The Court:	Supreme Court
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Name and surname of the judge, Higher Court Office:	JUDr. Edita Bakošová
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Ruling

The Supreme Court of the Slovak Republic in the legal case of the plaintiff Slovak Republic - K., established in P., represented by JUDr. Dušan Paulík, lawyer in Banská Bystrica, Kukučínova No. 18, against the defendants 1/ R., residing in P., R., represented by JUDr. Tamás Puskás, lawyer in Dunajská Streda, Alžbetínske námestie No. 1203, 2/ S., residing in P., R., 3/ S., residing in P., R., 4/ H. residing in P., R., on the determination of ownership, filed at the District Court in Bardejov under file No 6 C 176/2009, on an extraordinary appeal by the Attorney General of the Slovak Republic against the judgment of the Regional Court in Prešov of 30 April 2013, file No 19 Co 43/2012, as follows

r u l e d :

The Supreme Court of the Slovak Republic hereby annuls the judgment of the Regional Court in Prešov of April 30, 2013, case no. 19 Co 43/2012, and the judgment of the District Court in Bardejov of November 9, 2011, case no. 6 C 176/2009-403, and returns the case to the District Court in Bardejov for further proceedings.

r e a s o n i n g :

The plaintiff, through a claim submitted on October 26, 2009, received by the District Court in Bardejov on November 2, 2009, sought a determination that she is a co-owner in a specific share of the real estate listed in the cadastral registry of the P. Cadastre Office - Cadastral Area L., under LV no. XXX and LV no. XXX, on the grounds that the defendants were listed as co-owners of these real estate properties in the land registry based on a certificate of inheritance from their legal predecessors. Originally, these properties were listed under land registry file no. XX, Cadastral Area L., for the legal predecessors of the defendants, Z. and R., born Z., who were joint owners. Since the legal predecessors of the defendants were of Hungarian nationality (ethnicity), according to the SNR Decree no. 104/1945 Sb., concerning the confiscation and expedited redistribution of agricultural property belonging to Germans, Hungarians, as well as traitors and enemies of the Slovak nation, in the version of Decree no. 64/1946 Sb., the real estate in question was confiscated for the purposes of land reform, as stated in registry entry no. XX, and disposition of these properties was reserved exclusively for the Ministry of Agriculture and Land Reform. As indicated above, a decision was made by the Ministry of Agriculture and Land Reform, file no. 5392/VI-573/1945, dated August 23, 1945, on the temporary forced administration of the forestry assets of H. and others for Cadastral Area L. in favor of the State Forest Management in Zborov. Based on a decision from the Ministry of Agriculture and Land Reform – the working group for land reform in Prešov, file no. 4474/47, dated December 18, 1947, an application was filed with the District Court in Bardejov for the registration of the confiscation of property owned by R., born Z., H., and R., to the real estate recorded in land registry file no. XX, Cadastral Area L. According to this, the District Court in Bardejov issued an order, file no. 2433/47, dated December 23, 1947, to approve the registration of the confiscation of the real estate for land reform purposes into land registry file no. XX under entry number XX. This indicates that the owner of the real estate in question became the Czechoslovak state as of March 1, 1945. The legal predecessors of the defendants were again registered as owners under LV no. XXX and XXX, Cadastral Area L., based on a decision from the

District Office - Office for Land and Housing Affairs no. 3/2000/00039, dated September 29, 2000, in L., issued as part of the land registry restoration process (hereinafter referred to as "ROEP"). The plaintiff argued that within the ROEP process, the data from the cadastral records were insufficiently examined, specifically from land registry file no. XX, Cadastral Area L., from which entry no. XX shows that the legal predecessors of the defendants had their properties confiscated, which became the property of the state, and no documents show that the legal predecessors of the defendants had applied for the return of the properties by December 31, 1995, as required by Section 6(2) of Act no. 229/1991 Coll. on the adjustment of ownership rights to land and other agricultural property (hereinafter referred to as "Act no. 229/1991 Coll.").

