

Specifics of disputes on the substitution of the will of the obliged person under the Land Act

Abstract

This thesis deals with the nature and effects of the judgments as a basis for transferring ownership of corresponding lands as a replacement for lands to which the ownership right could not be restored. The aim is also to give a comprehensive interpretation of the specifics of replacement disputes and at the same time to analyse whether these specifics determine the constitutive nature of replacement judgments. In order to be consistent and complete, the thesis focuses on procedural issues as well as, to the extent necessary, on related substantive issues. The thesis also analyses and evaluates the legal opinions of the case law, which the author also confronts with competing considerations, legal opinions and his own reasoning.

The thesis is divided into eight chapters. The content of the first chapter is devoted to a necessary and brief introduction to the issue of agricultural restitution under the Land Act. This matter is necessary to understand the context and the basis for the discussion of disputes for the substitute enforcement of the restitution claims. This chapter also deals with the creation of a restitution claim and the procedures for its enforcement. The second chapter discusses the nature of replacement disputes and the interpretive principle of *in favorem restitutionis*. Chapter Three contains a treatise about the characteristic conditions for the success of an action as formulated by the case law. The subsequent fourth chapter discusses the prerequisites for success in replacement disputes. The fifth chapter aims at clarifying the basic ideas behind the adoption of the possibility of bringing an action. The nature of the replacement action is also analysed in detail. The sixth chapter contains a complex consideration of the issues relating to the subject matter of the replacement disputes, the limitations on the claimant's choice of land and also the restrictions on the transfer of the land. Furthermore, this chapter focuses on the conflict of claims made by different claimants against identical land. Considerations on the nature and character of the proceedings with regard to the issues presented in the thesis so far and the related allocation of the burden of proof are presented in Chapter Seven. The eighth and final chapter discusses the effects and nature of replacement judgments by contrasting the legal opinions held by the case law with other opinions and positions, linking the discussion of judgments with conclusions about the nature of the action and the proceedings.

Key words: substitution of the will, restitution, nature of the judgment