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REPORT

**“DISPUTES REGARDING THE COMPETENCES BETWEEN THE STATE POWERS
BEFORE THE CONSTITUTIONAL COURT – INTERNATIONAL EXPERIENCE”**

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ABSTRACT: At first the corresponding judicial bodies dealt primarily with jurisdictional disputes between individual rulers. However, due to the fact that there are numerous other different issues emerging today, constitutional review is no longer concerned only with the distinction of these powers. In case of deciding on jurisdictional disputes, such disputes may concern disputes between top governmental bodies, between the state and other regional or local units, between regional or local units, between (ordinary) courts and other governmental bodies, as well as other jurisdictional disputes. The Slovenian Constitutional Court is also empowered to decide on jurisdictional disputes, however, cases prevail, relating to disputes between ordinary courts and administrative governmental units dealing with denationalization issues.

I. COMPARATIVE OVERVIEW

Certain elements of constitutional review go back as far as the year 1180, i.e. to the old German Reich. At first the corresponding judicial bodies dealt primarily with jurisdictional disputes between individual rulers and partly even with violation of rights.

In reality, from a historical point of view, in many (other) systems constitutional/judicial review emerged in jurisdictional disputes between various government bodies. However, due to the fact that there are numerous other different issues emerging today, constitutional review is no longer concerned only with the distinction of these powers. From the comparative point of view the following types of jurisdictional disputes may be determined:

1. Jurisdictional disputes between top governmental bodies: Adigea/Russia, Albania ¹, Andorra, Austria, Azerbaidjan, Baden-Wuerttemberg/Germany, Bashkiria/Russia, Bavaria/Germany, Berlin/Germany, Bremen/Germany, Bosnia and Herzegovina ², Bulgaria, Buryatia/Russia, Cameroon, the Central African Republic, Chad, Croatia ³, Cyprus,

¹ The Court of Cassation is empowered to examine the legal basis of contested court decisions but it cannot interpret the Constitution. Under Article 24.1 of the Constitutional Law, it is the prerogative of the Constitutional Court to interpret the Constitution and constitutional laws. The Constitutional Court has jurisdiction to examine complaints lodged by natural persons or legal entities alleging violations of their fundamental rights by unlawful decisions. The term "decision" as used in the basic law covers not only "decision" as used in the basic law covers not only decisions by other organs of the state but also court decisions (**ALB-1998-3-004**; Albania, Constitutional Court, date: 04-11-1998, No. 57, Fletorja Zyrtare (Official Gazette), no. 27), CODICES).

The Constitutional has power to rule on the conformity with the Constitution of orders staying execution and may be asked by the Council of Ministers to examine the cases concerned. Repeated orders by the President of the Court of Cassation for a stay of execution of a single decision in civil proceedings which have become final, and the stay of execution of, or objection to, decisions of the plenum of the Court of Cassation are unlawful and unconstitutional acts (**ALB-1995-3-003**, Albania, Constitutional Court, date: 21-09-1995, No. 2, Fletorja Zyrtare (Official Gazette), CODICES).

² The Constitutional Court is not empowered to review decisions of the Human Rights Chamber for Bosnia and Herzegovina under Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina (**BIH-1999-2-001**; Bosnia and Herzegovina, Constitutional Court, date: 26-02-1999, No. U 7/98; Appeal of the Office of the Public Attorney of the Federation of Bosnia and Herzegovina against the Decision of the Decision of the Human Rights Chamber of 11 March 1998 in Case no. CH/96/30, Sretko Damjanovic vs. the Federation of Bosnia and Herzegovina, Sluzbeni Glasnik Bosne in Hercegovine (Official Gazette of Bosnia and Herzegovina 9/99, 15. 6. 1999, CODICES).

