The Court:	Regional Court Prešov
File mark:	19Co/43/2012
Court file identification number:	8209205485
Date of the decision:	30. 04. 2013
Name and surname of the judge, Higher Court Office:	JUDr. Zlata Simková
ECLI:	ECLI:SK:KSPO:2013:8209205485.1

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

The Regional Court in Prešov, in a panel consisting of the presiding judge JUDr. Zlata Simková and judges JUDr. Gabriela Világiová and JUDr. Jana Burešová, in the legal case of the plaintiff: Slovak Republic, represented by Forests of the Slovak Republic (Lesy SR), state enterprise, Námestie SNP 8, 975 66 Banská Bystrica, Company ID: 36 038 351, represented by JUDr. Dušan Paulík, attorney at law, with an office at Kukučínova 18, 974 01 Banská Bystrica, against the defendants: 1/ R. P., born XX.XX.XXXX, B. utca no. XX/B, XXXX P., R., represented by JUDr. Tünde Keszegh, Ph.D., attorney at law, with an office at Alžbetínske nám. 1203, Dunajská Streda; 2/ S. X., born XX.XX.XXXX, X. utca XX, XXXX P., R.; 3/ S. Z., born XX.XX.XXXX, Z. B. X-X, XXXX P. no. XXXX, R.; 4/ H. P., born XX.XX.XXXX, B. utca XX/B, XXXX P., R., regarding the determination of ownership rights, and the appeal of the plaintiff against the judgment of the District Court in Bardejov, case no. 6C/176/2009-403, dated November 9, 2011, unanimously decided as follows:

r u l e d :

Confirms judgement.

The plaintiff is ordered to pay the costs of the appeal proceedings in the amount of EUR 66,32 to the defendant in the first row on behalf of its lawyer, JUDr. Tünde Keszegh, PhD., lawyer, with registered office at AK Alžbetínske námestie, Dunajská Streda, within 3 days of the entry into force of this judgment.

Orders the plaintiff to pay the costs of the appeal.

r e a s o n i n g :

By the challenged judgment, the court of first instance dismissed the lawsuit.

The court ordered the plaintiff to pay the first defendant's legal costs in the amount of 773.91 euros to the account of the first defendant's legal representative Tünde Keszegh, PhD., attorney, Alžbetínske nám. 1203, Dunajská Streda, all within 3 days from the final validity of this judgment.

The decision was legally justified according to the provisions of § 1 (1) to (5), (7) to (11); § 27 of the Slovak National Council Regulation No. 104/1945 Coll. n.; § 33 (1); 72 (2) of the Government Regulation No. 8/1928 Coll., stating that the plaintiff sought to establish the ownership right to the real estate, registered on the LV No. XXX and XXX of the cadastral district of the Slovak Republic, and that the plaintiff sought to establish the ownership right to the real estate, registered on the LV No. XXX and XXX of the cadastral district of the Slovak Republic. L.. He justified the action on the ground that the defendants are registered as joint owners of the properties in question on the abovementioned title deeds. The 1st defendant acquired his co-ownership interest in the properties on the basis of the certificate of inheritance No 4D/179/05, the 2nd and 3rd defendants acquired their co-ownership

interests in the properties on the basis of the certificate of inheritance No 4D/178/06 and the 4th defendant acquired his co-ownership interest in the properties on the basis of the certificate of inheritance No 4D/189/05.

The plaintiffs asserted that the properties in question were originally registered in land registry file No. 49 for the cadastral area of L. under the legal predecessors of the defendants, Z. H., P. R., and R. X., née Z., who were their joint co-owners. Since the defendants' predecessors in title were of Hungarian nationality (ethnicity), by virtue of Government Decree No 104/45 Coll. in conjunction with Government Decree No 64/46 Coll. the properties in question were confiscated for the purposes of the land reform, as is apparent from entry No 34, and the disposition of those properties was reserved exclusively to the Land and Land Reform Board. Thus, by decision of the Land and Land Reform Board No 5392/VI-573/1945 of 23.08.1945, a decision was taken on the temporary internal administration of the forest estates of H. Z. and Co. for the area of. L. in favour of the State Forest Administration Zborov. On the basis of the decision No 4474/47 of 18.12.1947 of the Poverty Board for Agriculture and Land Reform - Working Group for Land Reform Prešov No 4474/47, an application for confiscation of the property of persons R. X., nee Bardejov was submitted to the OS Bardejov. Z., H. Z. and V. P., to the real estates registered in the land-book insert no. 49 to. L.. Subsequently, by OS Bardejov Resolution No. 2433/47 of 23.12.1947, the confiscation of the properties in question for the purposes of the land reform was authorised to be entered in the PKV No. 49, under entry No. 38 of 20.12.1947. The Czechoslovak State became the owner of the properties in question as of 01.03.1945. The legal predecessors of the defendants were re-registered on LV No. XXX and XXX k. ú. L. as owners on the basis of the decision of the OÚ - OPPaLH No. 3/2000/00039 dated 29.09.2000, VZ 400/2001, which was issued in the framework of the ROEP. The plaintiff considered that the data from the cadastral register, namely from the land book entry No. 49 of the cadastral register, were not sufficiently ascertained in the ROEP procedure. L., from which entry No. 38 shows that the legal predecessors of the defendants confiscated the properties in question and they became the property of the State, and no documents show that the legal predecessors of the defendants requested the handing over of the properties in question within the time limit of 31.12.1995 within the meaning of Article 6(2) of Act No. 229/1991 Coll.

