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Nationalisation and Reprivatisation of Forests in Poland after World War II

Abstract

The article concerns the transfer of ownership of forest property, nationalized after World War II. It covers the process of property acquisition by way of nationalization decrees and dilemmas related to the issue of reprivatisation. 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 under the ownership of the Treasury. 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 'task' of nationalization, covering forests with a smaller area, not subject to the takeover under the agricultural reform decree. Different legal grounds for the nationalization of forests determined different re-privatization procedures initiated after 1989. The work includes issues proposed over the years and existing statutory solutions, as well as case law affecting the interpretation of legal norms.

Key words: transfer of ownership, nationalization, reprivatisation, forests

Introduction

The end of World War II meant territorial and political changes for Poland. According to Chapter IX of the Potsdam Agreement, German territories east of the Oder (Odra) and Lusatian Neisse (Nysa Łużycka) rivers as well as the territory of the Free City of Gdansk were transferred to Poland as compensation for the loss of the Eastern Borderlands to the USSR. These processes involved the resettlement of entire populations

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and radical changes in ownership processes, which, as in other countries of Central and Eastern Europe, resulted from the doctrine of real socialism.

The transfers of property were carried out by means of nationalization, adopted into Polish legislation along the lines of Soviet solutions. Introducing a new economic and social system post 1944, the state took over 2,700 thousand hectares of agricultural land and 1,780 thousand hectares of forests, a large percentage of which was allocated for the implementation of land reform (Jastrzębski 2017: 51). On the other hand, about 85% of forest properties and the entire timber industry were placed under the management of the State Forests, thus finalizing the process of the transfer of private or local government property to the state.

The political transformation initiated after 1989 involved renewed interference in the existing property relations as well as the adoption in the Polish Constitution of 1997 of the principle of protection of private property as the basis of the socio-economic system, opening the issue of claims of former owners and their heirs against the State Treasury and other state-owned legal entities.

The purpose of this paper is to present both the process of nationalization of forest estates in Poland immediately following World War II, as well as the attempts of their reprivatisation undertaken through numerous legislative initiatives and court proceedings. It, therefore, does not cover the problem of transfer of property made in the later period (e.g. property left by the so-called "late re-settlers"). The article was created by applying a number of research methods from humanities and social sciences necessary for a proper reconstruction of institutional and legal changes that may have occurred in the sphere of forest property ownership in Poland after World War II. The basis of the work is primarily the analysis of legislation, including the legal status of forests under the management of the State Forests, the jurisprudence of the Constitutional Court and the Supreme Court, as well as researching the latest studies on the subject.

The Process of Forest Nationalization in Poland

The Decree of the Polish Committee of National Liberation (PKWN) of September 6, 1944, on the implementation of land reform (PKWN... 1944, No. 3/13) was the basis for property and political changes in Poland after World War II. The main purpose of the regulation dealt with the transfer of agricultural land, however forest or other

forest lands could also be subject to nationalization as an element of landed property not precisely defined. Pursuant to Art. 2 of the decree, landed agricultural properties owned by the State Treasury, citizens of the German Reich and Polish citizens of German nationality, persons convicted, among other things, for high treason or such properties confiscated for other reasons were allocated for the purpose of land reform. According to Art. 2 e) of the decree, property owned by natural and legal entities not listed above was subject to nationalization if the total area of the property exceeded 100 ha or 50 ha for agricultural lands, whereas in the Poznań, Pomeranian, and Silesian Voivodships, it was subject to nationalisation if its total area exceeded 100 ha, regardless of the size of agricultural land. In other words, unlike other properties, "post-German" land was subject to transfer regardless of its size and actual use. At the same time, the decree sanctioned the nationalisation of all large farms of more than 100 hectares, of which less than 50 hectares were farmlands and the rest comprised forests or forest industry facilities. In such cases, the "forest" part was not allocated for the purposes of land reform, but was put under the management of the State Forestry Directorate (Miłosz 2012: 193).

