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FINLAND: RIGHT TO RETURN AND RIGHT TO RESTITUTION

1 Background

11 Historical background

Finnish speaking people have inhabited Karelia for about 10 000 years, whereas the Russians have merely lived there for 60 years. The name Karelia is used as a general term referring to all to the Soviet Union compulsory ceded territories: Pechenga, Salla, Kuusamo, Ladogan Karelia, Karelian Isthmus and some islands in the Gulf of Finland.



Images: Total Finland in 1939 and the Soviet Union.

Finland became independent on 06.12.1917. The Finnish-Soviet borders were confirmed in the Tartu Peace Treaty on 14.10.1920. Germany and the Soviet Union signed the Molotov-Ribbentrop Pact on 23.08.1939, which divided Europe in spheres of influence.

The Soviet Union attacked Finland on 30.11.1939 without a declaration of war. Thus began the so called Winter War. The armed conflict ended on 13.03.1940. During the interim peace the first evacuations of Karelian refugees started.

On 22.06.1941 the Germans implemented 'Operation Barbarossa' and attacked the Soviet Union. Without declaring the war on Finland the Russians began bombarding Finland on 25.06.1941. Henceforward WW II began for Finland.

Within a few weeks the Finnish army was able to drive the Russian army out of the Karelian territory, so that the evacuated Karelians were allowed to return to their homes. In most cases they had to rebuild their houses, which were destroyed during the Winter War.

On 11.06.1942 the USA and the Soviet Union undersigned an all encompassing Lend-lease contract in which the USA promised to support the Soviet Union with all kinds of war materials. The Soviet Union got about 2 000 B euro worth of goods (when counted on the current Finnish economy).

The War ended with a Finnish defence victory. However, the Karelian evacuees again had to leave their homes and return to other parts of Finland. The disappointing conditions for peace were outlined in the Paris Peace Treaty on 10.02.1947.

Losing two wars was devastating for Finland. There were about 95 000 casualties, 240 000 injured, 500 000 refugees and 85 000 war orphans. Finland had to pay US \$ 262.5 million, in gold to the Soviet Union as reparation of war (today worth about 60 B euro). The total economical war expenses have been estimated to about 500 B euro (for today's Finnish economy).

Soon afterwards national anger arose due to the sentencing of the Finnish President Risto Ryti, as well as some other government officials as "criminals of war" was deeply humiliating. Furthermore A post-war Russian military surveillance commission attempted to break the backbone of the national self-respect. The constant mental apprehension caused by the Russian controllers produced the so-called "Finlandization" phenomena.

Finland took fairly good care of its exiled people. There were no refugee camps, as all the people were needed to reconstruct the country and generate wealth in order to pay the war reparations to the Soviet Union. The total population of Finland was only 3.7 million.

12 Right to return and the right to restitution

Nowadays the right to restitution or payment of compensation is a fundamental principle of international law.

International law has over the years elaborated a fairly complete set of norms protecting property during hostilities. These norms belong to such diverse fields of law such as the law of armed conflicts, human rights law, refugee law, the law of international investment and ius ad bellum, which prohibits aggression in international relations (e.g. Hague Convention on the laws of war; UN Pinheiro Principles; UN A/CN4.L602 Responsibility of States for internationally wrongful acts).

However, there is a contrived debate to what extent this principle goes back and if it actually covers World War II and post World War II property confiscations.

Affected states still today try to avoid their responsibility and desist from restoring stolen and confiscated properties to their rightful owners. Nonetheless, historical precedents clearly prove that such a responsibility exists and was an issue for the first time during World War II when the question came up whether, according to international law, property of refugees could be protected.

The findings of the International Law Conference in London 1943 in this respect have been published by W. R. Bisschop (Grotius Transactions 1943).

The collection of precedents shows that states in the past have in fact defended the interests of foreign nationals against their own governments.

Also lawyers such as Dr. George Weiss pursuing Jewish claims found precedents applicable to World War II. The same question was readdressed by United Nations Conciliation Commission for Palestine (A/AC.25/W741).

2 Ancient and Old Norms

21 Code of Hammurabi 1760 BC

The Code of Hammurabi (Codex Hammurabi) is a well-preserved ancient law code, created ca. 1760 BC in ancient Babylon. In the Codex Hammurabi also the private property was known. Article 21: "If any one breaks a hole into a house (break in to steal), he shall be put to death before that hole and be buried". Article 22: "If anyone is committing a robbery and is caught, then he shall be put to death".