According to the plaintiff, the shares in the disputed immovable property could not belong to the inheritance of the defendants' predecessors in title because at the time of their death the Slovak Republic, or the Czechoslovak State, was a co-owner of the shares.

In its further pleadings, the plaintiff argued that the State had become the owner of the confiscated property and could not therefore allocate the properties to other persons, since it was the owner of them. On 1 March 1945, by decision of the Confiscation Commission at the seat of the Bardejov District National Committee No. Kom. 1/46-III. of 28 August 1946, the entire property of the defendants' predecessors in title, situated in the territory of the Slovak Republic, was confiscated pursuant to Article 1(1) of Slovak National Council Regulation No. 104/45 Coll. and the confiscation was subsequently registered under B38 in the land-book entry No. 49 of the Bardejov District Court on the basis of a resolution of the Bardejov District Court, in the land-book insertion No. 49 to the land-book insertion No. 49 to the land-book insertion No. 49 to the land-book insertion No. 49 to the land-book insertion No. 49 to the land-book insertion No. L.. This entry was made on the basis of Section 5(1) of Act No. 90/47 Sb.

In their statement of defence, the defendants stated that they did not know and could not have known of any confiscation. Neither were their ancestors informed of the confiscation. Had they been aware of the confiscation, they would not have initiated the alternative succession proceedings. They pointed out that the plaintiff's file No 5392/VI-573/1945 did not indicate who had been served with a copy and that the decision of the Commission of Inquiry No 4474/47 did not indicate who had been served with a copy of the file, apart from the addressee. They referred to their good faith and the fact that they live in the EU and to refer to Regulation No 104/45 Coll. is not in accordance with EU law and is incompatible with universal human rights. They requested that the action be dismissed.

The defendant in the first instance argued in his statement that a decision should have first been issued by the confiscation commission, which would have confiscated certain agricultural assets, and subsequently, another decision, known as an allocation certificate, should have been issued to assign

the confiscated assets to a specific person. Both decisions were supposed to be recorded in the land registry. In this case, the confiscation was recorded, but it was not noted to whom the land was allocated. The record of confiscation did not mean that the state became the owner; it was merely a blocking of the disposition right. The owner remained the person who was recorded in the land registry. He pointed to the principle of registration according to Hungarian law.

The defendant in the first instance also contested the non-compliance with procedural procedures according to the Administrative Procedure Code in force at the time during the proceedings. He also pointed out that the decision did not include a clause indicating its finality and enforceability.

In support of his claim, he also referred to the judgments of the Supreme Court of the Slovak Republic in cases No. 3Cdo/15/97 and M Cdo/31/01, according to the conclusions of which confiscation of property under the Decree occurred ex lege, but only if all the conditions set out in the Decree were met. An administrative decision was an essential condition for confiscation, without compliance with which the confiscated property was obviously not confiscated.

The Court of First Instance, based on the evidence presented, concluded that the lawsuit was unfounded, and stated that the confiscation and transfer of ownership to the state under Decree No. 104/1945 Coll. of the Slovak National Council occurred directly on the effective date of the decree, i.e., March 1, 1945. According to the court of first instance, this fact clearly follows from Section 1 of the decree. However, to complete the confiscation process, it was necessary, in accordance with Section 1(7) of the decree, to issue an individual decision on whether a specific person was considered to be of Hungarian nationality under Section 1(1)(b) of the decree. Such a decision was not subject to instanced review, and the possibility of appealing the decision of the Confiscation Commission was introduced only by an amendment under Decree No. 87/1947 Coll. of the Slovak National Council, effective from December 30, 1948. Appeals were heard by the Board of Commissioners.

In that connection, the Court of First Instance stated that the court is not entitled to examine the decision of an administrative authority outside the administrative justice system in terms of its substantive correctness, but can only examine whether it is an administrative act, whether it is not a paact [translator’s note: null and void administrative act], whether the administrative act is issued within the competence of the competent administrative authority and whether it is legally valid and enforceable.

The decision of the Confiscation Commission stated that the legal predecessors of the defendants were at an unknown location, and that they had been notified of the decision. However, it was not proven in the proceedings that the procedural steps required by the then-effective Administrative Procedure Code had been followed in the case of the defendants' legal predecessors, who were supposedly residing at an unknown location. Specifically, there was no evidence to show that the confiscation decision had been delivered to them using one of the acceptable methods of delivery at the time, such as through a representative, agent, or guardian, or by public announcement. The order of the District Court in Bardejov, by which the confiscation was recorded in the land registry, had already been delivered to their curator.

On the basis of the above view, the Court of First Instance concluded that the confiscation order had not been validly and effectively served on the defendants' predecessors in title and that it was as if the order had not even been made, could not have become final and enforceable, and thus could not validly conclude the confiscation process.

Since the legal procedure was not followed with respect to the defendants' predecessors in title, the result is that their property was not confiscated, and thus the State could not even become the owner of the land.

If the property which should have been confiscated by the defendants' predecessor in title did not pass into the possession of the State, then there was nothing to prevent that property being subsequently dealt with in the succession proceedings after them. As a result of such a transfer, the defendants thus became the owners of the disputed immovable property.

On the basis of the above, the Court of First Instance dismissed the action as unfounded.

