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This Land Is My Land

By ERIMAR VON DER OSTEN

Selling property one doesn't own is a classic trick of con artists and swindlers. But surprisingly, anyone considering buying from the federal government in eastern Germany may be getting the proverbial Brooklyn Bridge. Many contend that the German government never had legal title to the lands and businesses that East German Communists confiscated between 1945 and 1949. Yet the government continues to sell them despite several lawsuits still pending at the Constitutional Court in Karlsruhe and at the European Human Rights Commission in Strasbourg.

One of the houses offered is my late father's estate in Mecklenburg. It is described in a brochure by the new Land Mecklenburg-Vorpommern as "a vacant historical monument from about 1600 surrounded by three lakes in very picturesque landscape," and its suggested uses are as a "hotel with conference rooms or congress center."

The German government has maintained that Russia made it a precondition for German reunification to uphold the Soviet confiscations between 1945 and 1949. For that reason, the so-called Bodenreform—the expropriations by Communists euphemistically tagged land reform—couldn't be touched according to Bonn.

Yet Russians who should know say that Moscow only insisted upon the legality of the original land reform but had no intentions of telling the new government what to do about the property. British historian Norman Stone, for example, asked Mikhail Gorbachev in an interview last year whether he had insisted on not returning eastern German property to its previous owners during the talks on German unification. Mr. Gorbachev denied that such conditions were ever proposed and so did his foreign minister, Eduard Shevardnadze. Even former U.S. President George Bush has weighed in, saying he could not confirm the German government's version of events.

Mr. Stone has concluded that "some interesting things have emerged [from this issue]. . . One is the flimsiness of constitutional rights, and constitutional courts, if a government is truly determined to have its wicked way."

Under the terms of the unification treaty, the German state acknowledges the illegitimacy of all violations of private prop-

erty after 1949—the year both German states were founded—and is compensating former owners or their descendants by restitution. But those whose property was expropriated before 1949 get a far different treatment: They are offered less than 100th of the property value after the turn of the millennium but retain no further right to the property.

Nor is the government's strange position somehow guided by altruistic concerns for eastern Germans now living in these houses. Less than half of the properties seized before 1949 are inhabited or otherwise used by former East Germans who had acquired their rights in good faith. Everything else was transferred to the Federal Republic's ownership in 1990 and there is no legal or moral reason why these properties cannot be returned to their original owners.

The government's line was upheld in front of the Constitutional Court in 1991 by foreign ministry official Dieter Kastrup. He testified that the Soviet Union insisted upon the



irreversibility of the expropriations during reunification negotiations. But a foreign ministry protocol recently made public shows

that when Mr. Kastrup met with the Soviet Union's ambassador to Germany, Yuli Kvitsinski, on Aug. 13, 1990, Mr. Kvitsinski made it clear that the Soviet concern was merely the legality of the original expropriation because Moscow didn't want to run the risk of being challenged in court for those acts.

This is a key point because if Mr. Kastrup is right, the unification treaty violates both international law and national property rights enshrined in Article 14 of the Federal Republic's constitution. The government had asked parliament on Sept. 29, 1990 for a constitutional amendment to affirm the validity of the law-bending unification treaty. Thus Germany today has the distinction of experiencing three expropriations in the last 60 years: First by the Nazis in the 1930s, then by the Communists in the following

decade, and a third time by the misguided officials reunifying Germany in the 1990s.

Apparently Bonn wanted the money from the property sales to pay for reunification costs (horrendously miscalculated anyway) and to ensure the loyalty of state, provincial and local officials in the new Laender. The Soviet Union was merely an excuse to offer those Germans for whom property rights are more than words on a page. The government's intentions were clear from the beginning. Finance Minister Theo Waigel told parliament on May 23, 1990, before the reunification talks had even begun: "Proceeds from potential sales shall be used for the settlement of obligations of the state."

Moreover, in the nomenklatura capitalism typical of post-1989 Eastern Europe, the sales are not always transparent auctions. Official bodies publicize the process in an uneven manner and then choose, according to their personal preferences, between usage proposals that differ considerably. The result: Former cadres have ample opportunity to allocate state properties to themselves, their families or their cronies.

It is even possible that the Constitutional Court assisted the government's strategy in dealing with the touchy topic. During the hearing before the Constitutional Court on Jan. 22, 1991, constitutional judge Friedrich Henschel asked GDR Prime Minister Lothar de Maiziere which land the Soviet Union did not want returned to the pre-1945 owners. Mr. de Maiziere was interrupted by another constitutional judge and thereby prevented from answering; he later said that his view was that settlers' land and "honest" acquisitions should not be touched.

As a result the court never made the decisive distinction between land that should not be returned because it had been allocated to or acquired by East German citizens acting in good faith (settlers' land) and land that was expropriated but not assigned to individuals.

The government is not a private person who has acquired property in good faith. For the German state to act as if this were the case grossly contradicts the constitutional responsibility of the government to safeguard private property.

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