Even if it were possible to appeal a decision of the Human Rights Chamber, parties to the proceeding cannot be allowed to present their comments and arguments for the first time in the appellate proceedings (**BIH-1998-2-001**, Bosnia and Herzegovina, Constitutional Court, date: 05-06-1998, No. U 3/98, U 4/98, Sluzbeni Glasnik Bosne / Hercegovine (Official Gazette of Bosnia and Herzegovina) 22/98, CODICES).

³ The Constitutional Court is competent to resolve jurisdictional disputes only between the bodies stipulated by (const-eng-cro-a-128) Article 128.6 of the Constitution. Therefore, it does not fall within its jurisdiction to resolve a negative jurisdictional dispute between a judicial body and a court of arbitration (**CRO-2004-1-004**, Croatia, Constitutional Court, date: 28-01-2004, No. U-IV-670/2003, Narodne novine (Official Gazette), 15/04, CODICES).

Dagestan/Russia, Ecuador, El Salvador, Serbia&Montenegro, the FYROM, Gabon, Georgia, Germany, Guatemala, Hamburg/Germany, Hessen/Germany, Ireland ⁴, Irkutsk Oblast/Russia, Italy, the Kabardino-Balkar Republic/Russia, Karelia/Russia, Kazakhstan, Koma/Russia, Madagascar, Mali, Mongolia, Mozambique, Nicaragua, Niedersachsen/Germany, Niger, Nordrhein-Westfalen/Germany, Peru, Poland, Russia, Saarland/Germany, Senegal, the Serbian Republic of Bosnia, Slovakia, Slovenia, Spain, South Africa ⁵, South Korea, Taiwan, Tajikistan, Tatarstan/Russia, Thailand, Ukraine, Yakutia/Russia.

2. Jurisdictional disputes between the State and regional or local units: Adigea/Russia, Albania, Austria ⁶, Bashkiria/Russia, Bosnia and Herzegovina, Brazil, Bulgaria, Buryatia/Russia, Cameroon, the Central African Republic, the Czech Republic (and the subsidiary power of the Supreme Court), Dagestan/Russia, Serbia&Montenegro, the FYROM, Germany, Hungary, India, Irkutsk Oblast/Russia, Italy, Karelia/Russia, Koma/Russia, Madagascar, Malaysia, Mexico, Montenegro/Serbia&Montenegro, Nicaragua, Nigeria, Pakistan, Russia, the Serbian Republic of Bosnia, Slovenia, South Africa, South Korea, Spain, Switzerland, Tatarstan/Russia, Ukraine, Yakutia/Russia.

⁴ An appeal lies from the High Court to the Supreme Court in that the legislative provisions in question do not set down in a clear and unambiguous way that such jurisdiction is excepted and regulated. The issue which the Supreme Court had to determine was whether or not a right of appeal lay to it from a decision of the Divisional High Court with regard to a petition challenging the validity of the Divorce Referendum. Under the Constitution, the Supreme Court has, with such exceptions and subject to such regulations as may be prescribed by law, appellate jurisdiction from all decisions of the High Court. The Courts have construed this literally. Accordingly, it has been open to the Oireachtas (legislature) to exclude certain decisions of the High Court from the appellate jurisdiction of the Supreme Court. However, in doing this, legislation must be clearly and unambiguously intended to have this effect. It is open to the Supreme Court to interpret the legislative provisions as to whether or not their appellate jurisdiction has been denied. In the present situation it had not been set down anywhere explicitly in the statute in question that a decision of the High Court was final and unappealable. Enshrined within the statute was a power conferred on the Supreme Court to determine at any stage of the trial, a case stated from the High Court. The Supreme Court found that the existence of such a right neither clearly nor unambiguously barred an appeal. The Referendum certificate itself was found to be final and incapable of being further questioned in any court when it has been received by the Referendum Returning Officer from the High Court. The Supreme Court found that the order of the High Court could not be construed as being final in the sense of being unappealable (**IRL-1996-2-001**, Ireland, Supreme Court, date: 01-03-1996, No. 48/96, Hanafin v. Minister for Environment and Others, Irish reports (Official Gazette), CODICES).