The "appropriate" instrument for nationalising forests throughout the country was the PKWN Decree of 12 December, 1944 on the transfer of ownership of Certain Forests to the State Treasury (PKWN... 1944, No. 15/82). It sealed the process of transfer of property by covering forests of smaller area and, therefore, ensuring that they were not subject to a takeover under the agrarian reform decree.

According to Art. 1 of the decree, forests and forest lands exceeding 25 ha, owned or co-owned by physical or legal entities, were transferred to the ownership of the State Treasury.[2] This regulation, however, did not refer to forests and forest land owned by local governments, nor to those forests that had been legally or factually divided into plots of land of up to 25 ha before 1 September, 1939, unless they were subject to nationalization under the relevant provisions of the agrarian reform decree. The exclusion of forests and local government lands soon proved to be a temporary solution in connection with their acquisition under the Legal Act of 18 November 1948 on the Transfer of Certain Forests and Other Local Government Lands to the State (The Act of November 18…

[2] Along with forests, mid-forest land, meadows and waters, deputation land of the administration and forest guards, all immovable and movable property lying on the territory of the nationalised forest area regardless of its purpose, as well as those used for forest management and all material supplies were subject to nationalization.

1948, No. 57/456), as a prelude to the liquidation of local governments in 1950.

As in the case of the agrarian reform, no area restrictions applied to forests owned by German nationals. Article 2 of the decree sanctioned transfers of all sizes of forests, along with non-forest land associated with them and other real estate and movable property. These persons were not entitled to any, not even declaratory compensation for lost forests, such as the monthly payments provided for other natural persons in Article 5 of the decree.

It should be emphasized that, initially, the decrees on forest and agricultural reform had a limited territorial scope, not including the so-called Recovered Territories, i.e. the Western and Northern Territories formally annexed to Poland following the Potsdam Agreement. The Decree of 13 November, 1945 on the administration of the Recovered Territories changed this state of affairs, making these territories subject to the legislation in force on the territory of the District Court in Poznań, and in terms of labour law – in the Upper Silesian part of the Silesian Voivodship (Kociubiński 2013: 328). The reasons for the application of the described legal procedure were purely practical, as the regulations based on the German Civil Code of 1896 that were in force in Poznań best suited to the existing legal relationships (Góralski 2004: 196). At the same time, it allowed for the implementation of the project of nationalisation of forests and real estate properties in the incorporated areas.

The difference between the Western and Northern Territories was also based on the wide application of special norms, addressed directly to German property, as if on the occasion of the ongoing systemic transformations. First of all, there was the Decree of 8 March 1946 regarding abandoned and post-German properties (Decree... 1946, No. 13/87) on which basis, the State Treasury took over all property of: the German Reich and the former Free City of Danzig; citizens of the German Reich and the former Free City of Danzig with the exception of persons of Polish nationality or others persecuted by Germans; German and Danzig legal entities with the exception of legal entities under public law; companies controlled by German or Danzig citizens or by German or Danzig administrations; and dissidents. Article 2(4) of the decree provided that the property of German and Danzig legal persons under public law passed by legal operation to their respective Polish legal entities.

The only chance to retain the estates (or at least to nationalize the forests and landed properties belonging to them under the rules provided for non-German nationals) was to undergo nationality verification, or to prove that one belonged to those nationality groups that had suffered

legal restrictions after January 30, 1933 (The Act of April 28… 1946, No. 28/182).

Transfer of property by operation of law was the characteristic feature of the entire process. This meant that in order for the transfer of ownership to be effective, no entry was required into the land and mortgage register, as it was declaratory and not constitutional. Consequently, any negligence in this respect (which often happened) had no legal significance. The contemporary jurisprudence upheld such an interpretation, an example is the Supreme Court judgment of 25 March, 1999, which indicated that the taking over of real property referred to in art. 2 sec. 1 sub-sections b-d of the decree of 6 September 1944 on conducting agricultural reform, took place by virtue of the decree and the entry in the land and mortgage register was made only on the basis of an appropriate certificate that lacked the character of an administrative decision (The Judgment... 1999, No. 165/98).