The District Court of Bardejov dismissed the plaintiff's claim by judgment of 9 November 2011 No 6 C 176/2009-403 and ordered the plaintiff to pay the costs of the proceedings in the amount of EUR 773.91 to the account of the lawyer within three days to the defendant 1/. It did not rule on the costs of defendants 2/ to 4/. It based its decision on the provisions of Article 1(1)-(11) of Regulation No 104/1945 Coll. on the confiscation and accelerated distribution of the land and economic property of Germans, Hungarians and traitors and enemies of the Slovak nation ('Regulation No 104/1945 Coll.'), Article 33(1) and Article 72(2) of the Law on the Confiscation of the Land and Agricultural Property of Germans, Hungarians and Traitors and Enemies of the Slovak Nation ('Decree No 104/1945 Coll. 8/1928 Sb. on proceedings in matters falling within the competence of political authorities (administrative proceedings - hereinafter referred to as 'Decree No 8/1928 Sb.'), in substance by the fact that the confiscation and transfer of property to the State pursuant to Decree No 104/1945 Sb. took place directly on the date of its entry into force, i.e. 1 March 1945, as is apparent from § 1 thereof. It stated that, in order to complete the confiscation process, it was necessary, pursuant to Article 1(7) of that regulation, to issue an individual decision as to whether a particular person was to be regarded as a person of Hungarian nationality (ethnicity) pursuant to Article 1(1)(b) of the regulation, such a decision not being subject to an interlocutory review, and the possibility of an appeal against the decision of the confiscation commission having been introduced only by an amendment pursuant to Ordinance No 87/1947 Sb.n. SNR (administratively 89/1947 Sb. n. SNR, amending and supplementing certain provisions of the Regulation on the confiscation of the agricultural property of Germans, Hungarians and traitors and enemies of the Slovak nation - note of the Court of Appeal) with effect from 30 December 1948, which was decided by the Assembly of Ministers of the National Assembly. It emphasised that the court is not entitled to examine the decision of an administrative authority outside the scope of the administrative justice system in terms of its substantive correctness, but may only examine whether it is an administrative act, whether it is not a paact [translator’s note: null and void administrative act] and whether the administrative act was issued within the limits of the competence of the competent administrative authority, and whether it is legally valid and enforceable. He noted that the decision of the confiscation committee stated that the defendants' predecessors in title were at an unknown location and that they had been notified of the decision. However, there was no evidence in the proceedings that, in the case of the defendants' legal predecessors, who were to be at an unknown place, the procedural procedure under the Administrative Code in force at the time had been followed, i.e. that they had been served with the confiscation decision in one of the ways then possible - by a representative, agent or guardian, or by public notice, whereas the order of the Bardejov District Court, by which the confiscation was entered in the land register, had been served on their curator. From the foregoing, the Court of First Instance concluded that the confiscation order was not validly and effectively served on the defendants' predecessors in title, and it is as if the order had not even been issued against them. Thus, the decision could not have become final and enforceable and therefore the confiscation process could not have been validly concluded. Referring to the decision of the Supreme Administrative Court of 31 December 1946, God. A 1512/46, the Court stated that the confiscation proceedings were also subject to the provisions of Art. Decree No. 8/1928 Coll. and, pursuant to Article 72(2) thereof, service was part of the administrative act. Since the legal procedure had not been followed in respect of the defendants' predecessors in title, the confiscation of their property had not taken place and the State could not become the owner of the land. If the property which should have been confiscated from the defendants' predecessors in title did not pass into the ownership of the State, there was nothing to prevent that property from being subsequently seized in the succession proceedings after them. The decision on costs in relation to the plaintiff and defendant 1/ was justified by the provisions of Article 142(1) and Article 145 of the Civil Procedure Code (O.s.p.), the decision on costs in relation to the plaintiff and

defendants 2/ to 4/ (despite the absence of such a statement - note of the Court of Appeal) was justified by the provisions of Article 151(1) of the Civil Procedure Code (O.s.p.).

The Regional Court in Prešov, in response to the plaintiff's appeal, issued a judgment on April 30, 2013, under case no. 19 Co 43/2012, confirming the challenged judgment of the first-instance court pursuant to § 219 of the Civil Procedure Code (O.s.p.). The court also ordered the plaintiff to pay the defendant €66.32 in reimbursement of appellate costs to the defendant's attorney within three days, while at the same time, it denied the plaintiff's claim for reimbursement of appellate costs. In its reasoning, the appellate court stated that the first-instance court, based on the conducted evidence, had reached the correct factual findings and correctly assessed the case legally. Nothing had changed in this respect during the appellate proceedings. The appellate court fully agreed with the conclusions and reasoning of the first-instance court. In response to the plaintiff's appeal objections, the court clarified that resolving the question of when confiscation and the transfer of ownership of confiscated property to the state occurred under Decree No. 104/1945 Sb. n. first required determining whether an individual administrative decision had been issued at all—one that declared the plaintiff's legal predecessors to be of Hungarian nationality (ethnicity) and ordered the confiscation of their property. The court emphasized that for confiscation and transfer of ownership to be valid, all procedural requirements had to be met. The appellate court concurred with the first-instance court's finding that there was no evidence that legal due process had been followed in the case of the defendants' legal predecessors, who were allegedly residing in an unknown location. Specifically, it had not been proven that the confiscation decision had been properly served in accordance with the administrative procedures in effect at the time. Because of this, the court ruled that the decision should be considered as if it had never been issued, meaning it never attained legal validity or enforceability. Consequently, the confiscation never took place, and the state never became the owner of the disputed real estate. The court further noted that under Decree No. 104/1946 Sb. n., confiscation and transfer of ownership to the state occurred automatically on March 1, 1945, the date of the decree's effectiveness. However, while the timing of ownership transfer was not disputed, effective confiscation required that all legal conditions be met. In this case, the fundamental condition—the existence of a valid administrative decision—was not met, as the decision had not been properly served, making it legally ineffective. The appellate court referred to the Confiscation Commission's decision (case no. Kom. 1/46/III, dated August 28, 1946), which had been the basis for a submission to the District Court in Bardejov to record the confiscation in the land registry. However, since the confiscation order was never properly served, the confiscation could not take effect. The appellate court also cited the Bardejov District Court's resolution (case no. 2433/47, dated December 23, 1947), which confirmed that the lawyer Dr. Jozef Kálnássy had been appointed as a court curator for the absent property owners. Regarding the plaintiff's argument about an erroneous land registry entry of the defendants' ownership during the Land Ownership Evidence Renewal Process (ROEP), the court found it unfounded. It referred to § 4 of Act No. 180/1995 Z.z., which states that if forest lands are involved, a state forestry organization is a member of the commission for renewing land records and property rights. The court also cited the decision of the Bardejov District Office (case no. 3/2000/00039, dated September 29, 2000), which was delivered to the Prešov Regional Office, Department of Land, Agriculture, and Forestry. According to § 6(1) of Act No. 222/1996 Z.z., the Regional Office performed state administration functions, unless a specific law assigned them to another authority. The ROEP decision, issued by the Bardejov District Office, was deemed legally valid, and the approved land register constituted a public document under § 7(4) of Act No. 180/1995 Z.z., obligating the Cadastral Office to register the data in the land registry. The court agreed with the defendant's argument that the state's attempt to challenge this registration was legally unacceptable and violated legal certainty and private property rights. Since the Bardejov District Office, a state body, had already recognized the defendants' ownership through the ROEP decision, the appellate court found the plaintiff's claims invalid. Regarding the plaintiff's argument that it had acquired ownership of the disputed real estate through adverse possession, the appellate court noted that the plaintiff had been duly informed before the judgment was issued (under § 120(4) of the Civil Procedure Code (O.s.p.)) and had not submitted any additional evidence to support this claim. Since the plaintiff had not raised this issue during the main proceedings, the appellate court did not consider it in the appeal. Finally, the appellate court ruled on appellate costs under § 224(1) O.s.p. in conjunction with § 142(1) O.s.p., ordering the plaintiff to cover the defendant's legal expenses while denying the plaintiff's request for reimbursement.