⁵ The Constitutional Court is the highest court in "constitutional matters", while the Supreme Court of Appeal (SCA) is the highest court in all other matters. Though not decisive, a "constitutional matter" is a threshold requirement for leave to appeal to the Constitutional Court to be granted. An assertion that the SCA was merely incorrect on the facts does not raise a "constitutional matter" (**RSA-2001-1-001**, South Africa, Constitutional Court, date: 01-12-2000, No. CCT 25/2000, Allan Aubrey Boesak v. The State, 2001 (1) South African Law Reports (Official Gazette) 912 (CC), 2001 (1) Butterworths Constitutional Law Reports 36 (CC); 2001 Butterworths Constitutional Law Reports 36 (CC); 2001(1) South African Criminal Law Reports 1 (CC); CODICES).

⁶ Pursuant to §8 of the Constitutional Law on the Restriction of Civil Servants' Salaries (Bezügebegrenzungs BVG 1997), all persons who draw a salary or retirement pension of two or more legal entities over which the Court of Audit's jurisdiction are obliged to inform the Court of Audit of salaries exceeding a certain amount (ATS 80 000 gross) and/or if a person draws an additional salary (no matter what the amount). If a legal entity does not fulfil this obligation the Court of Audit has to gain the information by inspection of the legal entity's relevant documents. The Court of Audit has then to prepare a report which names all persons receiving such a salary or retirement pension. This report must be handed over to the parliaments of the Federation (both chambers) and the Länder, and should be made available to the general public. Differences of opinion arose between the Court of Audit and some entities, such as the Niederösterreich Land, some larger communities, the Austrian Central Bank, the Austrian Broadcasting Corporation (ÖRF), Austrian Airlines (AUA) and a regional Economic Chamber (Wirtschaftskammer) about the interpretation of § 8 Bezügebegrenzungs BVG. Most of these entities fulfilled their obligation only insofar as they informed the Court of Audit with data in anonymous form. Some did not fulfil the obligation at all. None of them permitted audit measures (inspection of documents.) Therefore the Court of Audit asked the Court to settle this conflict of jurisdiction (first 8 cases out of around 250), while the entities involved asked the Court not to allow the applications, as in their view the provision in question (§ 8 Bezügebegrenzungs BVG) would be incompatible with Community law. The Court as a court within the meaning of Article 2343 EC decided to request the European Court of Justice to give a ruling on the interpretation of some provisions of Directive 95/46/EC (Official Journal L 281) as such and also within the context of (const-eng-ech-0-008) Article 8 ECHR as well as Article 8 of the Charter of Fundamental Rights of the European Union (**AUT-2000-3-009**, Austria, Constitutional Court, date: 12-12-2000, No. KR 1-6, 8/00, CODICES).

3. Jurisdictional disputes between regional and local units: Austria, Bashkiria/Russia, Bolivia, Bosnia and Herzegovina, Brazil, Buryatia/Russia, Cameroon, Serbia&Montenegro, Germany, Irkutsk Oblast/Russia, Italy, Karelia/Russia, Koma/Russia, Mexico, Montenegro/Serbia&Montenegro, Nicaragua, Nigeria, Peru, Russia, Slovenia, South Africa, South Korea, Spain, Switzerland, Tatarstan/Russia, Tucuman/Argentina, Ukraine).

4. Jurisdictional disputes between the (ordinary) courts and/or other governmental bodies: Argentina ⁷, Austria ⁸, Egypt, Greece, Montenegro/Serbia&Montenegro, Serbia/Serbia&Montenegro, Slovenia ⁹, Tucuman/Argentina;.

5. Specific jurisdictional disputes between some specific subjects: Austria, Croatia, Cyprus, Hungary, Nicaragua, Tucuman/Argentina, Ukraine, Yakutia/Russia, Yemen).