The problem of statutory reprivatisation in Poland after 1989

The political changes, which occurred in Poland after 1989 have led to the establishment of standards of a democratic state under the rule of law in which the right to property ownership has been given special protection. In accordance with article 21 of the 1997 Constitution, it has become one of the state's constitutional principles, while article 64 defines it as fundamental among economic, social and cultural rights (Constitution..., 1997, No. 78/483). The post-war nationalization acts clearly contradict modern democratic standards of property protection, although the fact that they were implemented and had an effect on property relations is equally obvious. Nevertheless, after 1989, groups concerned with former owners and other entities harmed by the decrees on nationalisation began to take action in order to reverse the effects of nationalization by enacting an appropriate reprivatisation law, as was done in other post-communist countries (Makarzec 2003).

It seemed that these expectations would be met, because, already, on May 17, 1990, the Senate Civic Parliamentary Club, bringing together representatives of the former democratic opposition, submitted to the legislative committee a draft bill on the return of property taken over by the state, concerning the return of small-scale farming facilities (Biuro... 2010). On the other hand, the first attempt to comprehensively regulate the issue of reprivatisation was presented in the government draft law of July 16, 1991, assuming, among other things, the right of former owners

to return in kind manor and park complexes, agricultural or forest properties (Dobrzeniecki, Romanowski 2015: 79). In subsequent years, the Sejm worked on a number of draft laws to regulate the issue of returning property to former owners. Of the twenty drafts submitted to date, all have been rejected at various stages of their procedure (Ścisłowska) except one, which passed the legislative process. Hence, it is worthwhile, at this point, to take a look at its assumptions.

The bill passed by the Parliament was prepared by the AWS-UW government, which was led by Jerzy Buzek, based on the proposals of the Privatization Consultative Council of 1993. It provided for compensation for the nationalization of forests in the form of reprivatisation vouchers, which were to be subsequently purchased by the State Forest Holding as "State Forests" The former owners were to receive a so-called forest annuity, the amount of which would depend on the profitability of the forest. The funds for the purchase of reprivatisation vouchers were to come from the forest fund established by the Forest Act of September 28, 1991 (Biuro... 2010). The amount of compensation was to be 50% of the value of the lost property, while the circle of eligible entities was limited to persons who held Polish citizenship by 1999. (Ścisłowska). Thus, the nationalised forests were not to be returned in kind, but in the form of financial compensation.

The law was passed by the Sejm on March 7, 2001 and then sent, for signature, to President Aleksander Kwaśniewski who vetoed it, pointing to the excessive burden it would create for the state's budget were it to be implemented. He pointed out that the number of potential applications accepted by the government had been grossly underestimated, given the statistical survey methods used and the discrepancies in calculations between the government side and the associations of former owners. Consequently, the value of the collateral provided by law to cover reprivatisation claims may have been inadequate (Request... 2001).

With regard to the regulation of financial compensation for forest loss, the President also raised a number of objections. First of all, according to the government's estimates, the number of people entitled to receive forestry pension due to the state's taking over of nearly 1,850,000 hectares of forest lands was to be roughly about 7,000. On the other hand, the payment period was to cover 10 years from the moment of issuing reprivatisation vouchers. This meant that an amount of approx. PLN 120 million per year had to be set aside in the National Forest Holding "State Forests" budget (PGL "Lasy Państwowe") for this purpose. (Request... 2001). Already, in the course of work on the act, concerns emerged as to whether the State Forests would be able to generate

income allowing for payment of claims, especially taking into account the decreasing profitability of forest management and the relatively long period of drawing forest annuities by entitled persons.

