

*Oktawian Kuc**

RUSSIAN PROPERTIES IN WARSAW. DECADES-LONG POLISH-RUSSIAN DIPLOMATIC AND LEGAL BATTLES FOR PARITY AND THE QUESTIONS OF IMMUNITIES IN POLISH COURTS

Abstract: *The outbreak of the war in Ukraine in 2022 resulted in the revival of long-lasting disagreements in Polish-Russian relations. One aspect concerns numerous Russian properties in Warsaw, many abandoned or used for non-public purposes, and the disparity between both States' properties in the other in this regard. Although the Polish Government has sought to resolve this matter amicably for many years, ultimately several legal proceedings were initiated in Polish courts aimed at recovering some of those premises. Only recently, however, Poland has resolved to employ more decisive steps, including the seizure of the former Soviet residential complex known as Spyville in order to enforce a final judgment. This article sketches the history of the dispute, provides an insight into court proceedings, and discusses the approach of Polish judicial institutions to diplomatic and State immunities.*

Keywords: State immunity, diplomatic immunity, Russian properties, property recovery, *Spyville*, reciprocity, domestic courts, inviolability

INTRODUCTION

On 11 April 2022, the authorities of Warsaw finally recovered the former Soviet residential complex nicknamed *Spyville* (as it is believed to have hosted a nest of spies).

* Assistant Professor, Faculty of Law and Administration, University of Warsaw; e-mail: o.kuc@wpia.uw.edu.pl; ORCID: 0000-0002-7654-1925. This article was prepared within the framework of the research project no. 2021/43/D/HS5/00674 financed by the National Science Centre.

The forced seizure has echoed in the Polish and foreign press.¹ Although the compound was abandoned for many years, the Russian authorities have not been willing to relinquish it to the City of Warsaw, despite final court rulings in favour of the city, claiming diplomatic status vis-à-vis this and many other properties in Poland. But the seizure of the *Spyville* premises located at 100 Sobieski Street, by a bailiff with the assistance of the police marks a rather new chapter in this long-lasting dispute over the properties occupied by Russia in Poland as a remnant of the old days of “close brotherhood” with the Soviet Union. With the invasion of Ukraine by the Russian Federation in February 2022 and the subsequent extreme cooling – if not freezing – of diplomatic relations between Moscow and Warsaw, the Polish authorities decided to take more decisive steps in line with judicial decisions they have managed to secure. The political dimension of these actions is even more evident owing to the Polish pledge that the recovered complex will be used, should the technical conditions of the buildings allow, by war refugees from Ukraine.² In response, the Russian Ambassador in Warsaw protested the occupation of the diplomatic site.

1. ACQUISITION OF RIGHTS TO PROPERTIES BY THE SOVIET UNION IN POLAND

To untie the Gordian knot of international law, history, and politics, a short description is warranted explaining how the Soviet Union came into possession of a disproportionate number of real properties in Poland – and Warsaw in particular – and why they are still occupied by its successor, i.e. the Russian Federation. Rights to these real properties were acquired generally in two main ways, depending on the time of the acquisition. During the first period, until the mid-1960s, the premises were mostly purchased in regular civil transactions. In the second period, the rights to the properties were obtained on the basis of bilateral international instruments.

Initially, between 1946 and 1965, the diplomatic mission of the USSR, including its trade representation, acquired several properties in Warsaw. Most of them were purchased according to the Polish civil law, while a few were transferred or handed over by unilateral acts of the Polish civil or military authorities. In any case, the acquisitions were based on the domestic law of Poland at that time. In 1946, a villa on a 0.5 ha plot of land was purchased at 31 Piłsudski Street in the small but

¹ See e.g. A. Higgins, *A Crumbling Russian ‘Spyville’ Returns to Polish Hands*, The New York Times, 22 May 2022, available at: <https://www.nytimes.com/2022/05/04/world/europe/russia-spy-housing-warsaw.html>; L. Kurasinska, *Poland To Seize Russian Diplomats’ Property And Use It To House Ukrainian Refugees*, Forbes, 6 March 2022, available at: <https://www.forbes.com/sites/lidiakurasinska/2022/03/05/poland-to-seize-russian-diplomats-property-and-use-it-to-house-ukrainian-refugees/?sh=455854835f55> (both accessed 30 April 2023).

² City of Warsaw, *Warszawa odzyskuje „Szpiegowo”* [Warsaw reclaims “Spyville”], 11 April 2022, available at: <https://um.warszawa.pl/-/warszawa-odzyskuje-%E2%80%9Eszpiegowo> (accessed 30 April 2023).

very elegant spa town of Konstancin near Warsaw as the Residence of the Soviet Trade Representative. Similarly, the Residence of the Soviet Ambassador at 13 Żeromski Street (0.66 ha) in the same town was bought in 1965. These properties are now held in the ownership of the Russian Federation, and the title to them is not contested in any way by the Polish Government. Their legal status under Polish law is also undisputed.³

Within the borders of the post-war City of Warsaw, all private land had been nationalized by the new Polish Communist Government under the so-called ‘Bierut’s Decree’ of October 1945⁴, with the purpose of rebuilding the City. The former owners retained title to existing buildings, if they were suitable for habitation, and were entitled to petition the city to establish a perpetual usufruct on the nationalized land they formerly owned. Under these legal conditions, the Soviet Union acquired additional sites in the city centre. The premises at 7 Szucha Avenue were purchased in January 1946 by the Soviet Union Trade Representation, which occupied the building until the 1990s. Subsequently, the property was assigned to Ukraine as one of the successors of the Soviet Union and it now hosts the Embassy of Ukraine in Warsaw and serves as a Residence of the Ukrainian Ambassador. Although after the dissolution of the Soviet Union this property fell to Ukraine, the Russian Federation has also raised its own claims to the premises, particularly recently. They were, however, rejected in a decision of the Mayor of the City of Warsaw on 18 March 2022.⁵ A second building, located at 8 Szucha Avenue in the Governmental District, used to be the former headquarters of the Soviet Trade Representative. It was acquired in October 1946 from a private party through a civil transaction, and the Soviet Trade Representative requested the Polish authorities to establish its perpetual usufruct over the land, which was the right of any former owner of nationalized properties under the Bierut Decree. In recent decades the building has not been used for diplomatic or any other official purposes, as the premises have been, for more than 20 years, commercially leased, despite diplomatic protests from the Polish Ministry of Foreign Affairs,⁶ and without paying taxes. Formally,

³ Deputy Head of the Chancellery of the Sejm, Letter, 16 November 2004, available at: <https://www.sejm.gov.pl/archiwum/prace/kadencja4/uzup/in86.pdf> (accessed 30 April 2023).

⁴ Dekret z dnia 26 października 1945 r. o własności i użytkowaniu gruntów na obszarze m. st. Warszawy [Decree of 26 October 1945 on the ownership and usufruct of land within the City of Warsaw], Journal of Laws 1945, No. 50, item 279, as amended.

⁵ Mayor of Warsaw, *Decision no. 106/SD/2022*, 18 March 2022, mark: SD-WS-I.6841.1493.2018.EKL.

⁶ *Odpowiedź sekretarza stanu w Ministerstwie Spraw Zagranicznych na interpelację nr 8325 w sprawie nieuregulowanego statusu nieruchomości znajdujących się na terytorium Rzeczypospolitej Polskiej, a będących w posiadaniu Federacji Rosyjskiej* [Response of the Secretary of State in the Polish Ministry of Foreign Affairs to parliamentary question no. 8325 regarding the unregulated status of real estates located on the territory of the Republic of Poland and held in possession by the Russian Federation], 22 June 2007, available at: <http://orka2.sejm.gov.pl/IZ5.nsf/main/551A1A56> (accessed 30 April 2023).

the ownership of the land under the building rests with the State Treasury, and any claims relating to the Russian title to the property were rejected by a decision of the Mayor of the City of Warsaw on 29 March 2022⁷ concerning Russia's petition to establish its perpetual usufruct.

Another interesting case concerns the property located at 17/19 Szucha Avenue and 1 Litewska Street (0.3 ha). It was nationalized by the new Polish Communist Government after the war and the perpetual usufruct to the property was later acquired in 1960 in a regular civil transaction between the Soviet Union from the Polish Treasury. The existing villa was adapted for a kindergarten for children of Soviet diplomats, and on the remaining plot a residential building was constructed for the staff of the Soviet Embassy. Nevertheless, the pre-war owner, and later his wife and sole heir, pressed their claims to the property, which was expropriated in 1948 through administrative channels, and following change of the regime in Poland (i.e. Poland's rejection of the communist system, which began in 1989) challenged the validity of the deed transferring the title to the Soviet Union by filing a lawsuit against the Russian Federation, the Treasury, and the City of Warsaw. In 2000 the Warsaw Circuit Court dismissed their claims and the appeal was rejected by the Warsaw Court of Appeal in 2002. However, the cassation to the Supreme Court was successful and the challenged judgment was quashed in 2003.⁸ The persistence of the private parties paid off as the Warsaw Court of Appeal found in 2004 that the notary deed from 1960 was null and void, and consequently the Russian Federation – as the successor of the Soviet Union – had never acquired title to the property in question.⁹ Interestingly, the Russian Federation and its staff abandoned the building, which quickly became one of the biggest squats in Warsaw, hosting up to 50 people daily. Today, the pre-war villa has been refurbished and hosts a luxury restaurant, while the residential building was replaced by a modern office building.

The last property to fall within the first category is a developed plot at 45 Kielecka Street (0.59 ha). In January 1950, the Mayor of the City of Warsaw handed over the land to the Polish Ministry of Defence “for administration and use” to construct a school in accordance with the zoning regulations in place.¹⁰ The buildings erected on the site hosted a high school for children of the employees and officers of the Ministry of Defence. The school was operated by the Ministry of Defence for only a very short time, as it was decided to hand over the school to the Soviet Union. In implementing this decision, on 15 December 1953 an arrangement was made

⁷ Mayor of Warsaw, *Decision no. 125/SD/2022*, 29 March 2022, mark: SD-WS-I.6841.375.2019.EKL.

⁸ Polish Supreme Court, Judgment of 13 November 2003, I CK 380/02. *See also* Polish Supreme Court, Judgment of 10 August 2005, I CK 760/04.