The Court of First Instance justified its decision on the costs in relation to the proceedings between the plaintiff and the defendant in the first row in accordance with the provisions of Sections 142(1) and 145 of the Code of Civil Procedure. It awarded the defendant in the first row, as the successful party, the costs necessary for the effective exercise of its rights against the plaintiff as the unsuccessful party, totalling EUR 773.91, consisting of the legal costs for the following legal services: taking over and preparing the representation - EUR 55.49 and a lump sum - EUR 7.21, statement of defence 26.11.2010 - EUR 55,49 and lump sum compensation - EUR 7,21, participation in the hearing on 29.06.2011 - EUR 57,- and lump sum compensation - EUR 7,41, statement on the merits on 07.11.2011 - EUR 57,- and lump sum compensation - EUR 7,41, reimbursement of travel expenses of E. T. P. and back when attending the hearing on 29.06.2011 - EUR 223,29, compensation for loss of time when attending the hearing on 29.06.2011 for 24 half-hours - EUR 12,35, i.e. EUR 296,40.

The Court of First Instance decided on the costs of the proceedings between the plaintiff and the defendants in rows 2 to 4 in accordance with the provisions of Section 151(1) of the Code of Civil Procedure, with the result that the plaintiff, who was unsuccessful in the case, did not have the right to reimbursement of the costs of the proceedings. The defendants in Rows 2 to 4, who were fully successful in the proceedings, did not make an application for the plaintiff to be ordered to pay their costs and the costs associated with the interim measure during the proceedings, so the first-instance court did not rule on the obligation to pay the costs, as there was no application by the successful parties for such a decision.

The plaintiff appealed against that judgment within the period prescribed by law. In his appeal, he submitted that the judgment under appeal was based on an error of law and that, at the same time, the Court of First Instance had made incorrect findings of fact on the basis of the evidence adduced.

The plaintiff argued that the court of first instance was presented with the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov No. Kom. 1/46-III. of 28.8.1946, by which the property of the defendants' legal predecessors was confiscated in its entirety and on the entire territory of the Slovak Republic.

By the aforementioned decision of the confiscation commission, the plaintiff acquired the co-ownership shares of the defendants' legal predecessors in the real estate currently registered on LV No. XXX and No. XXX for the cadastral territory of L., ex lege by confiscation pursuant to the Regulation of the Presidium of the Slovak National Council No. 104/1945 Coll. no. n. No 104/1945 Sb. n. SNR').

Pursuant to the provisions of § 1(10) of Regulation No. 104/1945 Coll. n. SNR by decision of the Commission or the Board of Commissioners, property shall be deemed to have been confiscated pursuant to paragraph 1, 2, 3 or 3a on 1 March 1945. No complaint may be lodged with the Supreme Administrative Court against this decision.

From the submitted decision of the Confiscation Commission at the headquarters of the District National Committee in Bardejov No. Kom. 1/46-III. of 28.08.1946 it clearly and unquestionably follows that, with reference to the provisions of § 1 paragraph 1 and § 1 paragraph 10 of Regulation No. 104/1945 Coll. n. SNR, this decision confiscated all the property of the defendants' predecessors in title situated in the territory of the Slovak Republic as of 1 March 1945.

The confiscation of the property of the legal predecessors of the defendants according to the above was subsequently registered under No. B38 in the land book entry No. 49 for the cadastral area of L. on the basis of the order of the District Court in Bardejov, which is unequivocally evident from the plaintiff's submitted land book entry No. 49. This entry under No B38 in the land register was also made in accordance with Article 5(1) of Act No 90/1947 Coll.

The Court of First Instance dismissed the claimant's application on the ground that the claimant had failed to prove that the decision of the confiscation commission had been served on the defendants'

predecessors in title and, therefore, in the view of the Court of First Instance, it had not been established that the decision in question had become final.

It is true that, on the basis of the replies from the State archives of the Slovak Republic, no confiscation file relating to this legal case, i.e. the confiscation of the property of the defendants' predecessors in title, has been preserved in those archives, from which it would be possible to determine the manner of delivery of the confiscation decision to the defendants' predecessors in title.

The Court of First Instance erred in law in finding that the decision of the confiscation commission had to be served on the persons whose property had been confiscated and that, otherwise, the decision did not become final against such persons.

The plaintiff substantiated those allegations by the fact that Article 1(1) of Decree-Law No 8/1928 Coll. did not apply to the decision of the Confiscation Commission pursuant to the provisions of the Decree-Law No 8/1928 Coll. No. 104/1945 Coll. n. SNR, and further argued that the application of the government decree in question to the confiscation process could only be considered in an extreme case if the confiscation was decided by the Board of Supervisors as the central authority, which was not the case here.

Citing the provision of § 1, paragraph 10 of Regulation No. 104/1945 Coll. n. SNR and Article 72(2) of Government Decree No 8/1928 Coll., the plaintiff further argued that it was undoubtedly apparent from those provisions that, even if the Court of First Instance had concluded by an extensive interpretation that the provisions of the aforementioned Government Decree applied to the decision-making of the confiscation commission, the Court of First Instance should also have taken account of the fact that Article 1(10) of Decree No 104/1945 Coll. n. SNR, nor any other provision of that regulation made the validity of the confiscation commission's decision subject to its being served on the persons affected by the confiscation commission's decision, and that even Regulation No 104/1945 Coll. SNR as an administrative regulation provides otherwise in its Article 1(10), i.e. it contains a special regulation according to which property is deemed to have been confiscated by the very decision of the Commission or the Board of Commissioners, i.e. that such a decision has become final by the very act of the decision of the relevant Commission, since this is clear from the very wording of the above-mentioned provision of the special administrative regulation.