For the reasons mentioned above, the 2001 law was vetoed, and in the years that followed no legislation was passed that would comprehensively regulate the restitution of properties nationalized after World War II. Restitution and compensation for lost property was selectively regulated for selected organisations and social groups and religious associations (e.g. The Act of June 7... 2001, No. 72/745; The Act of July 8… 2005, No. 169/1418). As regards re-privatisation of a general nature, all initiatives were rejected, withdrawn or lost at the committee-work stage. The most recent "approach" to the subject of re-privatisation was taken in 2017, with the adoption of a draft law on compensation for certain harm caused to individuals as a result of the seizure of real estate or movable monuments by communist authorities after 1944 (Projekt… 2017). The bill does not provide for the return of the seized property in kind, but rather for compensation in the form of crediting the value of the seized property against the sale price, cash benefit or treasury bonds.[3] A narrow circle of entitled parties and the level of benefits, which was set at 20–25% of the property value caused many opponents of the initiative to accuse its authors of the intention to extinguish claims instead of realizing them. It is not known if and when next the project will be discussed by the Sejm. As at present, Poland has no existing law that would comprehensively regulate the restitution of nationalized property or the payment of compensation for such property. There is also no indication of any changes to the status quo in the near future.

Pursuing reprivatisation claims through the courts

Regardless of unsuccessful attempts to regulate the restitution of property by law, former owners and their heirs have been trying to pursue claims of reprivatisation through the courts since the beginning of the 1990s. At the same time, the issues of constitutionality and interpretation of the nationalisation decrees have been raised before the Constitutional Tribunal (CT), which has already made a pronouncement on this issue on several occasions. The resolutions and rulings of the CT regarding land reform are of particular importance for determining the status of forest properties.

[3] In the first case, it concerns the acquisition of real estate owned by the State Treasury or local government units by the entitled persons

The first interpretative resolution concerned the determination of the interpretation of Article 2(1)(e) of the Land Reform Decree[4] and was adopted on September 19, 1990. (Resolution... 1990, item 26). In it, the Court determined that land reform did not apply to those properties that had been parcelled out into building plots before the start of World War II, regardless of when the ownership of such properties was transferred, since they had lost their character as real estate property at the time of land subdivision. This resolution adopted the principle, which was repeated in later rulings, of applying the provisions of the decree as narrowly as possible, thereby allowing many nationalisations to be considered illegal.

Another resolution of 16 April, 1996 was also devoted to the interpretation of Article 2(1)(e) of the Decree (Resolution... 1996, item 13). In it, the Court stated that the standard area indicated in the provision were only relevant when the decree came into force. This meant that there were no obstacles to the creation of larger farms at a later date, since they were no longer subject to the land reform regulations, which were "consummated" on a one-off basis on the date the decree in its original version came into force. At the same time, the Court found that the provision analysed in the previous and current resolution is still in force to the extent that it can be applied to determine the effects of past events (Osajda 2009: 26–27). On the other hand, in the opinion of the Court, the problem of the constitutionality of the provision does not exist since the area norms specified in it are no longer in force.

This argument was referred to in a subsequent ruling of 28 November, 2001, concerning a constitutional complaint directly challenging the compatibility of a decree with the Basic Law (Resolution... 2001, item 266). The Court decided to discontinue the proceedings on the grounds that the provision had ceased to have effect. In its justification, the Tribunal stated that the issue of the legality of the authorities imposed on Poland in 1944 by the State belonged to the sphere of historical and political assessments and could not be transferred to the sphere of legal relations structured at the time. He pointed out that in the Court's understanding, a provision remains in force within the legal system as long as the application of individual acts of law are or may be undertaken on its

[4] According to Art. 2(1)(e) of the decree, manor estates "owned or co-owned by natural or legal persons, if their total size exceeds either 100 hectares of the total area or 50 hectares of agricultural land, and in Poznań, Pomeranian and Silesian provinces, or if their total size exceeds 100 hectares of the total area, regardless of the size of the agricultural land of that area" were designated for the purposes of the agrarian reform. (PKWN... 1944, No. 3/13).

