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VERIFIABILITY OF LAND DEEDS ISSUED UNDER THE LAW OF 26 OCTOBER 1971 ON THE REGULATION OF OWNERSHIP OF FARMS

Abstract

On 4 November 1971, the Law of 26 October 1971 on the regulation of ownership of farms came into force. It was a one-time piece of legislation aimed at finally regulating the informal trade in agricultural real estate. Despite its incidental effect, the enfranchisement carried out over 50 years ago has had legal effects that are still relevant. The document confirming the ownership of property acquired as a result of enfranchisement is the land title deed, which is an administrative decision. The article aims to provide an overview of the possibility of verifying land title deeds in administrative and civil proceedings.

KEYWORDS

enfranchisement, agricultural real estate, land deed

SŁOWA KLUCZOWE

uwłaszczenie, nieruchomości rolne, akt własności ziemi

I. INTRODUCTION

The issue of proper regulation of the property of individual farms did not see adequate legislative solutions in Poland until 1971.¹ Until then, many holders of agricultural property who actually wielded it as owners and at the same time carried out agricultural work on the land were not owners in the eyes of the law.

J. Paliwoda points out the following reasons for this situation:

- a) legal restrictions on land circulation in the interwar period and after World War II,
- b) restrictions and difficulties in making real estate transactions introduced during the occupation,
- c) the high cost of transferring ownership of agricultural property,
- d) customs and traditions prevailing in some regions of the country, where either agricultural properties were taken into possession as a result of *de facto* inheritance divisions, without caring about the formal transfer of ownership, or the fact that agricultural properties were acquired under private contracts from sellers without formal proof of ownership,
- e) keeping land records according to actual ownership (as allowed by the tax law), which constituted, in the eyes of farmers, an official acceptance of informal land dealing.²

Informal trade in agricultural property was confirmed by official data. In 1960, 117,847 sale and donation contracts were registered, in 1963 – 91,574, in 1967 – 55,603, and in 1969 – 53,894.³ On 26 October 1971, the Sejm of the People's Republic of Poland passed a law on the regulation of the ownership of farms.⁴ It entered into force on the date of promulgation, which was on 4 November 1971. As H. Ciepla points out, the enfranchisement law was intended to comprehensively regulate the existing discrepancy between the state of ownership and the state of possession and in order to provide a universal solution.⁵ It covered about 2.3 million farms.⁶

¹ J. Paliwoda, *Problemy prawne uregulowania własności gospodarstw rolnych*, Wrocław 1975, p. 9.

² *Ibidem*, pp. 9-10.

³ E. Spirydowicz, M. Rutkowski, *Nowe ustawy rolne*, Warszawa 1972, pp. 11-12.

⁴ Act of 26 October 1971 on the regulation of ownership of farms (Journal of Laws of 1971, Art. 27 item 250); hereinafter referred to as the "Enfranchisement Law".

⁵ H. Ciepla, *Prawne skutki uregulowania własności gospodarstw rolnych*, Warszawa 1982, p. 163.

⁶ J. Kłopotowski, *Regulacja własności gospodarstw rolnych*, *Gospodarka i Administracja Terenowa* 1972, iss. 5.

The basic premise of the Enfranchisement Law was that the owners of agricultural property were to be those farmers who actually farmed on it.⁷ Its provisions refer to the state of affairs existing on the date of its entry into force, i.e. 4 November 1971. The acquisition of ownership of real estate and the legal consequences associated with it occurred on that very date. The exception to this is Article 2 item 1 of the Enfranchisement Law (acquisition of property by dependent holders or the State), according to which it shall occur after the decision on the transfer of real estate is issued and becomes effective.⁸

The Enfranchisement Law provided for two modes of acquiring ownership of real estate. The first of these concerned autonomous holders and provided for the acquisition of ownership of real estate comprising farms as of the date of entry into force of the Enfranchisement Law by operation of law:

- a) in the event that the estate is taken into possession on the basis of a contract of sale, exchange, donation, life annuity contract or any other contract for the transfer of ownership, for the abolition of co-ownership or a contract for the division of inheritance, concluded without the form prescribed by law;⁹
- b) if the conditions of point a) did not apply, in the case of their uninterrupted possession for an extended period of time: 5 years if possession was obtained in good faith, or 10 years if possession was obtained in bad faith.¹⁰

The second mode of acquiring ownership of real estate concerned land on which no one had long been farming as an owner.¹¹ It provided for the possibility of transferring the land to the existing dependent holders or for the State to take them over.¹² If in the first mode, the acquisition of ownership occurred by operation of law and administrative decisions were only declaratory, then in the cases specified in the second mode, these decisions were to be constitutive and the date of legal validity of the decision determined the moment of acquisition of ownership by the dependent holder or the State.¹³ Unlike the enfranchisement of autonomous holders, the enfranchisement of dependent holders or the seizure of real estate by the State was still subject to the fulfilment of additional conditions such as the absence of personal management of the land by the owner or members of his or her family and permanent employment in occupations other than farm labour.

Ruling on the determination of the acquisition of real estate by an autonomous holder and the transfer of real estate to the property of a former dependent

⁷ M. Kuydowicz, T. Pajor, *Uregulowanie własności gospodarstw rolnych*, Warszawa 1974, p. 9

⁸ *Ibidem*, p. 10.

⁹ See Article 1, item 1 of the Enfranchisement Law.

¹⁰ See Article 1, item 2 of the Enfranchisement Law.

¹¹ *Ibidem*, p. 10.

¹² See Article 2, item 1 of the Enfranchisement Law.

¹³ H. Ciepla, *ibidem*, p. 65.

holder was transferred to the authority competent for agricultural affairs of the presidium of the district national council. Intricate or contentious cases could be referred to the county enfranchisement commission for consideration. The ruling followed an administrative procedure and culminated in the issuance of a land title deed (hereinafter "AWZ"), constituting an administrative decision. The provisions of the Code of Administrative Procedure applied to cases considered by the bodies for agricultural affairs of the presidiums of national councils and the enfranchisement commissions.¹⁴ The final AWZ was the basis for disclosing the new ownership status in the Land and Mortgage Register.

The Enfranchisement Law was a one-time act and did not shape social relations for the future (except for Article 17).¹⁵ According to the legislature, enfranchisement, due to its one-time nature, should be a short-lived action, which justified entrusting the implementation of the Enfranchisement Law to public administration bodies. This constituted an exception to the principle of deciding civil cases, which undoubtedly include property cases, in civil proceedings (Articles 1 and 2 of the Code of Civil Procedure¹⁶).

Despite the Enfranchisement Law coming into force more than 50 years ago, it has had quite a considerable impact on the circulation of agricultural property. There are still properties on the market for which the only proof of ownership is just an AWZ.¹⁷ AWZs were issued until 5 April 1982. This was due to the repeal of the Enfranchisement Law by the Act of 26 March 1982 on amending the Civil Code and repealing the Act on the regulation of the ownership of farms.¹⁸ During the implementation of the Enfranchisement Law, it turned out that there were too many problems in the cases, the solution of which posed difficulties for the administrative bodies, which led to the prolongation of the enfranchisement action.¹⁹ As a result, the amendment law transferred the adjudication of real estate acquisition cases by an autonomous holder and for deferred payment of real estate acquisition claims to courts in non-trial proceedings. At the same time, the possibility of transferring cases involving the State's takeover of agricultural property on the basis of decisions issued under Article 2(1) of the Enfranchisement Law to the courts was excluded, as confirmed by the Supreme Court in its resolution of 14 February 1983, ref: III CZP 1/83.²⁰ The repeal law is still in effect today, making it possible to file petitions in ordinary courts to declare the acquisition of

¹⁴ Law of 14 June 1960 – Code of Administrative Procedure (i.e. Journal of Laws of 2023, item 775).

