The Court:	Banská Bystrica Regional Court
File mark:	17Co/37/2021
Court file identification number:	6818200820
Date of the decision:	30. 06. 2022
Name and surname of the judge, VSU:	JUDr. Ľubomír Šabla
ECLI:	ECLI:SK:KSBB:2022:6818200820.3

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

The Regional Court in Banská Bystrica, as the appellate court, in a panel composed of the presiding judge JUDr. Ľubomír Šabla and judges JUDr. Zita Nagypálová and JUDr. Dušan Ďurian as panel members, in the dispute of the plaintiff: Slovak Republic, represented by Forests of the Slovak Republic ((Lesy SR, state enterprise) a state enterprise, with its registered office at Námestie SNP 8, 975 66 Banská Bystrica, Company ID (IČO): 36 038 351, against the defendant: Q. Z., born on XX.XX.XXXX, residing at X. XXXX/X, XXX XX K., legally represented by Paul Q, s. r. o. Law Firm, with its registered office at Karadžičova 2, 811 09 Bratislava, Company ID (IČO): 35 906 464, and Tomáš Kamenec, s. r. o. Law Firm, with its registered office at Špitálska 43, 811 08 Bratislava, Company ID (IČO): 36 855 995, in proceedings concerning the determination of ownership rights to real estate, on the appeal of the defendant against the judgment of the District Court of Revúca, file number 4C/18/2018-492, dated December 3, 2020, in connection with the corrective order of the District Court of Revúca, file number 4C/18/2018-523, dated January 29, 2021, as the court of first instance, rules as follows:

r u l e d :

I. It modifies the judgment of the court of first instance, in connection with the corrective resolution of the court of first instance, to dismiss the claim in its entirety.

II. It annuls the resolution of the District Court Revúca No. 4C/18/2018 - 186 dated January 8, 2019, regarding the imposition of a preliminary measure, in connection with the confirming resolution of the Regional Court in Banská Bystrica No. 15Co/23/2019 - 253 dated February 20, 2019.

III. The plaintiff is obligated to reimburse the defendant for 100% of the litigation costs within three days from the date the court of first instance issues a final decision on the amount of the reimbursement.

r e a s o n i n g :

1. By the judgment challenged by the appeal, in connection with the corrective order, the court of first instance determined that the Slovak Republic is the exclusive owner of the land parcel U. with parcel number XXXX/X – forest land with an area of XXXXXXX m², and the land parcel CKN with parcel number XXXX – forest land with an area of XXXXX m², recorded in Land Registry List No. XXXX, maintained for the cadastral territory and municipality of Y., district V. (Ruling I), and imposed on the defendant the obligation to reimburse the plaintiff for the full costs of the proceedings (100%) within three days from the date of the finality of the order, by which the court of first instance will determine the exact amount (Ruling II).

2. The evidence taken in the proceedings before the court of first instance showed the following:

3. The original owner of parcel U. no. XXXX/X – forest land with an area of XXXXXXX m², and parcel CKN no. XXXX – forest land with an area of XXXXX m², recorded in Land Registry List No. XXXX,

maintained for the cadastral territory and municipality of Y., district V. (hereinafter also referred to as "parcels 1 and 2" or "real estate"), was Dr. X. E., based on an entry in land registry book entry no. XXX for the cadastral territory of Y., listed as parcel mpč. XXX/a with an area of XXX holds and XXX öls, according to document no. XXXX/XXXX. For the first time, parcels 1 and 2 were seized by the state under Act No. 215/1919 Coll. on the Seizure of Large Landed Property (the so-called "Seizure Act"), based on document no. XXXX/XXXX dated August 8, 1924, following a proposal by the State Land Office in Prague dated August 4, 1924. However, by decision no. XXXXX/XX II/4 of the State Land Office in Prague, the entry recording the state seizure of the property was deleted, based on document no. 509/1928 dated March 30, 1928. For the second time, parcels 1 and 2 were confiscated by the state under Decree No. 104/1945 Coll. of the Slovak National Council on the Confiscation and Accelerated Redistribution of Agricultural Property of Germans, Hungarians, as well as Traitors and Enemies of the Slovak Nation, as amended by Decree No. 64/1946 Coll. of the Slovak National Council (hereinafter also referred to as the "Confiscation Decree"), by decision of the Presidency of the Slovak National Council no. 21.430/45-I/B dated January 19, 1946.

4. The Commission for Agriculture and Land Reform – Section "B", by letter No. 14.302/48-I-B. dated March 4, 1948, submitted to the Board of Commissioners the appeals filed against confiscation decisions, including the appeal of Dr. X. E., along with supporting documents. These included a certificate from the Ministry of the Interior confirming that in the years 1930 and 1940, he declared himself of Slovak nationality (ethnicity), as well as a church certificate officially authenticated by the Roman Catholic Church of the Parish Office in Tornaľa, attesting to his religious and political conduct. (A note was included stating that the confiscation decision dated January 19, 1946, No. 21.430/45-I/B, had already been annulled by a decision of the Commission of the Slovak National Council.) The submission included a proposal for the Board of Commissioners to recognize these appeals (including the appeal of Dr. X. E.) as justified, in accordance with § 1(12) of the Confiscation Order, and, as a result, to amend or annul the contested decisions on the confiscation of agricultural property.

5. The Commission for Agriculture and Land Reform – Section "B", by letter No. 2189/1948 dated April 6, 1948, proposed to the District Court in Tornaľa, pursuant to § 5(1) of Act No. 90/1947 Coll., on the implementation of land registration concerning confiscated enemy property and the adjustment of certain legal relations related to allocated property in the land register of cadastral area Y, to make an entry in the relevant land registry records (hereinafter also referred to as "PKV"), including PKV No. XXX, as well as No. XXX and No. XXX, regarding the real estate registered in the name of Dr. X. E. The proposed entry was: "Confiscated according to the Confiscation Order for the purposes of land reform in its entirety." The confiscation note was recorded in the mentioned land registry entries (PKV), including PKV No. XXX, on XX.XX.XXXX under entry No. 838/1948. The confiscation of real estate registered in the name of Dr. X. E., including property in the cadastral area I. (formerly Y.), in the then district X., was also confirmed by an extract from the list of confiscated properties from 1949 for the district of the X. working group.

6. The District Office in Revúca, Department of Land, Agriculture, and Forestry, by decision No. III - 111/97-PÚ dated March 10, 1997, published the Simplified Register of the Original State of Lands (hereinafter also referred to as "ZRPS") for cadastral areas I. and H., which, along with other participants in land adjustments, was also delivered to the state enterprise Forests of the Slovak Republic (Lesy SR, state enterprise), with instructions on the possibility of submitting written objections within 15 days of delivery. Forests of the Slovak Republic (Lesy SR, state enterprise) responded by filing objections, but the ownership of Dr. X. E. was not contested. By decision of the District Office in V., Department of Land, Agriculture, and Forestry, No. I2001/00554 dated December 10, 2001, the ZRPS for cadastral area Y. (I.) was approved under Z-XXXX/XXXX. According to this decision, the original land registry entry No. XXX was transformed into ownership certificate No. XXXX for cadastral area Y. (I.), in which parcel D. No. XXX/X was recorded, originating from the original parcel No. XXX/a. According to document No. 1304/1916, Dr. X. E. was listed as the owner. A member of the commission for proceedings and the renewal of the records of certain lands and legal relations concerning them (ROEP) for cadastral area I. was designated on behalf of Forests of the Slovak Republic (Lesy SR, state enterprise) as X. V., with F. S. H., residing in Y. He personally attended the ROEP commission meeting held on August 12, 2003, at the City Hall in Tornaľa.

7. Based on the certificate of inheritance case file No. XD/XXX/XXXX, O. XXX/XXXX dated September 18, 2006, issued by notary Z. S. V., with an office in V., and legally valid from October 3, 2006, the real estate - parcel D. No. XXX/X (forest land) registered in ownership certificate No. XXXX for cadastral area Y. was inherited from the deceased Dr. X. E., born XX.XX.XXXX, last residing in J., who passed away on XX.XX.XXXX, by Dr. Q. E., born XX.XX.XXXX, residing in the USA, as the sole legal heir.

8. By a purchase contract dated March 19, 2007, as amended by Addendum No. I dated July 3, 2007, the ownership rights to the real estate were transferred to the company L.. spol. s r.o., with registered office at K. S. XXX, F.: XX XXX XXX (hereinafter also referred to as "L.. spol. s r.o."). Subsequently, by contract No. 40/20/Nn/2008 dated August 21, 2008, the company leased, among other properties, the disputed forest parcels 1 and 2, recorded in ownership certificate No. XXXX for cadastral area Y., to the lessee - Forests of the Slovak Republic (Lesy SR, state enterprise), ID No.: 36 038 351, Revúca branch, for temporary use from August 21, 2008, to December 31, 2026.

9. By letter dated 14.07.2014, the claimant invited the company L. spol. s r.o. to align the actual status with the entry in the real estate register, since the claimant feels itself to be the owner of land parcels 1 and 2 as the legal successor of the Czechoslovak Republic, which acquired them by confiscation under the confiscation decree after the original landowners, with the indication that this is the second such document in the sequence. From its contents it is clear that the first notice was dated 06.05.2014.

10. Purchase contract dated 15.12.2014 transferred the ownership right to the property to the company A., s.r.o., with the registered office X. XXX, F.: XX XXX XXX XXX (hereinafter also "A., s.r.o."), in favour of which the ownership right was registered by entry V-XXX/XXXX of 18.05.2015.

11. With reference to Article 2(1) of the fundamental principles of the Civil Dispute Procedure Code, considering the values and their priority, which it protects, primarily justice as a fundamental value of law, and arguing based on Section 185(2) of the Civil Dispute Procedure Code, the court of first instance also took evidence ex officio, without a motion from the parties, from public registers and lists, particularly by searching REGOB for the defendant, obtaining full extracts from the commercial registers of the relevant companies L., spol. s r. o., A., s. r. o., and E., s. r. o., as well as from Forests of the Slovak Republic (Lesy SR, state enterprise), including the complete Land Registry List No. XXXX for the cadastral territory and municipality of Y., district V., and a partial extract from Land Registry List No. XXXX for the cadastral territory and municipality of G., district Y. Furthermore, upon the plaintiff’s motion, which was made only after the court of first instance had on its own initiative obtained and attached the bankruptcy file of the District Court in Trnava, case no. 23K/45/2014, including the file of the bankruptcy trustee of the insolvent company A., s. r. o. "in bankruptcy," case no. 23K/45/2014, S1398, the court of first instance familiarized the parties with the contents of the bankruptcy files, as, according to the court of first instance, all this evidence indicated that the factual allegations of the parties (without specifying which) were inconsistent with reality.

12. By checking the Register of inhabitants of the Slovak Republic for the defendant, the court of first instance had proved that the defendant was born on XX.XX.XXXX in Y. and is registered for permanent residence at the address X. XXXX/X, K..

13. From the extract from the Commercial Register of the Slovak Republic, the court of first instance found that Q. was the sole shareholder of the company L. spol. s r.o. from 12.12.2014 to 11.07.2016. Z., resident X. XXXX/X, XXX XX K. (the defendant). The company was dissolved on 11.01.2017 on the basis of voluntary deletion from the Commercial Register.

14. From the extract from the Commercial Register of the Slovak Republic, the court of first instance further found that the company A., s.r.o. was established on 20.11.2014, its sole shareholder and managing director was Z. N., resident H. XXX/XX, XXX XX S.. O. 08.10.2019 the company ceased to exist ex officio by deletion from the Commercial Register.