basis (Osajda 2009: 28–29). Despite a number of proceedings concerning Article 2(1)(e), in none of them did this provision become the basis for a decision. It follows that the decree has been "consummated" by a single application, and the changes in the property relations have become irreversible.[5]

The Supreme Court has also interpreted the agrarian reform decree on several occasions while examining cassation appeals in cases for the restitution of a real estate or payment of compensation. The justification of the judgment of April 22, 2005 (Verdict... 2006, No. 3/560) seems to be particularly interesting, in which the Court of First Instance pointed out that the decree had been misapplied, stating that it did not follow from the decree's provisions that non-landed property, i.e. forestry property, was to be used for the purposes of the land reform. The Supreme Court pointed out that such an understanding of the term "manor estate" is supported primarily by the content and even by the very fact of issuing the decree of 12 December 1944 on taking over certain forests into the ownership of the State Treasury. On the basis of this decree (art. 1 sec. 3 letter "b"), there were no forests or forest lands divided legally or factually before 1 September 1939 into plots of land of up to 25 hectares, constituting the property of physical entities and not covered by the provisions of art. 2 sub-section "e" of the decree of 6 September, 1944 on conducting the agrarian reform. Part of the content of this provision should be considered redundant if it is assumed that forest complexes owned by persons who were owners of land that was covered by the provisions of the decree on agricultural reform were also covered by the provisions of the said decree. Forest estates, not intended for agricultural production, constituting part of a landed estate, could be excluded from the agrarian reform decree pursuant to § 5 of the decree of the Minister of Agriculture and Agrarian Reform dated 1 March, 1945 on implementing the PKWN decree of 6 September, 1944 on carrying out the land reform. Only when they exceeded 25 hectares did they become ex lege property of the State Treasury on the basis of article 1 of the decree of 12 December, 1944.

Despite the, generally, favourable line of jurisprudence for the claimants, as a rule, cases involving forest estates do not end in either their restitution or payment of compensation. This is because both state-owned forests and the natural resources of national parks are subject to

[5] This ruling was considered controversial and received as many as four dissenting opinions. Lech Garlicki stated directly that it was used to avoid ruling on the constitutionality of the decree, while Marian Zdyb regarded the ruling as an indirect legitimisation of the PKWN and the law it created (Osajda 2009: 27–28).

special legal protection under the Act of 6 July, 2001 on preserving the national character of the country's strategic natural resources (The Act of July 6... 2001, No. 1235). This means that forests owned by the State Treasury are not subject to ownership transformation, with exceptions arising from separate acts. For former owners and their heirs, this regulation means exclusion of the possibility to return nationalized forest in kind.

Instead, Article 7 of the 2001 Law stipulates that the claims of physical entities, former owners, or their heirs for the loss of forest property will be satisfied in the form of compensation paid from the state budget funds under separate regulations. However, these people do not receive compensation at all, because, to this day, the relevant normative acts have not been passed, which actually makes it impossible for the entitled to effectively pursue their claims.

This, of course, does not mean that there is no legal action against the State Treasury in forestry matters. The lawsuits are based on Article 7 of the 2001 Law, from which the claim for payment for the loss of forest property is derived, despite the lack of enactment of a separate legislation. At the same time, Article 417 of the Civil Code, as it stood until September 1, 2004, in conjunction with Article 77 of the Constitution, is invoked as the basis for claims for compensation for damages caused by legislative omission (Bosek 2017: 148). Such a conclusion seems reasonable given the fact that the law passed in 2001 for the next two decades did not live to see the separate legislation that was supposed to be the basis for paying compensations. For this reason, the Supreme Court, in its ruling of 24 June, 2012, expressed disapproval of the legislator's omissions, stressing that, although, Article 7 of the Act on preserving the national character of the country's strategic natural resources cannot constitute an independent basis for awarding compensation – it is not merely a declaration of its payment, containing the obligation to issue appropriate regulations (Verdict... 2012, No. 547/11). Thus, the Supreme Court acknowledged that former forest owners should be compensated for the damage suffered as a result of the legislative omission.