Against these judgments of the first instance and appellate courts, the Prosecutor General of the Slovak Republic (hereinafter referred to as "the Prosecutor General") filed an extraordinary appeal on the basis of the plaintiff's petition, referring to the provisions of Article 243e(1) in conjunction with Article 243f(1)(c) of the Civil Procedure Code (O.s.p.), who requested that the contested decisions be set aside and that the case be remanded to the district court for further proceedings. With reference to the provisions of Article 1(1), (2), (7) and (10) of Regulation No 104/1945 Coll. n., Article 5(1) of Act No 90/1947 Coll. on the implementation of the book-keeping procedure for confiscated enemy property and on the adjustment of certain legal conditions relating to allocated property (hereinafter referred to as 'Act No 90/1947 Coll.'), and Article 1(1) of the Law on confiscated enemy property. No 8/1928 Coll. stated that it disagreed with the view expressed by the courts of both instances, which dismissed the plaintiff's action on the ground that she had not borne the burden of proof in the proceedings as regards establishing the legal title of ownership of the immovable property in question, in respect of which confiscation had been carried out pursuant to Decree No 104/1945 Coll. In the opinion of the Attorney General, the plaintiff has proved the fact of acquiring ownership of the immovable property in accordance with the legislation in force at the time. The State's ownership by confiscation arose directly ex lege on 1 March 1945 on the basis of the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov No Kom. 1/46-III of 28 August 1946. It is unnecessary to resolve the question of the service of the decision of the confiscation commission without a specific file (without the possibility of assessing that service), solely on the basis of the defendants' assertion, without proving that fact, which was dealt with by the courts throughout the proceedings, since the procedure and decision-making under Regulation No. 104/1945 Coll. did not, in the opinion of the Attorney General, fall within the scope of the procedural regulation in force at the time, which is Art. 8/1928 Coll., on the ground that the confiscation commission (unlike the Corps of Commissioners) established pursuant to Regulation No. 104/1945 Coll. was neither one of the bodies referred to in Article 1(1) of Art. 8/1928 Coll., but in particular because the wording of Article 1(1) of Regulation No 104/1945 Coll. makes it clear that the property was deemed to have been confiscated on the date on which the confiscation order came into force. In the opinion of the Attorney General, this is to be regarded as a fundamental difference from the procedure under Confiscation Regulation No 108/1945 Sb., which has no such provision concerning the transfer of ownership to the State directly and which expressly refers to the procedural regulation in force at the time; moreover, under that regulation, the confiscation was decided by the administrative authority in accordance with the procedure laid down in Article 5(1)(a) of Regulation No 108/1945 Sb. 8/1928 Coll. It follows from the foregoing that the courts of both instances erred in law in their assessment of the case, i.e. they misapplied the legal rule, i.e. Art. No 8/1928 Coll., and consequently erred in law in their assessment of the question of establishing the legal title of the plaintiff's acquisition of ownership of the property in question. The Court of Appeal also erred in law in that, if the State recognised the defendants' right of ownership in the ROEP proceedings, the plaintiff's conduct in the case is consequently unacceptable from the point of view of legal certainty. In proceedings for the renewal of the registration of certain land and legal relations thereto pursuant to Act No 180/1995 Coll. on certain measures for the regularisation of ownership of land, as amended on 29 September 2000, ownership was not acquired, but only the available data on the land and the legal relations to it were ascertained and, on that basis, the register of the renewed registration of land was drawn up and approved. The purpose of this procedure was merely to take an inventory of the land and its owners, who, for various reasons, were not registered in the Land Registry before the register was drawn up. Thus, if the error in the procedure under Act No 180/1995 Coll. the predecessors in title were registered as the owners of the land despite the fact that the State was entered in the land register, the plaintiff's procedure, which seeks to rectify that error by means of an action for a declaration of invalidity, cannot be regarded as unacceptable. On the basis of the foregoing, the Attorney General concludes that in the present case the ground of appeal under Article 243f(1)(c) of the Civil Procedure Code (O.s.p.) is applicable, and that the filing of this extraordinary appeal is necessary to protect the rights and legally protected interests of the parties and that such protection cannot be achieved by other legal means.