15. From the extract from the Commercial Register of the Slovak Republic, the court of first instance also found that the company E., s. r. o., with its registered office in V. XXXX, XXX XX K. G., F.: XX XXX XXX XXX was established on 10.06.2015 with a share capital of € 5 000,-. Until 10.11.2016, its sole shareholder and managing director was S. E., residing at N. XXXX/XX, XXX XX XX K. G.. On 21.04.2017 the company was dissolved by voluntary deletion from the Commercial Register.

16. From the file of the District Court of Trnava, case No. 23K/45/2014 and the bankruptcy file of the company A., s.r.o. "in competition", the court of first instance found the following facts:

17. By the resolution of the District Court of Trnava file no. 23K/45/2014 dated 21.01.2015, upon the debtor's petition, i.e. the company A., s.r.o. dated 22.12.2014, delivered to the court on 23.12.2014, bankruptcy proceedings were initiated against the named debtor (hereinafter also referred to as "the bankrupt"), published in the Commercial Bulletin 19/2015 in the chapter Bankruptcy and Restructurings on 29.01.2015. Subsequently, on 14.02.2015, bankruptcy was declared on the debtor's assets and creditors were invited to register their claims within 45 days of the declaration of bankruptcy. The resolution was published in the Commercial Bulletin on 13.02.2015. By the resolution of the District Court of Trnava file no. 23K/45/2014 dated 27.04.2015, final on 08.05.2015, the bankruptcy on the assets of the bankrupt was declared small, the resolution was published in the Commercial Bulletin on 07.05.2015. The final list of claims against A., s.r.o. consisted of the following claims:

I. claim of creditor Z. H. in the amount of 14 125,90 € dated 30.04.2015, the legal reason for the claim - purchase contract dated 25.11.2014 for the real estate: parcel U. no. XXXX/X - forest land with an area of XXXX m2 registered on LV no. XXXX kept for the cadastral area and municipality G., district Y. for an agreed purchase price of 15 000,- €. The debtor paid € 1 000,- before signing the contract and did not pay the remaining part of € 14 000,-.

The ownership right to the property in favour of the company A., s.r.o. was authorized by the deposit V-XXXX/XXXX dated 26.11.2014. The creditor also claimed statutory default interest from 11.12.2014 to the date of the declaration of bankruptcy on 14.02.2015 in the amount of 5.05 % per annum, i.e. € 125.19.

II. claim of creditor Z. N., apartment H. XXX, S. in the amount of 8 200,- € dated 30.04.2015, legal basis of the claim - contract between the creditor as the debtor's managing director and the debtor on interest-free loan of funds with maturity 31.12.2008. On the day of signing the contract, the debtor was handed over cash in the amount of € 8 200,-, the loan was not even partially repaid. This claim was denied by the insolvency administrator on 30.04.2015 for several reasons.

III. the claim of creditor Q. Z. P. N., F.: XX XXX XXX XXX with place of business X. XXXX/X S. in the amount of 3532,68 € dated 30.04.2015. The legal basis for the claim - a contract for the provision of services (transport of timber twice) from G. to X.. The service was performed in the number of 16.5 hours, the performance of the service was confirmed by signing two acceptance protocols. Two invoices were issued for the services, which were not even paid pro rata.

IV. claim of the creditor L... spol. s. r. o. in the amount of € 200 000,- dated 06.07.2015. Legal grounds for the claim - purchase agreement on the transfer of forest land in the cadastral territory of Y. parcel D. no. XXX/ X with an area of XXXXXXX m2 dated 15.12.2014 for a purchase price of € 350 000,-. Before signing the contract, the debtor paid part of the purchase price of € 150 000,- by means of a promissory note, which became due on 15.02.2015, the remaining part of the purchase price of € 200 000,- was to be paid by 15.06.2015, this was not paid.

VI. the claim of the creditor L.. spol. s r. o. in the amount of € 650 000,- dated 06.07.2015 from the same purchase contract dated 15.12.2014. Legal grounds for the claim - contractual penalties of € 300 000,- and € 350 000,- due to the debtor's failure to perform all acts necessary for the proper registration of the ownership right in the cadastre and the registration of the security transfer to the real estate. The transfer of the title was made only on the basis of the lender's application for registration of the title.

18. The inventory of the bankrupt's property consisted of: parcel U. no. XXXX/X - forest land with an area of XXXX m2 registered at LV no. XXXX for the cadastral territory and municipality of G., district Y. in the value of 15 000,- €, a claim on the account in I., a. s. with a cash balance of 7 040,87 €, parcel D. no. XXX/X - forest land with an area of XXXXXXXXX m2 registered at LV no. XXXX for the cadastral

territory and municipality of Y., V. district in the amount of € 350 000,-, a claim against the District Court of Trnava file no. 23K/45/2014 for the release of the advance payment deposited by the petitioner before the filing of the bankruptcy petition in the court's treasury in the amount of € 1 659,70 and a monetary claim in the amount of € 2 410,96 for non-payment of an aliquot part of the rent against the tenant G. s. r. o., with its registered office in V. XXXX/XX, K., F.: XX XXX XXX XXX for the rental of real estate under the lease agreement for the period from 01.01.2015 to 14.02.2015.

19. By auction notice No. 43K/45/2014, S1398 dated 08.06.2015, the bankruptcy trustee announced the place, date and time of the first auction of land parcels 1 and 2 in the cadastral area of Y., as well as the forest land in the cadastral area of G., including two inspection dates, published in the Commercial Bulletin No. 110/2015, chapter Bankruptcy and Restructuring, on 11.06.2015. By letter dated 03.07.2015, M., s. r. o. requested from the bankruptcy trustee a copy of the expert's report on the subject of the auction (i.e. 1 and 2), the purchase contract for the auction object, the forest management plan of the auction object and the text of the lease contract for a definite period of time until 2044, as well as a power of attorney to carry out an in-depth audit of the history of the acquisition of the auction object from the original land book entry to the present in the cadastral department of the District Office of Revúca with the following, that the bankruptcy trustee determines that the bidder or a person authorised by him may consult the entire file established for the subject of the auction, while he requested that these documents be sent in the form of an electronic copy to the electronic address indicated by him due to the shortness of time. Subsequently, the insolvency administrator requested from the bankrupt and the tenant the forest management plan in force for the subject of the auction. On 10.07.2015, the branch of I., a. s. in Trnava confirmed that the auction security in the amount of € 45 750,- had been deposited on the bankrupt's account on 08.07.2015 for the subject of the auction - land parcels 1 and 2 in the cadastral area of Y.. According to the list of participants in the auction of the bankrupt's real estate in the cadastral territory of Y., kept at LV No. XXXX, only the company E., s. r. o. participated in the auction through its managing director S.. S. E..

20. From the certificate on the course of the voluntary auction drawn up in a notarial deed by notary Z.. Nz 24360/2015, N 326/2015, NCRIs 24930/2015 dated 13.07.2015 with the start of the voluntary auction at 9.30 a.m. and the granting of the auctioneer's bid at 9.37 a.m. the real estate in the amount of the lowest bid of € 350 000,- was acquired by the company E, s. r. o., in favour of which the ownership right was registered in the Land Registry by entry Z-XXXX/XXXX of 03.08.2015. By notice of the result of the auction, file no. 43K/45/2014 S 1398, registration number NCRIs 24930/2015, dated 13.07.2015, the bankruptcy trustee announced the auction of parcels 1 and 2 by publication in the Commercial Bulletin 135/2015, chapter Bankruptcy and Restructuring on 16.07.2015. On the same day, 13.07.2015, at 3.44 p.m., the bankruptcy trustee electronically notified the representative of the creditors, Z. H. that the bankrupt's account was also credited with the payment of the total price achieved by the auction from the auctioneer (no. l. 362 of the file). The bank's confirmation that the bankrupt's account had been credited with the payment of the auction price is not in the bankruptcy trustee's file. On 13 July 2015 at 16.14, the representative of the creditors electronically requested the bankruptcy trustee to draw up a partial distribution of the proceeds. The proceeds were distributed on 14.07.2015 in such a way that the insolvency administrator issued four transfer orders for the transfer of funds from the bankrupt's account to the creditors Z. H., the company L... s. r. o., the bankruptcy trustee as remuneration for the administration of the realisation, the bankruptcy trustee's partial distribution and Q. Z. P. N..

21. By a letter dated 07.03.2016 marked as "Request for the issue of forest land for use in the cadastral territory of Y. - reply", the Forests of the Slovak Republic (Lesy SR, state enterprise), Banská Bystrica, branch plant V. notified the company E. s. r. o. in connection with its request for the issue of forest land, i.e. the disputed parcels 1 and 2 for use, that it considers that these parcels belong to the ownership of the State and therefore their request cannot be granted. At the same time, E. s.r.o. requested that the actual situation be brought into line with the legal situation and that the land in question be registered in favour of the Slovak Republic, with a warning of the possibility of bringing an action before the courts. By the Purchase Agreement dated 12.04.2016 as amended by Amendment No. 1 dated 02.05.2016, the ownership right to the real estate was transferred in its entirety to the defendant, in whose favour the ownership right was registered by the entry V-XXX/ XXXX dated 09.05.2016.

22. On the basis of the application for registration of the geometric plan XXXXXXXX-XX/XXXXXX dated 28.10.2016 Z-XXXX/XXXX-pol. XXXX/XXXXXX, the parcel of register D. No. XXX/X was divided into parcels of register U. No. XXXX/X and XXXX, which are registered on LV No. XXXX for the cadastral territory of Y.. A pledge was created on the real estate in favour of I. B. G., a. s. registered by the deposit V-XXXX/XXXX dated 23.07.2019.

23. By a written invitation dated 10.02.2017, the Forests of the Slovak Republic (Lesy SR, state enterprise), State Enterprise Banská Bystrica, Branch Plant V. notified the defendant that they consider that these lands belong to the ownership of the state and also invited the defendant to align the actual situation with the legal situation and to ensure the registration of the subject lands in favor of the Slovak Republic with a warning of the possibility of filing a lawsuit in court, with the fact that the previous owners registered on the original LV No. XXXX were also informed of this fact.

24. On 15.07.2015 the auction security in the amount of 5 875,- € was deposited on the account of the bankrupt A., s. r. o. - land in the cadastral territory of G. According to the list of participants in the auction, the real estate of the bankrupt in the cadastral territory of G., kept at LV No. XXXX, only G. participated in the auction. N., born in. XXXX, residing in X. J. I. From the certificate on the course of the voluntary auction drawn up in a notarial deed by notary Z. Nz 25116/2015, N 334/2015, NCRIs 25676/2015 dated 17.07.2015 with the start of the voluntary auction at 10.00 a.m. and the granting of the auctioneer's admission at 10.06 a.m., the real estate in the amount of the lowest bid of 15 000,- € was acquired by G. N., b. XXXX residing in X. J. I. By notice of the auction result file no. 43K/45/2014 S1398, registration number NCRIs 25676/2015 dated 17.07.2015, the bankruptcy trustee announced the auction of forest land in the cadastral area and municipality of G., the notice was published in the Commercial Bulletin 140/2015, chapter Bankruptcy and Restructuring on 23.07.2015. On 31.07.2015 the branch of I., a. s. I. N. confirmed that on 31.07.2015 the amount of € 13 125,- was deposited in cash on the bankrupt's account with the note of the depositor payment of the purchase price - land in the cadastral territory of G.. The proceeds were subsequently distributed.