6. Jurisdictional disputes between the constitutional courts of the constituent republics of the federation: Serbia&Montenegro.

II. SLOVENIA

A) History

In accordance with the former Slovenian Constitution of 1963 as well as in accordance with the former Slovenian Constitution of 1974 (when Slovenia was a federal republic within the former Yugoslav federation), the Slovenian Constitutional Court was empowered to decide on jurisdictional disputes relating to the "rights and duties of the socio-political communities within the Republic. Until 1991 the former Slovenian Constitutional Court did not decide any case dealing with such issues.

B) Regulation and Practice

Under the Constitution of the Republic of Slovenia of 1991 (Official Gazette RS, Nos. 33/91, 42/97, 66/00, 24/03, 69/04) the Constitutional Court decides:

⁷ Decisions given by the special bodies responsible for trying judges are justiciable and therefore subject to review by the judiciary in cases of alleged violation of the safeguards on lawful proceedings (**ARG-2001-2-007**, Argentina, Supreme Court of Justice of the Nation, date: 14-06-2001, No. G.595.XXXV, González, Silvia Susana s/ comunicación en causa no. 56.523 Vicat, Luis Ernesto s/denuncia, Fallos de la Corte Suprema de Justicia de la Nación (Official Digest), 324 (II), CODICES).

⁸ In a dispute as to jurisdiction (where two courts either claim or refuse jurisdiction to deal with a case) the Constitutional Court may be obliged to set aside all legal decisions conflicting with its verdict. It will then exceptionally be empowered possibly to overturn the decision of the other courts (VfSlg 13.951/1994) (**AUT-1968-C-001**, Austria, Constitutional Court, 13-12-1968, No. B 622/78; G 113/84, G 134/84 et al., B 168/85, G 224/58; G 187/01, G 269/91; G 103-1072, G 123-127/92 et al.; K I-2/94; B 1171/94; G388-391/96; G 363-365/97, G 13.12.1968, 9690/1983 of 10.06.1983 of 11. 12. 1984, 10.616/1985 of 9. 10. 1985, 10.841/1986 of 20.03.1986, 12.883/1991 of 16. 10. 1991, 13.179/1992 of 01.10.1992, 13.951/1994 of 29.11.1994, 14.304/1995 of 11. 10. 1995, 14.723/1997 of 24.01.1997, 15.129/1998 of 11.03.1998, 15.506/1999 of 09.06.1999; CODICES).

⁹ In deciding a denationalization claim, the decisive fact is the actual basis for the transfer of property rights. Where there was a legal transaction between a real estate owner (the present applicant for denationalization) and an applicant for land consolidation which incorporated all of the components specified by the rules of the law of obligations, with the land consolidation decision only being used as the means of executing such a transaction, the decision concerning the denationalization claim came within the jurisdiction of the courts of justice. In the case where the legal title to the transfer of property right consists of a decision of a state body, the decision, in accordance with the rules of administrative proceedings, shall come within the jurisdiction of an administrative body (**SLO-1995-3-017**, Slovenia, Constitutional Court, date: 05-10-1995, No. U-II-107/95, Uradni list RS (Official Gazette) 61/95, Odločbe in sklepi Ustavnega sodišča (Official Digest of RS), IV 1995, Pravna praksa (Legal Practice Journal), Ljubljana, Slovenia (abstract); CODICES).

- on jurisdictional disputes between the state and local communities and among local communities themselves (Item 7 of Para. 1 of Article 160);
- on jurisdictional disputes between courts and other state authorities (Item 8 of Para. 1 of Article 160);
- on jurisdictional disputes between the National Assembly, the President of the Republic and the Government (Item 9 of Para. 1 of Article 160).