The plaintiff, in her statement of defence to the Attorney General's extraordinary appeal, stated that she agreed with the content of the extraordinary appeal in the present case and the grounds of appeal in their entirety. She reiterated that, if the courts have concluded that the decision of the confiscation commission under Art. Decree No 8/1928 Coll. had to be served on the persons whose property had been confiscated, they should in such a case, having regard to the order of the District Court in Bardejov

of 23 December 1947, No 2433/47, have proceeded on the basis that the court had examined in detail all the necessary particulars of the decision of the Confiscation Commission at the headquarters of the District National Committee in Bardejov, No Kom. 1/46-III. of 28 August 1946, including the manner of its service and delivery (if necessary). More than 65 years after the issuance of this resolution, the courts have unlawfully and unjustifiably expressed doubts about the correctness of this judicial decision and, at the same time, about the legal validity of the aforementioned decision of the relevant confiscation commission.

The defendant 1/ in his statement on the appeal of the General Prosecutor stated that the legal opinion of the General Prosecutor is contrary not only to the purpose and meaning of the Administrative Procedure Code vl. No 8/1928 Coll., but also with the settled case-law of the courts of the Slovak and Czech Republic. With reference to the provision of Article 1(1) of the cit. The Court stated that the confiscation commission was set up by the State for the purpose of deciding which persons were to be regarded as of German or Hungarian nationality (ethnicity). The Confiscation Commission was therefore clearly a political authority, and the question of confiscation could only be regarded as a question of so-called internal administration. Reiterating his earlier submissions, from which he drew the conclusion that the confiscation commission's decision had to be served, he therefore considers it correct for the courts to find that the confiscation commission's decision had not become final and that the plaintiff had not become the owner of the co-ownership shares in question.

Defendants 2/ to 4/ did not exercise their right to be heard on the Attorney General's special leave to appeal.

The Supreme Court of the Slovak Republic, as the court deciding on the extraordinary appeal (§ 10a(3) of the Civil Procedure Code (O.s.p.) (hereinafter referred to as the Civil Procedure Code (O.s.p.) in the version prior to 1 January 2015)), having found that this appeal was filed in time by the Attorney General of the Slovak Republic (§ 243g of the Civil Procedure Code (O.s.p.)), the Supreme Court of the Slovak Republic has decided to dismiss the appeal on the grounds that the appeal was filed in time by the Attorney General of the Slovak Republic.s.p.p.) on the basis of the plaintiff's initiative (Article 243e(1) and (2) of the Civil Procedure Code (O.s.p.)), without ordering an appeal hearing (Article 243i(2) in conjunction with Article 243a(1) of the Civil Procedure Code (O.s.p.)), the Court examined the case and concluded that the extraordinary appeal of the Prosecutor General is well-founded.

Pursuant to Section 243f(1) of the Civil Procedure Code (O.s.p.), an extraordinary appeal may be brought only on the grounds that a/ the proceedings were vitiated by the defects referred to in Section 237 of the Civil Procedure Code (O.s.p.), b/ the proceedings were vitiated by another defect which resulted in an erroneous decision in the case, and c/ the decision was based on an error of law. The Court of Appeal is bound not only by the scope of the extraordinary appeal but also by the grounds of appeal raised in the extraordinary appeal. Obligatorily (Article 243i(2) of the Civil Procedure Code (O.s.p.) in conjunction with Article 242(1) of the Civil Procedure Code (O.s.p.)), it deals with the procedural defects referred to in Article 237 of the Civil Procedure Code (O.s.p.) and with other defects in the proceedings in so far as they resulted in an incorrect decision in the case. It assesses the grounds of appeal not only on the basis of how they were identified in the special appeal, but also on the basis of the content of that appeal.

In view of the above-mentioned legal obligation to always examine whether the contested decision of the Court of Appeal was not issued in a proceeding affected by one of the procedural defects listed in Section 237 of the Civil Procedure Code (O.s.p.), the Court of Appeal did not limit itself to assessing the grounds of appeal explicitly stated in the extraordinary appeal, but also addressed the question whether the proceedings in this case were not affected by one of the defects listed in Section 237 of the Civil Procedure Code (O.s.p.) (defects giving rise to the so-called "confusion of the proceedings").

A defect of this nature occurs if a/ a decision was made on a matter which does not fall within the jurisdiction of the courts, b/ the party who acted as a party to the proceedings did not have the capacity to be a party to the proceedings, c/ the party to the proceedings did not have standing and was not duly represented, d/ the same case has already been finally decided or proceedings have already been

instituted in the same case, e/ no application for the institution of proceedings has been made, although it was required by law, f/ a party has been deprived of the opportunity to be heard by the court, g/ a judge has been disqualified or the court has been improperly seated, unless a panel has been seated instead of a single judge.

None of the defects referred to in Article 237(a/) to (g) of the Code of Civil Procedure was alleged in the extraordinary appeal and did not come to light in the proceedings on this appeal.

The Court of Appeal came to the same conclusion with regard to the so-called other defects (Article 243f(1)(b) of the Civil Procedure Code (O.s.p.)), procedural defects resulting in substantive incorrectness of the decision, which is based on a violation of the provisions governing the court's procedure in civil court proceedings.

