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TRANSFER OF OWNERSHIP OF FORESTS IN THE WESTERN AND NORTHERN TERRITORIES AFTER WORLD WAR II: NATIONALIZATION AND REPRIVATIZATION

Summary: The article concerns the transfer of ownership of forest property, nationalized after World War II. It covers the subject matter of the process of property acquisition by way of nationalization decrees, in particular in the area of the so-called Regained Territories and dilemmas related to the issue of reprivatization. The work includes issues proposed over the years and existing statutory solutions, as well as case law affecting the interpretation of legal norms.

Keywords:
Transfer of ownership - nationalization - reprivatization - forests

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INTRODUCTION

The Third Reich's defeat initiated territorial changes on the map of Europe, the beneficiary of which became, among others, Poland. According to the wording of Chapter IX of the Potsdam Agreement, the German territories east of the Odra and Nysa Łużycka and the area of the Free City of Gdańsk were transferred to Poland, compensating for the loss of the Eastern Borderlands to the USSR. The territorial provisions of Potsdam were supplemented by signing on August 16, 1945. agreements between the Provisional Government of National Unity of the Republic of Poland and the Government of the USSR, pursuant to which the USSR gave Poland all claims to German property located in Poland, including that part of Germany, which will be annexed to Poland [Dębski S., Góralski W.M. 2004: 41-42].

The designation of the western border of the Polish state along the Odra and Nysa Łużycka regions meant a territorial purchase of 101,000. km², or about 1/3 of the entire territory of Poland, of which 62.1% were agricultural land and 26.7% of forests [Rybicki H. 1976: 199]. By introducing a new economic and social system, the state took over after 1944. 2,700,000 ha of agricultural land and 1780 thousand ha of forests, of which a large percentage was allocated for the implementation of the agrarian reform [Jastrzębski R. 2017: 51]. On the other hand, about 85% of forest real estate and the entire wood industry were included in the management of the State Forests, thus finalizing the process of transfer of private or self-government property to the state.

These changes were made by means of nationalization, introduced into Polish legislation along the lines of Soviet solutions, in connection with property transfers carried out on a large scale. The concepts that existed until now in the doctrine of the law did not fully reflect the significance of the implemented undertaking, because, as J. Wasilkowski emphasized:

> Socialist nationalization cannot be equated either with expropriation (in the technical-legal sense) or with confiscation, which is also used in other socio-economic formations [Wasilkowski J. 1969: 143].

For this reason, in the Polish doctrine after World War II, nationalization was defined, clearly distinguishing this form of transfer of ownership from expropriation.

According to the above, nationalization is defined as one of the administrative legal means of acquiring ownership rights. Thus, the passage of law takes place as a result of imperious state interference, without the consent of the entities concerned. The property of each entity may be subject to speculation; both a natural person, a legal person as well as an entity without legal personality, while the purchaser of the law can only be a state. The radical change in ownership relations, which was the effect of nationalization, created new legal relations for over 40 years. That is why the transformation of the political system at the turn of the 1980s and 1990s raised the question of a new form of ownership relations, including the issue of possible reprivatization of properties nationalized by means of decrees after World War II.

THE LEGAL BASES OF THE NATIONALIZATION OF FORESTS ON THE SO-CALLED RECOVERED TERRITORIES.

Nationalization of forests throughout the country was mainly based on the Decree of the PKWN of December 12, 1944. on the takeover of some forests into the ownership of the Treasury [Dz.U. 1945, No. 15 item 82]. This decree was a supplement to the decree on agricultural reform, which initiated changes in the system and ownership after the Second World War. In a sense, it crowned the 'work; of nationalization, covering forests with a smaller area, not subject to the takeover under the agricultural reform decree.

According to the wording of art. 1 of the decree, forests and forest land with an area of over 25 ha, owned or co-owned by natural or legal persons, became the property of the State

Treasury[1]. At the same time, under the decree, excluded were forests and forest land owned by local self-government and those forests that were divided legally or actually before September 1, 1939 for plots no greater than 25 ha, if these areas were not subject to nationalization on the basis of the relevant provisions of the Decree on Agricultural Reform. Forests and local government land for a long time did not resist the rest of the nationalization activities, as they were taken over under the Act of November 18, 1948. on the ownership of your state of some forests and other local government lands [Dz. U. 1948, No. 57, item 456].