22 Acilian Law 122 BC

According to this law people had right to recover property if officially extorted.

23 Treaty of Westphalia 1648

The Treaty of Westphalia on 24.10.1648, also known as the treaties of Münster and Osnabrück provided for the general restitution of all seized property.

The single most important article on private rights and property from the Münster Treaty was Article 24. It stipulated the restitution of all goods that had been seized or confiscated because of the war.

The original owners or their heirs were granted the right to repossess themselves on their own authority, meaning without having to refer to the courts. All official acts of seizure and all transactions to third persons, which had followed seizure, were thereby lifted. As all measures taken during the war now lost their effect, the original owners did not only regain possession, but also their title.

24 Treaty of Nimmeguen 1678

The Treaty of Nimmeguen 17.09.1678 between Spain and France provided in Art 21 that: properties and estates shall be immediately restored to the lawful owners.

25 Edict of Tolerance 1790

The edict of Tolerance 1790 allowed the Hugenots to return and enjoy civil rights, Art. 1.

26 Treaty of London 1839

The Treaty of London 19.04.1839 provided in Art. XVI that property shall be restored.

3 Norms from 1900

31 Hague Convention on law of Warfare 1907

Art. 46 Hague Convention (on 15.06-18.10.1907) stipulates that private property cannot be confiscated.

32 Treaty of Severs 1920

Further the Peace Treaty with Turkey on 10.08.1920 contained in Art. 144 provisions for the compensation of Armenian refugees who had fled from Turkey and facilitate the return to their homes.

33 Chorzow Factory Case, Germany v. Poland 1928 (PIJ)

In the Chorzow Factory case, Germany v. Poland on 13.09.1928 the Permanent Court International Justice defined 'the broad legal characteristics of restitution in a manner which endures largely unchanged to the present day.

Restitution was affirmed not only as one possible form of reparations but as the preferred form. Other remedies such as financial compensation were only to be sought if restitution was not possible.

This was based on the corrective justice notion that restitution in kind provided a more appropriate remedy than any alternative that provided redress to the victim without restoring the status quo ante by divesting the wrongdoer of the specific assets in dispute'.

34 Paris Treaty 1928

Paris treaty - i.e. Kellogg-Briand Pact on 27.08.1928 renounces war as an instrument of national policy or international dispute. So benefits gained by the war of aggressions were not legal.

35 Anti-War Pact 1933

Anti-War Pact on 10.10.1933 is Treaty of Non-Aggression and Conciliation. It stipulated that benefits gained by the war of aggressions were not recognized legal.

36 Memorandum of London 1943

London Declaration on 05.01.1943 for private transactions in countries occupied by Germany.

4 International pacts/agreements

41 Atlantic Charter 1941

In the Atlantic Charter on 14.08.1941 the biggest Allied countries agreed upon some principles to be followed after the war. The articles 1 - 3 of the Charter are as follows:

1. First, their countries seek no aggrandizement, territorial or other;
2. Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;
3. Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them.

42 UN declaration of human rights 1948

According to the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution of the United Nations on 10.12.1948, its article 17 confirms the constancy of the property:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

43 European Convention on Human Rights 1950

The European Convention on Human Rights was undersigned on 04.11.1950 and its First Protocol on 20.03.1952 which has a similar article as the UN Declaration. The Soviet Union and Russia have ratified these conventions.

44 OSCE and CSCE 1975 and 1995

The principles of CSCE's (Conference on Security and Cooperation in Europe) successor, Organization for Security and Co-operation in Europe (OSCE), give full possibilities to return the property ownership.

45 Pinheiro Principles 2005

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (www.cohre.org) on 11.08.2008 are strongly supporting the right to get back one's property and right to return to his/her home.

1.1 The Principles on housing and property restitution for refugees and displaced persons articulated herein are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

1.2 The Principles on housing and property restitution for refugees and displaced persons apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter "refugees and displaced persons") who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

46 Resolution of European Council 2006

The General Assembly of the European Council adopted on 25.01.2006 a resolution in which it condemns the crimes of totalitarian communist regimes. The resolution is a strong message to Russia that the old aggressions have not yet been solved. As a member of the European Council Russia has bind itself in the same values and agreements as Finland.

5 ECHR Decisions

51 Loizidou v. Turkey 1996

Loizidou v. Turkey on 18.12.1996 is a landmark legal case regarding the rights of refugees wishing to return to their former homes and properties. The European Court

of Human Rights ruled that she, and consequently all other refugees, have the right to return to their former properties. The ECHR ruled that Turkey had violated Mrs. Loizidou's human rights, that she should be allowed to return to her home and that Turkey should pay damages to her (WikiPedia).