As regards the objection in the special appeal that the decisions of the Court of First Instance and the Court of Appeal are based on an incorrect legal assessment of the case (Article 243f(1)(c) of the Civil Procedure Code (O.s.p.)), it should be noted that a legal assessment is an activity of the court in which it draws legal conclusions from the findings of fact and applies a specific legal standard to the established factual situation. An error of law is an error by the court in applying the law to the facts. It is an error of law if the court has failed to apply the correct rule of law or, although it has applied the correct rule of law, has misinterpreted it or has drawn incorrect legal conclusions from the correct findings of fact.

In the extraordinary appeal it was argued that the courts of both instances based their decision on the view that the plaintiff had not sustained the burden of proof as to the acquisition of ownership by the plaintiff because the decision of the confiscation commission had not been served on the defendants' predecessors in title, from which they concluded that there had been no confiscation of the immovable property. The fundamental decisive question for the correct assessment of the need to serve the decision of the confiscation commission on the persons concerned and to prove it was therefore whether the procedure and decision-making under Regulation No 104/1945 Coll. applied to the procedural rule in force at the time, which was Regulation No 104/1945 Coll. on the confiscation of land. Reg. 8/1928 Coll.

The Court of First Instance stated in the grounds for its decision that the confiscation and transfer of ownership to the State under Regulation No 104/1945 Coll. took place directly on the date of its entry into force, i.e. 1 March 1945, but that in order to complete the confiscation process it was necessary to issue an individual decision (Article 1(7) of the aforementioned Regulation) on whether a particular person was to be regarded as a person of Hungarian nationality (ethnicity) (Article 1(1)(b) of the aforementioned Regulation). The Court of First Instance held that it had not been established in any way in the proceedings that, in relation to the legal predecessors of the defendants, who were at that time residing in an unknown place, the procedural procedure under the applicable Administrative Procedure Code (Decree No 8/1928 Coll.) was followed, i.e. that they were served with the confiscation decision by one of the possible methods of service - by a representative, agent or guardian, or by public notice. In order to emphasise the correctness, he pointed out that the order of the District Court of Bardejov, on the basis of which the confiscation was entered in the land register, was served on the defendants' predecessor in title by the appointed curator. This view was shared by the Court of Appeal.

Pursuant to § 1 paragraph 7 of Regulation No. 104/1945 Coll, the Confiscation Commission (hereinafter referred to as the Commission) shall decide by the end of 1946 at the latest which persons are to be regarded as persons of German or Hungarian nationality (ethnicity) (paragraph 5) or as traitors or enemies of the Slovak and Czech nation and of the Czechoslovak Republic (paragraph 6), whether participatory and other companies and legal persons fall within the provisions of paragraph 1(d) or (e), and whether exceptions may be allowed under paragraph 3 or 4.

According to paragraph 8 of the cited provision, the permanent members of the Commission are: the Chairman, appointed by the Board of Commissioners upon the proposal of the Commissioner for Agriculture and Land Reform, two representatives from the Commissioner’s Office for Agriculture and Land Reform, and two representatives from the Commissioner’s Office for Internal Affairs. Additional members of the Commission in individual districts include: all members of the council of the respective

National Committee (Administrative Commission), one representative each from the Unified Association of Slovak Farmers, the Association of Slovak Partisans, the Association of Soldiers of the Slovak National Uprising, the Association of Anti-Fascist Prisoners, the Association of Foreign Soldiers, and the District Agricultural Commission. Representatives of the organizations mentioned in the previous sentence are appointed by the respective district branch, or if none exists, by the relevant central office. The Commission makes its decisions at the seat of the District National Committee in whose jurisdiction the property subject to confiscation is located. The Chairman convenes the Commission as needed. The Commission has a quorum when more than half of its members are present, and decisions are made by a majority vote of those present. The Chairman does not vote, except in the case of a tie, in which case he casts the deciding vote. If the Commission in different districts makes conflicting decisions regarding the same person, the final decision on confiscation is made by the Board of Commissioners.

According to paragraph 9 of the cited provision, all state public administration authorities and people's courts are required to assist the Commission in the exercise of its powers under this decree.

According to paragraph 10 of the cited provision, a decision of the Commission (paragraph 7) or the Board of Commissioners (paragraph 8, last sentence) establishes that the property of such a person is considered confiscated under paragraphs 1, 2, or 3 as of the effective date of this decree. No appeal against this decision to the Supreme Administrative Court is allowed.

According to § 1(1) of Government Decree No. 8/1928 Sb., this decree regulates, with certain exceptions specified therein, administrative procedures carried out in matters under the jurisdiction of political (state police) authorities, including: District offices, state police offices, magistrates (in cities with a special statute), municipal or city councils, and municipal notary offices (in cities with established magistrates). Regional offices. Central offices.

According to § 2 of the cited decree, when the decree refers to an "office", unless stated otherwise, it refers to the authority conducting the proceedings or a part thereof as defined in § 1(1).

According to § 5 of the cited decree, political offices have jurisdiction over all matters of internal administration (Article 1 of the law) that are explicitly assigned to them or that are not designated to other authorities by a special regulation. The jurisdiction of state police offices is defined by separate regulations.

According to § 6 of the cited decree, if jurisdiction is assigned to political offices but it is not specified which office has substantive competence, the first-instance authority is the district office, and the second-instance authority is the regional office.