All the above area restrictions did not include forests belonging to persons of German nationality, which according to the wording of art. 2 of the decree were nationalized regardless of size, together with non-forest land associated with them and other real estate and movable property. At the same time, they were not entitled to any, even declarative compensation for lost forests, as the monthly supply provided for other natural persons in art. 5 of the decree.

The forest or other forest lands could also have been nationalized as part of an undefined closer property on the basis of the previously issued PKWN Decree of September 6, 1944. on the implementation of agricultural reform [Dz.U. 1945, No. 3 item 13]. According to art. 2 of the decree for the

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[1] Along with the forests of nationalization, forest land, meadows and waters, deputant land of the administration and forest guard, all real estate and movable property located in the area of the nationalized forest facility, regardless of its purpose, as well as those used to run the forest holding and all material supplies were subject to nationalization.

purposes of land reform, agricultural land properties, owned by the State Treasury, citizens of the German Reich and Polish citizens of German nationality, persons convicted to, among others, for treason or confiscated for other reasons. According to art. 2 e) of the decree, the property of natural and legal persons not mentioned above was subject to nationalization, if the total real estate area exceeded 100 ha of total area or 50 ha of agricultural land, and in the Poznań, Pomeranian and Silesian provinces, if their total area exceeds 100 ha of the total area, regardless of the size of agricultural land. As is clear from the above regulation, unlike other land estates, "post-German" lands were subject to reform regardless of the area and actual destination. What also points out, by virtue of the decree virtually all large farms with an area of over 100 ha were nationalized, from which agricultural land could account for less than 50 ha, and the rest were forests or forest industry objects. In such cases, the 'forest' part was not allocated for the purposes of agricultural reform, and was given to the Chief Executive of the State Forests [Miłosz J. 2012: 193].

It should be emphasized that the decrees on forests and agricultural reform were not included in the scope of the Western and Northern Territories, formally attached to Poland after the entry into force of the Potsdam Agreement. In order to include them in the Polish law system, the Decree of November 13, 1945, was issued about the management of the Regained Territories, constituting in art. 4, that this area would be covered by the legislation in force in the area of the District Court in Poznań, and in the field of labor law - the legislation in force in the area of the Upper Silesian part of the Silesian Voivodeship [Kociubiński P.T. 2013: 328]. The reasons for the application of the described legal procedure were purely practical, as they were based on the German Civil Code from 1896, the regulations in force in Poznan best correspond to the existing legal relations [Góralski W.M. 2004: 196]. At the same time, this procedure made it possible to implement on the connected areas the project of nationalization of forests and real estates.

Moreover, what is extremely important in the area of the Western and Northern Territories was the wide application of special norms, not directly related to the project of implemented political changes, but directed directly to German property, as in the case of the decree of March 8, 1946. on abandoned and post-German property [Dz.U. RP 1946, No. 13 item 87]. On the basis of this act, the State Treasury took over all property: the German Reich and the former Free City of Gdańsk; citizens of the German Reich and the former Free City of Gdańsk with the exception of people of

Polish nationality or others persecuted by Germans; German and Gdańsk legal persons, excluding legal persons governed by public law; companies controlled by German or Gdańsk citizens or by the German or Gdańsk administration; people escaped to the enemy. Article 2 paragraph 4 of the same decree stated that the assets of German and Gdańsk legal entities under public law were transferred under the law of appropriate Polish legal persons. To explain the wording used in the decree, the Minister of Justice in the ordinance of May 21, 1946. stated that people of Polish nationality are citizens of the German Reich and the former Free City of Gdańsk, who are of Polish descent or show their liaison with the Polish nation and make a declaration of fidelity to the Polish nation, as well as citizens of the German Reich and the former Free City of Gdańsk, if they obtained or would obtain declaration of Polish nationality in accordance with the provisions of art. 1 and 2 of the Act of April 28, 1946. on the citizenship of the Polish State and persons of Polish nationality residing in the Regained Territories [Dz.U.1946 No. 28 item 182]. The same legal act stipulated that people of other nationalities were those belonging to national groups, which after January 30, 1933. have experienced legal restrictions. These standards became the basis of the national verification process in the Regained Territories, allowing part of the population (including autochthones) to preserve property, or even the nationalization of their forests and real estates based on the principles provided for non-German nationals.