¹⁵ J. Paliwoda, *ibidem*, p. 38.

¹⁶ Law of 17 November 1964 – Code of Civil Procedure (i.e. Journal of Laws of 2023, item 1550 as amended).

¹⁷ A. Bieda, E. Jasińska, E. Preweda, *Znaczenie aktu własności ziemi w obrocie nieruchomości położonych na terenach wiejskich*, "Infrastruktura i Ekologia Terenów Wiejskich" 2010, iss. 12.

¹⁸ Journal of Laws of 1982 No. 11, item 81, hereinafter referred to as the 1982 repeal law.

¹⁹ Resolution of the Supreme Court of 30 June 1992, ref: III CZP 73/92.

²⁰ Resolution of the Supreme Court of 14 February 1983, ref: III CZP 1/83.

property by enfranchisement. When repealing the Enfranchisement Law, the legislature expressly stipulated that the acquisition of the right to ownership of real estate under it by operation of law remained in effect, regardless of whether it was established by the issuance of an AWZ by 5 April 1982, or whether the issuance of an AWZ did not occur.

The purpose of this article is to provide an overview of issues related to the possibility of verifying AWZs issued under the Enfranchisement Law under the provisions of the Code of Administrative Procedure and in civil proceedings. It should be emphasized that in the current state of the law, a statement of property acquisition made by a court or, until the repealing law entered into force, made by a local state administration body, is the sole evidence of property acquisition under the Enfranchisement Law (Article 10 of the 1982 repeal law). Due to the limited framework of the study, the issues related to the review of a court decision stating the acquisition of property by enfranchisement will not be discussed in this article.

II. VERIFIABILITY OF THE AWZ UNDER THE PROVISIONS OF THE CODE OF ADMINISTRATIVE PROCEDURE

The Enfranchisement Law itself already provided for an appeal path against AWZs issued at the first instance. A decision of the agricultural affairs authority, as well as a decision of the district enfranchisement commission, could be appealed to the provincial enfranchisement commission, whose decision was final. Since the provisions of the Code of Administrative Procedure applied to the proceedings, it was possible to use extraordinary legal remedies: a motion to reopen the enfranchisement proceedings; and a motion to revoke, amend and annul the AWZ. From the date of entry into force of the Act of 19 October 1991 on the management of agricultural property of the State Treasury,²¹ i.e., 1 January 1992, the application of the provisions of the Code of Administrative Procedure on the resumption of proceedings, annulment and revocation or amendment of decisions was excluded to final AWZs issued under the Enfranchisement Act.²²

The above exemption was the subject of three judgements of the Constitutional Court: the judgement of 22 February 2000, ref: SK 13/98²³, the judgement

²¹ Law of 19 October 1991 on the management of agricultural property of the State Treasury (i.e. Journal of Laws of 2022, item 2329 as amended), hereinafter the Law on the management of agricultural property of the State Treasury.

²² See: Article 63 item 2 of the Law on the management of agricultural property of the State Treasury.

²³ Journal of Laws of 2000, Article 15, item 203.

of 15 May ref: SK 29/99,²⁴ and the judgement of 10 June 2020, ref: K 11/18.²⁵ In the aforementioned judgements, the Constitutional Court recognized the compatibility of Article 63 item 2 and 3 of the Law on the management of agricultural property of the State Treasury with the Constitution of the Republic of Poland,²⁶ giving priority to the principle of permanence of final administrative decisions. The justification stressed that the persons concerned from the time the Enfranchisement Law came into force, and its subsequent repeal, until the entry into force of the Law on the management of agricultural property of the State Treasury had sufficient time to take appropriate legal steps. On the other hand, the principle of the rule of law does not imply the indefinite possibility of revoking final administrative decisions. Also, Article 77 of the Constitution of the Republic of Poland cannot be interpreted in a way that excludes the possibility of introducing time limits for taking to court cases that involve violations of individual rights or freedoms and for compensation for unlawful action by public authorities. The Court stressed that with regard to the persons concerned, who have not taken legal steps for the realization of their claims for many years, the legislator has the option of introducing a regulation that deprives them of the possibility of effective enforcement.