25. After the distribution of the proceeds from the sale of all real estate, i.e. real estate in the cadastral territory of Y., and in the cadastral territory of G., the bankruptcy on the bankrupt's property was cancelled by the resolution of Trnava file no. 23K/45/2014 of 17.09.2015, final on 13.10.2015, after the final distribution had been fulfilled. The resolution was published in the Commercial Bulletin 183/2015, chapter Bankruptcy and Restructuring on 24.09.2015. Subsequently, the bankruptcy trustee of the bankruptcy estate of the bankrupt was dismissed from his position by the resolution of the District Court of Trnava, file no. 23K/45/2014 of 02.03.2016, final on 11.03.2016, the resolution was published in the Commercial Bulletin 48/2016 Bankruptcy and Restructuring on 10.03.2016. By letter dated 01.04.2016, the bankruptcy trustee filed a petition with the District Court of Trnava for the dissolution of the bankruptcy and its deletion from the Commercial Register.

26. From the partial extract from the LV No. XXXX kept for the cadastral territory and municipality of G., district Y., the court of first instance had further proven that the land U. No. XXXX/X - forest land with an area of XXXX m2 is also currently owned by the defendant in its entirety.

27. On the basis of the evidence thus adduced, with reference to the provisions of Section 137(c) of the Civil Dispute Procedure Code, as amended (hereinafter also referred to as "C. S. P), the provisions of Section 1(1) of Regulation No. 104/1945 Coll. SNR in force since 01.03.1945, the provision of § 1(4) and (7) of the confiscation decree, the provision of § 1(12) of Decree No. 104/1945 Coll. n.1, the provision of § 1(12) of Decree No. 104/1945 Coll. 89/1947 Sb. n. of the SNR as amended by Regulation No. 89/1947 Sb. n. 40/1964 Coll., Civil Code, as in force from 01.01.1992 (hereinafter also "O. z.") and § 93(3) of Act No. 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as in force until 31.12.2016 (hereinafter also "ZKR"), the Court of First Instance came to the following conclusions:

28. First and foremost, given the subject matter of the proceedings, which concerns the determination of ownership rights to real estate, the court of first instance, in accordance with Section 137(c) of the Civil Dispute Procedure Code, considered the procedural prerequisite and the condition

for the success of the declaratory action in this dispute, namely, the existence of the plaintiff's urgent legal interest in the requested determination. The court concluded that the declaratory action in question forms the basis for settling legal relationships concerning the real estate, as the requested declaratory ruling can eliminate the discrepancy between the actual state and the state recorded (legally) in the real estate cadastre. Eliminating this discrepancy will directly affect the plaintiff's legal position concerning the real estate, i.e., the plaintiff's interest in aligning the ownership records with the actual state justifies the existence of an urgent legal interest in the requested determination and the filed lawsuit.

29. The Court of First Instance, based on the evidence presented, agreed with the plaintiff in concluding that the appeal of Dr. X. E. against the confiscation decision of the Presidency of the National Council of the Slovak Republic No. 21.430/45-I/B of January 19, 1946, by which parcels 1 and 2 were confiscated for land reform purposes on the basis of the owner's nationality (ethnicity), was not upheld. Dr. X. E. lodged the appeal by June 30, 1947, seeking the annulment or amendment of the confiscation decision, referring to the attached supporting documents, in particular a certificate from the Ministry of the Interior, confirming that between 1930 and 1940, he declared himself of Slovak nationality (ethnicity). The appeal was supposed to be submitted to the Presidency of the Board of Commissioners by the Commission for Agriculture and Land Reform – Section "B," through letter No. 14.302/48-I-B dated March 4, 1948. However, the defendant did not prove the contrary, i.e., that the appeal was accepted and upheld. From the provisions of § 1(12) of the Confiscation Ordinance, as amended by Ordinance No. 89/1947 Coll. SNR, the Court of First Instance inferred that timely appeals submitted to the Presidency of the Board of Commissioners could be reviewed only if they were directed against decisions of the Confiscation Commission, and not against decisions of the Presidency of the National Council of the Slovak Republic (SNR). The property of Dr. X. E. was not confiscated by a decision of the Confiscation Commission but by a decision of the Presidency of the SNR. This fact was not disputed in the proceedings, and therefore, the decision could not have been reviewed under § 1(12) of the Confiscation Ordinance. This conclusion is further supported by the subsequent actions of the Commission for Agriculture and Land Reform – Section "B," which, through letter No. 2189/1948 dated April 6, 1948 (a later document than the one from March 4, 1948), pursuant to § 5(1) of Act No. 90/1947 Coll. on the Implementation of Land Registry Order Regarding Confiscated Enemy Property and the Adjustment of Certain Legal Relations Pertaining to Allocated Property, proposed to the District Court in Tornaľa to record the confiscation under the Confiscation Decree for the purposes of land reform in its entirety in the relevant land registry entries under the name of Dr. X. E., including land registry entry XXX. The confiscation was recorded on April 13, 1948, under entry No. 838/1948. The confiscation entry is the last recorded entry in the relevant land registry record, and there is no subsequent entry indicating that the confiscation was amended or revoked, unlike the first confiscation of Dr. X. E.'s property by the state under the Seizure Act. The Court of First Instance noted that the plaintiff's assertion that the confiscation decision was never lawfully revoked and that the property of Dr. X. E. was fully confiscated is further supported by an extract from the 1949 list of confiscated property for the district of Working Group X., which included the property of Dr. X. E.. Other land registry entries, specifically Nos. XXX and XXX, also registered under the name of Dr. X. E., were confiscated based on the same legal basis (entry No. 838/1948). These land registry records also indicate a 1960 allocation, confirming that ownership was transferred to the Czechoslovak State. According to the Court of First Instance, all these circumstances clearly rule out the possibility that the confiscation decision in question was annulled. Thus, the defendant failed to meet the burden of proof regarding its claims disputing the confiscation of the property of the plaintiff's legal predecessor. The defendant did not provide evidence that the legal conditions for the confiscation of the property had not been met.

30. In so far as the defendant argued in the proceedings that the confiscation order at issue had not been produced by the plaintiff in the proceedings, the Court of First Instance noted that, since the confiscation order had been issued pursuant to the confiscation order, the plaintiff, or his predecessor in title, had been regarded as the owner of the immovable property for more than 60 years since 1946. It held that the legal certainty of persons and the preservation of the necessary authority of the State require that a final decision of an administrative authority, or a legal regulation which has been in force until now and which is part of the Slovak legal order, on the basis of which a person has acquired or has been deprived of ownership of a property, must be an unquestionable legal fact having future effects, irrespective of whether a written version of such an act exists or not. Otherwise, it would be possible,

after an unreasonably long period of time, to disturb a legal situation which has existed for several decades. The passage of time is thus a material fact which must be given de facto effect. The Court of First Instance referred to the order of the Supreme Court of the Slovak Republic, Case No. 4MCdo/12/2014 of 29.09.2015.

31. As regards the defendant's defence that the Czechoslovak State did not acquire ownership of the immovable property because it was not mortgaged in its favour after the confiscation, the plaintiff's predecessor in title and the plaintiff himself were therefore never entered in the land register as the owner of the immovable property in Part B - Owners, the Court of First Instance stated that it also considered this defence to be unfounded. It was of the opinion that the confiscation occurred ex lege and simultaneously ex tunc, which is apparent from the legal nature of Article 1(1) of the confiscation order 'With immediate effect and without compensation, confiscation shall be made ...', i.e. a declaratory act confirming the confiscation was not required to be issued in each individual case. An administrative decision on whether a person (his property) fell within the confiscation regime was only necessary if there was doubt as to whether the conditions for confiscation of the property were met. Thus, confiscation decrees ex lege established a legal ground for the acquisition of property; the State, by confiscating property, acquired ownership ipso iure, i.e. without registration in the land register. The legal title of the transfer was not the administrative act, but the confiscation decree itself. Thus, the legal transfer of ownership of the disputed immovable property to the Czechoslovak State already took place when the confiscation order entered into force, whereas the confiscation note in the relevant land register merely declared the confiscation. The confiscation caused the absolute extinction of the ownership of Dr X. E. as the former owner and, at the same time, a new original acquisition of ownership by the new owner, in the present case the Czechoslovak State. The Court of First Instance noted that the defendant had not disputed during the proceedings that the property of Dr. X. E. had been taken into possession and beneficial enjoyment by the plaintiff's legal predecessor, the Czechoslovak State.

32. In support of the defendant's defence that his predecessor in title had been in possession since 2001, since the plaintiff had participated directly in the registration of the title in favour of the defendant's predecessor in title in the process of drawing up the simplified register of the initial state, as well as in the preparation of the register of the renewed land registration, the Court of First Instance held that, in those processes, errors were made as a result of insufficiently ascertained documents and that the legal status resulting from the newly established title deeds in the context of those land registrations did not correspond in many cases to the actual status. This is due to the fact that the land registries do not check the accuracy and completeness of the documents for the establishment of the ZRPS or ROEP. and the quality of the established records is therefore not reliable. Such an error has apparently occurred in the present case, since, although the confiscation of property pursuant to Regulation No 104/1945 Coll. n. 104/1945 Coll. n. was noted under No 838/1948 in Land and Land Registration No XXX for the cadastral area of Y. No. 64/1946 Coll. n. of the National Council of the Slovak Republic as amended by Decree No. 64/1946 Coll. n. SNR for the purposes of land reform, within the framework of land reform, the newly established LV No. XXXX, on which was registered the parcel D. No. XXX/X created from the original parcel mpč. XXX/a incorrectly listed the original owner Dr. X as the owner. E. The courts have jurisdiction to resolve these errors in civil litigation proceedings, since both under Act No. 330/1991 Coll. and Act No. 180/1995 Coll. the ownership was not acquired, but only the available data on the legal relations were ascertained and the register of the renewed land registration was compiled on the basis of these data (cf. the resolution of the Supreme Court of the Slovak Republic, Case No. 4MCdo/12/2014 of 29.09.2015).

33. The Court of First Instance was of the opinion that the presumed (putative) title of acquisition of ownership in the present case, from which the retention of the immovable property could be inferred, was the certificate of inheritance issued by Z.. S. V., notary, J. office based in V. sp. nr. XD/XXX/XXXX, O. XXX/XXXX dated 18.09.2016, legally valid on 03.10.2016. The notary based on an incorrect entry in LV No. XXXX for the cadastral territory of Y.. On the basis of this alleged title of acquisition of ownership in the inheritance proceedings, parcels 1 and 2 were acquired in their entirety by Dr. Q. E., b. XX.XX.XXXX, domiciled in the USA as the sole heir by operation of law. This is a deemed title because at the time of the death of the testator, Dr. X. E. did not objectively belong to his estate.

34. The Court of First Instance referred to the Roman law principle "nemo plus iuris ad alium transfere potest quam ipse habet", i.e. no one can transfer more rights to another than he himself has. Accordingly, the subsequent contract of sale under which parcels 1 and 2 from Dr Q. E. was acquired by the trading company L.. spol. s r. o., was considered absolutely invalid (with reference to the resolution of the Supreme Administrative Court of the Slovak Republic, Case No. 7Cdo/245/2019 of 29.09.2020) and thus also another acquisition title, on the basis of which the change of ownership from the company L. spol. s r. o. to the company A., s. r. o. should have occurred, was considered invalid.