⁹ Warsaw Court of Appeal, Judgment of 14 June 2004, I ACa 1707/03.

¹⁰ Mayor of Warsaw to the Minister of National Defence, 30 January 1950, PB/69/50, available in Warsaw Circuit Court, case no. XXIV C 68/13.

to transfer the property, along with all the equipment, to the USSR Embassy for “perpetual and free use”¹¹ to manage and run the school (1953 Agreement). This Embassy boarding school has remained on the spot until recently. After the change of the regime in Poland, the Polish authorities officially indicated to the Russian Embassy that the Ministry of Defence had no authority to hand over the facilities to the Soviet Embassy, and insinuated that it was only possible due to the Soviet dominance in the senior positions within the Ministry,¹² including the Minister himself, who at that time was the Soviet Marshal Konstantin Rokossovsky. Furthermore, it was highlighted that the property at 45 Kielecka Street was supposed to be returned to Poland once the Russian School was transferred to a new location – built on yet another plot facilitated by Poland (as is explained later). This obligation on the part of the Soviet Union/Russian Federation was not fulfilled.

In the second period – between 1972 and 1986 – a few bilateral international agreements were concluded between the then Peoples’ Republic of Poland and the Soviet Union, with the purpose of mutual exchange of properties for diplomatic, consular, or similar public functions. Generally, Poland fulfilled its obligations by providing its Soviet counterparts with real estates as agreed. The obligations of the Soviet Union, however, as well as its legal successor the Russian Federation, have never been carried out and the situation is the source of the dispute discussed in this article.

The first such agreement was reached on 11 July 1972,¹³ under which the Soviet Union received “the free right of perpetual usufruct, free of taxes and other fees” over the 3.14 ha plot of land with buildings of the Embassy already constructed at that time at 49 Belwederska Street. Its location is strategic as the property is adjacent to one of the buildings of the Polish Ministry of National Defence, close to the Chan-

¹¹ Umowa w sprawie przekazania przez Ministerstwo Obrony Narodowej Polskiej Rzeczypospolitej Ludowej i przejęcia przez Ambasadę ZSRR w PRL w bezterminowe i nieodpłatne użytkowanie szkoły średniej [Agreement concerning the transfer by the Ministry of National Defence of the People’s Republic of Poland to the USSR Embassy in Poland of the high school for perpetual and free use], 15 December 1953, available at: <https://traktaty.ms.gov.pl/> (accessed 30 April 2023).

¹² Polish Ministry of Foreign Affairs, *Note concerning the return (release) of properties of the Russian Federation forwarded to the Russian Embassy in Warsaw*, DPT/15/3/09/10/AN/165, 12 October 2010 (“there seems to be a probable presumption that the unlawful transfer of this property to the Embassy of the USSR could have taken place due to the special situation in the management of the Polish Ministry of National Defence at that time”). All diplomatic notes cited or referred to in this article are deposited in court cases files discussed in the article.

¹³ Porozumienie między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Związku Socjalistycznych Republik Radzieckich o użytkowaniu działek ziemi, przeznaczonych pod siedziby Ambasad w Warszawie i w Moskwie oraz budowie kompleksu obiektów Ambasady Polskiej Rzeczypospolitej Ludowej w Moskwie [Agreement between the Government of the People’s Republic of Poland and the Government of the Union of Soviet Socialist Republics on use of plots of land intended for the headquarters of the Embassies in Warsaw and Moscow and the construction of the complex of the Embassy of the People’s Republic of Poland in Moscow], 11 July 1972, available at: <https://traktaty.ms.gov.pl/> (accessed 30 April 2023).

cellery of the Prime Minister and one of the residences of the President of Poland. The property still remains occupied today by a huge complex of the Embassy of the Russian Federation in Warsaw. The matter of the title transfer under the Polish law was regulated already in 1973 in a notary deed to this effect. The ownership of the Russian Federation is not contested and its rights are disclosed in the land register. In exchange, the Polish State obtained the right under the same conditions to use the plot in Moscow at Klimaszkińska Street for the purposes of constructing the Polish diplomatic mission in the USSR.

The next arrangement of this type was agreed upon on 27 December 1974 (the 1974 Agreement).¹⁴ Under Art. I, the Polish government granted to the Soviet government “the right to free and perpetual usufruct, without any taxes and other fees, of a plot of land free of development of 1.85 ha located in Warsaw between Belwederska and Spacerowa Street, intended for the construction of the residential-office complex of the USSR Trade Representation and the Office of the Economic Advisor of the USSR Embassy”. Next, the USSR government committed itself in Art. II to grant the same rights to Poland in relation to plots of land of an aggregated area of 1.85 ha. The location of one of those plots was specified – the leased premises of the Polish Consulate General in Minsk of 0.47 ha. In Section 3 of this article, the parties agreed that other properties of 1.38 ha should be determined within 6 months from an adequate request from Poland and should be located in each city of the Soviet Union where a diplomatic mission or a consular post were or were to be situated. This obligation, however, has never been fulfilled, as only the plot in Minsk was handed over to Poland for official functions.¹⁵ Importantly, according to Art. III of the Agreement, buildings developed on land plots in Warsaw shall be held in the ownership of the Soviet Union under the condition that they shall not be sold or transferred to any third party without the previous consent of the Polish government. Furthermore, in Section 3 of this Article both governments

¹⁴ Porozumienie między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Związku Socjalistycznych Republik Radzieckich o wzajemnym przyznaniu prawa do wieczystego użytkowania części gruntu, przeznaczonych w Warszawie – pod budowę kompleksu budynków biurowo-mieszkalnych Przedstawicielstwa Handlowego ZSRR i Biura Rady do Spraw Ekonomicznych Ambasady Związku Socjalistycznych Republik Radzieckich oraz w Związku Socjalistycznych Republik Radzieckich – pod budowę budynków biurowo-mieszkalnych przedstawicielstw dyplomatycznych i urzędów konsularnych Polskiej Rzeczypospolitej Ludowej [Agreement between the Government of the People’s Republic of Poland and the Government of the Union of Soviet Socialist Republics on mutual granting of rights of perpetual usufruct over plots of land intended in Warsaw – for the construction of a complex of offices and residential buildings of the Trade Representation of the USSR and the Office of the Advisor for Economic Affairs of the Embassy of the Union of Soviet Socialist Republics, and in the Union of Soviet Socialist Republics – for the construction of offices and residential buildings of diplomatic missions and consular posts of the People’s Republic of Poland], 27 December 1974, available at: <https://traktaty.ms.gov.pl/> (accessed 30 April 2023).

¹⁵ Polish Ministry of Foreign Affairs, Note no. DPT.2981.1.2013/99, 14 April 2015.

committed – on the basis of the reciprocity principle – that each shall execute the formalities in accordance with its domestic law.

In accordance with the 1974 Agreement, the Soviet Union secured two additional properties in Warsaw. The first one is located at 25 Belwederska Street (1.31 ha), where the Office of the Economic and Trade Advisor was situated,¹⁶ Today, it hosts the Consular Department of the Russian Embassy and the Russian cultural and educational centre. The second property – the notorious *Spyville* – was developed into a residential complex for diplomats at 100 Sobieski Street (0.62 ha),¹⁷ and was handed over to the Soviet Union in 1977. This compound, consisting of two connected residential buildings with a cascade structure – the highest with eleven floors – is considered an architectural showcase of modernism. It was populated with Soviet diplomats and high officials until the 1990s and the collapse of the USSR itself. During that time, the Polish government recognized that the compound was used for diplomatic-residential purposes, but later it became vacant and has begun to fall into ruin. Today, all the apartments are devastated. The only bright and intriguing chapter of its history was a short-lived Night Club 100, that was allegedly frequented only by guests with Russian passports and closed in 2017. At the time of the seizure of *Spyville*, the only remaining signs suggesting that the complex was not totally abandoned were the presence of a guard and a notice “The premises of the Embassy of the Russian Federation”. The lack of control over the premises was highlighted by frequent visits from urban explorers that documented the disastrous technical conditions of the buildings. The legal status of the property was never regulated under Polish law. In particular, the perpetual usufruct over the property was not established. According to the Polish Ministry of Foreign Affairs, the 1974 Agreement did not transfer ownership to the Soviet Union, but only possession for use.¹⁸

Next, the agreement of 3 October 1978 on mutual exchange of land plots for the construction of technical centres (1978 Agreement)¹⁹ was concluded. Art. 1 envisaged

¹⁶ Urban Planning and Architecture Department, City of Warsaw Office, *Decision no. 308/76*, 3 December 1976 (available in Warsaw Circuit Court, case no. II C 682/22).

¹⁷ Initially, the 1974 Agreement envisaged that the Soviet Union should receive one plot at 25 Belwederska Street. Nevertheless, it quite quickly turned out that part of this 1.85 ha plot needed to be used for communication purposes due to the reorganization of roads in this area. Thus, the plot was decreased in area to 1.3 ha. Under those circumstances, the Polish Government proposed to the Soviet Embassy the additional plot of 0.6 ha at 100 Sobieski Street for residential purposes, located ca. 1 km away, to which the Soviet Embassy agreed. *See* Polish Ministry of Foreign Affairs, Note no. DAO-15-ZP-29-76, 18 May 1976.

¹⁸ Polish Ministry of Foreign Affairs, Note no. DPT 15/3/09/12/AN/71342/59, 9 May 2012.