Even if the Court of First Instance concluded that the decision of the confiscation commission should have been served on the persons whose property had been confiscated, the Court of First Instance in such a case should undoubtedly have assumed that the decision of the confiscation commission was final, and if the defendants argued that this was not the case, they should have proved such an allegation, or offered evidence to prove it. This follows from the fact that, on the basis of Resolution No 2433/47 of the District Court of Bardejov of 23.12.1947, an entry of confiscation of the property of the defendants' legal predecessors was made in the land register, entry No 49 for the cadastral area of L. The District Court of Bardejov, when making the above-mentioned entry in the past, unquestionably examined in detail all the necessary elements of the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov No. Kom. 1/46-IH. of 28.08.1946, including the manner of its service and delivery (if any) and came to the conclusion at that time (i.e. as early as 23.12.1947) and taking into account all the then existing and available evidence (including on the possible service of this decision) that it was a valid and legally valid act. The contrary position, i.e. that the District Court of Bardejov would have acted in the past in contravention of the law in force and in force at that time, is unjustified, unproven and at the same time unreasonable and contrary to the evidence adduced in the present proceedings.

On the basis of the above-mentioned resolution of the District Court of Bardejov dated 23.12.1947, the ownership of the plaintiff to the disputed immovable property, acquired ex lege, was also entered in the land register, which proves the ownership right of the plaintiff beyond any doubt; no other later entry in the land register testifies to the ownership of the immovable property or co-ownership shares in the immovable property to other than the plaintiff.

In the case of the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov No. Kom. 1/46-III. of 28.08.1946 and the resolution of the District Court of Bardejov No. 2433/47 of 23.12.1947, these are clearly documents under the provisions of Section 134 of Act No. 99/1963 Coll. of the Civil Procedure Code. The validity and legal validity of the decision of the confiscation commission, and thus the plaintiff's right of ownership, is evidenced by the entry made under B38 of land-book entry No 49 for the cadastral area of L. The defendants' right of ownership was entered in the Land Register only by an error in carrying out the ROEP, when the competent authority did not take into account the above-mentioned entry on the confiscation of the property of the defendants' predecessors in title.

The Court of First Instance in the contested judgment, after almost 64 years since the issuance of the order of the District Court of Bardejov No. 2433/47 of 23.12.1947, unlawfully and unjustifiably expresses doubts about the legal validity of the aforementioned decision of the substantively competent confiscation commission, although this validity and legal validity has been confirmed and proved by the order of the District Court of Bardejov No. 2433/47 of 23.12.1947.

If the defendant in the first row in his statement of 07.11.2011 referred to the provision of § 444 of the General Civil Code of 1811, according to which the ownership of immovable property is extinguished only by deletion from the public books, Regulation No. 104/1945 Coll. n. 104/1945 Coll. of the National Council of the Slovak Republic (SNR) contained a special method of acquisition of property by the State ex lege (pursuant to the provisions of Article 1(1) and (10) of Regulation No 104/1945 Coll. of the National Council of the Slovak Republic) and the entry of the confiscation of the property of the defendants' predecessors in the land register by Resolution No 2433/47 of the District Court of Bardejov of 23 December 1947 erased the entry of the ownership of the defendants' predecessors in the land register. By the above-mentioned order of the District Court of Bardejov, the provision of Section 431 of the General Civil Code of 1811, according to which ownership of immovable property was acquired by registration in public registers (although for the acquisition of ownership rights under Regulation No. 104/1945 Coll., Coll. SNR, such registration was not necessary and, according to the judgment of the Supreme Court of the Slovak Republic of 31.01.2011, Case No 4 Cdo 180/2009, submitted by the plaintiff, it was merely declaratory).

The Court of First Instance did not deal in the reasoning of the judgment with the plaintiff's allegations, set out in the statement of defence of 07.02.2011, namely that, on the basis of the confiscation of the property of the defendants' predecessors in title, the State, through its bodies and organisations, had held and used that property undisturbed for several decades.

This fact was not disputed between the plaintiff and the defendants. In view of that fact, the Court of First Instance, if it was of the opinion that the plaintiff had not acquired title by virtue of Decree No 104/1945 Coll., should have taken into account the fact that the plaintiff had acquired title to the disputed immovable property by way of retention of title.

In accordance with the letter of the Credentials of the National Council of the Slovak Republic for Agriculture and Land Reform No.: 5392/VI-573/1945 dated 23.08.1945, the plaintiff took over the disputed real estate in August 1945. Also on the basis of the fact that the plaintiff had the decision of the Confiscation Commission at the seat of the District National Committee in Bardejov No. Kom. 1/46-III. of 28.08.1946, it is evident that the plaintiff was for several decades a bona fide holder of the properties in question, and also their owner.

Referring to the law in force in the territory of Slovakia until 01.01.1951 and to the provisions of Sections 115, 116(1) and 566(1) of the Civil Code, the plaintiff further argued that even if the confiscation of the property of the defendants' predecessors in title had not taken place, and the plaintiff maintains that the confiscation took place without any doubt, the plaintiff became the owner of the real property, the title to which is the subject of the present proceedings, by possession, as of 01.01.1961.