35. The defendant could therefore acquire title to parcels 1 and 2 by presumed title only by retention of title. With reference to the legal regulation of possession under Hungarian law valid in the territory of Slovakia until 1950, in the Civil Code No. 141/1950 Coll. effective from 01.01.1951 and in the Civil Code No. 40/1964 Coll. effective from 01.01.1992, the court of first instance reasoned that the prerequisite for possession must be, inter alia, the finding that during the period of possession the holder actually was, i.e. not only could have been, in view of all the circumstances, bona fide that the thing or right belonged to him. He referred to the decisions of the Supreme Court of the Slovak Republic, Case Nos 2Cdo/271/2007, 5Cdo/49/2010 and 3Cdo/12/2010. The assessment of whether, having regard to all the circumstances, the holder has a good faith belief that the thing belongs to him cannot be based solely on an assessment of the holder's subjective ideas. The good faith of the holder must be assessed from an objective point of view, i.e. whether the holder, while exercising the due care which, having regard to the circumstances of the particular case, may be required of any person, had or could have had doubts that he was using immovable property of which he had not acquired ownership. Rightful possession does not necessarily have to be based on an existing legal ground; a putative legal ground is sufficient. However, the point is that the possessor must, having regard to all the circumstances, have a good faith belief that he has such a title. The presumption of the acquirer's belief is that he is not acting unlawfully in appropriating a particular thing, and he is therefore deemed to be a rightful possessor. It is a psychological state, an inner conviction, which is also manifested outwardly and from which it can be inferred that he reasonably considers himself to be the owner of the thing. Among the essential circumstances which are favourable to the rightfulness of possession is the fact of how the person acquired the thing, whether he has any rightful title to acquire it, which may be a legal act by which the thing is transferred to another owner, or whether the thing passes into the possession of another owner, such as a confiscation order, for example. Thus, the subjective feeling of the holder cannot in itself be the basis for retention of possession unless that feeling is induced by circumstances objectively indicating the legitimacy of the possession of the right. In this regard, the court of first instance referred to the decision of the Supreme Court of the Slovak Republic, Case No. 5Cdo/260/2008 of 10.12.2008 and the decision of the Supreme Court of the Czech Republic, Case No. 26Cdo/4024/2010 of 16.11.2011. Proof of circumstances proving good faith, which is viewed from an objective point of view, is a procedural obligation of the one who invokes favourable conclusions arising from the possession of the right of ownership (decision of the Supreme Court of the Czech Republic Case No. 22Cdo/769/2010 of 26.09.2011). The good faith of the holder cannot be said at the moment when he became acquainted with the facts which objectively must have raised doubts that the thing belongs to him by right. At that moment, his good faith ceases, as a result of which the retention period is suspended. The mere notification of the unlawfulness of the possession may only exceptionally result in the cessation of the retention period in conjunction with the loss of the good faith of the holder. The question of the existence of good faith is therefore to be assessed by reference to whether the holder, with the normal care which may be required of him, did not have and could not have had any doubt that the thing belonged to him.

36. Based on these theses, the court of first instance concluded that the certificate of inheritance, from which the defendant's predecessors in title could derive their good faith to the right to use the disputed real estate and possibly to acquire the right of ownership to it, was issued already during the effective period of the Civil Code No. 40/1964 Coll. in the wording effective from 01.01.1992, therefore the conditions for retention of possession must be examined according to this legal provision. The Court of First Instance held that in the present case the acquisition of the right of ownership by the defendant's predecessors in title could not have taken place because of the failure to fulfil all the conditions required by law for the acquisition of the right of ownership by retention of possession, since after the defendant's predecessor in title, the company L.A., had been granted the right of retention of possession, the defendant's predecessor in title, the company L.spol. s r.o. received a letter from Forests of the Slovak

Republic ((Lesy SR, state enterprise), state enterprise dated 14.07.2014 (which the defendant did not dispute), the defendant's predecessor in title could not have been in good faith that the property belonged to him, taking into account all the circumstances of the case. This is evidenced by the fact that on 15.12.2014 the company, of which the defendant was the sole shareholder at that time, concluded a sale and purchase agreement with A., s.r.o. for the transfer of the ownership of parcels 1 and 2 for consideration. Thus, in 2014, the defendant, on the basis of a summons issued by the State Enterprise of the Slovak Republic, became aware of facts which objectively must have caused him to doubt that the property rightfully belonged to him, as this was done repeatedly (the first summons dated 06.05.2014), therefore the good faith of the defendant's predecessors in title undoubtedly ceased in 2014. The defendant's predecessor in title, L. spol. s r. o. could therefore objectively be bona fide only in the period from 2006 - acquisition of the ownership right on the basis of the alleged acquisition title - the certificate of inheritance until 2014, i.e. for a period of 8 years, which means that this commercial company and the legal predecessor of the defendant did not exercise the rightful possession of the land parcels 1 and 2 for the statutory period of 10 years, therefore the conditions for the acquisition of the ownership right to the disputed land parcels 1 and 2 by the defendant's legal predecessor by inheritance could not have been fulfilled.

37. Finally, the Court of First Instance held that the acquisition of the ownership right by the legal predecessor of the defendant - the company E., s. r. o. could not have been achieved even by a gratuitous transfer of the disputed real estates registered in the inventory of the bankrupt A.'s property, s. r. o. in the framework of a bankruptcy auction under the Bankruptcy Act (ZKR) as an original method of acquiring ownership, which allows the acquisition of ownership of a thing even from a non-owner, thus breaking the principle of 'nemo plus iuris', since such a transfer is valid under Article 93(3) of the Bankrupcty Act (ZKR) only if the condition that the purchaser knew or should have known that the bankrupt or a third party whose property secures the bankrupt's obligation is not the owner of the thing is not fulfilled. The Court of First Instance was of the opinion that the buyer knew or should have known that the bankrupt was not the owner of the property, because it concluded from the evidence that the auctioneer - E., s.r.o. company - when transferring the ownership right to the disputed real estate entered in the inventory of property at the bankruptcy auction carried out in the bankruptcy of A., s.r.o. as the bankruptcy debtor, must have known that the bankrupt was not the owner of the property for several reasons. N. A., S. r. o. was incorporated on 20.11.2014. The petition for declaration of bankruptcy was filed by the company itself as a debtor by a written filing dated 22.12.2014 delivered to the District Court of Trnava on 23.12.2014 due to its extension in accordance with Section 3(3) of the Bankruptcy Code, according to which the extended is the one who has more than one creditor and the value of its payable liabilities exceeds the value of its assets. Thus, already one month after its formation and after the company A., s. r. o. on 15 December 2014 concluded a purchase agreement with the company L... spol. s r. o. for the land parcels 1 and 2 for the purchase price of 350 000,- € and at a time when the company L... spol. s r. o. already had knowledge of the disputability of the ownership of these land parcels, moreover, at a time when the defendant was the sole shareholder in this company (from 12.12.2014 to 11.07.2016). The final list of the bankrupt's creditors, in addition to L.. spol. s r.o., also included Q. Z. P. N., i.e. the defendant in the capacity of a natural person entrepreneur, Z. H. and the managing director of the bankrupt himself, Z. N., whose claim in respect of the interest-free cash loan in the amount of EUR 8 200,- was successfully denied by the original insolvency administrator. It was established that the claims of Z. H., as well as the company L.. spol. s r.o. arose on the basis of purchase contracts as acquisition titles of ownership by the bankrupt, to forest land, namely the purchase contract of 25.11.2014 to forest land in the cadastral area of G. (the entry of the ownership right was allowed on the basis of the accelerated entry dated 26.11.2014 under V XXXX/XXXX) and the purchase contract dated 15.12.2014 for parcels 1 and 2 in the cadastral area of Y. (only three days after the defendant became a shareholder of the company L. spol. s r.o.). After the bankruptcy declared on the bankrupt's assets was declared small, on 15.05.2015 the company L... spol. s r.o. filed a petition for registration of the ownership right to parcels 1 and 2, which was granted on 18.05.2015 under V-XXX/XXXX, as a result of which the inventory component of the general assets of the estate was supplemented with a new inventory component of the bankrupt's assets, i.e. the disputed parcels 1 and 2. Moreover, the bankrupt's inaction, which consisted in failing to secure the transfer of title to the land in question, which was only effected by the creditor's proposal for the registration of title, and in failing to secure the establishment of a security transfer of title, justified for the creditor, i.e. for the company L.. spol. s r.o.,

the creation of a further claim for payment of contractual penalties on account of breach of contractual obligations in the total amount of EUR 650 000,-. The auction of parcels 1 and 2 as well as the land in the cadastral area of G. was already successful in the first round, in both cases the properties were auctioned for the lowest bid. Parcels 1 and 2 were auctioned by the company E., s.r.o. as the only participant in the auction on 13.07.2015, whereas that company was only established on 10.06.2015, i.e. one month before the auction, and its share capital was EUR 5 000,-. However, it was able to auction the properties in question for the amount of € 350 000,-. By a contract of sale dated 12.04.2016, as amended by Amendment No. 1 dated 02.05.2016, E., s.r.o. subsequently transferred the disputed land to the defendant Q. Z.. On 21.04.2017 the company E., s. r. o. was dissolved, it was deleted from the Commercial Register on the basis of voluntary cancellation. Similarly, the parcel CKN number XXXX/X - forest land in the cadastral territory of G. registered on LV No. XXXX was auctioned by a third party - natural person G. N. as the only participant in the auction on 17.07.2015. According to the partial LV No. XXXX, the current owner of the forest land in question in the cadastral territory of G. is also the defendant Q. Z.. The Court of First Instance took into account the defendant's personal connection to both L.. spol. s r.o. and A., s.r.o. in that the defendant was the sole shareholder of L.. spol. s r.o. at the time of the transfer of the real estate to A., s.r.o. and the registered office of the bankrupt A., s.r.o. was at the address X. XXX, which is the address of the permanent residence of the defendant's brother Z. S. Z., identified according to his identity card presented to the court at the hearing on 14.09.2020. Despite the not insignificant amount of the lowest bid and the amount of the auction security, which exceeded several times the amount of the share capital of the company E., s. r. o. (the auctioneer), which was established and entered in the Commercial Register only a few days before the auction of parcels 1 and 2, this company, unlike the company M., s.r.o., before the auction itself, did not even electronically request a copy of the expert's report on the subject of the auction, the purchase contract for the subject of the auction or the forest management plan for the subject of the auction, the text of the lease agreement concluded for a fixed term from G., s.r.o. until 2044. Neither did the bankruptcy trustee ask for a power of attorney to carry out an in-depth audit of the history of the acquisition of the auction object from the original land register to the present day at the cadastral department of the Revúca District Office, nor did it show any interest in inspecting the possession of the auction object on the spot. Last but not least, all the properties which were the subject of auctions in the context of the bankruptcy of the bankrupt, whether the disputed parcels 1 and 2 or the forest land in the cadastral area of G., are today in the exclusive possession of the defendant. In the light of the foregoing, the Court of First Instance held that the procedure laid down in Article 93(3) of the Civil Code was expedient in order to achieve an original method of acquiring ownership in the context of bankruptcy, enabling ownership of the property to be acquired even from a non-owner. The above-mentioned temporal context and the sequence of individual legal acts of the companies concerned since 2014, when Forests of the Slovak Republic ((Lesy SR, state enterprise), state enterprise invited the legal predecessor of the defendant, L. spol. s r.o. to reconcile the actual situation with the entry in the real estate register, as well as the personal connection of the companies concerned with the defendant's person and the final acquisition of the ownership right to parcels 1 and 2 into the exclusive ownership of the defendant as a natural person led the court of first instance to the conclusion that at least the company E., s.r.o., as the auctioneer of the disputed land parcels 1 and 2 in the bankruptcy of A., s.r.o., knew, or must have known, that the bankrupt was not the owner of the real estate, and therefore the principle of 'nemo plus iuris' could not have been breached in the present case. Consequently, E., s.r.o. could not validly transfer the ownership right to parcels 1 and 2 to the defendant by the purchase agreement of 12.04.2016 as amended by its Amendment No. 1 of 02.05.2016. In this regard, the court of first instance referred to the decision of the Supreme Court of the Slovak Republic Case No. 5MCdo/12/2011 of 29.04.2011, according to which "a legal successor cannot validly acquire the right of ownership if the entity from which it derives (derivatively) its right of ownership to real estate has never acquired this right and therefore could not validly transfer it further".