However, the above cited ruling is one of the few exceptions to the, rather conservative, rulings in this area. This underlines the fact that the line of jurisprudence in "forest" cases is not uniform, and the courts are usually reluctant to comment on the state's compensation obligations. An example is the judgment of the Supreme Court of June 26, 2014, in which it was noted that Article 7 on preserving the national character of the country's strategic natural resources does not contain the subjective

scope of the future normative act, which is to determine the principles of compensation, the manner of determining benefits, or the conditions that should be met by eligible persons (Verdict... 2014, No. 316/14). In other words, this provision does not provide an independent basis for a compensation claim, and the courts are not empowered to fill in these gaps on their own. Moreover, with the exception of the Supreme Court's judgment of June 24, 2012, case law has interpreted the rationale for legislative omission rather conservatively. An example is the decision of 6 September 2012, issued not much later, in which the Supreme Court held that Article 7 on preserving the national character of the country's strategic natural resources is a blanket provision, which, admittedly, contains a declaration to regulate compensation, but without being bound by the deadline for enacting the relevant legislation (Verdict... 2012, No. 77/12). Therefore, there are no prerequisites to recognize the State Treasury's liability for legislative omission.

Summary

Despite many attempts, the Polish legal system has not managed to introduce a law, which would comprehensively regulate the issue of reprivatisation of property nationalised by decrees of the PKWN after World War II. Therefore, the only way for former owners to regain the seized property is through judicial or administrative proceedings (depending on the legal basis of nationalisation). In accordance with the jurisprudence of the Constitutional Tribunal, challenging the seizure of land or forestry by the state is possible only if the seizure was carried out in violation of the content of the post-war communist decrees, e.g. in violation of the area norms adopted therein. This means recognition by the Constitutional Tribunal of the effectiveness and legality of the decrees, which may raise some doubts due to the axiological inconsistency with the newly created constitutional order.

Even more objectionable is the inaction of the State in regulating compensation for the nationalisation of forests currently under the management of the State Forests. The legislator has ruled out the possibility of returning the forests in kind, while promising compensation to entitled persons. However, despite the passage of many years the relevant legislation has not been enacted, making it impossible to effectively pursue claims in this regard. The legal chaos is aggravated by the Supreme Court's inconsistent jurisprudence on the question whether the lack of regulations governing the conditions of paying compensation constitutes

a legislative omission. This certainly does not serve citizens' trust in the organs of state authority and maintains a state of uncertainty that is undesirable in a democratic state.

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Nacjonalizacja i reprywatyzacja lasów w Polsce po II wojnie światowej

Streszczenie

Artykuł dotyczy problematyki przeniesienia własności nieruchomości leśnych znacjonalizowanych po II wojnie światowej. Obejmuje tematykę nabywania majątku w drodze dekretów nacjonalizacyjnych oraz dylematy związane z kwestią reprywatyzacji. Nacjonalizacja lasów w całym kraju odbywała się głównie na podstawie dekretu PKWN z dnia 12 grudnia 1944 r. o przejęciu niektórych lasów na własność Skarbu Państwa. Dekret ten był uzupełnieniem dekretu o reformie rolnej, który zapoczątkował zmiany ustrojowe i właścicielskie po II wojnie światowej. W pewnym sensie ukoronował dzieło nacjonalizacji, obejmując lasy o mniejszej powierzchni, niepodlegające przejęciu na mocy dekretu o reformie rolnej. Różne podstawy prawne nacjonalizacji lasów determinowały procedury reprywatyzacyjne wszczęte po 1989 r. W artykule uwzględniono inicjatywy legislacyjne podejmowane na przestrzeni lat oraz istniejące rozwiązania ustawowe, a także orzecznictwo wpływające na wykładnię norm prawnych.

Słowa kluczowe: transfer własności, nacjonalizacja, reprywatyzacja, lasy