On the basis of the foregoing, the plaintiff requested that the appellate court reverse the judgment appealed from and rule that:

"A/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on
LV No. XXX for the cadastral territory of L., municipality L., district P., namely
land parc. no. KN-C 202/2 forest land with an area of 29 333 m2,
land parc. no. KN-C 203/3 forest land with an area of 18 255 m2,
land parc. no. KN-C 256 forest land with an area of 4 489 m2,
land parc. no. KN-C 257/2 forest land with an area of 25 131 m2,
land parc. no. KN-C 259/2 forest land with an area of 3 467 m2,
land parc. no. KN-C 261 forest land with an area of 3 171 m2,
land parc. no. KN-C 262 permanent grassland with an area of 18 002 m2,
land parc. no. KN-C 267 forest land with an area of 445 416 m2,
land parc. no. KN-C 268 forest land with an area of 7 941 m2,
land parc. no. KN-C 269/2 forest land with an area of 31 286 m2,
land parc. no. KN-C 304/4 built-up areas and courtyards with an area of 184 m2,
land parc. No KN-C 304/5 built-up areas and courtyards with an area of 1 502 m2,
land parc. No KN-C 310/2 forest land with an area of 329 m2,
where the co-owner's share is currently listed as the owner R. P., born. X.X.XXXX, N. C. XX/B, XXXX, P., R.,

B/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory of L., municipality L., district P., namely
land parc. no. KN-C 202/2 forest land with an area of 29 333 m2,
land parc. no. KN-C 203/3 forest land with an area of 18 255 m2,
land parc. no. KN-C 256 forest land with an area of 4 489 m2,
land parc. No. KN-C 257/2 forest land with an area of 25 131 m2,
land parc. No. KN-C 259/2 forest land with an area of 3 467 m2,
land parc. No. KN-C 261 forest land with an area of 3 171 m2,
land parc. No. KN-C 262 permanent grassland with an area of 18 002 m2,
land parc. no. KN-C 267 forest land with an area of 445 416 m2,
land parc. no. KN-C 268 forest land with an area of 7 941 m2,
land parc. no. KN-C 269/2 forest land with an area of 31 286 m2,
land parc. No KN-C 304/4 built-up areas and courtyards with an area of 184 m2,
land parcel No KN-C 304/5 built-up areas and courtyards with an area of 1 502 m2,
land parcel No KN-C 310/2 forest land with an area of 329 m2,
in which the co-ownership share is currently registered as the owner S. X., nee. Z. Q., born. X.X.X.XXXX, T. G. XX, p. no. X, P., R.,

C/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory of L., municipality L., district P., namely
land parc. no. KN-C 202/2 forest land with an area of 29 333 m2,
land parc. no. KN-C 203/3 forest land with an area of 18 255 m2,
land parc. no. KN-C 256 forest land with an area of 4 489 m2,
land parc. no. KN-C 257/2 forest land with an area of 25 131 m2,
land parc. no. KN-C 259/2 forest land with an area of 3 467 m2,
land parc. no. KN-C 261 forest land with an area of 3 171 m2,
land parc. no. KN-C 262 permanent grassland with an area of 18 002 m2,
land parc. no. KN-C 267 forest land with an area of 445 416 m2,
land parc. no. KN-C 268 forest land with an area of 7 941 m2,
land parc. no. KN-C 269/2 forest land with an area of 31 286 m2,
land parc. no. KN-C 304/4 built-up areas and courtyards with an area of 184 m2,
land parc. No. KN-C 304/5 built-up areas and courtyards with an area of 1 502 m2,
land parc. no. KN-C 310/2 forest land with an area of 329 m2,
in which the co-ownership share is currently as the owner recorded S. Z., born. XX.X.XXXX, Z. B. - V. X-X, X. posch., P. no. XXXX, R.

D/ The Slovak Republic is the owner of a co-ownership share in the size of 18/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory L., municipality L., district P., namely
land parc. no. KN-C 202/2 forest land with an area of 29 333 m2,
land parc. no. KN-C 203/3 forest land with an area of 18 255 m2,
land parc. no. KN-C 256 forest land with an area of 4 489 m2,
land parc. no. KN-C 257/2 forest land with an area of 25 131 m2,
land parc. no. KN-C 259/2 forest land with an area of 3 467 m2,
land parc. no. KN-C 261 forest land with an area of 3 171 m2,
land parc. no. KN-C 262 permanent grassland with an area of 18 002 m2,
land parc. no. KN-C 267 forest land with an area of 445 416 m2,
land parc. no. KN-C 268 forest land with an area of 7 941 m2,

land parc. no. KN-C 269/2 forest land with an area of 31 286 m2, land parc. no. KN-C 304/4 built-up areas and courtyards with an area of 184 m2, land parc. no. KN-C 304/5 built-up areas and courtyards with an area of 1 502 m2, land parc. no. KN-C 310/2 forest land with an area of 329 m2, in which the co-ownership share is currently as the owner listed H. P., born XX.X.X.XXXX, N. C. XX/B, XXXX, P., R.,