38. Lastly, the Court of First Instance did not, based on the circumstances of the present case, consider the defendant's good faith regarding the acquisition of the ownership right to the real estate - parcels 1 and 2 to his exclusive ownership in the sense of the ruling of the Constitutional Court of the Slovak Republic I. ÚS 549/2015 of 16.03.2016, which would warrant the protection of his ownership right. He therefore insisted on the application of the abovementioned principle of 'nemo plus iuris ad alium transfere potest quam ipse habet', even though this may appear unfair from the defendant's point of view. The Court of First Instance concluded by emphasising that the fundamental value of law is

justice. Already in the thought of the Roman jurist Ulpian: 'Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuiquete tribuere', the distributive justice of giving to each what is due to him was included as one of the three fundamental principles of law, alongside the first two principles of honestly living, doing no harm to anyone. Distributive justice implies the fundamental norm of all not only judicial decision-making, consisting in the obligation to treat similar cases alike and to treat different cases differently.

39. The Court of First Instance concluded that, in the light of the above, and having regard to its assessment of the evidence individually and in its interconnectedness, it was justified in upholding the plaintiff's claim in its entirety.

40. The Court of First Instance decided on the plaintiff's claim for costs pursuant to Article 255(1) C. s.p. according to the ratio of success of the parties in the case, since the plaintiff was fully successful in the case. He added that the amount of the costs would be decided by the court of first instance by a separate order to be made by the judicial officer after the decision on the merits had become final.

41. The defendant filed a timely appeal and supplement against the judgment of the court of first instance. He claimed that the decision of the court of first instance was incorrect for the reasons specified in § 365 para. 1, letters b), d), f), and h) of the C. S. P, i.e., on the grounds that the court's incorrect procedural conduct prevented the party from exercising its procedural rights to such an extent that it resulted in a violation of the right to a fair trial; the proceedings had another defect that could have led to an incorrect decision on the matter; the court of first instance reached incorrect factual findings based on the evidence provided, and the decision of the court of first instance was based on an incorrect legal assessment of the case.

42. The defendant saw a violation of the right to a fair trial, first of all, in the fact that the judgment under appeal does not comply with the requirements of proper reasoning, is unreviewable, there is a discrepancy between the court's legal conclusions and its findings of fact, and there is a situation in which the court's legal conclusions do not follow from its findings of fact. It referred to Article 220(2) of the C. S. P, which deals with the requirements for the statement of reasons for a judgment, and stressed that, in accordance with the consistent case-law of the European Court of Human Rights, the lack of proper and exhaustive reasons for a judicial decision must be regarded as an infringement of the right to a fair trial. It considered that the Court of First Instance failed to deal at all with the defendant's fundamental arguments which call into question the plaintiff's claim. On the one hand, the Court of First Instance held that the confiscation did not require a decision because it occurred ex lege, an administrative decision being necessary only if the confiscation is disputed; on the other hand, the Court of First Instance held that the defendant's predecessor in title had contested the confiscation and established that it was disputed; moreover, the Court of First Instance did not require the confiscation decision to be in writing, arguing that the authority of the State requires that the decision of the administrative authority be an unquestionable fact of law.

43. The Court of First Instance further asserts, without any relevant legal reasoning, that the confiscation did not require registration in the land register. It also fails to provide any evidence or legal basis for its claim that the current land registry does not reflect the actual ownership status of the properties, thereby questioning state-guaranteed processes of land consolidation and the ROEP.

44. Further, the defendant accused the Court of First Instance of favoring the principle of nemo plus iuris over the principle of legal certainty and good faith of the acquirers, even in cases that may appear unfair, referring to the alleged conclusions of the resolution of the Supreme Court of the Slovak Republic No. 7Cdo/245/2019 of 29.09.2020.

45. The defendant saw a further contradiction in the reasoning of the court of first instance in the fact that, on the one hand, it states that the mere notification of the illegality of possession can only exceptionally result in the cessation of the retention period, on the other hand, it claims that the

mere notification of the plaintiff to the company L. spol. s r.o. dated 14.07.2014 had the effect of extinguishing the good faith of L. spol. s r.o. without further delay.

46. Finally, the defendant also considered the conclusion of the court of first instance to be insufficiently justified, specifically the finding that at a minimum, the company E., s. r. o., as the auction purchaser, must have known that the insolvent company A., s. r. o. was not the owner of the real estate. This conclusion is based on facts that are not capable of proving even potential knowledge on the part of E., s. r. o., and the court derives this alleged knowledge of E., s. r. o. from the actions of third parties without any logical connection. Obvious evidentiary gaps are filled by mere speculation of the court of first instance, which is not based on the evidence presented.

47. The defendant considered the court of first instance's factual finding regarding the confiscation of the property of X. E. to be incorrect, as the plaintiff failed to prove the existence of a confiscation decision. The plaintiff submitted only indicative (related) documents, which merely create a possibility of confiscation. The court of first instance, on the one hand, did not require the plaintiff to prove the existence of the confiscation decision, justifying this with the principle of legal certainty and the claim that confiscation occurred ex lege and that an administrative decision was only necessary in cases of disputed confiscation. On the other hand, the court required the defendant to prove the existence of a decision on X. E.'s appeal against the confiscation decision to establish the revocation of the confiscation ruling. It is unclear why the court of first instance did not apply the same premise of state authority and emphasis on legal certainty to the ZRPS process and the participation of state representatives (the plaintiff and the acting authorities) in assessing the factual circumstances related to the registration of the defendant's legal predecessors in the real estate cadastre. The defendant therefore expressed the opinion that the court of first instance selectively approached evidence of the same type and assigned them different probative value, which contradicts the principle of equality of arms stated in Article 6 of the fundamental principles of the Civil Dispute Procedure Code (C. s. p.). In this, the defendant also saw the arbitrariness of the judgment, referring to the decision of the Constitutional Court of the Slovak Republic, case no. IV. ÚS 35/2012, dated January 19, 2012, according to which: "Incorrect distribution of the burden of proof generally leads to a fundamentally different ruling. Under certain circumstances, such a procedural error may, in its effects, constitute an expression of arbitrariness by the acting court, which, for example, disproportionately burdens one party with the burden of proof, misapplies its responsibility for failing to meet the burden of proof, and subsequently decides against that party." The defendant considered it decisive that he proved the filing of the appeal, meaning that the confiscation decision was suspended, which was not disputed between the parties. Throughout the proceedings, no evidence was presented proving that the appeal had been dismissed. Based on this, the court of first instance should have concluded the factual determination accordingly, in the defendant's opinion. He pointed to the position of the Commission for Agriculture and Land Reform – Section "B" Bratislava, in letter no. 14.302/48-I/B dated March 4, 1948, where it was explicitly confirmed that the appeal was admissible and justified, and therefore the decision could not have become final.

48. Further, the Court of First Instance did not pay any attention at all to the defendant's argumentation on the necessity of a legal act, i.e. registration in the land register at the relevant time for the acquisition of the ownership right to the property, i.e. that confiscation (titulus) and registration in the land register (modus) are not mutually exclusive, but are applied simultaneously, complementarily. On this issue, the Court does not convincingly justify its view of ex lege confiscation by pointing to specific evidence and legal rules. It confines itself to a semantic and subjective interpretation, which is impermissible by the nature of the right to a fair trial. It does not follow from anything that the legislation on confiscation was superior to the legislation on the acquisition of immovable property by registration in the land register. Further, the defendant argued that since the confiscation was disputed because Dr. X. E. challenged the confiscation, according to the Court of First Instance's own reasoning, that fact should establish an obligation to issue an administrative act establishing the confiscation. Since the existence of the confiscation order was not established, the confiscation could not validly have taken place.

49. According to the defendant, the view of the court of first instance that confiscation occurs ex lege and ex tunc on the effective date of Decree No. 104/1945 Coll. of the Slovak National Council is in direct contradiction with the wording of Section 1(7) of this decree, which states that by a decision of the Presidency of the Slovak National Council pursuant to Section 6, the property of such a person is considered confiscated under Sections 1 or 2 as of the effective date of this decree. No appeal against this decision to the Supreme Administrative Court is permitted. According to the defendant, two legal facts were required for effective confiscation: the effective date of the decree and a decision of the Presidency of the Slovak National Council determining which persons, among others, were to be considered of Hungarian nationality (ethnicity). The plaintiff failed to prove that Dr. X. E. was legally recognized as a person of Hungarian ethnicity, and the court did not conduct any relevant evidentiary proceedings in this regard. The defendant also disagreed with the conclusion of the court of first instance that decisions of the Presidency of the Slovak National Council could not be challenged under the decree and that only decisions of the Confiscation Commission under Section 1(6) of the decree—i.e., decisions determining which persons were subject to confiscation—could be contested. According to the defendant, however, there was a general provision allowing for a remedy against decisions of the Presidency of the Slovak National Council. The defendant, in the appeal, claimed to have proven that Dr. X. E., at the relevant time, declared affiliation with Slovak nationality and conducted himself in the political and religious spheres in a manner that did not allow for confiscation, whereas a necessary condition for confiscation was affiliation with Hungarian nationality under Section 1(1) of the Confiscation Decree. If the fundamental conditions for confiscation were not met, then it was the plaintiff's burden to prove otherwise, which did not happen. The defendant therefore maintained that the plaintiff neither proposed nor presented any evidence proving that Dr. X. E. was a person whose property was subject to confiscation under the decree. In contrast, the defendant demonstrated that the decision had not become final and that the conditions for confiscation had not been met.

50. The defendant further disagreed with the first instance court's questioning of the ZRPS (Land Use Act) and the ROEP. It considered it inadmissible to question the fundamental public trust in the state and state-guaranteed processes. The court's statements, in its view, were not supported by the evidence and the contents of the court file and were contrary to the principle of the reliability of cadastral data. It is not for the court to assess, in general terms and without evidence, the state-guaranteed processes of land registration and ROEP. as unreliable; the results of such proceedings are ipso iure binding and credible erga omnes, unless the contrary is proved in a particular case in the manner prescribed by law. Therefore, he disagreed with the opinion of the Court of First Instance on the impossibility of calculating the retention period from 2001, when Dr. X. was registered as the owner of the land in LV No. XXXX. E. The Court of First Instance did not address in detail and did not investigate why and under what circumstances such registration was made and that it was also done with the plaintiff's assistance and consent. The plaintiff, against whom the defendant claims the good faith of his predecessors in title, had knowledge of and consented to the registration of Dr. X. E. in LV No. XXXX, thereby, according to the defendant, confirming the bona fides of the defendant's predecessors in title as early as 2001, and therefore cannot successfully defend the alleged bad faith of the defendant's predecessors in title in 2001 if he was negligent for more than 17 years. For the plaintiff is the State, it is not relevant who acts for it under the law. Thus, the state authority carried out and guaranteed the land improvements, including the ZRPS , with the participation and assistance of the Forestry of the Slovak Republic, a state enterprise. The State authority also carried out and guaranteed the ROEP. with the assistance of the Forestry of the Slovak Republic, State Enterprise, the State authority confirmed the acquisition of ownership by the defendant's predecessors in title in inheritance proceedings, made all necessary entries in the Land Registry, the State, through the Forests of the Slovak Republic, State Enterprise, leased the properties from the defendant and paid rent to the defendant in return, and the defendant's predecessors in title were registered as the owners of the properties on the basis of the plaintiff's direct action and undoubtedly in good faith. The State has not disputed the ownership rights of the defendant's predecessors in title since at least 1997, when it actively participated in the land improvement process; this also confirms the objective good faith of the defendant's predecessors in title, i.e., the State has acted as a negligent owner since at least 1997, and the plaintiff's first qualifying act in this matter was not until the filing of the lawsuit in 2018. According to the defendant,

even if the plaintiff was in occupation of the properties in question, he was only acting as a detention agent, he did not take possession and enjoyment of the land as alleged by the court of first instance. Thus, the plaintiff's possession of the properties, if any, must also be attributed to the defendant's predecessors in title.