Thus, in the current state of the law, it is not possible to use the extraordinary remedies provided for in the Code of Administrative Proceedings. However, it must be emphasized that the exemption provided for in Article 63 item 2 of the Law on the management of agricultural property of the State Treasury does not include Article 113 § 1 of the Code of Administrative Proceeding concerning the correction of clerical and accounting errors and other obvious mistakes in relation to the AWZ.²⁷ The possibility of correcting them is not limited by any deadline.²⁸ The competent authority to adjudicate on the rectification of the AWZ is the municipal authority with jurisdiction according to the location of the property.²⁹ However, rectification is not a legal remedy. In the literature and jurisprudence, it is generally accepted that rectification cannot lead to a change in the decision. Thus, it is not permissible to rectify a decision that would lead to a redetermination of the case, different from the original one, to amend or supplement the decision.³⁰ Therefore, it is not permissible to rectify a ruling that would lead to

²⁴ Journal of Laws of 2000, Article 40, item 474.

²⁵ Journal of Laws of 2020, item 1047.

²⁶ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, Article 78, item 483, as amended), hereinafter referred to as the Constitution.

²⁷ Judgement of the Supreme Administrative Court of 21 March 1996, ref: II SA 432/95.

²⁸ Judgement of the Supreme Administrative Court of 29 June 1997, ref: IV SA 1015/97.

²⁹ Judgement of the Provincial Administrative Court in Warsaw of 29 March 2006, ref: IV SA/Wa 2403/05 and the judgement of the Provincial Administrative Court in Krakow of 4 February 2013, ref: III SA/Kr 1764/12.

³⁰ See: e.g. P. Przybysz, *Kodeks postępowania administracyjnego. Komentarz*, updated to Article 113 of the Code of Administrative Procedure, LEX/el. 2023, and the case law cited therein.

a redetermination of the case, different from the original one, to amend or supplement the ruling. Facts cannot be supplemented, previous findings changed and given a different meaning than before the rectification.³¹ Under the rectification procedure, it is not possible to correct a substantive error as an obvious mistake.³²

The AWZ itself is an administrative decision that is very poor in content and usually contains a brief statement of reasons. The AWZ indicates the person in whose favour the enfranchisement took place, along with the determination of the property, the area of the property, the amount, method and timing of repayments or refers to the exemption from the obligation to repay debts, and in the case provided for in Article 8 of the Enfranchisement Law, the creation of a life annuity right. The above-mentioned content of the AWZ was explicitly indicated by the legislator in Article 12 item 1 and 2 of the Enfranchisement Law and, as a result, it constitutes substantive content that cannot be corrected. Consequently, the erroneous plot number assigned only in the AWZ, where it was given correctly in the administrative file, cannot be changed by way of rectification, despite the lack of need to change the factual findings. A defective area of plots of land,³³ or a change of fractional parts disposed of by persons indicated in the AWZ³⁴ is also not subject to amendment by way of rectification.

Through rectification, of course, the person in whose favour the enfranchisement took place cannot be changed. However, the AWZ includes not only the names of these individuals, but also their parents' names, place of residence, or date of birth. Case law recognizes that it is permissible to correct a mistake in the sequence of names of the person in whose favour the enfranchisement took place,³⁵ however, in another state of facts, such a correction could be inadmissible. The rectification must not cause a situation in which there is doubt about the person who was covered by the AWZ. Given that the enfranchisement was mainly related to family and neighbourhood relations, there may be such facts the rectification of which, for example, the name (or surname) of the parents or one letter in the surname, would involve a change in the addressee of the decision, which is inadmissible in the rectification procedure.