¹⁹ Porozumienie między Rządem PRL a Rządem ZSRR o wzajemnym przekazaniu działek gruntu dla budowy ośrodków technicznych współdziałających w obsłudze maszyn, urządzeń i aparatury dostarczanych we wzajemnej wymianie handlowej i o warunkach budowy tych ośrodków [Agreement between the Polish Government and the USSR Government on mutual exchange of land plots for the construction of technical centres cooperating in servicing machines, equipment, apparatus, and devices delivered in mutual trade exchange, and on conditions of construction of those centres], 3 October 1978, available at: <https://traktaty.ms.gov.pl/> (accessed 30 April 2023).

that the “listed plots are transferred on the basis of reciprocity into free and perpetual usufruct and exempt from taxes” to the Soviet Union for the construction of technical centres by the Trade Representation in the Peoples’ Republic of Poland. Their aggregated area amounted to ca. 8.65 ha and included premises at 101 Ostrobramska Street (1.75 ha) for Stankoimport; at 10 Połczyńska Street (1.7 ha) for Avtoexport; at 2B Bobrowiecka Street (1 ha) for a residential complex for staff of the technical centres; and in the town of Karczew (4.2 ha) for Traktoroexport. According to Art. 2, the Peoples’ Republic of Poland was to receive, under the same conditions, 8 plots of land with an aggregated area of 8.65 ha within the territory of the (now former) USSR – two in or around Moscow; two in Leningrad (now St. Petersburg); two in Kiev; and two in Minsk. Importantly, Art. 4 provided for limitations on property disposal, as follows: “Although any buildings and other objects erected on the plots shall be held in ownership of the Soviet Union, nevertheless they shall not be sold or transferred to third parties without the consent of Poland”. As no property was transferred to Poland, the Polish government asserted that the government of the former USSR – and later of the Russian Federation – had not fulfilled their mutual obligations under this Agreement.²⁰

Notwithstanding the above, with the collapse of the Soviet Union all foreign technical centres lost their *raison d’être* and were closed in the early 1990s. In 1990, the Soviet Union Council of Ministers initiated the process of restructuring and transforming those centres into private law companies in Russia and abroad. But the ownership of the plots for the technical centres rested and rests with the Polish Treasury, and any rights to those properties or its buildings have never been transferred to the Soviet Union under Polish law, as no formalities were concluded, including the execution of notary deeds and the effectuation of land register entries. Thus, for example, in 1998 the Polish Treasury concluded a lease agreement of the property occupied by a former technical centre with a private company incorporated in Poland, but controlled by the Russian authorities. The company later attempted to gain title under Polish law and applied to Polish courts for a declaration of usucapion (prescription) of the property. Its claims, however, were rejected in both the main and appeal proceedings.²¹

Subsequently, an arrangement was reached between 1985 and 1986 in the form of a diplomatic note exchange,²² leading to the handover to the Soviet Union of plots of land at 3 Beethoven Street (together 1.99 ha). Under the arrangement, the Russian

²⁰ Odpowiedź podsekretarza stanu w Ministerstwie Spraw Zagranicznych na interpelację nr 5313 w sprawie gruntów eksterytorialnych Federacji Rosyjskiej w Warszawie i w Karczewie [Response of the Undersecretary of State in the Ministry of Foreign Affairs to parliamentary question no. 5313 regarding extraterritorial lands of the Russian Federation in Warsaw and Karczew], 23 November 2006, available at: <http://orka2.sejm.gov.pl/IZ5.nsf/main/08129054> (accessed 30 April 2023).

²¹ Warsaw Circuit Court, Order of 28 October 2015, V Ca 4126/14.

²² USSR Embassy, Note no. 79-H, 12 December 1985; Polish Ministry of Foreign Affairs, Note no. DAO.15.ZSRR-79-85, 13 December 1985; USSR Embassy, Note no. 106-n, 11 September 1986.

counterparty should have constructed a new Russian school, and vacated and returned the premises at 45 Kielecka Street occupied by the Embassy School at that time. Unfortunately, until today the school transfer condition has not been fulfilled by either the Soviet Union or the Russian Federation, and a new school has never been constructed on these plots. Thus, the obligation to return the property at 45 Kielecka Street has not been carried out. Furthermore, as an equivalent Poland was promised a similar property in Moscow for educational purposes, which again has never been transferred. Additionally, the 3 Beethoven Street property was developed as a residential building for the Soviet Embassy officials and their families, together with a playing field, playground, green areas and parking. It is used today for the same purpose, although the Polish authorities have stressed that the objective of the property transfer has not been fully complied with, as no school was erected.²³ Formally, the premises at 3 Beethoven Street are owned by the City of Warsaw and no deed under internal civil law transferring any right to the Russian Federation has been carried out by the parties.

As a side note, other premisses are or were held in possession by the Russian Federation outside Warsaw. For example, in December 1994 the Polish National Forestry Agency leased to the Russian Embassy in Poland a recreational complex of almost 5 hectares in Skubianka, at the Zegrzyński Reservoir. The complex had been used by the Soviet and Russian diplomats and officials much earlier, at least from the end of the 1970s.²⁴ It consists of hotels, bungalows, villas, and auxiliary buildings and is located in the vicinity of Warsaw, in a forest at a popular place of rest and water sports. Due to the lack of payments from the Russian Federation, the Agency terminated the lease on 13 April 2022 and requested the Russian Embassy multiple times to release the property, but with no effect. Hence the complex was seized by the National Forestry and secured in November 2022.²⁵ At the time of its

²³ City of Warsaw Office to the Ministry of Foreign Affairs, 14 December 2010, GK-SP-GSP-I-AWO-722-15-62-08, available in Warsaw Circuit Court, case no. II C 1792/19.

²⁴ Protokół z rozmów pomiędzy delegacjami Ministerstwa Spraw Zagranicznych PRL a UPDK Ministerstwa Spraw Zagranicznych ZSRR o wybranych problemach związanych z realizacją polsko-radzieckiego Międzyrządowego Porozumienia z 27 grudnia 1974 r. o wzajemnym przekazaniu działek dla przedstawicielstw obu stron, a także dotyczących wymiany doświadczeń w zakresie obsługi przedstawicielstw zagranicznych [Minutes of talks between delegations of the Polish Ministry of Foreign Affairs and the USSR Ministry of Foreign Affairs on selected problems relating to the implementation of the Polish-Soviet Intergovernmental Agreement of 17 December 1974 on the mutual exchange of plots for the missions of both Parties, as well as on the exchange of experience in the field of servicing foreign missions], 22-25 April 1987 r. (available in Warsaw Circuit Court, case no. XXIV C 162/16).

²⁵ State Forests, *Lasy Państwowe odbierają nieruchomości nad Zalewem Zegrzyńskim* [State Forests take over properties at the Zegrzyński Reservoir], 2 November 2022, available at: <https://www.lasy.gov.pl/pl/informacje/aktualnosci/lasy-panstwowe-odbieraja-nieruchomosc-nad-zalewem-zegrzynskim>; Ministry of Climate and Environment, *Przejęcie nieruchomości dzierżawionej Ambasadzie Federacji Rosyjskiej przez Lasy Państwowe* [Takeover of the property leased to the Embassy of the Russian Federation by the State Forests], 3 November 2022, available at: <https://www.gov.pl/web/klimat/przejecie-nieruchomosci-dzierzawionej-ambasadzie-federacji-rosyjskiej-przez-lasy-panstwowe> (both accessed 30 April 2023).

seizure, it was in disastrous technical conditions – “broken windows, rotten floors, collapsing roofs, and vandalized appliances and furniture”.²⁶ Additionally, there are also premises of consular posts occupied by the Russian Federation in Cracow and Poznan, but they are leased either from the State Treasury or private entities. The situation in relation to Russian properties in Gdańsk is more complicated, where two properties are held by Russia for its Consulate General without any legal title (as it has refused to conclude a lease agreement claiming that the premises have allegedly been in its possession from the eighteenth century).²⁷

2. THE PROBLEM OF DISPARITY, THE LACK OF RECIPROCITY, AND THE POLISH RESPONSE

The Polish government has taken the position that there is a clear and evident disparity in the Polish-Russian relations insofar as properties controlled by each State on the territory of the other are concerned, with the Russian Federation having for its use an incomparably greater number of premises in Warsaw. This situation is rooted in the asymmetry of diplomatic relations between the Soviet Union and Poland – then a vassal state – dating back to the late 1940s, as well as the Russian non-compliance with the agreements and arrangements reached (already discussed). Those agreements obligated the USSR (later the Russian Federation) – on the basis of the principle of reciprocity – to hand over to Poland real properties for purposes of Polish diplomatic missions and consular posts under the same conditions and in exchange for properties provided for the Soviet Union/Russia in Poland. Unfortunately, this reciprocity has never been achieved. Ultimately, the Russian Federation at its creation was in possession of eighteen real estates in Poland – regardless of the title (plus claims to the premises now occupied by the Ukrainian Embassy in Warsaw), but the Republic of Poland held only five properties in Russia, including three premises which are rented – that of the Consulate General in St. Petersburg leased from the Russian authorities together with the Consulate General in Irkutsk and the Consular Agency in Smolensk commercially rented. Already in 1998 this disparity was calculated to amount to circa 112,000 m² to the detriment of Poland.²⁸

²⁶ Polish Press Agency, *Ośrodek dzierżawiony przez ambasadę rosyjską przejęty przez Lasy Państwowe* [Complex leased by the Russian Embassy recovered by the State Forests], 2 November 2022, available at: <https://www.pap.pl/aktualnosci/news%2C1469275%2Cosoitek-dzierzawiony-przez-ambasade-rosyjska-przejety-przez-lasy-panstwowe> (accessed 30 April 2023).

²⁷ Odpowiedź podsekretarza stanu w Ministerstwie Spraw Zagranicznych na zapytanie nr 5501 w sprawie nieruchomości w m.st. Warszawie przekazanych ZSRR w latach 70. XX w. [Response of the Undersecretary of State in the Ministry of Foreign Affairs to parliamentary question no. 5501 regarding properties in Warsaw transferred to the USSR in the 1970s of the twentieth century], 28 November 2013, available at: <https://www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=1E22A9F9> (accessed 30 April 2023).

²⁸ Odpowiedź podsekretarza stanu w Ministerstwie Spraw Zagranicznych na interpelację nr 709 w sprawie

The Polish Government enumerated the conditions for regulating the legal status of those properties held in possession by the Russian Federation, which under the international bilateral arrangements were only transferred for use, without legal title under the Polish land law. In order to effectively transfer the title to Russia, both parties need to enter into a civil law contract in a form of a notary deed and effectuate an entry into the land registry. But there is also the obligation to comply with the reciprocity principle, which is envisaged not only in all Polish-Russian agreements but also is mandatory under Polish law as a condition for such a transfer of title.²⁹ This requires that the Russian Federation transfers to the Republic of Poland similar properties under the same conditions. Without such a transfer, the Russian Federation has no title and shall be considered as a possessor without a legal title under domestic civil law, and as such is obliged to pay compensation for use.³⁰

Consequently, this disparity also has another aspect. The position of the Polish Government is that the principle of reciprocity shall apply as well to the matter of remuneration for the use of properties for diplomatic and consular purposes. On one hand, all real properties located in Poland that are or were in possession of the Russian Federation (or previously by the Soviet Union) have been used without any consideration, even if occupied without a legal title. The same is also the case in relation to any taxes, including situations when premises are commercially leased to third parties. At the time, Poland was forced to rent for a fee its premisses of the General Consulate in St. Petersburg. In 1994, the amount of rent was increased drastically by the City of St. Petersburg, and Poland refused to sign a new lease,³¹ believing that such an increase was in contravention of the principle of reciprocity by the Russian counterparty.