Demonstration of belonging to the Polish nation and loyalty to this nation was of special importance also because the deprivation of property could result from the application of special norms of sanction nature, providing for the withdrawal of property of persons who compromised the state and the Polish nation. According to the Decree of June 28, 1946, about criminal liability for deviation from nationality during the war of 1939-1945, people who signed the Volksliste could be deprived of their property by virtue of a judicial decision. An additional weapon was the Decree of September 13, 1946, on the exclusion from society of people of German nationality, on the basis of which these people could be displaced from the territory of the Polish state, and their property was subject to forfeiture [Góralski W.M. 2004: 198].

The aforementioned legal acts "tightened" the subject and subjective scope of expropriations, effectively excluding the situation in which the post-German property (including forests) was not taken over. The legislation did not provide for exceptions to this rule. The property of natural

and legal persons, both private law and public law, were subject to nationalization.

A characteristic feature of the entire process was the transfer of property by virtue of law. This meant that the entry in the land and mortgage register was not required for the effectiveness of taking over ownership, as it was declaratory and not constitutive. As a consequence, any negligence in this respect (not infrequent) had no legal significance. Modern jurisprudence maintains such an interpretation, an example of which is the Supreme Court's verdict of March 25, 1999. indicating that the acquisition of land property referred to in art. 2 sec. 1 lit. b-d of the Decree of September 6, 1944. the land reform was carried out by virtue of a decree, and the entry in the land and mortgage register was made only on the basis of an appropriate certificate, which in turn was not an administrative decision [Ref. III RN 165/98]. It should also be emphasized that the transfer of rights under the law only included post-German property; this rule did not apply to all other assets nationalized after World War II.

ON THE PROBLEM OF REPRIVATIZATION: ATTEMPTS TO REGULATE THE RETURN OF PROPERTY NATIONALIZED AFTER WORLD WAR II

Contemporary constitutional standards do not allow nationalization, subjecting special protection to property rights. Art. 21 of the Basic Law increases the protection of property and the right of inheritance to the rank of one of the constitutional principles of the state. In turn, art. 64 lists the right to property as the first of economic, social and cultural rights, subjecting it to all legal protection more equally [Dz.U997, item. 78, No. 483]. This, of course, does not mean the absolute character of the right of ownership; the same provision of the Basic Law allows its limitation if it is made by law and does not violate the essence of the right of ownership. In turn, the aforementioned art. 21 in paragraph 2 introduces to the legal order the institution of expropriation, developed in ordinary legislation under constitutional conditions.

It is not surprising, then, that the brief analysis of nationalization acts reveals their open contradiction with contemporary democratic norms relating to the protection of property, and this assessment does not raise any doubts. On the other hand, there is no doubt as to the fact that the nationalization acts were implemented and their implementation had perma-

nent effects on ownership relations. However, political changes carried out after 1989. raised the hope of some circles to reverse the effects of nationalization and the enactment of a reprivatization law, similar to other post-communist countries[2]. These expectations were fuelled by some activities of legislative bodies, such as the promising Senate resolution of April 16, 1998. about legal continuity between the II and III RP. In this resolution, the Senate states, among others:

> Normative acts established by the non-sovereign legislator in the years 1944-1989 are deprived of legal force, if they have compromised the sovereign existence of the Polish state or are contrary to the principles of law recognized by civilized nations, which are expressed in the Universal Declaration of Human Rights. This applies in particular to normative acts violating basic civil rights and freedoms. These include acts depriving of Polish citizenship, making the penal law a tool of persecuting people fighting for independence or differing in world-view beliefs, as well as acts on the basis of which unfair deprivation of property [M.P. 1998 No. 12 item 200].

In the same act, the Upper House emphasizes communication with the Basic Law of April 23, 1935, while defining the constitution of July 22, 1952. as the '*constitution of a non-sovereign state*'. Bold and unambiguous statements contained in the resolution may be due to the fact that it is devoid of a normative character, but it could be read as an announcement of taking action to restore property nationalized after the Second World War.

