

Abstract of doctoral dissertation entitled: LEGAL AND PRACTICAL ASPECTS OF DECREE APPLICATIONS OF THE REGIONAL LIQUIDATION OFFICE IN WARSAW

The aim of the present paper was to find an answer to the question whether decree applications submitted by the Regional Liquidation Office in Warsaw pursuant to Article 7, Section 1 of the Decree of 26 October 1945 on Ownership and Use of Land in the Area of the Capital City of Warsaw (Journal of Laws No. 50, item 279, as amended), hereinafter referred to as the Warsaw Land Decree, are ineffective in the light of the established contemporary case law under which is uniform and consistent in its refusal to establish the right of perpetual usufruct to the benefit of former owners and their legal successors. When discussing the issue in question, it was necessary to determine the date on which the municipality of the Capital City of Warsaw became the owner of Warsaw land in accordance with the provisions of the Warsaw Land Decree as well as the moment when former owners lost their ownership rights to the land. Until now there has been no comprehensive study on this subject. It should be emphasized that this problem is of particular interest to a large group of post-war owners, among other things, in view of the number of court decisions issued in this respect so far. It needs to be borne in mind that this issue is less and less frequently the subject of court proceedings due to the lack of effectiveness and high costs of enforcing the rights.

This paper was prepared based on an analysis of the logical structure of legal acts, including the so-called ministerial acts and post-war judgements. The method of examining official documents issued by the Presidium of the National Council of the Capital City of Warsaw, the General Counsel to the Republic of Poland and liquidation offices, in particular, together with the analysis of normative acts and literature was subsequently applied to determine the actual powers and status of liquidation offices. Owing to the analysis of three individual cases, it was possible to demonstrate the variety of factual and legal circumstances faced by the post-war owners of Warsaw land. Moreover, contemporary rulings of administrative courts, mainly the Supreme Administrative Court, were also subject to evaluation.

The first chapter is devoted to the concept of ownership and expropriation, but also discusses the so-called *de facto* expropriation in the light of the national and European case law. A broad definition of property is presented in the first sub-chapter, taking into account constitutional regulations as of the year 1921 onwards. The second sub-chapter helps to understand different approaches to the issue of expropriation as well as its types. The final sub-chapters discuss the problem of interference with the essence of property in the absence of expropriation (the so-called *de facto* expropriation), both from the point of view of the doctrine and court rulings, including decisions of the European Court of Human Rights.

The second chapter elaborates on the Warsaw Land Decree, starting from the presentation of archival documents which show the original of the Decree and justification of the motives for its implementation together with an indication of the historical and social background. The chapter in question consists of eleven sub-chapters which analyze the scope of regulations of the Warsaw Land Decree. The first sub-chapter describes the events and legal circumstances underlying the adoption of the Warsaw Land Decree. Exclusion of certain types of land from the Decree is also specified therein. The second sub-chapter focuses on the analysis of the Warsaw Land Decree as to whether it can be regarded as an act of nationalization. In the course of the analysis it turned out that even the date on which Warsaw land was transferred to the municipality of the Capital City of Warsaw posed problems as far as its correct identification is concerned, which contributed significantly to the current position of the case law. Arguments regarding this issue are presented in the third sub-chapter. The subsequent sub-chapter discusses all the entities entitled to submit to the benefit of the current owner an application (the so-called decree applications) with a request to establish the right of perpetual lease for a symbolic rent, or the right of development for a symbolic payment. Moreover, attention is also paid both to absent administrators as well as entities managing the land on the basis of the regulations in force in the post-war period which enabled establishment of such a form of ownership. The fifth sub-chapter specifies the authorities competent to examine decree applications depending on the time period. The sixth and seventh sub-chapters discuss exceptions allowing the said authorities to dismiss a decree application submitted in favor of a post-war owner. A temporary exception to the *superficies solo cedit* principle resulting from Article 5 of the Warsaw Land Decree is deliberated upon in the eighth sub-chapter. Sub-chapters nine and ten indicate the problem arising from the existence of abandoned properties within the territory of the Capital City of Warsaw after the entry into force of the provisions of the Warsaw Land Decree, as well as manners of recovery of such property. At this

point reference was made to archival documents. The eleventh sub-chapter discusses the problem of obtaining compensation in respect of the said Warsaw land.

The third chapter presents the genesis and legal basis for the activities of liquidation offices. The conducted research revealed the problem of discrepancy between the contemporary assessment of post-war legal acts by the judicature and legal academics, and the stance of the courts, particularly from the 1940s and 1950s. The first sub-chapter outlines the process of establishment of liquidation offices as well as describes the structure and changes involved therewith. The second sub-chapter focuses on the scope of the activities of liquidation offices as regulated by the published legal acts. The performed research was completed with an analysis of the so-called "ministerial" legal acts and other official documents, which allowed for detailing and comprehending the scope of duties imposed on liquidation offices, which was subsequently discussed in the third sub-chapter. Sub-chapter four contains an analysis of the post-war case law pertaining to the scope of the activities of liquidation offices as administrators. In view of the above, the next sub-chapter highlights the activities of liquidation offices as regards submission of decree applications to the benefit of the previous owners in the context of the provisions of the Warsaw Land Decree. The sixth sub-chapter presents the contemporary standpoint of the doctrine and case law concerning the activities of the Regional Liquidation Office in Warsaw and the existence of abandoned property in the territory of Warsaw in the post-war period. The seventh sub-chapter discusses the activities of liquidation offices with regard to the property of the persons who renounced Polish nationality during the war. The eighth sub-chapter elaborates on the contemporary case law within the scope of the complicated situation of the *Volksdeutsche* right after World War II. The subject matter of the ninth sub-chapter is the post-war case law which clarifies the concept of seizure of the property of the persons who renounced Polish nationality in the event of a possible decision of confiscation.

The subject matter of the **fourth chapter** is a specific decree application submitted by the Regional Liquidation Office in Warsaw. It contains a detailed description of the complicated historical and legal background, the actions undertaken by land owners for the purposes of protecting their property as well as the uneven struggle that the parties concerned had to lead with the administrative bodies and the courts. The chapter in question also describes the thought process that accompanied rendering of the judgements as well as getting to the truth on the basis of the archival evidence attached to the files.

The **subsequent chapter** tells the story of a Warsaw property in which the main role was played by a liquidation office as well, however a completely different one than it is discussed in the previous chapter. Doubts may arise as to whether, in fact, the persons rendering judgements pertaining to the scope of the activities of liquidation offices had sufficiently in-depth knowledge, thus ensuring correct ruling.

Chapter six describes the decree process in the factual and legal circumstances other than those discussed in the previous chapters. The variety of decree cases involving the Regional Liquidation Office in Warsaw that could be encountered if given an access to decree files is unbelievable, especially if we take into account the times at which the decree applications were submitted.

The **final part** contains conclusions resulting from the research referred to in individual chapters, particularly in the second and third, as well as *de lege lata* and *de lege ferenda* recommendations. Based on the conclusions drawn from archival documents and post-war legal acts, at the same time taking into account post-war doctrine and court rulings, the author demonstrated that a critical approach should be taken as to the current standpoint of the judiciary as far as questioning of the effectiveness of decree applications submitted by the Regional Liquidation Office in Warsaw and the existence of abandoned property in the territory of the capital city of Warsaw are concerned.

An integral part of the present paper is an appendix that contains copies of the most interesting archival documents, the content of which is necessary to demonstrate a correct picture of the issue in question, thereby facilitating reader's understanding thereof.