³¹ Judgement of the Supreme Administrative Court of 24 September 2009, ref. II OSK 1439/08.

³² Judgement of the Supreme Administrative Court of 24 September 1999, ref. IV SA 1184/97, judgement of the Supreme Administrative Court of 25 October 1999, ref: II SA 1662/99.

³³ Judgement of the Provincial Administrative Court in Warsaw of 29 March 2006, ref: IV SA/Wa 2403/05.

³⁴ Judgement of the Provincial Administrative Court in Krakow of 4 December 2013, ref: III SA/Kr 354/13.

³⁵ Judgement of the Provincial Administrative Court in Krakow of 4 February 2013, ref: III SA/Kr 1764/12.

III. VERIFIABILITY OF AWZ IN CIVIL PROCEEDINGS

In view of the fact that Article 63 item 2 of the Law on the management of agricultural property of the State Treasury prevents the application of the provisions of the Code of Administrative Procedure on extraordinary remedies to AWZs, a doubt has arisen as to whether this provision opens up a judicial path to requesting the annulment of AWZs. This view could be justified by the fact that cases of ownership (among other things, to declare the acquisition of property) should be classified as civil law settlements, which should be handled under Articles 1 and 2 of the Code of Civil Procedure in civil proceedings. This issue was finally resolved by the Supreme Court in a resolution of 30 June 1992,³⁶ indicating that the entry into force of Article 63 of the Law on the management of agricultural property of the State Treasury does not open the judicial path to request the annulment of an AWZ. In its rationale, the Supreme Court said that allowing courts to hear cases of AWZ invalidation would mean allowing judicial review of administrative decisions and the possibility of courts ruling differently from what public administration bodies have ruled.³⁷ Due to the principle of the division of powers between the courts and the public administration as well as the principle that courts are allowed to review administrative decisions only in cases and in the manner provided by law, review of AWZs would only be possible if there was explicit legislation on the subject.³⁸ In contrast, Article 63 of the Law on the management of agricultural property of the State Treasury does not contain a provision extending the jurisdiction of common courts to review AWZs. Moreover, in view of the deletion by Article 63 item 1 of the Law on the management of agricultural property of the State Treasury of Article 8 item 4 of the 1982 repeal law, which provided for the transfer to the courts of cases in which an AWZ was revoked or declared invalid, the Supreme Court saw a limitation on the jurisdiction of the courts to review AWZs.

The entry into force of Article 63 of the Law on the management of agricultural property of the State Treasury also excluded the possibility of refusing entry on the grounds that the final AWZ was issued in violation of the provisions of

³⁶ Resolution of the Supreme Court of 30 June 1992, ref: III CZP 73/92.

³⁷ Also, the judgement of the Supreme Court of 6 November 1985, ref: III CRN 347/85. In the justification of the judgement, the Supreme Court stated that an application filed after 5 April 1982, to declare the acquisition of property by an autonomous holder on the basis of the Enfranchisement Law is subject to rejection on the grounds that the court route is inadmissible, if the proceedings on the acquisition of property were completed before 6 April 1982 (the date of entry into force of the 1982 repeal law) by a final decision of a local state administration body.

³⁸ An example of such a provision is Article 8, item 2 of the 1982 repeal law, according to which appeals against an AWZ issued by a territorial primary state administration body in the cases specified in item 1 above shall be forwarded to the competent courts as the second instance in those cases.

the Enfranchisement Law in the Land and Mortgage Register proceedings.³⁹ It should be emphasized, however, that the exclusion by Article 63 of the Law on the management of agricultural property of the State Treasury of the possibility of application of extraordinary remedies by the Code of Administrative Procedure does not mean that, when deciding a civil case, the court is not authorized to subject an AWZ to legal evaluation due to its subject matter. Without entering into the legitimacy of the AWZ, the court has the power to assess what legal effects the acquisition of real estate by enfranchisement has, among other things, in the sphere of marital property relations.⁴⁰ The binding legal force of an administrative act comes down to that area of relations that the administrative body is statutorily appointed to regulate.⁴¹ On the other hand, the adjudication of whether the enfranchised object became part of the spouses' joint property or a separate property of one of the spouses was beyond the cognizance of the authorities issuing the AWZ.