51. If the Court of First Instance, referring to the resolution of the Supreme Court of the Slovak Republic no. 7Cdo/245/2019 of 29.09.2020 gave priority to the principle of nemo plus iuris over the protection of the acquirer's good faith, the defendant considered that the above decision only referred to the earlier overridden case law of the Constitutional Court of the Slovak Republic contained in the decision of case No. I. ÚS 50/2010. That case-law is overtaken in particular by the decision of the Constitutional Court of the Slovak Republic I. ÚS 549/2015, which favours legal certainty and the protection of good faith. According to the defendant, the general courts as well as the Constitutional Court of the Slovak Republic are promoting a shift of opinion according to which the protection of the acquirer's good faith is at least equal to the principle of nemu plus iuris and in the event of a clash of these principles, the good faith acquirer is favoured, especially if the owner was negligent. In this case, the State was a negligent owner between 1997 and 2018. According to the defendant, the judgment is devoid of any reasoning as to why the trial court, without more, sided with the nemo plus iuris principle and failed to take into account the significant jurisprudential shift in favour of good faith and to the detriment of the nemo plus iuris doctrine, thereby also violating the defendant's right to a fair trial. In the light of the aforementioned decision of the Constitutional Court of the Slovak Republic, as well as in the light of the case-law of the Constitutional Court of the Czech Republic, the defendant, in the further text of the appeal, dealt in detail with the issue of the clash between two constitutional values - the principle of protection of the good faith of the acquirer and the principle of protection of the property right of the original owner in favour of the good faith of the acquirer resulting from the public registration in the land register. The credibility of the cadastral data has the character of a legal presumption, according to which the relevant cadastral data are correct, which in its essence is to guarantee an increased degree of consistency between the actual and legal situation, the credibility of the cadastral data, the confidence in their correctness is expressed in Article 70 of the Cadastral Act. The principle of nemo plus iuris can thus be broken by the principle of good faith protecting the participants in private law relations, which is contained in the principle of the rule of law as one of the supporting principles of the entire legal order of the Slovak Republic. According to the defendant, the principle of good faith also applies in civil law as a general principle, notwithstanding the fact that it is expressly regulated in the Civil Code only on an ad hoc basis.

52. The defendant insisted that its good faith, or that of its predecessors in title, was objectively established, depending on the guarantees of the State and State-controlled processes, as well as on the guarantees contained in the transfer agreements. The defendant considered the arguments of the Court of First Instance that the notification of the unlawfulness of the possession could only exceptionally result in the cessation of the retention period in conjunction with the loss of the good faith of the holder and that the sending of a simple notification to the company L.. spol. s r.o. had, without more, resulted in the cessation of the good faith of that company to be mutually contradictory. It considered that communication was not a qualified act which was objectively capable of creating doubt as to the ownership of that company. Mere assertions cannot give rise to an objective doubt as to the right of ownership by reference to the aforementioned guarantees which L. spol. s r.o. objectively possessed. According to the defendant, the credibility of the plaintiff's allegations in comparison with the credibility of the entry in the land register has a fundamentally different weight, which is why it is legitimate to grant good faith to one who believes in the entry in the land register until such time as such entry is challenged in a qualified procedure. Moreover, the title had been intestate for 13 years from 2001 until the service of the notice on L. spol. s r.o., with the plaintiff arguing that the 1948 title was allegedly valid. The defendant did not consider such a notification to be capable of calling into question the cadastral registration.

53. The defendant, referring to Section 134(4) of the Civil Code in conjunction with Section 112 of the Civil Code, considered that the retention of title was only interrupted by a qualified act, which was the assertion of the right of ownership before the court. The authority against which the owner

should act should be the court alone, since it is the only one which is responsible for deciding ownership disputes. Therefore, according to the defendant, it is only the action brought on 02.05.2018 that must be regarded as the first possible moment of interruption of the retention period.

54. In the supporting argumentation regarding the acquisition of real estate through an original method in bankruptcy and the preclusion of the plaintiff's rights in bankruptcy, the defendant disagreed with the court's conclusion that at a minimum, the company E., s. r. o., as the acquirer of the real estate, knew or must have known that the insolvent entity was not the owner of the real estate. The defendant justified this by referring to the chronological context and the sequence of legal acts of the affected commercial companies, as well as the personal ties between those companies and the defendant. According to the defendant, the sole decisive legal fact for acquiring property in bankruptcy from a non-owner, under Section 93 of the Bankruptcy and Restructuring Act (ZKR), is the good faith of the acquirer and nothing else. Thus, in bankruptcy, in the case of a remunerated transfer, ownership can only be denied if the acquirer knew or must have known that the insolvent party, or a third party whose assets secured the insolvent party's obligation, was not the actual owner of the acquired property. The burden of proving the absence of good faith on the part of the acquirer, beyond reasonable doubt, lies with the party asserting that ownership was not acquired (typically, the previous owner). According to the defendant, none of the actions cited by the court of first instance to justify the lack of good faith of E., s. r. o. (i.e., the knowledge that it was acquiring property not owned by the insolvent party) were conducted with the participation of E., s. r. o. or its representatives. Therefore, for the assessment of the real estate acquisition by E., s. r. o., it is irrelevant that the defendant had ties to L., spol. s r. o., or the alleged ties to A., s. r. o., which does not meet the criteria for affiliation under Section 9 of the Bankruptcy and Restructuring Act (ZKR), which represents the most comprehensive regulation of links between certain entities. The court's reasoning, which diverts attention from the decisive facts, does not properly explain what specific impact these actions had on the good faith of E., s. r. o., nor does it prove that E., s. r. o. had received any information suggesting that A., s. r. o. was allegedly not the owner of the real estate. The court file contains no evidence proving that E., s. r. o. or its representatives knew or must have known about the alleged dispute over ownership rights to the real estate, nor does it contain any evidence indicating potential knowledge of E., s. r. o. regarding the contested ownership. The plaintiff did not submit any evidence capable of proving the circumstances establishing a lack of good faith on the part of E., s. r. o., as required by Section 93(3) of the Bankruptcy and Restructuring Act (ZKR). The defendant maintained that, on the contrary, it was proven before the court of first instance that E., s. r. o. had not received any document or information suggesting any deficiency in the acquisition of the real estate. The company had a statutory guarantee that the real estate was properly included in the list of assets under the supervision of a court-appointed administrator. Furthermore, there exists no legal, personal, or factual connection between E., s. r. o. and the defendant, the defendant's legal predecessors, or the insolvent party.

55. The defendant stated that he does not know and cannot interpret the intentions and motivations of the company E., s. r. o. during the bankruptcy proceedings, specifically comparing its actions, or lack thereof, to those of the company M., s. r. o. However, he believes that, by the nature of the matter and considering common market and legal realities, the following is evident: The company E., s. r. o. did not conduct a thorough audit of the properties, as no generally binding legal regulation requires such an audit when acquiring assets in bankruptcy. It is the administrator's responsibility to act with professional diligence to ensure the indisputability of the assets included in the bankruptcy estate and to meet all requirements related to the bankruptcy. Participants in the bankruptcy proceedings can and must justifiably rely on the actions of the state-appointed person—the administrator. Participants in the bankruptcy proceedings, as well as third parties (including the plaintiff), have a range of remedies available in bankruptcy that guarantee the indisputability of the assets being liquidated. Such remedies include the assertion of a disputed note, exclusion lawsuits, and actions for the annulment of auctions. Therefore, buyers of assets from the bankruptcy can and must justifiably rely on the process preceding the liquidation. All essential data regarding the factual and legal status of the properties were published and communicated through the Commercial Bulletin.

56. Insofar as the court of first instance reproaches E., s. r. o. for not inspecting the real estate, the defendant again pointed out that no generally binding legal regulation requires inspection when acquiring property in bankruptcy, from the nature of the property to be acquired, i.e. forest land, such a procedure is understandable, since it is publicly observable and publicly accessible, thus the interested party can inspect it at any time and in any depth. Thus, it is not a matter to which special access would be required to be granted with the accompaniment of third parties/manager, such as an apartment, house, built-up area, etc. The fact that the insolvency file does not contain enquiries from E., s. r. o. concerning the properties does not show that it was not interested in the actual state of the properties, i.e. the fact that E., s. r. o. did not carry out an official inspection of the properties does not mean that the company had or must have had knowledge that the insolvent was not, according to the plaintiff, the owner of the properties. The carrying out of a physical inspection of the properties does not affect knowledge of the legal status of the case.

57. In so far as the Court of First Instance disputes the possibility of the acquisition of the properties by E., s.r. o. for the submission in the auction, which exceeded the amount of its share capital, the defendant stated that the acquisition of a thing in bankruptcy is not conditional on the amount of the share capital, it is common and legitimate to create so-called project companies, whose existence is tied to a specific project (purpose), where companies are created only while maintaining the minimum requirements for their formation. This is demonstrated, for example, by the amount of the share capital of a major entity in the field of real estate development, which, in addition, publicly offers its bonds - the company E.V. P. N. F., s. r. o. The capitalisation of companies can be carried out through contributions to the capital fund in accordance with Article 123(2) and Article 217a of the Commercial Code, which is not reflected at all in a change in the amount of the share capital. In addition, it may be carried out by foreign funds through loans, silent partnership contributions and otherwise, which also does not affect the amount of the share capital. The share capital does not determine the company's assets. It is only the aggregate of the shareholders' contributions; other indicators, such as net assets or equity, are decisive for determining the company's wealth.

58. In so far as the Court of First Instance points out that the defendant is the ultimate purchaser of the real estate, the defendant has stated that the validity of the acquisition of the real estate in bankruptcy by E., s. r. o. is irrelevant that the defendant is their subsequent owner. The defendant had and has no relationship with E., s. r. o. and it is also irrelevant that the defendant decided to acquire the properties only after obtaining financing from the bank. The defendant thus concludes that none of the facts identified by the Court of First Instance shows that it came to the knowledge of E., s. r. o. that A., s. r. o. was allegedly not the owner of the real estate; on the contrary, from the guarantees resulting from the activities of the bankruptcy court administrator, the auctioneer, the notary and the land registry, E., s. r. o. could not have had any objective doubts as to the ownership of the real estate.

59. The defendant argued that a subjective 'mere' doubt as to the good faith of E., s. r. o. was not sufficient to prevent the acquisition of the property in bankruptcy. The fact that that company knew or, having regard to all the circumstances, must have known that the bankrupt was not the owner is a qualified legal fact, the existence of which must be duly established. The court's activity in the context of proof (of course, solely with regard to the parties' evidence) must be directed towards verifying the facts which are defined in section 93(3) of the ZKR. The court must prove the existence of those facts at least beyond reasonable doubt. Merely suggesting a doubt, which the court of first instance had, does not establish E., s. r. o.'s knowledge as to the ownership of the property.