Anyhow, attempts in this respect were made at the beginning of democratic transformations, beginning with the draft law on the return of property taken over by the state, directed by the Senate, the Civic Parliamentary Club to the legislative commission on May 17, 1990[3]. In subsequent years, the Sejm worked on a number of bills designed to regulate the return of property to former owners. Out of the twenty projects submitted so far, all were rejected at various stages of their proceedings [Ścisłowska A. http://serwis.mamprawowiedziec.pl/analiza/2016/09/20-razy-reprywatyzacja.html]. Only one of the submitted projects passed the entire leg-

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[2] Previous legislative proposals in this area and a comparative analysis of solutions applied in the countries of the former Eastern Bloc have been presented, among others, in: P. Makarzec, *Reprivatization in Poland and other countries of Central and Eastern Europe*, Studio Iuridica Lublinensia 2003, vol. 2,

[3] , See in Office of Analysis and Documentation of the Chancellery of the Senate, Problems of reprivatization in the light of bills in the years 1989-2010, with particular reference to the proposals of recent regulations, OT-591, October 2010

islative process in March 2001 but was vetoed by President Aleksander Kwaśniewski.

The draft resolution adopted by the Sejm was prepared by the AWS-UW government, based on the proposals of the consultative council for privatization in 1993. As a basic form of compensation, the return of real estate in kind was accepted, except when it was purchased by third parties or constituted a high value for Polish culture. In this situation, the former owners or their heirs would be entitled to ownership interests and reprivatization vouchers in the form of bearer securities, to acquire certain real estate from State Treasury resources or flats sold.

In the Act of March 7, 2001. compensations for the nationalization of forests were also envisaged. The State Forestry Enterprise 'State Forests' was to purchase reprivatization vouchers, obtained from the loss of ownership of forest real estate. The former owners were to get the so-called forest rent, the amount of which would depend on the profitability of the forest. The State Forests would buy reprivatization vouchers from the forestry fund established by the Act of 28 September 1991. about forests [OT-591, October 2010]. The amount of compensation was 50% of the value of lost property, while the group of entitled entities was limited to persons who had Polish citizenship in 1999 [Ścisłowska A. http://serwis.mamprawowiedziec.pl/analiza/2016/09/20-razy-reprywatyzacja. html]. As it results from the above regulations, the Act did not provide for the possibility of returning nationalized forests in kind, but in the form of financial compensation.

The Act, after being passed by the Sejm, was handed over to President Aleksander Kwaśniewski, who vetoed the bill, pointing to an excessive burden on the state budget related to its implementation. Justifying the motion to reconsider the act, the president pointed out that:

> the act introduces an expensive model of reprivatization, the implementation of which will cause significant financial consequences on the national economy, and in addition, by removing property, it threatens the functioning of legal entities, including local government units [Request of the President of the Polish Republic of 22.03.2001. print no. 2719].

In addition, the President expressed concern that the number of potential applications adopted by the government was seriously underestimated, taking into account the accepted methods of statistical surveys and discrepancies in the calculations between the government and associ-

ations of former owners. This means that the value of collateral provided for in the Act to cover reprivatization claims may be insufficient.

The President also drew attention to the fact that reprivatization in the shape adopted in the Act may seriously undermine the basis for the functioning of local government units, equipped as a result of the communalisation process with their own assets [ibidem]. The return of real estate previously transferred to municipalities without an equivalent for local self-government units means in practice that they are prevented from fulfilling the tasks imposed by law.

Serious doubts of the President were also raised by regulations regarding financial compensation for loss of forests. Government calculations indicated ca. 7 thousand persons entitled to receive a forest rent due to the state taking over approx. 1850 thousand ha of forests. The payment period was to cover 10 years from the issue of reprivatization bills, from the PGL 'State Forests' budget, which for this purpose would have to reserve a sum of about PLN 120 million per year [ibidem]. Already in the course of the legislative process, concerns were expressed as to whether the State Forests would be able to generate income allowing the payment of claims, especially taking into account the decreasing profitability of forest management and the relatively long time of collecting forest rent by the entitled persons.

After the President's rejection of the Act of March 7, 2001. no project for the return of property nationalized after the Second World War has been passed[4]. Submitted proposals were rejected, withdrawn or lost at the stage of committee work. The atmosphere around work on the Act did not improve the reports on possible German claims to property and properties left in the Western and Northern Territories, although these fears had no real legal basis.