The situation of the Polish School in Moscow was similar. As explained, the Russian School in Warsaw was granted its premises by the Polish Government back in the 1950s, and its new location was secured and transferred to the Soviet counterparty, although no construction works followed. The USSR Embassy declared in its diplomatic note no. 8-I of 24 February 1984 that if Poland “officially requests the Soviet side to grant the Embassy of the People’s Republic of Poland in Moscow a school building, this request will be considered by the Soviet side taking into account the friendly nature of relations between our countries”. However, despite multiple requests no property was transferred to Poland. Hence, the Polish

nieruchomości rosyjskich w Polsce [Response of the Undersecretary of State in the Ministry of Foreign Affairs to parliamentary question no. 709 regarding Russian properties in Poland], 8 July 1998, available at: <https://orka2.sejm.gov.pl/IZ3.nsf/main/406958C6> (accessed 30 April 2023).

²⁹ Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami [Real Estate Management Act], as amended, consolidated version of 17 September 2021, Journal of Laws 2021, item 1899.

³⁰ Polish Ministry of Foreign Affairs, *supra* note 18.

³¹ See *supra* note 36.

School in Moscow had to rent its premises from the City of Moscow for circa 30 years, and after 1990 moved into the residential building for the employees of the Polish Embassy in Moscow.³²

The compliance with reciprocity is not only a fundamental principle of international law, but according to the Polish internal law also a rule in international relations with other States, particularly in relation to providing or facilitating the acquisition or use of properties. Hence, for example when in 1985 the Soviet Embassy requested the Polish counterparty to secure for it a plot of land at Beethoven Street for a residential building, the note from the Polish Ministry of Foreign Affairs pointed to the principle of reciprocity.³³ It explained that the Polish Real Estate Management Act of 1985 envisages that “State property may be granted in perpetual usufruct to a foreign State’s diplomatic or consular missions (...) if the right to acquire a title to State property is afforded to the Polish missions in that State”. Also, the most recent version of the Act contains a direct reference to the principle of reciprocity as a condition for a transfer of ownership or other title.³⁴

According to the Polish Ministry of Foreign Affairs,³⁵ the long-lasting Polish-Russian consultations had not brought about any solution to the problem. First attempts were made in 1992-93, but following bilateral talks did not result in any removal or reduction of the disparity due to “the lack of a constructive position on the Russian site”,³⁶ although the matter was even raised at the highest levels – by the President of Poland, Prime Ministers, and Ministers of Foreign Affairs. Consequently, the dispute has developed over the years, with the general public gaining an interest therein – an interest which has recently accelerated after the Russian invasion of Ukraine in 2022. So far, the Republic of Poland has neither secured the ownership of the promised additional six premises in Russia, including those being rented, nor has been able to enter its rights into the land register in relation to properties it already owns, including the premises of the Polish Embassy in Moscow. By comparison, the Russian ownership of the property occupied by the Russian Embassy in Warsaw is disclosed in the Polish land register.

Due to the lack of any progress, the Polish government resolved to turn to an instrument of diplomatic pressure by denouncing the bilateral agreements, which

³² See Polish Ministry of Foreign Affairs, *supra* note 12.

³³ Polish Ministry of Foreign Affairs, Note no. DAO.15.ZSRR-79-85, 13 December 1985.

³⁴ Art. 61(1) of the Real Estate Management Act (*supra* note 29): “Real estate of the State Treasury may, on the basis of reciprocity, be sold or transferred for use, lease or rental to diplomatic missions or consular posts of foreign States [...]”.

³⁵ See Undersecretary of State in the Ministry of Foreign Affairs, *supra* note 27.

³⁶ Undersecretary of State in the Ministry of Foreign Affairs, Odpowiedź na interpelację nr 12653 w sprawie bezumownego użytkowania budynków przez Federację Rosyjską [Response to the parliamentary question no. 12653 regarding non-contractual use of buildings by the Russian Federation], 14 June 2017, available at: <https://www.sejm.gov.pl/sejm8.nsf/InterpelacjaIResc.xsp?key=32AB98C0&view=null> (accessed 30 April 2023).

formed the basis for any property transfer and use under international law. The denunciations were based either on relevant provisions of the selected agreements regarding their termination (withdrawal or denunciation), or on Art. 56(1)(b) of the Vienna Convention on the Law of Treaties.³⁷ Hence, the Polish Council of Ministers, on the motion of the Minister of Foreign Affairs, on 20 June 2008 adopted a resolution denouncing the 1978 Agreement concerning the properties for technical centres.³⁸ The Embassy of the Russian Federation was informed in a note of 27 June 2008 about this fact.³⁹ The document specified that the Polish government would no longer consider itself bound by the Agreement after 12 months from the date of the note, i.e. on 27 June 2009. The Polish position here is well-reasoned – the actual liquidation of technical centres has rendered the subject and purpose of the 1978 Agreement moot and non-existent. As a consequence of the denunciation of the 1978 Agreement, the Russian Federation lost any right – both under international and Polish domestic law – to use the properties of the former USSR technical centres and ultimately the disparity was reduced by one third. Also, another legal argument was advanced by the Polish government pertaining to the lack of actual transfer of the ownership or any other title to those real properties, neither under the Polish civil law nor under international law, in performance of the 1978 Agreement. According to its Art. 5, the title to properties and buildings located on them shall only be transferred under the condition of reciprocity⁴⁰ and only after fulfilling all formalities under the laws of the receiving State. As Poland has never been granted properties under the 1978 Agreement, the Russian Federation did not acquire any title under either Polish or international law.

In relation to the property at 45 Kielecka Street, on 12 October 2010 the Polish Minister of Foreign Affairs denounced the 1953 Agreement, indicating 31 July 2011 as the date on which the Agreement would no longer be honoured. Simultaneously, the Russian Embassy was requested to vacate the premises.⁴¹ In its diplomatic

³⁷ Vienna Convention on the Law of Treaties (signed on 23 May 1969, entered into force on 27 January 1980), 1155 UNTS 331.

³⁸ Oświadczenie Rządowe z dnia 10 września 2008 r. w sprawie utraty mocy obowiązującej Porozumienia między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Związku Socjalistycznych Republik Radzieckich o wzajemnym przekazaniu działek gruntu dla budowy ośrodków technicznych współdziałających w obsłudze maszyn, urządzeń i aparatury, dostarczanych we wzajemnej wymianie handlowej i o warunkach budowy tych ośrodków, podpisanego w Warszawie dnia 3 października 1978 r. [Government Statement of 10 September 2008 on the loss of binding force of the Agreement between the Government of the People's Republic of Poland and the Government of the Union of Soviet Socialist Republics on mutual exchange of land plots for the construction of technical centres cooperating in servicing machines, equipment, and apparatus devices delivered in mutual trade exchange, and on the conditions of construction of those centres signed in Warsaw on 3 October 1978], M.P. No. 70, item 632.

³⁹ Polish Ministry of Foreign Affairs, Note no. DPT 15-3-2007/AN/157, 27 June 2008.

⁴⁰ Polish Ministry of Foreign Affairs, Note no. DPT/15/3/09/11/AN/115032/96, 30 June 2011.

⁴¹ See Polish Ministry of Foreign Affairs, *supra* note 12.

note, the Minister stressed that the 1953 Agreement “contains a number of formal defects and is not in line with the then Polish and international standards for concluding international agreements”. Thus, it should have been rather considered as an undetermined kind of a civil contract of private law. The note also highlighted the non-compliance with the reciprocity principle in relation to the Polish school in Moscow. Under those circumstances, the Polish government announced that it “cannot accept the further unequal treatment in relation to school properties and sees no possibility of extending the use of the premises at 45 Kielecka Street”. The Russian Federation has not responded in any way to the diplomatic note.

Having all those considerations in mind, the Polish government settled on liquidating – or at least drastically diminishing – the disparity in properties between the two States. The Russian Federation still claims that all properties shall be afforded diplomatic protection, and that it occupies them with a valid title, and hence that it does not have to pay any taxes or fees relating to their use. The unwillingness of the Russian Federation to settle the issue through bilateral negotiations carried out for more than ten years, led the Polish Ministry of Foreign Affairs – in accord with the Ministry of Internal Affairs, the Ministry of Treasury, the Office of the Prime Minister, the Office of the General Counsel to the Republic and the Mayor of Warsaw – to adopt in 2011 a two-fold strategy.⁴²

Its first prong addresses the issue at the international level. Here, the emphasis was put on the continuation of political consultations to resolve the matter, preferably in the form of a bilateral agreement dealing with the status of Russian properties in Poland and the Polish properties in Russia in a comprehensive manner. However, two main conditions were clearly communicated to the Russian counterparty; 1) the matter of the legal title to the land and premises of the Polish Embassy in Moscow should be resolved through disclosing the ownership in the land register; and 2) the premises of the Consulate General in St. Petersburg should be transferred to Poland with the fulfilment of all formalities.

The second element of the Polish strategy, in parallel with actions undertaken at the international plane, requires that the desired parity is achieved by pursuing all possible legal and administrative means aimed at recovering the properties occupied by the Russian Federation without any legal title and diplomatic justification. In this respect, two main categories of lawsuits have been employed and lodged in the competent Polish common courts. The first relates to the recovery of real property. With a judgment for the recovery of property, an owner may take over its property, if necessary with the assistance of bailiffs and other law enforcement officers. The second category of legal actions pursued by the competent Polish authorities against

⁴² See Undersecretary of State in the Ministry of Foreign Affairs, *supra* note 27.

the Russian Federation concerns the payment of compensation for non-contractual use of real estate, which allows courts to award damage-like remedies for the use of a property without a title or the consent of an owner.