If the Confiscation Commission, established for this purpose under § 1(7) and (8) of Decree No. 104/1945 Sb. n., in conjunction with § 1(1), § 2, § 5, and § 6 of Government Decree No. 8/1928 Sb., at the seat of the District National Committee in Bardejov on August 28, 1946, decided, among other things, that R., born Z., R., and H., who were at an unknown location at the time, should be considered persons of Hungarian nationality under § 1(1)(b) of Decree No. 104/1945 Sb. n., and that their property should be deemed confiscated as of March 1, 1945, under § 2 of this decree, with the instruction that no appeal to the Supreme Administrative Court is allowed under § 1(10) of the decree, then there is no doubt that this decision was issued by an administrative authority in an administrative procedure and that the provisions of the procedural regulation in force at the time, namely Government Decree No. 8/1928 Sb., apply to it.

The Court of Appeal therefore disagreed with the view of the Advocate General that the decision was not taken in the proceedings before the administrative authority and that the decision was not taken in the proceedings before the administrative authority. No 8/1928 Coll. did not apply to the present case. The Court of Appeal considers it necessary to point out at this point that, even according to the case-law of the Supreme Administrative Court in force at the time (decision of 31 December 1946, Boh. A 1512/46), the provisions of the Administrative Code (Decree No 8/1928 Coll.) applied to confiscation proceedings. Since Decree No. 104/1945 Coll. n. dealt with the same issue, i.e. the confiscation of the

property of Germans and Hungarians, as did Presidential Decrees No. 12/1945 Coll. and No. 108/1945 Coll. n., there is no reason to doubt that the confiscation proceedings under Decree No. 104/1945 Coll. n. were also subject to the provisions of the procedural regulations in force at the time, i.e. the provisions of Art. Decree No 8/1928 Coll. n. This conclusion is also supported by Regulation No 89/1947 Sb. n. SNR of 19 December 1947, amending and supplementing certain provisions of the Regulation on the confiscation of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation [cf. Art. 1(12) of Reg. No. 104/1945 Sb. n, according to which decisions of the Commission issued before the date of entry into force of this Regulation and challenged by 30 June 1947, as well as decisions of the Commission not challenged by 30 June 1947, according to which persons cannot be regarded as persons referred to in paragraphs 1 to 3, but challenged by a district national committee (district administrative commission) after a statement or on a proposal of a local national committee (local administrative commission) by 31 January 1948, may be reviewed by the Board of Supervisors by 30 September 1948. The local national committee (local administrative commission) may appeal within 8 days against the resolution of the district national committee (district administrative commission) to the Board of Supervisors].

However, the Court of Appeal finds merit in the General Advocate's objection that the plaintiff has sufficiently proved that the State acquired ownership of the properties in question.

In the proceedings, it was not disputed between the parties that the Commission of the Slovak National Council (SNR) for Agriculture and Land Reform, by a letter dated August 23, 1945, no. 5392/VI-573/1945, authorized the Administration of State Forests in Zborov to take temporary forced administration over the forest properties of former owners, including, among others, property no. 4/H. and partners in the cadastral areas of L., Z., P., Q., and N. (see case file pp. 25, 26). Subsequently, the Confiscation Commission, seated at the District National Committee in Bardejov, issued a decision on August 28, 1946, no. Kom. 1/46-III, declaring that R., born Z., R., and H. were to be considered persons of Hungarian nationality. Based on this decision, their agricultural property across the entire territory of Slovakia was considered confiscated as of March 1, 1945 (see the above-mentioned references). The decision includes a list of institutions and individuals who were notified of the decision, with item no. 14 indicating that the owners of the confiscated properties mentioned in the decision text (X., born Z., and partners) were notified (see case file pp. 260, 261). Further, the case file reveals that on December 20, 1947, the District Court in Bardejov received a request from the Commission for Agriculture and Land Reform – Section "B", no. 4474/47, for the registration of the confiscation in the land registry under ownership records X, XX, and X for properties registered under the names of the aforementioned owners, including R., born Z., R., and H. (see case file p. 27). By a resolution dated December 23, 1947 (case no. 2433/47), the District Court in Bardejov specifically, under item 2/, approved the requested entry in the land register, stating: "In the registry number XX of the cadastral area L., for the properties D. b. no. X-XX, XX-XX, recorded under B 14, 25/a, b, d, e, 29/a, b, 34/a, b, c, d, e, f, g, h, i, the above-mentioned owners are listed:" At the same time, the court noted: "The confiscation is recorded in accordance with Decree No. 104/45 Sb.n. SNR, as amended by Decree No. 64/1946 Sb.n. SNR, for the purposes of land reform, with the provision that disposal of this property is exclusively reserved for the Commission for Agriculture and Land Reform – the Slovak Land Fund." (see case file p. 28).

There is no reason to doubt that the Confiscation Commissions set up pursuant to Article 1(7), (8) of Ordinance No. 104/1945 Coll. n. at the individual District National Committees were to be regarded as "political offices" (cf. Article 6 of Ordinance No. 8/1928 Coll.).

According to § 25 of the cited decree, the authority delivers official documents by mail, unless it deems it more appropriate to deliver them itself, through its own officials or the municipality.

According to § 29(1) of the cited decree, delivery into the recipient's own hands must occur if: It is explicitly required, The date of delivery is decisive for calculating preclusive time limits, or The authority orders it for special reasons.

