

**Case number:**

Up-282/15

**ECLI:**

ECLI:SI:USRS:2017:Up.282.15

**Challenged act:****Operative provisions:****Abstract:****Denationalisation and the Principle of Equality**

In Case No. **Up-282/15** (Decision dated 5 October 2017, Official Gazette RS, No. 59/17), the Constitutional Court decided on a constitutional complaint against two judgments by which the Administrative Court and the Supreme Court dismissed with legal finality the complainant's lawsuit against a decision of an administrative authority dismissing her claim for damages resulting from a decrease in the value of real property that was returned to the complainant (as the legal successor of the former owner of the real property) by a final decision on denationalisation. The courts substantiated the challenged judgments with the assessment that the complainant is not entitled to the alleged damages, as her legal predecessor already had the right to obtain compensation for the nationalised property on the basis of the Treaty on the Regulation of Damages Suffered by Exiled, Displaced, and Persecuted Persons, on the Regulation of Other Financial Issues and Issues from the Social Field (the Settlement of Disputes and Financial Issues Treaty), which was concluded between the Federal Republic of Germany and the Republic of Austria in 1961, as well as on the basis of the laws adopted by the Republic of Austria for the implementation of this treaty. The courts based this assessment on the position according to which, on the basis of the second paragraph of Article 10 of the Denationalisation Act (the DenA), a person who seeks entitlements pursuant to the DenA can be refused the right to denationalisation if in another state said person had a legal basis ensuring him or her (even if only in principle) the right to obtain compensation for the seized property.

In the constitutional complaint the complainant alleged that the courts based the mentioned legal position on an unreasonable interpretation of the second paragraph of Article 10 of the DenA that is inconsistent with the legislature's intent and thus placed her in an unequal position with regard to the possibility to seek entitlements pursuant to the DenA when compared to persons to whom the DenA provides the right to denationalisation. In light of this allegation of the complainant, the Constitutional Court reviewed the challenged legal position from the perspective of the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution, which requires courts to treat essentially equal situations equally, and essentially different situations accordingly differently.

At the outset, the Constitutional Court emphasised that in the first sentence of the second paragraph of Article 10 of the DenA the legislature did not grant the right to denationalisation on the basis of the provisions of the DenA only to persons who had already obtained compensation for the seized property from a foreign state and persons who would have had the right to obtain such compensation in a foreign state if they had enforced it. Proceeding from the aim pursued by the DenA and considering the principle of equality before the law determined by the second paragraph of Article 14 of the Constitution, the legislature thus prevented these persons from also achieving a return of the

nationalised property in one of the statutorily determined forms pursuant to the DenA. The Constitutional Court further emphasised that whether or not former Yugoslavia was (also) a party to the peace treaty or some other treaty on the basis of which the competent authority (in accordance with the second sentence of the second paragraph of Article 10 of the DenA) determines if grounds for denying the mentioned right exist is irrelevant for the assessment of whether a person seeking entitlements on the basis of the DenA had the right to obtain compensation for the seized property from a foreign state. The decisive question is whether on the basis of such treaty and the regulations that the foreign state adopted for the implementation thereof the person had a right to obtain compensation precisely for the property that had been seized (i.e. confiscated or nationalised) and whose return is regulated by the DenA.

In addition to persons who obtained compensation for the seized property from a foreign state or who in fact had the right to obtain such compensation, the challenged legal position also excludes from the circle of those entitled to denationalisation persons whom a peace treaty or other treaty placed in the circle of beneficiaries who could seek compensation for the seized property from a foreign state. As this circle of beneficiaries also includes persons who did not fulfil the conditions determined by the regulations that the foreign state adopted for the implementation of such treaty and therefore could not have obtained compensation even if they had enforced it, the Constitutional Court assessed that as regards the possibility to seek entitlements pursuant to the DenA these persons are in an essentially different position than persons whom the first sentence of the second paragraph of Article 10 of the DenA excludes from the circle of those entitled to denationalisation because they obtained such compensation or in fact had the right to obtain it. In accordance with established constitutional case law, the mentioned groups could only have been treated equally if such were substantiated by reasonable grounds deriving from the nature of the matter. The Constitutional Court held that the circumstance that “there existed (even if only in principle) the right to obtain compensation for the seized property in a foreign state” cannot constitute such a reason unless it is established in individual proceedings that the person seeking entitlements on the basis of the DenA in fact would have had the right to obtain compensation from the foreign state if he or she had enforced such claim (on the basis of his or her “right in principle”).

As the Administrative Court and the Supreme Court based the challenged decisions on an interpretation of the first sentence of the second paragraph of Article 10 of the DenA that required two groups of persons in essentially different positions to be treated equally without reasonable grounds deriving from the nature of the matter for such equal treatment, the Constitutional Court decided that such an interpretation is not acceptable from the perspective of the right to equality before the law determined by the second paragraph of Article 14 of the Constitution. The Constitutional Court therefore annulled the challenged judgments and remanded the case to the Administrative Court for new adjudication.

**Thesaurus:**

**Legal basis:**

**Cases joined:**

**Full text:**

**Type of procedure:**

ustavna pritožba

**Type of act:**

posamični akt

**Applicant:**

Christa Haase, Republic of Austria

**Date of application:**

28. 4. 2015

**Date of Decision:**

5. 10. 2017

**Type of decision adopted:**

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**Outcome of proceedings:**

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