By 2017, the number of Russian properties in the capital of Poland decreased to fourteen as a consequence of the denunciations of the already-discussed agreements by the Polish government and the court proceedings initiated by private parties in relation to the properties at 17/19 Szucha Avenue and Litewska Street.⁴³ Nevertheless, the implementation of the 2011 strategy for the reduction in the disparity between the properties held by the Russian Federation in Poland and those held by the Republic of Poland in Russia was not a priority. Only after the Russian invasion of Ukraine did the Polish government resolve to proceed with the execution of court judgments for the recovery of selected properties. The seizure of the *Spyville* property at 100 Sobieski Street on 11 April 2022 was the first successful attempt in this regard.

3. PROCEEDINGS BEFORE POLISH COURTS PERTAINING TO RUSSIAN PROPERTIES IN WARSAW

The strategy of the Polish government aimed at reducing the disparity had already earlier moved to Polish courts when relevant lawsuits were filed beginning in January 2013 against the Russian Federation in relation to five properties located in Warsaw. Inasmuch as three of them are used neither for diplomatic nor consular nor any other public purposes by the defendant, the Polish authorities resolved to pursue all available judicial remedies, including the most intrusive one, i.e. in the form of recovery of the property.

The first action for property recovery was filed in January 2013 and concerned the property at 45 Kielecka Street. Only after three years – on 18 January 2016 – did the Circuit Court of Warsaw render a default judgment,⁴⁴ which became final on 2 February 2016. Although ultimately the Russian school ceased to operate on the premises, it was not returned to the State Treasury and no execution proceedings have been initiated for a long time. Only after the successful attempt of recovering the property at 100 Sobieskiego Street in April 2022, did the Polish authorities decide to follow these decisive steps. On 29 April 2023, a bailiff acting on a request from the City of Warsaw entered the property and took possession of it.⁴⁵

In parallel to a recovery action, in November 2015 the Polish Treasury sent the final pre-trial request for payment to the Russian Embassy in relation to the com-

⁴³ See Undersecretary of State in the Ministry of Foreign Affairs, *supra* note 36.

⁴⁴ Warsaw Circuit Court, case no. XXIV C 68/13.

⁴⁵ Polish Press Agency, *Warsaw takes over building 'illegally occupied' by Russian embassy*, 29 April 2023,

compensation for non-contractual use of the premises in preparation for another civil action. The Russian response to this request was returned to the Polish Ministry of Foreign Affairs the same month. The Russian diplomatic note explained that “the Embassy assumes that all matters relating to the Russian diplomatic real estates will be discussed after their legal status is regulated”.⁴⁶ As a result, in February 2016 court proceedings were initiated before the Warsaw Circuit Court against the Russian Federation for compensation in the amount of PLN 7.66 mln (ca. EUR 1.6 mln), plus statutory interest.⁴⁷ Due to the non-participation of the Russian Federation, a default judgment was rendered on 3 April 2017 awarding the amount sought by the Treasury, which became final on 16 May 2017.

In relation to 2B Bobrowiecka Street, it was not until 30 June 2011 that the Polish Ministry of Foreign Affairs requested the release of the property, even though the 1978 Agreement was terminated in 2008. The diplomatic note indicated 31 September 2011 as a final date for the release.⁴⁸ It stated that as a result of the termination, the Russian Federation lost any title to properties of the former Soviet technical centres in Poland and was using them without any legal basis. Furthermore, “[r]ecently, it turned out that one of the apartments in the building at 2B Bobrowiecka Street was rented to a citizen of Belarus, against whom an investigation in Poland in a serious criminal case is being conducted”. During the police search of the apartment in June 2011, an intervention by the representative of the Russian Embassy in Warsaw took place. Additionally, the note requested the payment of compensation for the non-contractual use of the property. With no response from the Russian side, a legal action against the Russian Federation for the recovery of the property was lodged in February 2013,⁴⁹ but the case is still pending. Additionally, a lawsuit for the compensation of PLN 8.9 mln (ca. EUR 1.9 mln) was filed in February 2016 and the default judgment was issued on 8 May 2017, which became final on 6 June 2017.⁵⁰

In 2011, the Polish Ministry of Foreign Affairs requested the Russian Embassy to release the property at 100 Sobieski Street and in 2012 informed the Russian Federation about the obligation to pay for the use of the premises.⁵¹ Nevertheless, the

available at: <https://www.pap.pl/en/news/news%2C1567057%2Cwarsaw-takes-over-building-illegally-occupied-russian-embassy.html> (accessed 13 July 2023); Polish News, *Warsaw. The town hall took over the building of the Russian school at Kielecka Street*, 29 April 2023, available at: <https://polishnews.co.uk/warsaw-the-town-hall-took-over-the-building-of-the-russian-school-at-kielecka-street/> (accessed 13 July 2023).

⁴⁶ Available in the case files of Warsaw Circuit Court, case no. XXIV C 200/16.

⁴⁷ Warsaw Circuit Court, case no. XXIV C 200/16.

⁴⁸ Polish Ministry of Foreign Affairs, *supra* note 40.

⁴⁹ Warsaw Circuit Court, case no. XXIV C 184/13.

⁵⁰ Warsaw Circuit Court, case no. XXIV C 160/16.

⁵¹ Polish Ministry of Foreign Affairs, Note no. DPT 15/3/09/11/AN/151195, 7 September 2011; Polish Ministry of Foreign Affairs, *supra* note 18.

property was not returned. Subsequently, the State Treasury sent the final pre-trial request for payment to the Russian Embassy in September 2015 in relation to the compensation for non-contractual use of the premises. The request was returned to the Polish Ministry of Foreign Affairs the next month with the identical explanation as in the previous correspondence, i.e. that “the Embassy assumes that all matters relating to the Russian diplomatic real estates will be discussed after their legal status is regulated”.⁵² Thus, in August 2015 the Treasury filed a lawsuit for the recovery of the property at 100 Sobieski Street.⁵³ Similarly, in 2016, a legal action seeking PLN 7.88 mln (EUR 1.68 mln) for the non-contractual use of the *Spyville* premises was filed.⁵⁴

During the proceedings, the service of correspondence was conducted through the cooperation mechanism in civil matters as regulated by a bilateral Polish-Russian treaty. The Federal State Unitary Enterprise of the Business Administration of the President of Russian Federation “Enterprise for Administration of Property Abroad” – one of *stationes fisci* of the Russian Federation named in the lawsuits – filed an opposition in a Russian court to the motion of the Warsaw Circuit Court on service of court notices through cooperation mechanisms. Firstly, it explained that the 100 Sobieski property had never been managed by the Enterprise, and that it was not within its competence. Nevertheless, it also raised some challenges concerning the lawsuit itself. Generally, as an agent of the Russian Federation, the Enterprise was of the opinion that all disputes concerning the properties in Warsaw should be resolved through diplomatic channels and under international public law instruments, as they had been transferred to the Soviet Union on the basis of a 1974 Agreement. Consequently, any related matters do not fall within the jurisdiction of either the Polish or Russian courts. It also pointed out that the execution of any application in the proceedings (including the service of the Polish court notices in accordance with the bilateral agreement on the matter) would infringe the sovereignty of the Russian Federation by requiring the Federation to participate as a defendant in a matter regulated by Polish law.⁵⁵

Notwithstanding these challenges, the Warsaw Circuit Court considered that its court notices had been properly served on the defendant, and due to its non-par-

⁵² Available in the case files of Warsaw Circuit Court, case no. XXIV C 162/16.

⁵³ Warsaw Circuit Court, case no. XXIV C 802/15.

⁵⁴ Warsaw Circuit Court, case no. XXIV C 162/16.

⁵⁵ *Sprzeciw w sprawie wniosku Sądu Okręgowego w Warszawie o doręczenie pism sądowych* [Objection to the motion of the Warsaw Circuit Court on service of court notices], 8 November 2016, Warsaw Circuit Court, case no. XXIV C 162/16. See also the Russian response in: *Sprzeciw w sprawie wniosku Sądu Okręgowego w Warszawie o doręczenie pism sądowych* [Objection to the motion of the Warsaw Circuit Court on service of court notices], 4 July 2016, Warsaw Circuit Court, case no. XXIV C 802/15, which contained just a few sentences on the immunity issue: “The Russian Federation, holding the property in question in possession in accordance with rules of international law, did not undertake any action within the realm of private civil law

ticipation in the Polish court proceedings it proceeded with deciding the merits of the matters. In the case of the property recovery, the Court rendered its default judgment on 27 October 2016, which became final on 30 November the same year. The decision “orders the defendant Russian Federation and all persons deriving their rights from it to hand over to the plaintiff, the State Treasury represented by the Mayor of the Capital City of Warsaw, the real estate located in Warsaw at 100 Jana III Sobieski Street [...] with buildings”. In relation to the matter of compensation, a default judgment was issued on 9 November 2016 against the Russian Federation, but the Federal State Unitary Enterprise filed an objection to the default judgment. This objection was, however, rejected due to procedural issues,⁵⁶ and the judgement become final on 14 March 2017.

Although the final judgments were secured, the representatives of the Russian Federation did not release the property. Thus, the Mayor of the City of Warsaw, acting as an agent for the State Treasury, initiated the execution proceedings, during which the Russian Federation was requested to voluntarily vacate the premises, and to which there was no response. For few years, the Polish counterpart did not wish to stir up the dispute, so it refrained from any form of coercion. The situation changed, when, as the City of Warsaw authorities put it: “Russia brutally attacked Ukraine. There is no more room for indulgence”.⁵⁷ Consequently, the bailiff entered the premises on 11 April 2022 at 9 o’clock with a force opening the gate and changing the locks. All those actions were carried out with the support of the Polish Ministry of Foreign Affairs, which was determined to regulate the legal status of properties “illegally occupied by the Russian Federation” and to remove the gross disparity in the respective real estates in Polish-Russian relations.⁵⁸

Concerning the premises at 3 Beethoven Street, the situation is a little different, as the formal owner of the property is the City of Warsaw and not the State Treasury. Thus it was the City of Warsaw that filed two lawsuits against the Russian Federation – in November 2019 and December 2021 respectively – for compensation for the non-contractual use, requesting the Warsaw Circuit Court to order the defendant to pay almost PLN 1.8 mln (EUR 0.37 mln) and PLN 0.7 mln (EUR 0.14 mln) in the first and second cases. Both lawsuits are still pending.⁵⁹

and did not consent to adjudicate the case under the jurisdiction of a Polish court. Due to those reasons, the Russian Federation because of its jurisdictional immunity, cannot act as a defendant in the present case”.