The Court also stated expressly that the damages awarded were not compensation for the property per se, but only for the denial of the ownership and use of the property, and that Mrs. Loizidou retains full legal ownership of her property.

52 John Demades v. Turkey 2008

John Demades v. Turkey: ECHR ruled on 22.04.2008 Turkey to pay 835 000 euro to a Cypriot national of Greek-Cypriot origin displaced person, John Demades, because he was not able to benefit his property. This reparation did not anyhow change the ownership of the property.

6 Finnish agreements and agreements with Soviet-Russia and Russian Federation

61 The Declaration of Independence 1917

The Declaration of Independence on 06.12.1917 and the war of independence in 1918 did not change the property rights. This was confirmed with a legal case which went through all the court instances in Finland.

62 The Tartu Peace Treaty 1920

The Tartu Peace Treaty on 14.10.1920 was the first border agreement between the Soviet-Russia and independent Finland. It was made forever. The eternity lasted under 20 years. The Treaty clearly confirms that the property relations remain same.

Article 9:

Russian citizens domiciled in the territory of Pechenga shall, without any further formality, become Finnish citizens. Nevertheless, those who have attained the age of 18 years may, during the year following the entry into force of the present Treaty, opt for Russian nationality. A husband shall opt on behalf of his wife, unless otherwise decided by agreement between them, and parents shall opt on behalf of those of their children who have not attained 18 years of age.

All persons who opt in favour of Russia shall be free, within a time limit of one year reckoned from the date of option, to leave the territory, taking with them their movable property, free of customs and export duties. Such persons shall retain full rights over immovable property left by them in the territory of Pechenga.

3. The inhabitants of these Communes shall be assured of the enjoyment of all their movable property situated in the territory of the Communes, also of the right to dispose and make unrestricted use of the fields which belong to or are, cultivated by them and of all other immovable property in their possession, within the limits of the legislation in force in the Autonomous Territory of Eastern Karelia.

63 The Treaty of Friendship, Cooperation and Mutual Assistance (FCMA) 1932

The Treaty of Friendship, Cooperation and Mutual Assistance (FCMA) between the Soviet Union and Finland was undersigned on 21.01.1932. It had no provisions for the property questions.

64 The continuation agreement for FCMA 1934

The continuation agreement for FCMA was undersigned on 07.04.1934.

65 Soviet Union dismissal from the League of Nations 1939

When starting the Winter War the Soviet Union broke all the previously mentioned agreements. For this reason the Soviet Union was expelled from the League of Nations on 14.12.1939.

66 Molotov-Ribbentrop Pact 1939

The Molotov–Ribbentrop Pact, colloquially named after Soviet foreign minister Vyacheslav Molotov and German foreign minister Joachim von Ribbentrop, was an agreement officially titled the Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics and signed in Moscow in the early hours of August 24, 1939, but dated August on 23.08.1939.

In addition to stipulations of non-aggression, the treaty included a secret protocol dividing the independent countries of Finland, Estonia, Latvia, Lithuania, Poland, and Romania into Nazi and Soviet spheres of influence, anticipating "territorial and political rearrangements" of these countries' territories.

67 Moscow Peace Treaty 1940

The Moscow Peace Treaty on 12.03.1940 did not change the property rights. The Soviet Union broke the Moscow Peace Treaty on 25.06.1941 by starting the so called Continuation War.

68 Compensation Laws in Finland 1940 and 1945

Some war damages and losses were according to two Finnish laws compensated to the exiled and expelled people in Finland as a social and business support. The goal was to accept the material losses of the evacuated people as subject of a refund claim and transfer to the evacuees such intrinsic values which could help them to adapt themselves to the society.

The first was the compensation law for the damages during the Winter War on 09.08.1940. The second was on 05.05.1945 the compensation law for the damages after 31.05.1944. The compensations were theoretically 39 % of the losses and practically about 20 %.

Also the exiled and expelled people were to pay so called conveyance tax (10 – 30 %) of the property value. This tax was not any kind of transfer tax of property but a property tax to finance the government budget.

The compensation laws did not anyhow transfer the ownership of the property to the government. They were a very good way to the government and tax payers to solve the refugee problem as they were able to start working again and provide for themselves.

69 The Paris Peace Treaty 1947

The Paris Peace Treaty on 10.02.1947 confirms the constancy of the Finnish property ownership in the ceded territories.