Since the Supreme Court has prejudged the inadmissibility of the judicial route in cases of annulment of the AWZ, it is necessary to consider whether there is a possibility of reviewing the AWZ under Article 10 item 1 of the Land and Mortgage Register Law of 6 July 1982.⁴² According to the above-mentioned provision, in the event of a discrepancy between the legal status of a property disclosed in the Land and Mortgage Register and the actual legal status, a person whose right has not been recorded or has been erroneously recorded, or has been affected by the recording of a non-existent encumbrance or restriction, may demand the elimination of the discrepancy. It is accepted in case law that proceedings for reconciliation of the state of the land register with the actual state of the law cannot replace other civil cases, such as those for acquisitions or enfranchisement.⁴³ As a result, in these proceedings, the court cannot examine whether the interested party acquired ownership of the property on the basis of the Enfranchisement Law, making it necessary to conduct a separate enfranchisement proceeding based on Article 4 of the 1982 repeal law. This thesis is also supported by the wording of Article 10 of the 1982 repeal law, according to which the declaration of acquisition of ownership of real estate made by a court or, until the date of the entry into force of this law, made by a local state administration body, is the sole evidence of the acquisition of ownership of real estate on the basis of the Enfranchisement Law.

³⁹ Resolution of the Supreme Court of 28 January 1993, ref: III CZP 167/92.

⁴⁰ Judgement of the Supreme Court of 21 May 1999, ref: III CKN 244/98.

⁴¹ *Ibidem*.

⁴² Law of 6 July 1982 on Land and Mortgage Registers (i.e. Journal of Laws of 2023, item 146, as amended), hereinafter referred to as the Land Records and Mortgage Law.

⁴³ Judgement of the Supreme Court of 21 March 2013, ref. III CZP 4/13, judgement of the Supreme Court of 27 June 2001, ref. II CKN 413/00, judgement of the Supreme Court of 8 June 2005, ref: I CK 701/04.

In proceedings based on Article 10 item 1 of the Land and Mortgage Law, the court is bound by the final administrative decision (both constitutive and declaratory), by which it cannot issue a ruling that would undermine the decision.⁴⁴ Importantly, the court has the authority to examine in these proceedings whether the administrative decision is final and valid.⁴⁵ If the administrative decision was not properly served on one of the parties to the proceedings, any determination of finality by the administrative body would be erroneous. However, in the case of AWZ, this rule does not apply. In a resolution of 18 May 1994, the Supreme Court clarified that after the entry into force of Article 63 of the Law on the management of agricultural property of the State Treasury, the court is bound by the AWZ if it has been declared final by a competent administrative authority.⁴⁶ This conclusion is drawn from the second sentence of Article 8 item 2 of the 1982 repeal law, according to which the provisions of the Code of Administrative Procedure apply to the proceedings before an appeal is transferred to the competent court as to the time limit for filing an appeal, the grounds and the form. Thus, since the legislature left the preliminary examination to the administrative body, one cannot conclude from such regulation that it delegated to the court the assessment of whether the recognition of the AWZ as final was correct. Due to the continued applicability of Article 8 item 2 of the 1982 repeal law, it would be possible for the court to hear the appeal if a hitherto pending appeal against the AWZ were now found in the case file.⁴⁷

Both in the doctrine of administrative law and in case law, it is unanimously accepted that the omission of the participation of a certain entity as a party in the administrative proceedings and the delivery of the decision to the latter of the parties to the proceedings (if more than one entity is a party) results in the decision being considered final.⁴⁸ According to this position, after the expiration of the deadline for the decision to become final, a party to the administrative proceedings not involved in them is only entitled to a request for the resumption of proceedings under Article 145 item 1.4 of the Code of Administrative Procedure.⁴⁹ While the legal consequences of incorrectly serving an administrative decision on one of the parties to the proceedings do not amount to a complete disregard of the participation of a certain entity in the proceedings as a party, with regard to the AWZ this distinction is irrelevant. This is due to the inadmissibility of review-

⁴⁴ T. Czech, *Księgi wieczyste i hipoteka. Komentarz. Tom I. Księgi wieczyste, Komentarz do art. 10*, LEX el. 2022, thesis 160.