⁵⁶ Order of the Warsaw Circuit Court, 6 February 2017, XXIV C 162/16.

⁵⁷ City of Warsaw, *supra* note 2.

⁵⁸ Polish Ministry of Foreign Affairs, *Oświadczenie MSZ w sprawie przejęcia rosyjskiej nieruchomości w Warszawie* [Statement of the Ministry on seizure of the Russian property in Warsaw], 11 April 2022, available at: <https://www.gov.pl/web/dyplomacja/oswiadczenie-msz-w-sprawie-przejecia-rosyjskiej-nieruchomosci-w-warszawie> (accessed 30 April 2023).

⁵⁹ Warsaw Circuit Court, case no. II C 1792/19 and case no. II C 1856/21.

The most recent case was filed in 2022 by the Treasury against the Russian Federation in relation to the property at 25 Belwederska Street. The Polish Government is seeking PLN 55.3 mln (EUR 11.7 mln) compensation for the non-contractual use thereof. The proceeding is still pending.⁶⁰ Interestingly, the competent Polish authorities in relation to both 3 Beethoven and 25 Belwederska Street sought only compensation for use, but not the recovery of the premises. The reason for that is that both these locations are used by the Russian Federation for public purposes – the first one houses diplomats and their families; and the second is occupied by the Consular Department of the Embassy – although without any legal title under either international law or the internal law of Poland.

It is worth noting that an important aspect of the proceedings – which has had an enormous impact on their length and success – was a rather petit procedural issue: the effective service of court documents and correspondence. In practise, it took a lot of time and effort on the part of Polish courts to serve the agents of the Russian Federation with copies of lawsuits, information concerning court hearings, and its decisions, including the default judgments rendered. One could not but notice that the Russian Embassy and other Russian authorities adopted the strategy of obstruction in this regard.

In most cases, at the beginning the courts used the regular post services and sent correspondences to the Russian Embassy in Warsaw directly. Next, they resolved to utilize the mutual legal assistance mechanisms, thus relying on the Hague Convention⁶¹ or the Polish-Russian Agreement on Legal Assistance.⁶² Under the Convention, each contracting State shall designate a Central Authority, which receives requests for service from other States and carries them out or arranges to have them served. The bilateral agreement specifies that all assistance requests shall be forwarded through central authorities, being the Ministry of Justice and the Attorney General Office as indicated by the Russian Federation. Those attempts were not all successful, as certain requests were returned either “rejected” or “unprocessed”.

The Russian Embassy’s initial position was that the regular postal delivery was not effective and should be carried out in accordance with the Agreement on Legal Assistance.⁶³ It later changed its stance, insisting on service through diplomatic

⁶⁰ Warsaw Circuit Court, case no. II C 682/22.

⁶¹ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, (signed 15 November 1965, entered into force 10 February 1969), 658 UNTS 163.

⁶² Umowa między Rzeczpospolitą Polską a Federacją Rosyjską o pomocy prawnej i stosunkach prawnych w sprawach cywilnych i karnych, sporządzona w Warszawie dnia 16 września 1996 r. [Agreement between the Republic of Poland and the Russian Federation on legal assistance and legal relations in civil and criminal matters, concluded in Warsaw on 16 September 1996], *Journal of Laws* 2002, No. 83, item 750.

⁶³ See e.g. Russian Embassy in Poland, Note no. 293/H, 5 June 2013.

channels. Notwithstanding, in some cases the Russian Federation was represented by an attorney in Polish courts. For example, in a lawsuit concerning the recovery of the property at 2B Bobrowiecka Street,⁶⁴ a Polish attorney presented the court with the power of attorney issued by the Chancellery of the President of the Russian Federation, represented by the Chief of the Chancellery – Vladimir Igorevich Kozhin – “on behalf and in the interest of the Russian Federation” to carry out all procedural acts and “use all range of instruments to protect the rights of ownership of the Russian Federation” in relation to the property. The document was additionally notarized on 25 July 2013. Later on, the same attorney held the power of attorney from the Russian Ambassador in Poland, Sergey Vadimovich Andriyev, “to represent the Russian Federation before common courts and other authorities of the Republic of Poland in cases concerning the following federal properties located within the Republic of Poland: Warsaw, 2B Beethoven Street (formerly 2B Bobrowiecka) and, Warsaw, 101 Ostrobramska Street”.⁶⁵ Ultimately, the lawyer informed the Warsaw Circuit Court that despite the submitted powers of attorney he did not represent the Russian Federation and that his mandate came to an end.

Eventually, the Polish courts resolved to serve the correspondence on the Russian Federation through diplomatic channels, through the offices of the Polish Ministry of Foreign Affairs, by directing it to the Russian Embassy in Poland. This, however, did not change the attitude of the Russian counterparty, as all notes and attached court correspondence had been immediately returned by the Embassy, including lawsuits.⁶⁶ The only explanation in diplomatic notes repeated the same position of the Russian Federation that “the Embassy assumes that all matters relating to the Russian diplomatic real estates will be discussed after their legal status is regulated”. This approach of the Polish courts in relation to the service through diplomatic channels is, however, in line with the general practice in other jurisdictions and the jurisprudence of the Polish Supreme Court. The latter has confirmed that the Polish Code of Civil Procedure does not regulate the matter of delivering court correspondence to foreign States named as a party in a civil action. Nevertheless, the Court stressed that it is, however, possible to deliver correspondence through diplomatic channels through a Polish diplomatic mission in a defendant State or diplomatic mission of the defendant State in Poland.⁶⁷

⁶⁴ Warsaw Circuit Court, case no. XXIV C 184/13.

⁶⁵ *Ibidem*.

⁶⁶ See e.g. Polish Ministry of Foreign Affairs to Warsaw Circuit Court, DPT.2981.1.2018/129, 23 December 2019, available in Warsaw Circuit Court, case no. II C 1792/19.

⁶⁷ Polish Supreme Court, Judgment of 19 June 2018, I CSK 45/18.

4. THE QUESTION OF IMMUNITIES IN ADDRESSING THE RUSSIAN-POLISH PROPERTY DISPARITY

The Russian Federation has claimed and still claims that all its properties in Poland enjoy special “diplomatic” status, regardless of their use and purpose. This absolute and broad approach is, however, not shared by the Polish government. Thus, the question of immunities, or protection of immovable property owned or utilized in a foreign country by a sending State, remains the cornerstone of the Russian-Polish dispute.

In relation to diplomatic immunities, rights and privileges of diplomatic missions and consular posts are envisaged in the Vienna Conventions on Diplomatic Relations⁶⁸ (VCDR) and on Consular Relations⁶⁹ (VCCR), as well as by customary international law. This special protection extends not only to the diplomatic staff,⁷⁰ including the head of the mission, but also to premises occupied by the mission, which shall be understood as the buildings or parts of buildings and the appurtenant land “used for the purposes of the mission”, and covers as well the residence of the head of the mission.⁷¹ By virtue of Arts. 30(1) and 37(2) VCDR, private residences of diplomatic and administrative staff respectively, with some limitations in relation to the latter group, enjoy the same or analogous status as the residence of the head of the mission. Importantly, the legal definition of the diplomatic premises is rather functional in nature, requiring *de facto* use and occupancy, and applies only to facilities actually used for diplomatic purposes or as a residence of selected diplomatic officers. This means that ceasing to perform diplomatic or consular functions on the premises leads to a voluntary loss of this protection by a sending State. The sole designation as “diplomatic” by a sending State is here irrelevant. At the same time, the functional approach means that the title to the property is also irrelevant when considering the special status and protection of diplomatic properties. Hence, a sending State may own the property utilized for diplomatic purposes, lease it, or use it under another civil law contract, or even occupy it without any title (e.g. when a lease is terminated but the premises are not returned), but that the sole exercise of diplomatic functions justifies the special protection under VCDR.

⁶⁸ Vienna Convention on Diplomatic Relations (signed on 18 April 1961, entered into force 24 April 1964), 500 UNTS 95.

⁶⁹ Vienna Convention on Consular Relations (signed on 22 April 1963, entry into force 9 March 1967), 596 UNTS 261.

⁷⁰ For the sake of clarity, the reference to a diplomatic mission, diplomatic staff and head of the mission shall respectively extend over a consular post, consular staff and head of the post in this article. The immunities and protection envisaged in VCDR are wider than the ones in VCCR, so the relevant provisions of VCDR are discussed here.

⁷¹ Art. 1(i) VCDR.

This is mostly due to the fact that the receiving State had to consent, even tacitly, to the establishment of a diplomatic mission and its localisation on its territory. Furthermore, although the sending State is generally entitled to use the mission premises as it sees fit, this discretion is not absolute, but rather limited by Art. 41(1) VCDR, which specifies that it shall not be used “in any manner incompatible with the functions of the mission [...] or by other rules of general international law or by any special agreements”. For example, the commercial use of diplomatic premises is often considered as falling within this limitation. This position was also expressed by the Polish Ministry of Foreign Affairs in its numerous diplomatic notes of protest concerning the commercial lease of premises by the Russian Embassy.⁷²

The main aspects of the diplomatic status of the premises of a mission envisage their inviolability and protection by the receiving State. The inviolability requires first and foremost, as per Art. 22(1) VCDR, that agents of the receiving State do not enter the property. The protection aspect requires the receiving State to “take all appropriate steps to protect the premises [...] against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity,”⁷³ and also specifies certain obligations of the receiving State vis-à-vis private parties. It also provides for immunity from search, requisition, attachment or execution on the premises⁷⁴ in any kind of proceedings – court or administrative.

Having these considerations in mind, the strategy of the Polish government had to be carefully designed to navigate through the legal requirements of international law in relation to diplomatic premises and their protection. Hence, the Polish efforts to reclaim the property and the following court proceedings for their recovery have been limited only to properties not used for diplomatic and residential purposes. In the cases of 25 Belwederska and Beethovena (the first of which hosts the Consular Department of the Embassy, and the second is a residence for diplomatic staff of the Russian Embassy), the owners – the State Treasury and the City of Warsaw – sought only compensation for their non-contractual use, but did not move to secure court judgments on recovering the property.