In 2017 once again, an initiative was taken to regulate compensation by law, adopting a bill to compensate for some of the harm done to natural persons as a result of the takeover of immovable property or monu-

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[4] The exceptions are two laws regulating the problem of reprivatization in a partial way: the Act of June 7, 2001. on the amendment to the act on commercialization and privatization of state-owned enterprises (Journal of Laws 2001 No. 72 item 745) and the Act of July 8, 2005 on the exercise of the right to compensation for leaving real estate outside the current borders of the Polish state (the law regulating the return of the so-called Zabużański property, OJ 2005 No. 169, item 1418)

ments by the communist authorities after 1944[5]. The project does not provide for the return of the acquired property in kind, but compensation in the form of: including the value of the property taken over as a share of the sale price, cash benefit or treasury bonds[6]. The narrow circle of authorized entities and the level of benefits set at 20-25% of the value of the property has caused the project to many opponents, accusing its creators of the intention to terminate claims instead of implementing them. It is not known whether and when this project will become the subject of debates of the Sejm. As a consequence, Poland does not have a law that would comprehensively regulate the issue of the return of nationalized property or payment of compensation on this account. Nothing indicates that there will be a change in this area in the near future.

THE CONSTITUTIONAL TRIBUNAL AGAINST NATIONALIZATION DECREES

In the face of failure in attempts to regulate the return of property, former owners and their heirs from the beginning of the 90s tried to pursue reprivatization claims in court. The issue of constitutionality and the interpretation of nationalization decrees before the Constitutional Tribunal, which has already repeatedly expressed itself on this matter, was raised in parallel. Of particular significance for determining the status of forest real estate are the resolutions and judgments of the Tribunal regarding agricultural reform.

The first interpretative resolution was adopted on September 19, 1990. [Ref. In 3/89, OTK No. 1/1990, item 26]. The Tribunal established in it that the land reform was not subject to immovable property, which before the beginning of World War II was parceled out into building plots regardless of when the ownership of these properties was transferred because at the time of the parceling they lost the character of real estates. This resolution adopted a tactic repeated in subsequent rulings, consisting in the possibly narrow application of the decree's provisions, which in turn allowed for the recognition of many of the nationalizations as being contra-

[5] The project was initiated by the Ministry of Justice in October 2017. It is currently at the stage of giving opinions in: https://legislacja.rcl.gov.pl/projekt/12304605

[6] In the first case, it concerns the acquisition by the eligible real estate owned by the State Treasury or local government units

ry to the law. Since the application concerned only the interpretation of Article 2 sec. 1 lit. e of the decree on agrarian reform[7], in the justification, the Tribunal did not analyze the constitutionality of the abovementioned regulations.

Another interpretation resolution of 16 April 1996 the Tribunal also devoted to the interpretation of art. 2 act 1 lit. e of the decree [reference number In 15/95, OTK No. 2/1996, item 13]. It stated that the surface standards indicated in the provision were relevant only when the decree entered into force. This means no obstacles to the creation of larger farms in the later period, as they were no longer subject to the regulations of the land reform. At the same time, the Tribunal determined that the provision, analyzed in the previous and current resolution, is still in force to the extent that it may be applicable to determining the effects of events in the past [Osajda K. 2009: 26-27]. On the other hand, in the Tribunal's opinion, the problem of the constitutionality of a provision does not exist, as the area norms laid down therein no longer apply.

This argument was referred to in a subsequent ruling of November 28, 2001, regarding a constitutional complaint that directly questioned compliance with the Basic Law of the decree [reference number SK 5/01, OTK No. 8/2001, item 266]. The Tribunal decided to discontinue the proceedings, citing the loss of the force of the binding provision. In the quotation already cited several times, it stated that the issue of legality of state authorities imposed on Poland in 1944. belongs to the sphere of historical and political assessments and can not be transferred to the sphere of legal relations shaped at that time. It pointed out that in the understanding of the Tribunal the provision is valid in the legal system as long as individual acts of applying the law are or may be made on its basis [Osajda K. 2009: 26-27]. Despite many proceedings in the matter of art. 2 act 1 letter e, in none of these provisions has the basis for the settlement. It follows that the Decree was 'consumed; by one-time use, and the changes in ownership relations became irreversible[8].