Jurisdictional disputes may be the following:

- "positive" disputes on jurisdiction: when two bodies accept jurisdiction (competence) on the same legal matters (e.g. an ordinary court and an administrative unit, Para. 1 of Article 61 of the Constitutional Court Act, Official Gazette RS, No. 15/94);
- "negative" disputes on jurisdiction: when several bodies refuse jurisdiction (competence) on the same legal matters (Para. 2 of Article 61 of the Constitutional Court Act). If a jurisdictional dispute occurs because several bodies refuse to be competent in a particular case, a solution to the case may be proposed by the body to which the case was assigned, but believes that the matter does not fall within its jurisdiction (Para. 2 of Article 61 of the Constitutional Court Act) ¹⁰.

An application for resolving a jurisdictional dispute may be submitted:

- by the body to which the case was assigned, but believes that the matter does not fall within its jurisdiction (in the form of request – proposal, Para. 2 of Article 61 of the Constitutional Court Act)
- or
- by a party to the procedure which caused the jurisdictional dispute e.g. an individual, application in the form of individual petition (Para. 3 of Article 61 of the Constitutional Court Act).

Under the Rules of Procedure of the Constitutional Court (Official Gazette RS, No. 93/03) a request (or individual petition) for a ruling on a jurisdictional dispute between the courts and other state organs and a jurisdictional dispute between the National Assembly, the President of the Republic and the Government, and on a jurisdictional dispute between the State and local communities and among local communities themselves should contain:

- the name and seat of the applicant,
- the first and last name and office of the representative of the applicant,
- the title and seat of the organ or organs which are parties to the controversy,

¹⁰ If the jurisdiction over a particular case was not refused, a jurisdictional dispute could not arise (Slovenia, Constitutional Court, Ruling No. U-II-430/98, date: 14/1-1999, OdlUS VIII, 7).

The Constitutional Court rejects the request for resolving the jurisdictional dispute between the State and the local government because the petitioner did not specify the State body having interfered, and the manner of its interference with the area of jurisdiction of the petitioner (Slovenia, Constitutional Court, Ruling No. U-II-194/95, date: 18/10-1995, OdlUS IV, 106).

It is not within the jurisdiction of the Constitutional Court to evaluate the constitutionality and legality of agreements among the Ministries, because such agreements do not have the nature of regulations or general legal acts issued for the exercise of public authority. The procedural condition for commencing the proceedings for evaluating the constitutionality and legality is not fulfilled if the initiator does not show that the challenged statutory provisions directly encroach on his rights or legal benefits. A jurisdictional dispute before the Constitutional Court shall be commenced on the proposal of an affected organ or party to the proceedings. If such a dispute occurs between the organs of the state administration, the Government is, according to the Government Act, competent to resolve it, not the Constitutional Court (Slovenia, Constitutional Court, Ruling No. U-I-272/95, date: 16/2-1996, OdlUS V, 20).

- the statement of the general or individual act which was the cause of the controversy, or the statement of the issue on which the affected bodies cannot reach an agreement concerning jurisdiction,
- the statement of the provisions of regulations which govern the jurisdiction of the affected bodies.

As a rule, proceedings before the Constitutional Court require an "outside" application, which means that the Constitutional Court cannot start constitutional review proceedings *ex officio*. In case of a "privileged application" (which is called request/proposal, in accordance with Article 23 of the Constitutional Court Act filed by some governmental bodies = some privileged petitioners), the proceedings before the Constitutional Court starts automatically (without any introductory procedural Constitutional Court's decision on acceptance of such request). A request for a decision on disputes concerning jurisdiction between courts and other State bodies and on disputes concerning jurisdiction between the National Assembly, the President of the Republic and the Government, may be submitted by an affected body within 90 days from the day such body became aware of the interference of another party in its area of jurisdiction (Para. 1 of Article 61 of the Constitutional Court Act).