⁴⁵ Judgement of the Supreme Court of 7 April 1999, ref: I CKN 1079/97.

⁴⁶ Resolution of the Supreme Court of 18 May 1994, ref: III CZP 69/94.

⁴⁷ *Ibidem*.

⁴⁸ Judgement of the Supreme Court of 21 March 2013, ref: III CZP 4/13, and the case law cited therein.

⁴⁹ Judgement of the Supreme Administrative Court of 16 July 2002, ref: II SA 2230/00.

ing the AWZ from the point of view of its finality (see Supreme Court resolution of 18 May 1994, ref: III CZP 69/94).

An exception to the principle that a court is bound by a final administrative decision has been developed in case law based on the concept of absolute invalidity of administrative decisions. It is understood that the court is not bound by decisions with such significant defects that they must be considered invalid, even if this defect was not found in the administrative proceedings.⁵⁰ In the justification of the Supreme Court resolution of 9 October 2007, ref: III CZP 46/07, it was pointed out that for several decades the view has remained unchanged that an administrative decision cannot have legal effects despite its formal non-repeal if it suffers from defects that compromise its essence as an administrative act.⁵¹ Such defects included the absence of an authority appointed to rule on a particular matter, the failure to apply any procedure or a clear violation of the rules of administrative procedure, the Supreme Court said. The burden of proof that an administrative decision is vitiated by a defect of absolute invalidity rests with the person who derives legal consequences from this fact. Consequently, if an AWZ contains qualified defects detrimental to the essence of the administrative act, the court will not be bound by it.

Special attention should be paid here to the Supreme Court resolution of 11 March 1994, ref: III CZP 18/94, decided on the basis of a case for reconciliation of the content of the land register with the real state of the law, in which there were two mutually exclusive AWZs.⁵² According to the Supreme Court, the exclusion of the admissibility of the revocation of final AWZs also includes situations in which the administrative body has issued two decisions on different dates regarding the same subject of enfranchisement, in favour of two different persons. However, the property dispute that has arisen between these persons shall be resolved by the ordinary court in the proceedings in which its resolution is necessary to settle the case. In the justification for the resolution, the Supreme Court noted that due to the content of Article 10 of the 1982 repeal law, the resolution of the legal issue requires the intervention of the legislature, which would mean that the question of property ownership could not be resolved until an indefinite future date. According to the Supreme Court, in a situation where two different persons have AZWs stating that each of them has acquired ownership of the same property, there is a dispute as to the person of the owner, which must be resolved by the court (Articles 1 and 2 of the Code of Civil Procedure). There shall be no such dispute over ownership when the AWZ is legitimized by only one of the parties, while the other party questions the correctness of the decision. In such a case, the administrative decision, which is not subject to judicial review, is decisive for deciding the case. If the AWZs state mutually exclusive circumstances, there is no

⁵⁰ T. Czech, *op. cit.*, thesis 163 and 164.

⁵¹ Resolution of the Supreme Court of 9 October 2007, ref. III CZP 46/07.

