would be declared unconstitutional.

Finally, the U.S. government should abrogate the Treaty on Naturalization. This would ensure that Czech-born U.S. nationals who return to Czechoslovakia to reclaim property can do so without having to live there for two years. In this way, the Czechoslovak restitution program could be fairly administered to all individuals, regardless of where they live.

*Jeffrey J. Renzulli*

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168 See Galuska Memorandum, supra note 146.
169 Id. at 2.