All other properties are not used by the Russian Federation for diplomatic or consular functions, but for other purposes with no legal title under Polish or international law, and thus do not enjoy any special protection under international law. The 45 Kielecka premises were vacant, but previously used to be utilized for educational – including commercial – functions. The *Spyville* at 100 Sobieski Street was also vacant and in ruins before the seizure, with an occasional use for other purposes, including a nightclub. In this regard, already in its diplomatic note

⁷² Undersecretary of State in the Ministry of Foreign Affairs, *supra* note 27.

⁷³ Art. 22(2) VCDR.

⁷⁴ *Ibidem*, Art. 22(3).

of September 2011 to the Embassy of the Russian Federation, the Polish Ministry of Foreign Affairs stressed that these premises had not been used for diplomatic purposes for almost 20 years at that time.⁷⁵ Thus, it concluded that the VCDR was not and still is not applicable in relation to those properties. Furthermore, the status of the *Spyville* property and its unsuitable condition was also (probably unintentionally) confirmed by the attorney of the Russian Federation agent – the Federal State Unitary Enterprise of the Business Administration of the President of Russian Federation “Enterprise for Administration of Property Abroad” – in his objection to the default judgment. The brief challenged the property appraisal, stressing that its bad technical condition and that the premises had been totally devastated and certainly were not habitable,⁷⁶ which had also rendered the buildings unsuitable for official functions. The non-fulfilment of the definition of ‘diplomatic premises’ in those two cases paved the way for initiating court and execution proceedings, as diplomatic immunities from seizure did not apply. Ultimately, the bailiff could enter the premises and this did not constitute a violation of the premises under the VCDR.

The Russian response to the seizure of the 100 Sobieski property was rather predictable. The representative of the Russian Embassy was present at the location and protested. In the same vein, the Embassy sent a note of protest to the Ministry of Foreign Affairs.⁷⁷ Similarly, on 13 April 2022 Maria Zakharova – the spokeswoman for the Ministry of Foreign Affairs of the Russian Federation – called it illegal and “a flagrant violation of international law”, including the VCDR. According to the spokeswoman, the premises should be considered as enjoying diplomatic status. Additionally, with a dose of propaganda and cynicism the spokeswoman added that “the Polish Foreign Ministry resorts to demagoguery as it discusses the elimination of the real estate disparity in Russian-Polish relations. Is this what they call theft nowadays? I did not know that. I will add this term to the diplomatic dictionary”.⁷⁸ Interestingly, no adequate and proportional response followed, as the Russian authorities have not seized or threatened to seize any Polish property in Russia. All of them are used for diplomatic purposes, but this lack of response may also be interpreted as an indirect or veiled acknowledgement of the existence of the disparity. The Russian reaction to the seizure of the premises at 45 Kielecka

⁷⁵ Polish Ministry of Foreign Affairs, *supra* note 51.

⁷⁶ *Sprzeciw od wyroku zaocznego* [Objection to the default judgment], 6 December 2016, Warsaw Circuit Court, case no. XXIV C 162/16.

⁷⁷ TASS, *Polish authorities in Warsaw occupy Russian diplomatic real estate — Russian ambassador*, 11 April 2022, available at: <https://tass.com/politics/1435943> (accessed 30 April 2023).

⁷⁸ Russian Ministry of Foreign Affairs, *Briefing by Foreign Ministry Spokeswoman Maria Zakharova, Moscow*, 13 April 2022, available at: https://mid.ru/en/press_service/spokesman/briefings/1809211/#6 (accessed 30 April 2023).

Street was more concise but at the same time took on a threatening tone. The official statement of the Russian Ministry of Foreign Affairs reads that: “Warsaw’s arrogant move, which runs contrary to the standards of civilised interstate behaviour, will not remain unanswered and will have consequences for the Polish authorities and Poland’s interests in Russia. The architects of such divisive, illegal and incendiary moves should bear this in mind”.⁷⁹

Insofar as the State jurisdictional immunity is concerned, the Polish government expressed in its court briefs that the doctrine – as applied by the Polish courts – does not prevent bringing suit against the Russian Federation in common courts in relation to real property in its possession in Poland. Interestingly, the doctrine of State immunity is not regulated in the Polish law.⁸⁰ Only Art. 1113 of the Polish Code of Civil Procedure specifies that jurisdictional immunity shall be considered by a court *ex officio* at each stage of a case. It further decrees that once the immunity is acknowledged, a court dismisses a lawsuit or application, as the consideration of a case in violation of jurisdictional immunity results in the invalidity of the proceedings. This provision, however, neither addresses the essence of jurisdictional immunity in the Polish legal system, nor enumerates limitations on the immunity, nor determines persons or subjects protected by it. Consequently, this lacuna has been filled by the judicial practice of Polish courts, developed already in the interwar Poland.⁸¹ The doctrine of limited State immunity, as applied recently in Poland, was probably best summarized in two cases of the Polish Supreme Court which preceded the seizure of the 100 Sobieski property. Already in 2014, the highest Polish court stipulated that:

At the outset, it is necessary to address doubts arising in the case as to whether a foreign State, as a political organization and a subject of international law, may also be a subject of private law relations, and consequently a party to a litigation concerning the protection of such a private right or entitlement. Hence, the question oscillates around determining the applicant’s procedural capacity in this case. In connection with this issue, it is sufficient to stress that both the doctrine and jurisprudence distinguish two spheres of State activity in external relations: one associated with the exercise of sovereign functions of its authorities and officers, and the other undertaken within the framework of commercial transactions. The first realm of State activity, referred

⁷⁹ Russian Ministry of Foreign Affairs, *Foreign Ministry Statement on the seizure of the Russian Embassy school in Warsaw*, 29 April 2023, available at: https://mid.ru/en/press_service/spokesman/official_statement/1866256/ (accessed 13 July 2023).

⁸⁰ Arts. 1111 and 1112 of the Polish Code of Civil Procedure address only diplomatic and consular immunities and only in relations to members of the staff of the mission and of the consular post.

⁸¹ A good summary of the development of the State immunity doctrine in the Polish jurisprudence is provided in the judgement of the Supreme Court of 13 March 2008, III CSK 293/07.

to as *acta iure imperii*, is based on the principle of equality and sovereignty of States, which is fundamental in international law, and on the premise that a State shall not be subjected to jurisdiction of courts of other States (State jurisdictional immunity). Actions within the second realm, referred to as *acta iure gestionis*, in which a State acts as a party of civil legal relations, or more broadly of commercial transactions, do not fall within the scope of immunity from jurisdiction, and thus a foreign State has a legal standing within this realm.⁸²

A later judgment from 2018 provides an even more comprehensive discussion of the doctrine, and particularly explains the differences between State immunity at the trial level and the enforcement phase:

State immunity is divided into immunity from jurisdiction and immunity from execution. In the contemporary foreign legal scholarship, as well as in the jurisprudence of foreign courts, the approach to the institution of State immunity is dominated by the concept distinguishing sovereign acts of a State (*de iure imperia*) and civil acts (*de jure gestionis*) [...].

The second sphere of activity of a foreign State refers to the civil and commercial activity, i.e. to ordinary civil and commercial transactions. In particular, it concerns cases having as its subject rights *in rem* to immovable property located in the territory of the forum State (of the court) and claims related to immovable property. According to international law, a State is entitled to adjudicate cases involving another State to the extent that they concern rights to real property, which is justified by the fact that the sovereignty over land may be effectively exercised only by the State whose territory it is part of. In such cases, a foreign State in the State of the court is not entitled to jurisdictional immunity. The Supreme Court has approved the limited (functional) immunity of a foreign State by stating that the immunity does not apply to actions of State authorities in the field of commercial transactions. When evaluating the criterion for distinguishing between the *gestionis* and *imperium* actions of a foreign State, the nature of a specific action should be referred to. Hence, the existence of State jurisdictional immunity is linked, in the circumstances of the case, with an action that can only be performed by a public authority profiting from the State attributes [...].

During trial proceedings, the limitation of State immunity results from applying an objective criterion, which is the nature of the State's activity that is the cause of the dispute. But in enforcement proceedings, the concept of limited immunity is usually implemented by means of a mixed subjective-objective criterion relating to the intended use of the assets against which the enforcement is to be directed. In trial, the considera-

⁸² Polish Supreme Court, Order of 13 March 2014, I CSK 47/13.

tion of jurisdictional immunity focuses on assessing whether the act of a foreign State belongs to the sphere of *imperium* or *gestionis*, while in enforcement proceedings the crucial issue is whether the enforcement may be directed towards certain assets. Hence, enforcement is admissible in relation to State property not intended for public purposes and, of course, if the proceedings concerns acts *de jure gestionis*.⁸³

In this case, the Supreme Court confirmed that legal actions may be brought before Polish courts against foreign States in relation to compensation for the use of real properties, even for official and diplomatic purposes, and State immunity shall not bar such causes of action. It also substantiated that diplomatic immunity does not extend to pecuniary claims relating to the use of diplomatic properties, but rather in line with the VCDR is limited to physical violability. *A minore ad maius*, the immunity shall not be a bar in proceedings relating to the use of properties actually not utilized for diplomatic purposes.

In addition to the above, in the case relating to the property at 17/19 Szucha Avenue and the validity of the 1960 land deed, the Supreme Court stressed yet another interesting aspect of State immunity and its limitations. Any disputes over title to land are essentially civil law matters that may only be settled and adjudicated by domestic civil courts, which in such cases have the exclusive jurisdiction. The court added that:

First of all, one should agree with the view [...] that Polish courts have jurisdiction in this case. The Soviet State, as a party to the real estate exchange agreement of 8 October 1960, did not act as a subject of diplomatic relations, but as a subject of private law (*acta iure gestionis*), which is not entitled to immunity from jurisdiction. The subject-matter of the present case is the assessment of the validity and effectiveness of that contract from the civil law point of view, which may only be decided by a civil court. From the very essence of such a case, which concerns the determination of the legal status of real estate, it follows that the judgment rendered shall not in any way infringe upon the sovereignty of a foreign State (State immunity) [...] nor upon the diplomatic immunity enjoyed by diplomatic premises and diplomatic representatives. Thus, the reference by the defendant State Treasury of the Russian Federation to the diplomatic and jurisdictional immunity protecting the Embassy is inaccurate.⁸⁴

⁸³ Polish Supreme Court, *supra* note 67.