⁵² Resolution of the Supreme Court of 11 March 1994, ref: III CZP 18/94.

basis for assuming that the question of ownership was resolved by an administrative body by a decision not subject to judicial review. Refusal to settle a property dispute would violate Article 14 of the International Covenant on Civil and Political Rights⁵³ and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,⁵⁴ which provide that every person has the right to have his or her civil case heard by an independent and impartial court. Under the concept of proceedings in which the resolution of the dispute is necessary for the resolution of the case, the Supreme Court listed cases for reconciliation of the content of the land register with the real state of the law, for eviction from real estate, or for the division of inheritance (however, this enumeration is exemplary). Mutually exclusive AWZs shall be treated as official documents within the meaning of Article 244 item 1 of the Code of Civil Procedure, i.e. as documentary evidence subject to the court's free evaluation (Article 233 item 1 of the Code of Civil Procedure). In such a situation, the AWZs cannot be considered sufficient evidence to assume that the case has been clarified to a firm conclusion. This entails the court's obligation to take further evidence to determine the actual facts of the case, taking into account the contents of the Enfranchisement Law and the status as of 4 November 1971.

In the case law of the Supreme Court, the prevailing view is that an AWZ issued under Article 1 of the Enfranchisement Law constitutes a decision confirming the acquisition of property by operation of law. The declaratory nature of this decision determines that in court proceedings such an AWZ is treated like other official documents within the meaning of Article 244 item 1 of the Code of Civil Procedure.⁵⁵ Thus, it is possible and permissible to challenge their veracity as an official document in accordance with the Code of Civil Procedure. In a case decided by the Supreme Court in a judgement of 20 July 2005, ref: II CK 3/05, there was a challenge to the AWZ issued under Article 1 of the Enfranchisement Law. In the facts of the case, the AWZ issued on 30 May 1974 stated the acquisition of the property by the spouses. However, due to its declaratory nature, it could have not, in fact, constituted a confirmation of the acquisition of property jointly by the spouses, since they entered into marriage on 23 February 1974. Thus, they could not have acquired property under the Enfranchisement Law, which regulated possession as of 4 November 1971. Neither could the administrative authorities issuing the AWZs have made binding decisions on the question of whether the acquired property was part of the spouses' joint

⁵³ International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, Article 38, item 167).

⁵⁴ Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1933, Article 61 item 284).

⁵⁵ Judgements of the Supreme Court of 20 July 2005, ref: II CK 3/05, of 30 November 2004, ref: IV CK 26/04, of 5 September 2001, ref: I CKN 399/09.

property or part of the separate property of one of them, since these questions did not fall within the jurisdiction of the authorities specified in Article 12 of the Enfranchisement Law.⁵⁶

IV. SUMMARY

It follows from the above considerations that verification of AWZs in the current state of the law is possible only in civil proceedings, under quite extraordinary circumstances. The civil court was not given the authority to eliminate the AWZ from the legal transactions. As a rule, the civil court is bound by the contents of the final AWZ. The possibility for the court to deviate from the content of the AWZ occurs mainly with:

- a) evaluation in evidence of the AWZ being declaratory as an official document,
- b) applying the concept of absolute invalidity of administrative decisions,
- c) the existence of two or more AWZs that are mutually exclusive.

It should be noted, however, that Article 63 of the Law on the management of agricultural property of the State Treasury, which prohibits the application of extraordinary remedies to AWZs provided for in the Code of Administrative Procedure, despite being examined three times by the Constitutional Court, has not been eliminated from the legal order. More than 50 years have passed since the enactment of the Enfranchisement Law, and those concerned have had adequate time to take legal action. Priority has been given to the principle of permanence of final administrative decisions over the protection of individual interests of individuals. Thus, individuals should not delay in duly defending their rights, as prolonged inaction may result in deprivation of the opportunity to effectively pursue their claims. Also, it must be borne in mind that nowadays granting the possibility of verifying decisions in which the state of possession as of 4 November 1971 was crucial would involve many difficulties (e.g., determining successors in title, taking into account divisions and changes in property boundaries, changes in the use of property). In practice, it would be very difficult, if not impossible, to carry out such proceedings.

⁵⁶ Judgement of the Supreme Court of 21 May 1999, ref: III CKN 244/98.

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