In case of individual petition the Constitutional Court decides on the acceptance of such petition (Articles 24 to 26 of the Constitutional Court Act). An (individual) initiative for resolving a jurisdictional dispute may also be submitted by a party to the procedure which caused the jurisdictional dispute (Para. 3 of Article 61 of the Constitutional Court Act). Nevertheless, in the Slovenian system the *ex officio* proceedings have been partly preserved, also in case of jurisdictional dispute. The Constitutional Court, though, is not the primary initiator of proceedings, because the initiation of proceedings still depends on an outside applicant. However, as soon as the application has been filed before the Constitutional Court, the latter is free to act with reference to its opinion on the integrity of the specific legal area, its involvement, and the reciprocal dependence of the respective legal measures. Therefore, when deciding a case relating to jurisdictional disputes, the Constitutional Court:

- may issue a decision as to which body is competent¹¹, and
- may also abrogate or annul the general act, or the general act issued for the exercise of public powers, whereof unconstitutionality or illegality has been established (Para 4 of Article 61 of the Constitutional Court Act).

The provisions of Article 61 of the Constitutional Court Act shall be applied *mutatis mutandis* in all jurisdictional disputes between the State and local communities and among local communities themselves (Article 62 of the Constitutional Court Act).

Concerning effects of decisions in cases of jurisdictional disputes, in principle constitutional court decisions have an *inter partes* effect, but even here effects are felt *erga omnes*, when the Constitutional Court acts *ex officio*.

¹¹ In the case at issue, the county court has jurisdiction to decide on the return of the real estate subject to denationalization proceedings, since the actual basis for the transfer of the real estate was a sales contract, and the rounding off decision only served the execution of this contract and the entry in the land register (Slovenia, Constitutional Court, decision No. U-II-223/99, date: 18/11-1999, Official Gazette RS, No. 99/99, OdlUS VIII, 255).

C) Statistical Data

1. Undecided Cases

As of 22 November 2005 there were 1678 unresolved cases, from which 125 cases in the field of jurisdictional disputes (between the National Assembly, the President of the Republic and the Government, the State and local communities bodies and among such local government bodies, between the Courts and other State bodies), denoted by the prefix "P".

2. Data Concerning Received and Decided Cases

From 1 January to 22 November 2005 the Constitutional Court accepted 1623 cases. 125 of all cases represented jurisdictional disputes.

From 1 January to 22. November 2005 the Constitutional Court decided 1125 cases. Among them 60 jurisdictional disputes were resolved.

Generally speaking, with regard to the topic, the jurisdictional disputes between ordinary courts and administrative units on issues of denationalization prevail.

D) Jurisdictional Dispute Decided by the Slovenian Constitutional Court

Constitutional Court of Slovenia, Decision No. P-334/96, date: 9 January 1996

DECISION

At a session held on 9 January 1997, in proceedings for resolving a dispute on jurisdiction commenced at the demand of the Circuit Court in Murska Sobota, the Constitutional Court reached the following decision:

The Administrative Unit Murska Sobota has jurisdiction to decide on the demand of D.M. for the denationalisation of real estate.

Reasoning

A.

1. The Circuit Court in Murska Sobota demanded a resolution of a dispute on jurisdiction between themselves and the Municipality of Murska Sobota, or the then Administrative Unit of Murska Sobota (article 3 of the Transfer of State Functions Performed until 31.12.1994 by Municipal Bodies Act. Official Gazette RS, no. 29/95) for deciding on a demand for denationalization. The administrative body, then the Secretariat for Protection of the Environment and Regional Planning Murska Sobota, by resolution no. 362-36/93-4 of 10.5.1994 deferred the matter to the courts on the grounds that since the propose referred in the demand to the speculativity of the sales contract on the basis of which the disputed real estate is said to have been nationalized, the jurisdiction is thus given to the courts. The Circuit Court in Murska Sobota believes that the administrative organ has jurisdiction for deciding, so by application no. N 45/94-

4 of 27.9.1996, it proposed to the Constitutional Court that it decide on the dispute on jurisdiction. The court believes that the proposer states in the denationalization demand that nationalization took place without legal title. The cited sales contract is totally irrelevant to the decision on jurisdiction since at the time of concluding this contract, the real estate was no longer the property of the denationalization claimant.

