

# **Constitutional and Legal Context of Act No. 143/1947 Coll.: The Act on the Transfer of Ownership of the Property of the Hluboká Branch of the Schwarzenberg Family to the Czech Lands**

## **Abstract**

Among the most important restitution cases in the Czech Republic are the proceedings concerning Act No. 143/1947 Coll., on the transfer of the property of the Hluboká branch of the Schwarzenberg family to the Czech lands, also known as the "Lex Schwarzenberg". The thesis deals in detail with this law and the ensuing litigation, mainly focusing on the constitutional and legal context.

The purpose of the thesis is to conduct a detailed analysis of Act No. 143/1947 Coll. and the related proceedings before the Constitutional Court. Given the frequent criticism that this law faces from the professional public, as well as the approach of the Czech courts to its application, this thesis aims to comprehensively understand the reasons for which Law No. 143/1947 Coll. is described by experts as unconstitutional, when its constitutional conformity has long been assumed by the Constitutional Court. At the same time, this split between the views of the Constitutional Court and the views of a section of the professional public should be described and critically evaluated.

Methodologically, the work is based on descriptive analysis and historical-legal approach. The descriptive analysis enables a systematic description of relevant aspects of legislation and judicial practice, while the historical-legal approach provides a context for the emergence and development of Act No. 143/1947 Coll. The sources used were mainly legal regulations, both current and historical, archival materials, court decisions and decisions of international bodies, some of which have not yet been published.

The main result of this thesis is a comprehensive summary of the Constitutional Court's argumentation in proceedings concerning Act No. 143/1947, which was confronted with the opinions of the professional public and then evaluated whether and, if necessary, in what respect these opinions are consistent with constitutional legal theory. It was found that, although the reasoning of the Constitutional Court was well-founded, it could be criticised for lacking consideration of the aspect of justice. Although the existence of the Act is unusual in the Czech legal order, it does not pose a fundamental threat to the Czech legal order today, which would create a dangerous precedent or undermine citizens' confidence in the democratic rule of law. The Act No. 143/1947 is not a relic of the past, although in fact it was applied only at the moment of its entry into force, the established property relations persist to this day. Its existence is perceived very negatively both domestically and internationally. In order to achieve the principled value system that the Czech legal system imposes on itself, it is necessary to revise the current legislation.

## **Keywords**

Lex Schwarzenberg, Constitutional Court, Fundamental Rights and Freedoms