E/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory L., municipality L., district P., namely
land parc. no. KN-C 202/3 forest land with an area of 67 203 m2,
land parc. no. KN-C 203/2 other areas with an area of 100 m2,
land parc. no. KN-C 257/1 forest land with an area of 570 073 m2,
land parc. No KN-C 259/1 forest land with an area of 277 112 m2,
land parc. No KN-C 304/3 built-up areas and courtyards with an area of 297 m2, land parc. No KN-C 310/3 forest land with an area of 545 m2,
with a co-ownership share in the size of 99/192, at which the co-ownership share is currently as the owner listed R. P., born. X.X.XXXX, N. C.
XX/B, XXXX, P., R.,

F/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory of L., municipality L., district P., namely
land parc. no. KN-C 202/3 forest land with an area of 67 203 m2,
land parc. no. KN-C 203/2 other areas with an area of 100 m2,
land parc. no. KN-C 257/1 forest land with an area of 570 073 m2,
land parc. no. KN-C 259/1 forest land with an area of 277 112 m2,
land parc. no. KN-C 304/3 built-up areas and courtyards with an area of 297 m2,
land parc. no. KN-C 310/3 forest land with an area of 545 m2,
with a co-ownership share in the size of 99/192,
in which the co-ownership share is currently registered as the owner S. X., nee. Z. Q., born. X.X.X.XXXX, T. G. XX, p. no. X, P., R.,

G/ The Slovak Republic is the owner of a co-ownership share in the size of 9/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory L., municipality L., district P., namely
land parc. no. KN-C 202/3 forest land with an area of 67 203 m2,
land parc. no. KN-C 203/2 other areas with an area of 100 m2,
land parc. no. KN-C 257/1 forest land with an area of 570 073 m2,
land parc. No KN-C 259/1 forest land with an area of 277 112 m2,
land parc. No KN-C 304/3 built-up areas and courtyards with an area of 297 m2,
land parc. No KN-C 310/3 forest land with an area of 545 m2,
with a co-ownership share in the size of 99/192,
at which the co-ownership share is currently as the owner listed S. Z., born. XX.X.XXXX, Z. B. - V. X-X, X. posch, P. no. XXXX, R.,

H/ The Slovak Republic is the owner of a co-ownership share in the size of 18/192 on the real estate kept by the Cadastral Office in Prešov, Cadastral Administration Bardejov on LV No. XXX for the cadastral territory of L., municipality L., district P., namely land parc. no. KN-C 202/3 forest land with an area of 67 203 m2 , land parc. no. KN-C 203/2 other areas with an area of 100 m , land parc. no. KN-C 257/1 forest land with an area of 570 073 m2 , land parc. no. KN-C 259/1 forest land with an area of 277 112 m2 , land parc. no. KN-C 259/1 forest land with an area of 277 112 m2 , land parc. No KN-C 304/3 built-up areas and courtyards with an area of 297 m2, land parc. no KN-C 310/3 forest land with an area of 545 m , with a co-ownership share in the size of 99/192, in which the co-ownership share is currently as the owner listed H. P., born. XX.X.XXXX, N. C. XX/B, XXXX, P., R..

Defendants 1/ to 4/ shall jointly and severally pay the costs of the first instance proceedings in the amount of EUR 1 182,47 and the costs of the appeal proceedings in the amount of EUR 77,29 to the plaintiff's lawyer, all within three days of the judgment becoming final."

The first defendant in the proceedings before the Court of First Instance answered the plaintiff's appeal. In his pleading, he stated that he agreed with the judgment. The Court of First Instance ruled correctly and based its decision on the correct legal assessment of the case. It disagreed with the plaintiff's appeal and considered his arguments to be frivolous.

The first defendant also pointed out in its statement of defence that the defendants were not at fault for the conduct in question and that the plaintiff had twice in succession confirmed and acknowledged the defendants' or their predecessors in title.

On the basis of the foregoing, the plaintiff in the first instance requested the Court of Appeal to uphold the judgment under appeal as substantively correct and to award him a total of EUR 66,32 in costs of the appeal proceedings.

The Regional Court in Prešov, as an appellate court, within the scope of its competences arising from the provisions of Section 10(1) of the Civil Procedure Code, examined the contested sentences of the judgment of the Court of First Instance together with the proceedings which preceded them in accordance with the principles set out in Section 212 of the Civil Procedure Code, did not order an appeal hearing in the case, which is in accordance with the provisions of Article 214(1) and (2) of the Civil Procedure Code, having announced the place and time of delivery of the decision on the official notice board of the court on 23.04.2013 and found that the plaintiff's appeal is not well-founded.

On the basis of the evidence adduced, the Court of First Instance made the correct findings of fact and correctly assessed the case in law. Those correct findings of fact and assessment have not been altered at the appeal stage. The Court of Appeal fully agrees with the conclusion of the Court of First Instance and with the reasons given therein and, in relation to the plaintiff's additional grounds of appeal, states:

Thus, as it follows from the grounds of the judgment under appeal, the Court of First Instance based its conclusion on the finding that the decision of the Confiscation Commission under No. 1/46-III of 28.08.1946, on the basis of which R. X., nee. Z., H. Z. and V. P., who were to be designated as persons of Hungarian nationality (ethnicity) , and by which all property in the whole of Slovakia was to be confiscated on 1 March 1945, did not become final and enforceable on the ground that it was not served on the persons concerned, that is to say, on the defendants' predecessors in title, in accordance with the law in force at that time.