According to § 33(1) of the cited decree, for persons whose residence remains unknown despite investigation, or for persons unknown to the authority, delivery may be carried out by public notice on

the official board, provided that no representative, proxy, or guardian has been appointed. Delivery is considered executed—unless otherwise stated in administrative regulations—15 days after the notice is posted on the official board of the relevant authority, unless a longer period is specified in the notice.

According to paragraph 2 of the quotation. The authority may also promulgate the decree in the municipality by public posting and in another manner customary in the locality.

According to § 35(2) of the cited decree, if doubts arise or if a delivery receipt is missing, delivery can be proven by other appropriate means.

According to § 72(2) of the cited decree, a decision is issued—unless administrative regulations state otherwise—upon delivery of its written version. If announced orally in the presence of the parties, it is considered issued upon oral declaration.

The Court of First Instance justified the dismissal of the plaintiff's claim solely on the grounds that it was not proven during the proceedings that the confiscation decision had been delivered to the legal predecessors of the defendants by any of the possible methods, namely through a representative, proxy, or guardian, or by public notice.

There is no reason to question the fact that the confiscation order dated August 28, 1946, Comm. No. 1/46III, was served on the owners concerned, as this is directly apparent from the order in question, since under instruction under Order No. 14 a disposition was made for service of the order on the owners of the confiscated property. From the fact that the manner in which the service of this decision is to be effected is not mentioned in the disposition for service (by which of the methods mentioned in section 33(1) of the Vol. Reg. No. 8/1928 Coll.), it cannot be inferred that the delivery of the decision was defective or that it was not delivered, and the administrative regulation did not even imply an obligation for the acting administrative authority to indicate the manner in which service was effected.

At this point, the Court of Appeal considers it necessary to point out that the confiscation decision in question was issued almost 70 years ago, whereas from 1945 to 2005 the plaintiff considered herself to be the owner of the land in question by virtue of the confiscation pursuant to Regulation No 104/1945 Coll. The legal certainty of persons and the preservation of the necessary authority of the State require that a final decision of a court or administrative authority, on the basis of which a person acquires or is deprived of ownership of a thing, must be an unquestionable legal fact having future effects, irrespective of whether a written copy of such an act still exists (in the present case, from the letter of the Ministry of the Interior of the Slovak Republic of 20. 1/46-III., H. and Co., has not been preserved in its entirety (cf. no. 332-353). Otherwise, it would have been possible to claim defects in the proceedings after an unreasonably long period of time and thus disturb a legal situation that had lasted for several decades. The burden of allegation and the burden of proof at trial would thus place a burden beyond justification on the party in need of proof by such allegation. Where the confiscation of property (its process, effects, legality) is challenged in a declaratory action, the burden of proof in such proceedings is on the owner of the confiscated property, who challenges the confiscation, to prove that he or she does not have the legal conditions for confiscation of the property. The passage of time is thus a material fact which must be given de facto effect (see also the Communication of the Constitutional Court of the Czech Republic of 1 November 2005 in this connection).

The Court of First Instance, in agreement with the Court of Appeal, concluded that the effects of the confiscation did not arise because the decision of the confiscation committee was not served on the defendants' predecessors in title by one of the possible methods of service, while, however, paying no attention to the administrative authority's disposition, according to which the persons referred to in paragraphs 1 to 14 are notified of the decision issued, and paying no attention to the provision of Article 35(2) of the Law on Confiscation of Property. No 8/1928 Coll., according to which, in case of doubt, service may be proved by other appropriate means.

The failure of the administrative authority to maintain a complete file for almost seven decades, containing facts confirming the manner in which the decision of the confiscation commission was

communicated to persons residing in an unknown place at that time, cannot be imputed to the plaintiff's detriment. However, on the basis of the provisions of section 35(2) of Art. No 8/1928 Coll., another, undoubtedly appropriate, means of proving service of the decision in question was undoubtedly (apart from the disposition for service set out directly in the confiscation decision) the resolution of the District Court in Bardejov of 23 December 1947, No 2433/47. It appears from the contents of the file that the basis for the application for registration of the properties in question by the Land and Land Reform Board in Bratislava was the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov of 28 August 1946, No Kom. 1/46-III, and it follows from the provisions of Article 16(1) of Act No 90/1947 Coll. that the court, before issuing a decision, examines the fulfilment of the requisites for the issuance of the requested decision, i.e. also the perfection of the deed on the basis of which it is sought to authorise registration in the land register. Since the District Court in Bardejov, by its order of 23 December 1947 No 2433/47, granted the application for registration, this fact must be regarded as an irrebuttable legal presumption of the perfection of the submitted document forming the basis for the authorisation of registration in the Land Register, including its legal validity. The above-mentioned order of the District Court in Bardejov is to be regarded as a public document which is also binding on the court (cf. the provision of Article 134 of the Civil Procedure Code (O.s.p.)) and if the defendants wish to dispute its correctness, they are obliged to provide the court with convincing evidence to that effect. It does not appear from the content of the file that the defendants have such evidence, since, taking into account their age alone, they cannot have direct knowledge of the existence or method of service of the confiscation order in question and they have not submitted any evidence to the court other than the allegation of lack of knowledge of the confiscation order.

