Subject: Application of lex specialis derogat legi generali

In its answer No E-004016/2020, the Commission stated that, in accordance with the principle of lex specialis, special provisions prevail over general rules. On the basis of the Commission’s interpretation, only claims regarding expropriations carried out during the so-called reference period (between 25 February 1948 and 1 January 1990) are governed by the 2003 law.

The Commission makes reference to that paragraph in the law which allowed for the pursuit of claims arising from expropriations carried out prior to the so-called reference period, i.e. those carried out on the basis of the Benes Decrees, subject to certain conditions. This was reinforced by a 2010 Slovak court judgment.

In the Commission's view, the above position was annulled by the decisions of the Slovak supreme court, pursuant to which these cases are governed by the law only if the expropriation took place during the 'reference period'.

Does the principle of lex specialis require the above paragraph of the law, i.e. the special provision, to prevail over that provision of the law in question which, in the case of confiscations which occurred during the so-called reference period, as a general rule allows for the submission of claims for compensation?

---

1 In its answer, the Commission also acknowledged that the Member States must take into account the general principles of EU law when taking measures on the restitution of property that falls within the scope of application of EU law.
2 Resolution No CHAP(2017)02055
3 Slovak law No 503/2003 on compensation
4 Law Tt. 503/2003. In Article 3(2) of CHAP(2017)02055, the Commission analysed these decisions of the Member State courts
5 op cit
6 op cit 3
7 Opinion of Advocate General, C-285/06
8 op cit 4
9 Article 2(1) of 2003 law on compensation