On the basis of these conclusions and in the context of the plaintiff's appeals, the Court of Appeal finds that the resolution of the question at what point in time the confiscation and transfer of ownership of the confiscated property to the State occurred pursuant to SNR Regulation No. 104/1945 Coll. n, must be preceded by a finding as to whether the individual decision of the authority on the basis of which the predecessors in title were to be declared persons of Hungarian nationality (ethnicity) and on the basis of which the property of those persons was to be confiscated at the same time can be regarded as having been made at all, from the point of view of the procedural rules of law.

Unless otherwise provided for in the administrative regulations, the decision shall be rendered by delivery of a written copy thereof, or, if it has been pronounced orally in the presence of the parties, by oral declaration (Art. § Section 72(2) of Government Regulation No 8/1928 Coll. on proceedings in matters falling within the competence of the political authorities administrative proceedings).

The decision of the Confiscation Commission at the seat of the District National Committee Bardejov No.: Kom. 1/46III. dated 28.08.1946 shows that the legal predecessors of the defendants R. X., nee. Z., V. P. and H. Z., at the time of the issuance of this decision living in an unknown place, are deemed pursuant to Section 1(1)(b) of Ordinance No. 64/1/46 Coll. n. SNR as persons of Hungarian nationality (ethnicity) and, on the basis of this decision, the agricultural property is deemed to be within the scope of Section 2 of Regulation No 104/1945 Coll. n. SNR belonging by right of ownership to the above-mentioned persons shall be deemed to have been confiscated on 1 March 1945, irrespective of the cadastral area or municipality in which the property is located throughout the territory of Slovakia.

Persons whose whereabouts are unknown despite an inquiry, or persons who are not known to the authority, may be served, unless a representative, agent or guardian is appointed, by public notice on an official notice board, and service shall be deemed to have been effected, unless otherwise provided for in the administrative regulations, if fifteen days have elapsed since the notice was posted on the official notice board of the competent authority, unless a longer period has been provided for in the notice (Art. § Section 33(1) of Government Regulation No 8/1928 Coll. on proceedings in matters falling within the competence of political authorities - administrative proceedings).

Thus, as the Court of First Instance rightly held, it was not established in the proceedings that the procedural procedure under the Administrative Procedure Code in force at the time, cited above, had been followed in the case of the defendants' predecessors in title, who were to reside in an unknown place, i.e. that they had been served with the confiscation decision in question by one of the methods available at the time, i.e. by a representative, agent or guardian, or by a public notice.

On the basis of the foregoing, then, the Court of First Instance correctly held that, because the confiscation order was not validly and effectively served on the defendants' predecessors in title, it was as if the order in question had not even been made, and thus could not become final and enforceable against them.

As a consequence of the absence of a legal procedure for the issuance of the confiscation decision, the confiscation of the property of the defendants' predecessors in title did not take place and the State could not become the owner of the properties in question. Therefore, there was nothing to prevent the property of those persons from being dealt with in the succession proceedings and the defendants in those proceedings became the owners of the properties at issue on that basis.

The above addresses the plaintiff's appeal argument that he proved the acquisition of ownership rights to the disputed real estate, pursuant to Decree No. 104/1946 Coll. of the Slovak National Council in conjunction with Decree No. 64/1946 Coll. of the Slovak National Council.

As the Court of Appeal stated above, and as the Court of First Instance correctly stated, that the confiscation and transfer of ownership to the State pursuant to SNR Regulation No 104/1946 Coll. occurred directly on the date of its entry into force, i.e. 01.03.1945, the question of the moment when the ownership of the property of the persons concerned passed to the State was not in dispute, but all conditions had to be fulfilled in order for the confiscation to be effective. In the present case, the essential condition, namely the existence of a valid decision on the basis of which the confiscation and the transfer of ownership of the persons concerned to the State was to take place, is not fulfilled. Such ineligibility of the decision in the present case is due to the fact that it was not duly delivered, and thus the decision of the Confiscation Commission at the seat of the District National Committee of Bardejov No.: 1/46/III of 28.08. did not become final and enforceable.4474/47 of 18.12.1947, a petition was submitted to the District Court of Bardejov to mark the confiscation in the land register.

In support of the correctness of the conclusions expressed by both the first instance court and the Court of Appeal concerning the obligation of the administrative authority to proceed in accordance with the cited provisions of Sections 33(1) and 72(1) of Government Decree No 8/1928 Coll, it is necessary to refer to the order of the District Court in Bardejov, No 2433/47 of 23.12.1947, when Dr J. Q., a lawyer in P., was notified of the order in question as the court-appointed curator for the distant - in an unknown location - landowners.

With regard to the plaintiff's appeal objection that the defendants' ownership right was entered in the Land Register only by an error in the implementation of the ROEP, when the competent authority did not take into account the entry on the confiscation of the property of the defendants' legal predecessors, the Court of Appeal notes that the plaintiff also argued in the course of the proceedings before the Court of First Instance that the data from the cadastral register were not sufficiently ascertained, there was an error in the cadastral register, and the ROEP did not include a change in the person of the owners in the LV No XXX and XXX of the cadastral register. L. and the defendants' predecessors in title remained registered, that the contractor did not correctly identify the current owner when drawing up the ROEP and that the plaintiff cannot explain how it is possible that entry No 38 in the PKV No 49 was not taken into account when drawing up the ROEP and that the defendants' predecessors in title were registered as owners on the LV after the ROEP only in error, the Court of Appeal adds that it considers the plaintiff's above-mentioned arguments to be unfounded in their entirety. As is apparent from the provisions of Section 4 of Art. 180/1995 Coll. on certain measures for the settlement of land ownership, the State Forestry Organisation is also a member of the commission for the renewal of land registration and legal relations to land in the case of forest land.