60. The plaintiff had a demonstrable opportunity to exercise the right to exclude the real estate from the bankruptcy proceedings, as all related notices were published and delivered through the Commercial Bulletin and by entering a notation in the real estate cadastre. In this context, the defendant referred to Section 199(1) of the Bankruptcy and Restructuring Act (ZKR), which states that unless otherwise provided by law, court resolutions and other documents in proceedings under this Act are delivered by publication in the Commercial Bulletin. The same applies to documents that must be published under a special regulation. The plaintiff did not exercise this right and missed the opportunity to contest the inclusion of the real estate in the bankruptcy proceedings, referring to Section 78(8) of the Bankruptcy

and Restructuring Act (ZKR), which stipulates that the right to exclude an asset from the inventory may only be exercised in the manner prescribed by this law. If the asset has already been liquidated, the person with the exclusionary right is entitled to receive the proceeds from the liquidation of that asset. The defendant argued that by failing to exercise the plaintiff's rights in the bankruptcy proceedings, the plaintiff's ability to assert ownership rights was exhausted and precluded.

61. The defendant further criticized the court of first instance for failing to consider and justify the negligence of the plaintiff, despite the defendant's objections. The defendant saw this negligence on the part of the state in its involvement in the registrations in the real estate cadastre, specifically through its participation in processes that led to the registration of ownership rights to the real estate in favor of the defendant's legal predecessors. In this case, it was not different state authorities with separate competencies that acted, but rather Forests of the Slovak Republic, a state enterprise. Furthermore, the plaintiff's negligence was also evident in the fact that it did not seek the exclusion of the real estate nor did it use other legal remedies in the bankruptcy proceedings. Forests of the Slovak Republic, a state enterprise, was demonstrably represented by a lawyer since 2014 in efforts to assert its alleged ownership rights to the real estate, yet the lawyer failed to respond to documents delivered to the Commercial Bulletin and remained inactive. The defendant argued that, under Section 78(8) of the Bankruptcy and Restructuring Act (ZKR), the plaintiff's opportunity to claim ownership rights had been precluded and exhausted. The state could at most assert a presumed claim for damages against the administrator, the lawyer representing Forests of the Slovak Republic, a state enterprise, or the bankruptcy court, since the alleged ownership claim had effectively transformed into a claim for damages against these entities. However, the plaintiff allowed these alleged claims for liability to become time-barred. As another manifestation of the plaintiff's negligence as the alleged owner, the defendant pointed to the plaintiff's lease of the real estate, arguing that by renting the real estate from the defendant or his legal predecessors, the plaintiff could not have confirmed the defendant's ownership rights in a more explicit manner. Finally, the defendant highlighted the plaintiff's lack of credibility, citing, for instance, the plaintiff's claim that it had not participated in the ZRPS land adjustment process, which later turned out to be false. In a conflict between good faith and the principle of nemo plus iuris, it is essential to consider all circumstances of the case. However, the court of first instance failed to address these aspects in its judgment, did not explain how it evaluated them, and did not take them into account in its assessment. As a result, the court burdened the proceedings with fundamental procedural errors that violated the defendant's right to a fair trial.

62. The defendant also saw a violation of his right to a fair trial in what he considered an impermissible and excessive procedural activity of the court of first instance, contrary to the provisions of the Civil Dispute Procedure Code (C. s. p.). After inviting the parties to present additional motions for evidence-taking during the hearing on September 14, 2020, both parties explicitly and unanimously stated that they had no further motions for evidence-taking. After the closing arguments were delivered, the court declared an order closing the evidentiary proceedings. However, without any initiative from the parties, the court, after a recess, issued an order to continue taking evidence on its own initiative, specifically by including the bankruptcy file of company A., s. r. o. The defendant considered this order to continue taking evidence a gross violation of procedural rules, as the court, in contravention of Section 185 of the Civil Dispute Procedure Code, took evidence without a motion from the parties, which it was neither authorized to do nor explicitly required not to do. By doing so, the court exceeded its authority and substituted the procedural activity of the plaintiff. The court of first instance arbitrarily incorporated the bankruptcy file and, during the hearing on December 3, 2020, proactively sought the plaintiff's consent to the taking of evidence, as evidenced by the audio recording of the hearing. The plaintiff himself did not challenge or question any aspects of the bankruptcy proceedings of company A., s. r. o. throughout the entire trial. The defendant repeatedly objected to the inclusion of the bankruptcy file as well as the court's procedural activity, considering it a violation of the principle of equality of arms and an infringement on his right to a fair trial, as evidenced by the minutes of the hearing dated September 4, 2020, page 9. He further argued that the bankruptcy file does not have the nature of a public register or list, which would have allowed the court to take evidence without a motion. Bankruptcy files are classified as non-public under Section 8(4) of Act No. 8/2005 Coll. on Trustees and consist of recorded procedural acts and facts related to the respective bankruptcy case. Even according to the authors of the Civil Dispute Procedure Code, the term "public registers and lists" refers primarily to the Real Estate

Cadastre, the Commercial Register, the Register of Executions, the Register of Pledge Rights, the Register of Auctions, and similar records (the defendant incorrectly cited literature, referencing Števček et al.: Civil Code I. § 1-450. Commentary. Prague: 2015, p. 690, whereas the correct reference is Števček, M., Ficová, S., Baricová, J., Mesiarkinová, S., Bajánková, J., Tomašovič, M., et al. Civil Dispute Procedure Code. Commentary. Prague: C. H. Beck, 2016, p. 701). Through this procedure, the court of first instance violated the principle of adversarial proceedings and the equality of the parties, substituted the procedural activity of the plaintiff, granted him an unlawful advantage, and based a decisive part of its judgment on this unlawful conduct. According to the defendant, this fact cannot be remedied, as the unlawful procedural advantage granted to the plaintiff concerning the bankruptcy file remains permanently in place, meaning that the plaintiff will continue to benefit from the fact that the bankruptcy file became part of the evidence solely due to the court's unilateral action. Otherwise, the purpose of limiting the court's procedural activity and guaranteeing the principle of equality of arms between the parties would be entirely undermined, if it were stated that although the court violated the Civil Dispute Procedure Code (C. s. p.), it could still take the bankruptcy file into account later if a party submitted a motion. Since the bankruptcy file constitutes unlawful evidence, all facts contained within it and considered by the court of first instance in its judgment were obtained unlawfully and cannot be considered in further proceedings, based on the doctrine of the "fruit of the poisonous tree." Therefore, it is legally irrelevant that, after the bankruptcy file was obtained and included by the court of first instance, the plaintiff agreed to its use as evidence. This was not a motion initiated by a party with an explanation of what fact was to be obtained from the evidence or why such a fact was relevant to the dispute. According to the defendant, this improper procedural approach, which violated his right to a fair trial, can only be corrected by the appellate court by issuing a substantive decision on the case without considering the bankruptcy file and its contents, referring to Section 389(1)(b) of the Civil Dispute Procedure Code (C. s. p.) a contrario.

63. According to the defendant, the procedural excess of the court of first instance also applies to the admission of evidence concerning the examination of land ownership in the cadastral territory of G., which is not the subject of the dispute and cannot in any way prove the lack of good faith of E., s. r. o.. The court independently and proactively investigated the defendant's land ownership and arbitrarily included such evidence in the case file without a motion from either party. Furthermore, there were no factual allegations by the parties that contradicted reality and could have justified the court's investigation into the defendant's land ownership in the cadastral territory of G..

64. The defendant concluded that the court of first instance, through its actions, significantly privileged the plaintiff (the state) over the defendant, failed to guarantee the right to a fair trial, and did not treat the parties to the dispute equally.

65. The defendant concluded that the reasoning of the court of first instance's judgment reaches the height of absurdity with its "argument of justice" in point 65 of the judgment's reasoning, especially in light of the fact that the court granted ownership of the real estate to the state based on the so-called Beneš Decree—arguably the most unjust act of the state in the history of Czechoslovak statehood—thereby depriving ownership from an entrepreneur, a provider for a family with two children, who is repaying a loan used to purchase the real estate in accordance with guarantees that he had a right to rely on. At the same time, throughout the proceedings, the court unlawfully favored the state procedurally, overlooking its 21-year-long... (sentence incomplete; let me know if you want to add more for completion).

66. The defendant therefore proposed that the appellate court amend the challenged judgment of the court of first instance and dismiss the lawsuit in its entirety. At the same time, the defendant claimed reimbursement of legal costs.

67. The plaintiff, in response to the defendant's appeal, proposed that the judgment of the court of first instance be upheld as factually correct. Regarding the intabulation principle referenced by the defendant in the appeal, the plaintiff argued that the confiscation of property under the Confiscation Decree occurred ex lege and simultaneously ex tunc, meaning that it resulted in the absolute termination of ownership of the original owner and the original acquisition of ownership by the state as of the

effective date of the decree, i.e., March 1, 1945. To support this view, the plaintiff referred to the judgment of the Regional Court in Nitra, case no. 9Co/51/2019, dated March 12, 2020, which states that nothing in Decree No. 104/1945 Coll. suggests that an individual decision was required for each specific case. Confiscation occurred if the statutory conditions were met, and thus its legal basis was the law itself. Therefore, the state acquired ownership of the affected real estate without the need for intabulation. The plaintiff further noted that compliance with the land registration procedure did not create any new rights but merely provided public notice of existing rights. Consequently, failure to complete the land registration procedure does not imply that a right, which should have been recorded in the land register, did not exist. This conclusion follows from the judgment of the Supreme Court of the Slovak Republic, case no. 4Cdo/180/2009, dated January 31, 2011. Additionally, the plaintiff referenced a decision of the Supreme Court of the Czech Republic, case no. 28Cdo/4116/2019, which states: "... the intabulation principle contained in Section 431 of Act No. 946/1811 Coll., the General Civil Code, applied only to the transfer of real estate, as confirmed by the opinion of respected legal literature (see F. Rouček, J. Sedláček: Commentary on the Czechoslovak General Civil Code and Civil Law Applicable in Slovakia and Subcarpathian Ruthenia, Volume II, V. Linhart Publishing, Prague, 1935, p. 505: 'Ownership of real estate can also be acquired without land registration: through appropriation, auction, usucaption, expropriation, and other means.')." For these reasons, the plaintiff considered the defendant's arguments that confiscation had not taken place to be irrelevant.

68. The plaintiff further argued that neither the defendant nor his legal predecessors acquired ownership of plots 1 and 2 by usucaption, as good faith (bona fide) must be assessed in light of all circumstances that a possessor could perceive with normal prudence. It is not sufficient for the possessor to have a subjective belief that the property belongs to him; rather, the law requires that good faith be supported by objective circumstances from which the reasonableness of the possessor’s belief can be inferred. The plaintiff maintained that, upon delivery of the letter to the defendant’s legal predecessor on July 14, 2014, titled "Request for Alignment of the Actual State with the Real Estate Records II and Request for the Return of Unjust Enrichment II" (where the same issue had already been communicated in a letter dated May 6, 2014), the defendant’s legal predecessor could and, with even minimal diligence, should have had doubts about whether the property rightfully belonged to him, thereby unequivocally terminating any claim to good faith. The defendant or his legal predecessor could have, upon reviewing the land registry entries after receiving the aforementioned request, verified that the property was recorded as having been confiscated under Decree No. 104/1945 Coll. of the Slovak National Council, as amended by Decree No. 64/1946 Coll. of the Slovak National Council, for the purposes of land reform. For this reason, the plaintiff agreed with the conclusion of the court of first instance, stating that the defendant’s legal predecessor, L., spol. s r. o., could have objectively acted in good faith only from 2006 (when ownership rights were acquired based on the presumed acquisition title—certificate of inheritance) until 2014, a period of eight years. Therefore, the conditions for acquiring ownership of the disputed plots 1 and 2 through usucaption were not met.