2. On the basis of article 160 of the Constitution and indent 8 of the first paragraph of article 21 of the Constitutional Court Act (Official Gazette RS, no. 15/94 - hereinafter ZUstS), the Constitutional Court has jurisdiction to decide in disputes on jurisdiction between courts and administrative bodies. In compliance with the second paragraph of article 61 ZUstS, the Constitutional Court decides on jurisdiction in cases in which a number of bodies reject jurisdiction in an individual case and when the body to whom the matter has been deferred believes that it is not competent for it.

B.

3. The Denationalisation Act (Official Gazette RS, no. 27/91, 56/92 - odl. US, 13/93 - odl. US, 31/93 and 24/95 - odl. US - hereinafter: ZDen) divides jurisdiction for deciding on demands for denationalization between administrative bodies and the courts. If the real estate was nationalized on the basis of regulations determined in articles 3 and 4 ZDen, or if it was nationalized by measure of a state organ without legal title (article 4 ZDen), administrative bodies have jurisdiction (first paragraph of article 54 ZDen), but if the asset was transferred to state ownership on the basis of a legal transaction concluded because of threat, force or guile of a state organ or representative of authority (article 5 ZDen), a court has jurisdiction for deciding on a demand for denationalization (article 56 ZDen).

4. The proposer demanded denationalization of specified real estate (house, land) in the region of M.S., which were nationalized from her grandmother. She states in the demand that the cited real estate was burdened with a mortgage and that by decree of the occupying authority was transferred in 1944 to the ownership of P.b.d.d. After the end of the war, the claimant's assets were appropriated by D., with S. as liquidator of P.b.d.d. In this way, the real estate is claimed to have been transferred to state ownership without legal title, since the cited decree of the occupying forces must be considered null and void. After the appropriation of the disputed assets, D. concluded a sales contract with S., in the opinion of the proposer for speculative reasons, on the basis of which these assets were transferred to ownership of other physical persons as purchasers.

5. It is clear from the statements of the proposer that the cited sales contract does not refer to the nationalization of the disputed real estate, but to the disposal of this real estate after it had already been nationalized. It is thus not on the basis of this sales contract that the claimant lost ownership rights or on the basis of this contract was the real estate transferred into state ownership. It is thus not a situation corresponding to article 5 ZDen, which allows denationalization under specified conditions of assets which were transferred to state ownership on the basis of a legal transaction.

6. For deciding jurisdiction, therefore, the proposer's reference to circumstances that the disputed

real estate was transferred to state ownership (to the management of D.) without legal title is decisive. The grounds for the denationalization demand in article 4 ZDen, which enables denationalization of assets which were nationalized without payment by a measure of a state body without legal title is thus confirmed. In this it is totally irrelevant for the decision on jurisdiction whether the proposer's claim is also well-founded. In compliance with the first paragraph of article 54 ZDen, the administrative body - the Administrative Unit Murska Sobota thus has jurisdiction to decide on the denationalization demand.

7. It is clear from the record that the complete demand for denationalization was lodged on 2.6.1993. Three and a half years have passed for a decision to be made on jurisdiction for resolving the matter. The Constitutional Court finds that it is yet another example of clear procrastination in procedures in denationalization cases. The Constitutional Court has already several times drawn attention to procrastination of procedures in these cases and violations of the time limit under the first paragraph of article ZDen (for example, in cases U-II-119/96 of 6.6.1996 and U-II-351/96 of 5.12.1996).

C.

The Constitutional Court adopted this resolution on the basis of the fourth paragraph of article 61 of ZUstS, composed of: president Dr. Tone Jerovšek and judges Mag. Janez Snoj, Dr. Janez Šinkovec, Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič. The resolution was adopted unanimously.

President

Dr. Tone Jerovšek

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