⁸⁴ Polish Supreme Court, Judgment of 13 November 2003, I CK 380/02. *See also* A. Wyrozumska, *Poland*, in: D. Shelton (ed.), *International Law and Domestic Legal Systems. Incorporation, Transformation, and Persuasion*, Oxford University Press, Oxford: 2011, pp. 486-487.

There were also additional arguments presented during the court proceedings relating to Russian properties in Warsaw by the Polish government. International custom specifies that a State cannot invoke immunity from jurisdiction before courts of another State in cases relating to immovable property situated in the forum State, including any right, interest, possession, use or obligation arising thereof. The concrete expression of this rule may be found in the UN Convention on Jurisdictional Immunities,⁸⁵ which however has not yet entered into force, as well as in the European Convention on State Immunity.⁸⁶ Furthermore, the Polish lawsuit⁸⁷ referred to the jurisprudence of national courts from other jurisdictions – including Austria, Germany, Greece, and Italy. In particular, a longer discussion was provided in relation to the *Yugoslav Military Mission* case⁸⁸ decided by the German Federal Constitutional Court. The governmental brief acknowledged the German judgment as fundamental case law, playing an essential role in the evolution of diplomatic immunity, including the inviolability of mission premises, and the confirmation of admissibility of litigation in cases concerning rights *in rem*.

Unfortunately, Polish courts considering lawsuits lodged by the Polish government against the Russian Federation for the recovery of property or compensation for their non-contractual use were not in a position to further develop the application of State and diplomatic immunities doctrine, as they rendered default judgments due to the non-participation of the defendant. Although their decisions do not contain detailed motives, the Polish settled line of jurisprudence is rather clear, as evidenced by the cited judgments, which acknowledge the limits of the jurisdictional immunities of foreign States in cases relating to title to real property and compensation for its use.

FINAL REMARKS

The real property disparity between Poland and Russia is a remnant of the Soviet domination over this part of Europe and one of many “hot spots” in the Polish-Russian tense relations. The lack of willingness to address this issue through diplomatic and political means has led to the initiation of several proceedings in Polish courts aimed at recovering occupied real estate. In the process, despite the diplomatic protests of the Russian counterparty, the Polish authorities have achieved partial success by seizing the *Spyville* and Kielecka 45 Street property, and seem to be determined to

⁸⁵ Art. 13(b) of the United Nations Convention on Jurisdictional Immunities of States and Their Property (signed on 2 December 2004), UNGA Res. A/59/38.

⁸⁶ Art. 9 of the European Convention on State Immunity (signed on 16 May 1972) 1495 UNTS 181.

⁸⁷ Warsaw Circuit Court, case no. XXIV C 802/15.

⁸⁸ German Federal Constitutional Court, *Yugoslav Military Mission*, BVerfGE 15, 25 2 BvM 1/60, 30 October 1962, 65 ILR 108.

move forward in relation to other premises. While doing so, the Polish government and courts faced with Russian property issues had to manoeuvre through a complex network of international norms and the relations between them, particularly those relating to State immunities and immunities of diplomatic missions. Hence, Poland has implemented a selective approach, adapting its court tactics on a case-by-case basis to avoid any possible infringement of rights and privileges enjoyed by the Russian Federation. This has included securing property recovery judgments in relation to premises long used by the Russian Federation for non-official purposes or factually abandoned due to their inadequate technical conditions.

These actions, despite carrying heavy political burdens, are consistent with the international jurisprudence on the subject and the judicial practise of courts from several other jurisdictions,⁸⁹ including Austria,⁹⁰ Germany,⁹¹ Israel,⁹² Italy,⁹³ Sweden,⁹⁴ and the United States.⁹⁵ Insofar as concerns the international case law, the judgment on the merits in the dispute between France and Equatorial Guinea⁹⁶ rendered by the International Court of Justice (ICJ)⁹⁷, may be of particular interest. The Court sided with France by rejecting the constatation that the designation of premises by a sending State as diplomatic is sufficient to invoke the immunities and protection envisaged in the VCDR. It also observed that a different conclusion would “leave the receiving State vulnerable to a potential misuse of diplomatic privileges and immunities, which the drafters of the Vienna Convention intended to avoid”.⁹⁸ Moreover, as the ICJ found that the property designated as “diplomatic” by the Applicant was not used for diplomatic purposes, the Respondent’s action

⁸⁹ All subsequently referred cases concerned the State and diplomatic immunities in relations to property title, property recovery, and damages or compensation for the use of property.

⁹⁰ See e.g. Austrian Regional Court for Civil Matters (Vienna), *E AG v. S*, Appeal judgment, 40 R7/01b, ILDC 357 (AT 2001), 23 January 2001.

⁹¹ See e.g. German Higher Regional Court (Berlin), *State Immunity Case, Anonymous v. Land Registry of Berlin*, Complaint, 1 W 276/09, ILDC 2591 (DE 2010), 14 June 2010.

⁹² See e.g. Israeli Supreme Court *Her Majesty the Queen in Right of Canada v. Edelson and ors*, Final appeal judgment, PLA 7092/94, 51(1) PD 625, ILDC 577 (IL 1997), 3 June 1997.

⁹³ See e.g. Italian Supreme Court of Cassation, *Ministry of Foreign Affairs v. Immobiliare Villa ai Pini srl and China*, Appeal Judgment, Case No 19600/2008, (2009) 92(2) Riv Dir Int 596, ILDC 1371 (IT 2008), 17th July 2008.

⁹⁴ See e.g. Swedish Supreme Court, *Sedelmayer v. Russian Federation*, Judgment, ILDC 1673 (SE 2011), NJA 2011 475, 1st July 2011.

⁹⁵ See e.g. *Pradhan v. Al-Sabab*, 299 F.Supp.2d 493 (D. Md. 2004), ILDC 718 (US 2004).

⁹⁶ ICJ, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Judgment, 11 December 2020, ICJ Rep 2020, p. 300.

⁹⁷ Another interesting decision of the ICJ in the realm of immunities is ICJ, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 3 February 2012, ICJ Rep 2012, p. 99, which discusses the doctrine of State immunity and its exceptions. Although the ICJ summarizes in the judgment some general elements of the doctrine, nevertheless the main axis of the dispute concerned acts of armed forces, war crimes committed by those forces, and the possible application of State immunities.

⁹⁸ ICJ, *supra* note 96, para. 67.

of searching, attaching and ultimately confiscating the premises were not in violation of international law. But there is yet another aspect of the *France/Equatorial Guinea* dispute which is shared with the Polish-Russian disparity, and this refers to the instrumentalisation of international law for illegitimate reasons. During the proceedings before the ICJ, France even forwarded the argument of abuse of international law, both procedural and material,⁹⁹ as the actions undertaken by the Applicant were aimed at shielding the son of the President and his personal assets against ongoing investigation and criminal proceedings in France for money laundering and embezzlement of public funds. Similarly, the Russian Federation puts forward claims of diplomatic privilege and immunities in relation to its properties in Warsaw, even though many of them are not used for those or any other official purposes, and while some are vacated or became inhabitable. But the Russian possession of large complexes in the heart of the Polish capital is a propaganda tool and a sign of former domination and political submission.

That is why the Polish government, with large support of the general public, initiated the process of enforcing judgments and recovering properties held by Russia in Warsaw, also to be able to finally reconcile with its political past and make amends in areas where Russian influences are still present, or at least visible. Notwithstanding the fact that some of these decisive actions were triggered by the Russian invasion of Ukraine, many of the relevant judicial decisions were secured months if not years earlier. This proves that the Polish State is rather sensitive to the imbalance of power in relations with the Russian Federation. Mere legal arguments and methods, even if correct and justified, are not sufficient, but it was the general shift in the political landscape and the European, if not global, politics that facilitated some of these radical moves. In this context, it is interesting to observe that the Polish example in safeguarding parity in real estate matters and ending the Russian dominance in this sphere of bilateral relations has been picked up by other countries in the region as well; e.g., Czechia.¹⁰⁰

Finally, there are still challenges to finalizing the process of restoring the real estate parity in Polish-Russian relations. The Polish State has secured court judgments for recovery in relation to more premises, but only time will tell whether the deter-

⁹⁹ ICJ, *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, 6 June 2018, ICJ Rep 2018, p. 292, paras. 139-141.

¹⁰⁰ D. Lazarová, *Foreign minister sets up working group to look into the use of real estate owned by Russian Embassy*, Radio Prague International, 23 May 2022, available at: <https://english.radio.cz/foreign-minister-sets-working-group-look-use-real-estate-owned-russian-embassy-8751209>; *Czech ministry summons Russian ambassador over diplomatic properties*, Reuters, 31 May 2022, available at: <https://www.reuters.com/world/europe/czech-ministry-summons-russian-ambassador-over-diplomatic-property-use-doubts-2022-05-31/>; I. Willoughby, *Czechia eyes ending contracts allowing free rental of sites of Russian buildings*, Radio Prague International, 19 February 2023, available at: <https://english.radio.cz/czechia-eyes-ending-contracts-allowing-free-rental-sites-russian-buildings-8775481> (all accessed 30 April 2023).

mination to enforce them lasts as well. Then the matter of collecting the ordered compensation for non-contractual use needs to be addressed. It is rather certain that Russia will not pay it voluntarily, and that the options of the Polish authorities are rather significantly limited by the State immunity from execution. Next, Russia still holds at least two real estate premises in Warsaw without any legal title, which are actually used for official purposes – as a consular post and cultural centre and as housing quarters for the Embassy employees. What also remains critical is ensuring the continuous and uninterrupted provision of diplomatic and consular functions of the Polish State within the territory of the Russian Federation. The Russian authorities have refused for decades to disclose the ownership of the land under the Polish Embassy in Moscow in the land registry. Furthermore, consular posts outside the capital are leased, some from the Russian central or local authorities. In St. Petersburg in particular the conflict over the premises has grown over the years. There are currently no prospects for resolving these issues and securing the stability and security of the Polish diplomatic mission and consular posts in Russia.