Insofar as both lower courts, in support of the correctness of the resolution of the question concerning the service of the confiscation decision, referred in agreement to the service of the order of the District Court in Bardejov of 23 December 1947 No 2433/47 on the court-appointed curator, the Court of Appeal notes that it was not possible to compare the service of the decision in the court proceedings and in the administrative proceedings, since, while pursuant to Article 33(1) of the Code of Civil Procedure of the Republic of Lithuania of 23 December 1947, it was not possible to compare the service of the decision in the court proceedings and in the administrative proceedings. 8/1928 Coll., it was possible to serve the administrative authority's decision, inter alia, by means of a public notice on an official notice board (i.e. even without the appointment of a representative), such a procedure (by means of a public notice) was not permissible in court proceedings.

The confiscation decision of the competent administrative authority could not be regarded as a decision by which confiscation was carried out, but only as a decision declaring that the conditions for confiscation of the property of the defendants' predecessors in title had been fulfilled and that their property had been confiscated on the date of the entry into force of Decree No 104/1945 Coll., i.e. 1 March 1945. The confiscation of property could take place only if the conditions laid down by law were fulfilled, which included a legally effective (final and enforceable) administrative decision as to whether a particular person was a person of Hungarian nationality (ethnicity), irrespective of nationality (citizenship) (Article 1(1)(b) of the abovementioned regulation). In the present case, the decision in question has been issued, has become final and has therefore been confiscated, and the court is not entitled to examine the substantive correctness of the act itself. The same applies to the question of the correctness of the factual finding of the order that the former owners of the land are at an unknown location (and the consequent choice of the method of service of the notice, especially since the period of time since the notice was posted on the official notice board has undoubtedly already expired).

Insofar as the lower courts came to the opposite conclusion, the ground of appeal raised by the Prosecutor General that the contested decisions are based on an incorrect legal assessment of the case (Article 243f(1)(c) of the Civil Procedure Code (O.s.p.)) must be considered to be well-founded.

The Prosecutor General also identified the legal opinion of the Court of Appeal concerning the acquisition of ownership by the defendants in the ROEP proceedings as a defect in the proceedings under Article 243f(1)(c) of the Civil Procedure Code (O.s.p.).

The Court of Appeal considers it necessary to emphasise that the ROEP (Register of Restored Land Registration) is an inventory of land and its owners who, for various reasons, were not registered in the Land Registry before the register was drawn up. Most often these are owners who are registered only in the land register or who were not registered in the land register under socialism, although they have a deed to the land (inheritance certificate, contract, etc.). Land ownership rights were incompletely registered under socialism. This incomplete registration was also taken over by the land registry, which was established after 1989. In order to register all the land in the cadastre, the creation of ROEPs was introduced.

In relation to the case at hand, it is important to emphasize that due to various political and legal changes since 1945, the current land registry does not reflect the actual ownership status of certain properties. In the past, some confiscation decisions were not entered into land registers because there was no legal obligation to record the confiscation in the land registry (see also § 3 para. 1 point 2 of Act No. 90/1947 Sb. on the land registry arrangement of confiscated enemy property, which stipulated that the proposal for such registry arrangements for agricultural property confiscated under Decree No. 104/1945 Sb. was solely the responsibility of the Commission for Agriculture and Land Reform). During the preparation of the Register of Renewed Evidence of Land (ROEP), insufficiently verified records often led to errors, and the legal status indicated in the ownership list based on the ROEP did not correspond to the actual state. Since cadastral offices do not verify the accuracy and completeness of the documents used to compile the ROEP, the quality of this evidence is unreliable. Resolving such errors falls under the jurisdiction of civil courts. Such an error clearly occurred in this case, where despite the fact that confiscation under Decree No. 104/1945 Sb. was noted in the land registry (entry no. XX under record no. XX), ownership was later recorded for the Czechoslovak state under § 10 para. 2 of Act No. 46/1948 Sb., while the ROEP subsequently listed the legal predecessors of the defendants as owners.

The Court of Appeal therefore agreed with the opinion of the Attorney General that, pursuant to Act No. 180/1995 Coll. the ownership was not acquired, but only the available data on the legal relations to the land were ascertained and the register of the renewed land registration was compiled on the basis of those data. Insofar as the Court of Appeal took the view that by registering the predecessors in title in the Land Register in the framework of the ROEP as the owners of the properties in question, the State recognised their right of ownership (they acquired ownership), it assessed the case incorrectly in law (Article 243f(1)(c) of the Civil Procedure Code (O.s.p.)).

Due to the fact that the decisions of the lower courts were based on an incorrect legal assessment of the case, the Prosecutor General of the Slovak Republic rightfully filed an extraordinary appeal under Section 243e(1) of the Code of Civil Procedure in conjunction with Section 243f(1)(c) of the Code of Civil Procedure, as this was necessary to protect the rights and legally protected interests of a party to the proceedings, and such protection could not be achieved by other legal means.

The Supreme Court of the Slovak Republic therefore decided as set out in the operative part of this decision and referred the case back to the court of first instance for further proceedings (Article 243b(3) of the Civil Procedure Code (O.s.p.) in conjunction with Article 243i(2) of the Civil Procedure Code (O.s.p.)), with the result that the legal opinion expressed by the court of first instance is binding on the district court.

In the new decision, the court shall also decide again on the costs of the original proceedings and the appeal proceedings (Article 243d(1) of the Civil Procedure Code (O.s.p.) in conjunction with Article 243i(2) of the Civil Procedure Code (O.s.p.)).

This decision was adopted by the Senate of the Supreme Court of the Slovak Republic by a ratio of 3 votes to 0.

Notice:

No appeal shall lie against this order.