Article 27:

Finnish Nationals and commercial, industrial, financial and other private associations established in Finland, as also Finnish Public Associations and Corporations shall, in so far as concerns their property in Russia, their debts, claims for damages, indemnities and other claims upon the Russian State or its Governmental Institutions, be accorded the same rights and advantages as those which are accorded or shall in future be accorded by Russia to the Nationals of the Most Favoured Nation.

Article 28:

1. From the coming into force of the present Treaty, property in Germany of Finland and of Finnish nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Finland and of Finnish nationals removed by force or duress from Finnish territory to Germany by German forces or authorities after 19 September 1944 shall be eligible for restitution.

3. The restoration and restitution of Finnish property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

It has been claimed that the Finns lost in the Paris Peace Treaty their property rights. Its important to make distinguish between public and private justice. With the Paris Pact the ceded territory, 45 000 km², became according to the public law under the Russian law rules and as a Russian territory. According to the private law the property rights remained to the Finns.

Finland did not own the real property, so it could not hand over such property. The Soviet Union did not made a separate law by which to transfer the ownership of the properties.

Because the Paris Pact is a peace treaty, Finland can apply for the strongly changed circumstances and claim for the repair of the aggressions. Finland has at the beginning of 1990 decade unilaterally interpreted some armed articles.

69b The Treaty of Cooperation and Mutual Assistance 1948

The Treaty of Cooperation and Mutual Assistance on 06.04.1948 between the Soviet Union and Finland did not change the property ownership principles.

69c The Neighbourhood Agreement 1992

The Neighbourhood Agreement on 22.01.1992 is a contract between Finland and Russian Federation concerning the basics of the mutual relations. The Finnish Neighbouring Region Co-operation agreement was undersigned on 20.01.1992.

Finland's co-operation with neighbouring areas is a national instrument for implementing the EU Northern Dimension Action Plan, which has been reflected in the strategy of the Finnish Neighbouring Region Co-operation.

These agreements are no border agreements and do not change anyhow the property rights.

7 Current happenings

71 Several countries repair old crimes

Several countries have applied the human rights ex post facto and they have started to repair old crimes. F. ex. the New-Zealand and maories undersigned a Waitang agreement in 1840. The New-Zealand has returned properties to maories completely according to the current human right norms.

When Australia's prime minister in 12.02.2008 apologized the country's original inhabitants, aboriginales, compulsory custody, it was an old matter which the government wanted to correct.

Numerous countries have started to solve their old aggressions and compensate them. The recent examples are e.g.: Germany, Italy, Australia, Canada, Japan, Poland, Romania, Switzerland, Vatican and New-Zealand.

The Russian ambassador in Finland said in February 2008 that "Not following the international law means juridical nihilism". The same matter was repeated by the Russian president Vladimir Putin.

72 Results of Current Situation

In spite of political speeches a deep lack of trust is prevailing between Russia and Finland. Over 60 percent of Finnish people are Russofobic. The trust is a basic stone for all people's cooperation. It's vital the trust can be returned between the countries.

Finnish people have the lack of trust in their memes (cultural genes). This matter can be corrected only by that side which has broken the trust, not by a political liturgy. The victim can never build the trust on behalf of the party which made the aggression.

Russia still keeps and benefits from the Finnish property in the ceded territories. Russia does not let Finns benefit from their property. This has cost to the Finnish people hundreds of Billions of euro during the last 60 years.

The war years, the loss of territories, the resettlement of the Karelian population, and the war reparations that had to be paid to the Allied Forces, were experiences shared by most people living in Finland between 1939 and the late 1950s. These traumatic events affected people in all spheres of their lives and also how they coped physically and emotionally.

73 Conclusions

The property ownership has thus during the period of the independent Finland been permanent and the border contracts have not changed the property ownership. The Soviet Union and Russian Federation have prevented the Finnish people to dominate their property. So they have broken the international laws and agreements.

Professor Richard Pipes from Harvard University has stated: "Where there are no guarantees of property there are no limits to state authority and no regulatory bodies of law, and hence no guarantee of individual liberty, or civil rights".

President Martti Ahtisaari has stated on 02.11.2007: "All the refugees have the right to return and the right to claim back for their property".

In Finland its question of 45,000 km² territory and related deep human feelings, roots, culture and economical loses. Finland and Russia shall look for the property and territorial issues a sustainable, win-win based solution based on the international agreements.

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12 Right to return and right to restitution

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