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[7] Pursuant to Article 2 paragraph 1 lit. e of the decree, land property was intended for land reform purposes, *'owned or jointly owned by natural or legal persons, if their combined size exceeds either 100 ha or 50 ha of agricultural land, and in the Poznań, Pomeranian and Silesian provinces, if their combined size exceeds 100 ha of total area, regardless of the size of agricultural land of this area'* (Journal of Laws 1945 No. 3 item 13)

[8] This ruling was considered controversial and there were as many as four separate sentences. Lech Garlicki explicitly stated that the omission was used in order not to rule substantively on the conformity of the decree with the Constitution, while Marian Zdyb

LEGAL STATUS OF FORESTS AND REPRIVATIZATION

The judgments of the Constitutional Tribunal have set the interpretative framework allowing for the resolution of specific cases by common courts. It was through them that a process called judicial reprivatization, involving the questioning of the deduction of property on the basis of nationalization decrees, was going on since the 1990s. A court order that was positive for the claimants could result in the restoration of property or the payment of compensation. In the case of returns for forest real estate, both forms of compensation raise doubts due to the complicated legal status.

According to art. 3 of the Law on forests, the forest is the ground:

1) "On a compact area of at least 0.10 ha, covered with forest vegetation (forest crops) - trees and shrubs and forest undergrowth - or temporarily deprived of them:

a) Intended for forestry production or

b) constituting a nature reserve or part of a national park, or

c) entered in the register of monuments;

2) Connected with forest management, occupied for the purposes of forest management: buildings and structures, water melioration facilities, spatial division lines of the forest, forest roads, areas under power lines, forest nurseries, wood storage areas, and also used for forest parking lots and tourist equipment "[Dz.U. from 2018 Pos. 2129, 2161.]

The above-mentioned provision results in a broad statutory definition of the forest recognized both as land covered with trees and shrubs, as well as an area broadly related to forest management. As a forest within the meaning of the Act, buildings, structures or facilities should also be treated as long as they serve the purpose of forest management.

It should be emphasized that the area of forests and forested land owned by the State Treasury is 7 599 489 ha, out of which 7 208 896 ha are on the board of the State Forestry Enterprise State Forests [Pessel R. 2010: 53]. 78 000 ha remain in the State Treasury Agricultural Property Resource while 269,000 ha are managed by other entities representing the State Treasury, including national parks. In perpetual usufruct, there are 16,000 ha of forests [ibidem]. It is not difficult to notice that to the protection of the status quo in the scope of maintaining the State Treasury's property are subject to subsequent legal acts regarding forest real estate.

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considered the ruling to be an indirect legitimization of the PKWN and the right it creates, in: ibidem, pp. 27-28

Both state forests and natural resources of national parks are subject to special legal protection on the basis of the Act of 6 July 2001. on preserving the national character of the strategic natural resources of the country (further on: u.z.z.) (Journal of Laws [Dz. U. of 2018, item 1235]. In practice, this means that according to art. 2 of the abovementioned laws, forests owned by the State Treasury are not subject to ownership transformations, with the exceptions resulting from separate acts. The Forest Act itself in art. 38 defines the principles of disposal of forests, indicating the cases justifying the sale and introducing the formal criterion in the form of the consent of the General Director of PGL State Forests or the Minister for the Environment[9]. The strategic role of forests as natural resources is to maintain '*sustainable development in the interest of the common good*' (Article 3). To this end, forest management entities are obliged to maintain, increase and improve renewable resources[10].

For the consideration of reprivatization issues, crucial meaning carries the wording of art. 7 of the Act, according to which claims of natural persons, former owners or their heirs due to loss of ownership, among others forests, will be satisfied in the form of compensations paid from the state budget on the basis of separate regulations. The problem is that until now these provisions have not been adopted, which actually prevents claims by the entitled and causes considerable discrepancies in case law.

The above-mentioned problems induce the entities acting against the State Treasury in forest matters to base their actions on various legal grounds. The starting point is art. 7 of the u.z.z. from which, despite the lack of separate provisions, a claim for payment for loss of forest property is derived. At the same time, Article 417 of the Civil Code is recalled binding in the wording until 1 September 2004. in connection with art. 77 of the Constitution, as a basis for claims for payment of compensation for damage caused by legislative omission [Bosek L. 2017: 148]. Such a conclusion seems justified, taking into account the fact that the aforementioned act

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[9] It is permissible to sell the forest in the cases of selling shares of forests owned by the Treasury in co-ownership, regulation of the forest and forest boundary, unsuitability of land, buildings and structures for forest management purposes, change of use for non-forest and non-agricultural purposes or when dictated by important economic considerations or social security, as long as it does not violate the interest of the Treasury.