The decision of the District Office Bardejov OPPaH number: 3/2000/00039 of 29.09.2000 (no. l. 263 of the file) shows that the decision on the approval of the ROEP was delivered to the Regional Authority Presov, Department of Land, Agriculture and Forestry, while in accordance with the provisions of § 6 (1) of Act No.: 3/2000/00039 of 29.09.2000 (no. l. 263 of the file). 222/1996 Coll. effective as of 29.09.2000, the regional office performs state administration in individual sections according to the annex of this Act or if provided for by a special law. The decision in question was issued by the Bardejov District Office itself, which, pursuant to Article 5(1) and (2) of Act No. 222/1996 Coll., performs state administration in individual sections, unless its performance is entrusted by law to a regional authority, another state administration body, a municipality or another legal person, and is in the first instance substantively competent for proceedings in which the rights or obligations of natural persons and legal persons in the field of state administration are decided by state administration bodies (hereinafter referred to as "administrative proceedings"), unless the law provides otherwise.

According to Section 7(4) of Act No. 180/1996 Coll., the approved register is a public document based on which the cadastral office records the register data in the real estate cadastre.

It is precisely for that reason that it is possible to agree with the defendant's objection in the first instance that the procedure followed by the plaintiff, the Slovak Republic, is not acceptable from the point of view of legal certainty and the protection of the rights and legitimate interests of private individuals. The plaintiff, through its authority, the District Office of Bardejov, recognised the defendants' right of ownership by the ROEP decision.

The Court of Appeal also draws attention to the extensive case law of the Constitutional Court of the Slovak Republic, according to which the restitution regulations were not issued for the purpose of causing the extinction of the property right of the beneficiaries, but to facilitate the restoration of this property right. Where property has been seized by the State without legal justification, the owner has not lost his or her ownership of that property.

With regard to the plaintiff's ground of appeal that, if the Court of First Instance was of the opinion that the plaintiff had not acquired the right of ownership by virtue of Regulation No 104/1945 Coll. SNR, it should have taken into account the fact that the plaintiff had acquired title to the disputed immovable property by retention of title, the Court of Appeal notes that the case-file shows that the plaintiff was instructed at the hearing prior to the delivery of the judgment in accordance with the provisions of Article

120(4) of the Code of Civil Procedure. It appears from the minutes of the hearing that the plaintiff, represented by counsel, did not make any requests for additional evidence, nor does it appear from the course of the proceedings before the judgment on the merits was given that the defendant produced any evidence to prove his claim that he had acquired title to the immovable property in question by possession.

Since the plaintiff did not adduce evidence to prove that he should have acquired title to the disputed immovable property by virtue of possession, he cannot successfully criticise the first instance court that it should have taken into account such a method of acquisition of the plaintiff's title to the immovable property in question.

Therefore, the appellate court upheld the challenged judgment as factually correct, in accordance with Section 219 of the Civil Procedure Code.

The appellate court decided on the costs of the appeal proceedings in accordance with Section 224(1) of the Civil Procedure Code (O.s.p.) in conjunction with Section 142(1) of the Civil Procedure Code (O.s.p.). The reason for this decision on costs was the fact that the plaintiff was not successful in the appeal proceedings, and therefore the appellate court did not grant him reimbursement of the costs of the appeal. The defendant in the first place, who was successful in the appeal proceedings, applied for the reimbursement of appeal costs, totaling 66.32 EUR for legal representation in the appeal proceedings, including one legal service action - written submission to the court - a statement regarding the appeal 58.69 EUR + 1 administrative fee of 7.63 EUR. Therefore, the appellate court granted the reimbursement of the appeal costs and ordered the plaintiff to pay them to the account of the first defendant’s legal representative, JUDr. Tünde Keszegh, within 3 days from the finality of this judgment, according to Decree No. 655/2004 Coll. on Attorney Fees and Compensation for Legal Services, as amended, specifically Sections 10, 14(1)(b), and 15(a).

On 08.06.2012, the plaintiff served on the Court of Appeal a motion for leave to appeal in the event that the Court of Appeal upholds the judgment of the Court of First Instance.

The grounds for the application for leave to appeal were that a number of questions of fundamental legal importance had arisen in the proceedings, having regard to the fact that they were questions which had to be resolved in accordance with the legislation in force more than 60 years ago.

According to the plaintiff, the issues are:
- whether Government Decree No 8/1928 Coll. also applied to the decision-making of the Confiscation Commission pursuant to Presidium of the Slovak National Council Decree No 104/1945 Coll. n. , whereas, according to the plaintiff, the above-mentioned Government Decree did not apply to the Commission's decision-making
- whether the Commission's decision has become final by the mere act of issuing the Commission's decision, or whether further acts were necessary
- whether the General Court can currently review the decision of the relevant court of record in the past, whereas, in the plaintiff's view, the General Court cannot currently review the decision of the relevant court of record in the past.

As to the claimant's motion for admission of the appeal in this case, the Court of Appeal states that the appeal was not admitted, for the reasons that the issues raised by the claimant are not such as would not have been addressed by the court practice and case law of the Supreme Administrative Court of the Slovak Republic. The conditions for admitting the appeal as requested by the plaintiff were therefore not fulfilled.

Notice:

There is no appeal against this judgment.