[10] The critics of the Act point to the inconsistency of this regulation and conclude that its ratio legis was primarily attempted to protect the State Forests against unfavorable ownership transformations, in: A. Haładyj, J. Trzewik, *The concept of strategic natural resources - critical remarks*, Przegląd Prawa Ochrony, No 1 (2014), pp. 27-46

was released in 2001. and after a dozen or so years, there are still no separate provisions referred to in art. 7 of the Act. For this reason, the Supreme Court in its judgment of June 24, 2012. expressed its disapproval of the legislator's negligence, stressing that art. 7 of the u.z.z. cannot constitute an independent basis for awarding compensation, however, it is not only a declaration of its payment, including the obligation to issue relevant regulations [I CSK 547/11]. Thus, the Supreme Court admitted that former forest owners should be compensated for damage suffered as a result of legislative omission.

The above-mentioned ruling is one of the few exceptions from rather conservative decisions in this respect. This is emphasized by the fact that the line of jurisprudence in "forest" matters is not uniform, and the courts are usually reluctant to speak about the state's obligations in terms of compensation. An example may be the Supreme Court's judgment of 26 June 2014, in which it was noted that art. 7 of the u.z.z. does not include the subjective scope of the future normative act, which is to specify the rules for paying compensation, the method of determining benefits or conditions that should be met by authorized persons [Bosek L. ibidem]. It follows that this provision does not constitute an independent basis for a compensation claim and the courts are not entitled to fill these gaps themselves. In addition - unlike the judgment of the Supreme Court of 24 June 2012 quoted above - jurisprudence rather conservatively interprets the premises of legislative omission. Not much later, on September 6, 2012. The Supreme Court recognized that art. 7 of the u.z.z. is a blanket provision, which, although it contains a declaration of the settlement of compensation, without being bound by the date of passing the relevant legal act [ibidem]. For this reason, according to the Court, there are no grounds for recognition of the State Treasury's liability due to legislative omission.

CONCLUSIONS

The problem of the current status of nationalized forest real estate, as part of the wider issue of ownership by the State after World War II, has not been comprehensively regulated so far and therefore raises a number of controversies. The first of these results is undoubtedly due to the lack of a reprivatization law that would allow at least partial satisfaction of claims of former owners of real estate and their heirs. The inability to pass

the law clearly shows the conflict of values that is difficult to overcome, between the fundamental property right protected by the Act and the concerns about the excessive cost of compensation claims for the state budget. At the same time, doubts arise not only about the need (or lack thereof) of regulation but also about its possible shape, ranging from the subjective scope to the redress of the end.

Reprivatization by means of court decisions is another matter that arouses many emotions. First and foremost, in the current legal situation, there is a virtually unlimited time to move post-war decisions on nationalization. This raises legitimate concerns about the violation of the certainty of trade in the legal status of real estate, it can also result in a greater burden on the state finances than to reprivatize even to a limited extent. This results in endless legal disputes and actions on the border of the law, or even its circumvention, an example of which is the still unresolved problem of the so-called Warsaw lands.

Since the Constitutional Tribunal consistently refused to challenge the legality of nationalization decrees in many decisions, the subject of decisions of common courts can only be decisions that were taken in violation of the above-mentioned decrees. This is a manifest dissonance with the narrative adopted in the public discourse by successive representatives of public authority, stressing the wrongs of former owners and the obligation to repair it. However, these statements are not followed by any actions aimed at the final closure of the reprivatization claims. An example of a specific legislative obstruction in this respect is the lack of adoption of separate provisions to which Article no. 7 of the u.z.z., thus making it impossible to get compensation for loss of forest property even when nationalization was made in violation of the decree. An additional burden in this respect is the unstable and heterogeneous judicial decisions, especially the position of the Supreme Court, closing the way to obtain compensation for a legislative omission. It certainly does not serve the citizens' trust in the organs of state power and maintains uncertainty in the democratic state that is undesirable.

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