69. The plaintiff also disagreed with the defendant's claim that the legitimacy of the possession of the defendant's predecessors in title should be calculated from 2001, when LV No. XXXX was established on the basis of the ZRPS , on which X was listed as the owner of parcels 1 and 2 (at that time still a single parcel of EKN No. XXX/X). E., on the basis of the entry in K. no. XXX, d. no. XXXX/XXXX. The plaintiff considers this entry to be erroneous, since in this PKV as well as in the other relevant land registry entries there was a note on the confiscation of the property of Dr. X. E. and the district office did not take the confiscation note into account in the ZRPS proceedings. The date of 10.12.2001 cannot be considered as the commencement of the continuous lawful possession as X. E. was 50 years posthumous at the time of his registration in the title deed as the owner. Even if he had been alive at that time, he would not have been in possession in good faith as he was aware of the confiscation of the property. Also, Mr. Q. E. could not have been bona fide in possession of the property which he acquired by virtue of the certificate of inheritance valid on 03.10.2006, as it is reasonable to assume that he knew about the confiscation of the property. The defendant's predecessor in title, L. spol. s r.o., could not have been bona fide in view of the fact that it was notified twice in 2014 by the plaintiff that the property in question had been confiscated.

70. As regards the alleged infringement of the defendant's right to a fair trial, the plaintiff submitted that the Court of First Instance should have established the wording of Article 93(3) of the Bankruptcy A (ZKR) namely the exception in that section that the purchaser knew or ought to have known that the bankrupt or the third party whose property secures the bankrupt's obligation is not the owner of the property. The plaintiff considered the procedure of the court of first instance to be lawful. It considered that the defendant knew or ought to have known that the property in question was subject to confiscation and, by means of transfers of property between different companies and the subsequent use of the bankruptcy procedure, sought to acquire ownership so as to comply with the wording of Article 93(3) of the Bankruptcy Act (ZKR) in the sense that the purchaser in a transfer for consideration of an item entered in the inventory acquires ownership even if the bankrupt was not the owner of that item. The plaintiff considered that the court had acted lawfully also because the plaintiff had consented to the taking of evidence, namely the attachment of the bankruptcy file of the company A., s.r.o. The court of first instance had sought the material truth in the above-mentioned procedure, aiming at a fair decision and a decision in accordance with the actual state of affairs, since ownership is an institution protected by the Constitution of the Slovak Republic. While it is true and undoubted that the Civil Dispute Procedure Code upholds the principle of formal truth, property as an institution protected by the Constitution of the Slovak Republic must be protected in all circumstances. In this regard, the plaintiff referred to Article 3(1) of the Basic Principles of the Civil Dispute Procedure Code and Article 16(2) of the Basic Principles of the Civil Dispute Procedure Code He pointed out that every provision of the Civil Dispute Procedure Code is also to be interpreted with constant regard to the values protected by it, and while the court in hearing and deciding a case does not take into account facts and evidence obtained in contravention of the law, it is only the admission of evidence obtained in contravention of the law that is justified by the application of Article 3(1).

71. The defendant, in its appellate reply, referred to its argumentation in the appeal and its supplement.It reiterated that the call for reconciliation of the actual situation with the registration of the real estate registration II. and the call for the release of unjust enrichment II. of 14.07.In his opinion, the document of 14.07.2014 cannot be considered as a document challenging the ownership right and the good faith of the possession of the defendant's predecessor in title, he considered the document to be a mere notification of the illegality of the possession, which may result in the cessation of the retention of possession period only exceptionally. The bona fides of the defendant's predecessor in title were based on the land registry and the entries therein, and he therefore considered that the plaintiff's simple letter to L. S. r. o. of July 2014 could not, without more, have the effect of extinguishing the bona fides of that company's possession. He also referred to the existence of a lease agreement between L.. spol. s r. o. and the plaintiff as tenant. He thus insisted that neither the court of first instance nor the plaintiff referred to the existence of such exceptional circumstances which, in accordance with the doctrine and the applicable case-law, could result in the extinction of bona fide possession by the mere delivery of the plaintiff's letter of 14.07.2014.

72. Further, the defendant pointed out that the plaintiff had only very briefly responded to the circumstances of the taking of evidence by the court of first instance in relation to the acquisition by E., s.r.o. of title to the immovable property in the insolvency proceedings within the meaning of Article 93(3) of the Bankruptcy Act ZKR). In essence, the plaintiff merely endorses the procedure followed by the Court of First Instance. It merely points out that the defendant knew or ought to have known that the property in question was subject to confiscation and, by the procedural transfer of the property between different companies and the subsequent use of the insolvency proceedings, sought to acquire ownership in such a way as to fulfil the wording of Article 93(3) of the Bankruptcy Act (ZKR) in the sense that the purchaser in a transfer for consideration of an item entered in the inventory acquires ownership even if the bankrupt was not the owner of that item. The defendant stressed that the plaintiff failed to take into account the fact that the auctioneer of the real estate in the bankruptcy proceedings was not the defendant, but E. s.r.o. The defendant does not have and never had any relationship with A., s.r.o. or E., s.r.o. Thus, what is important under Section 93 of the Bankruptcy Act (ZKR) is the good faith of the transferee, i.e. E., s.r.o. The absence of good faith on the part of the transferee must be proved beyond reasonable doubt by the party claiming that the transferee did not acquire the property (usually the owner). The Court of First Instance found that E., s.r.o. was not bona fide, i.e. that it knew or must have known that the bankrupt was not the owner of the property, without any evidentiary submissions by the

claimant, without any proper evidence being taken, since the content of the file does not reveal any documents or testimony on the basis of which the court could have made that finding in accordance with the relevant legal provisions. The Court of First Instance justified that conclusion only by reference to the temporal connection and sequence of the various legal acts of the companies concerned and the personal connection of the companies concerned with the defendant. However, according to the defendant, that assertion is not supported by any evidence adduced by the court and the assertion itself is not evidence and is not procedurally capable of establishing any fact whatsoever. Moreover, the ZKR requires a higher standard of constructive knowledge - "must have known" - and the evidence at trial did not even establish that E., S. r. o. "could have known" of any doubt in the ownership of the bankrupt's real property. A subjective suggestion of doubt as to the good faith of E., s.r.o. is not sufficient. The plaintiff did not offer any evidence during the course of the litigation to establish that E., s.r.o. as purchasers of land in bankruptcy, knew or should have known that it was acquiring the property from a non-owner.

73. The plaintiff did not file a reply to the appeal.

74. The Regional Court, functionally competent to decide on the defendant’s appeal pursuant to Section 34 of the Civil Dispute Procedure Code (C. s. p.), reviewed the case within the scope of the appeal in accordance with Section 379 of the Civil Dispute Procedure Code, based on the grounds defined in the appeal pursuant to Section 380(1) of the Civil Dispute Procedure Code, and to the extent of deficiencies concerning procedural conditions under Section 380(2) of the Civil Dispute Procedure Code, finding no such deficiencies. Without the need to order an appellate hearing pursuant to Section 385(1) of the Civil Dispute Procedure Code, the Regional Court modified the judgment of the court of first instance pursuant to Section 388 of the Civil Dispute Procedure Code, as the conditions for its confirmation or annulment were not met, for the following reasons:

75. According to the appellate court, the defendant rightfully asserted the appeal ground under Section 365(1)(b) of the Civil Dispute Procedure Code (C. s. p.), namely that the court of first instance, through an incorrect procedural approach, prevented the party from exercising its procedural rights to such an extent that it resulted in a violation of the right to a fair trial. The appellate court holds the opinion that the court of first instance, by conducting evidence-taking without a motion, including the bankruptcy file of the District Court in Trnava as well as the file of the bankruptcy trustee, violated the principle of equality of arms between the parties, as enshrined in Article 6 of the Fundamental Principles of the Civil Dispute Procedure Code, which states: "The parties to the dispute have equal standing in the proceedings, meaning they have an equal opportunity to assert procedural means of attack and defense, except in cases where the nature of the case requires enhanced protection of one party to balance the inherent inequality between them. The court also takes into account the specific needs of the parties arising from their health condition and social status." In this dispute, the plaintiff is the Slovak Republic, acting as a legal entity, while the defendant is a natural person. Both parties were represented by legal counsel—attorneys knowledgeable in law—during the proceedings before the court of first instance. In the case of the plaintiff—the state—there is no need to examine health status or social standing. Enhanced protection of a party to the dispute is reflected in the Civil Dispute Procedure Code in provisions related to the protection of weaker parties, such as consumer disputes, anti-discrimination disputes, or individual labor disputes. However, this case does not qualify as a dispute involving the protection of a weaker party.

76. The principle of equality (of arms) of the parties to a dispute is based on the overall concept of the C. s. p. , which is built on the fundamental principle of formal truth. In the Court of Appeal's view, the entire C. s. p. (including the basic principles set out in Article 2(1), argued by the Court of First Instance, and Articles 3(1) and 16(2), relied on by the plaintiff) must be interpreted in accordance with that concept and the underlying principle. In so far as the Court of First Instance referred, when carrying out the examination of the contents of the insolvency file without a request, to fairness as a value protected by the C. s. p. , it should be pointed out that Article 2(1) of the Code of C. s. p. Art. deals with the fair and effective protection of rights and legally protected interests threatened or infringed in relation to the fulfilment of the principle of legal certainty as defined in Article 2(2) C. s. p. The purpose of the fundamental principle expressed in Article 2 C. s. p. is therefore to ensure

that the decisions of the courts in factually and legally identical or similar cases are the same. It is, in other words, an expression of the requirement that judicial decisions be predictable.

77. It is true that the principle of formal truth is tempered even in "classical" civil litigation by a substantive corrective in order to avoid the undesirable consequences of the absolute application of the principle of formal truth in practice. This material corrective is expressed in Article 185(2) and (3) of the C. s. p. , which allow the court, even without a motion, to take evidence derived from public registers and lists if those registers or lists show that the factual allegations of the parties are contradicted by the facts and to take evidence to establish whether the procedural conditions are met, whether the proposed decision will be enforceable and to establish the foreign law. At the same time, the last sentence after the semicolon in C. s. p. § 185(2) provides that the court shall not take other evidence without a motion unless otherwise provided by this act. Thus, in order for the court to be able to take evidence without a motion, the law must explicitly provide for this possibility. This material corrective is therefore much weaker and more narrowly applicable than the material corrective expressed in the procedural code in force before the C. s. p. - in Article 120(1) of the C. s. p. , according to which the possibility for the court to exceptionally take evidence other than that proposed by the parties was linked to the necessity of taking it for the decision in the case.

78. In order to establish a conclusion as to what factual assertions are to be contradicted, it is necessary to determine those factual assertions. In this respect, the legal conclusions set out in the resolution of the Supreme Court of the Slovak Republic, Case No. 4 Cdo 13/2009 of 24.02.2010, which deals with the hypothesis of the substantive legal norm to be asserted or proved, are still applicable: "In order to fulfil its legal obligation to identify the necessary evidence, a party must first of all fulfil its obligation to assert. The burden of proof is thus premised on the party's assertion of the facts, the so-called burden of proof. There is a close link between the duty to allege and the duty to prove. If a party fails to fulfil its obligation to allege facts relevant to the hypothesis of a legal rule, it cannot, as a rule, fulfil the burden of proof. Failure to fulfil the obligation to allege, that is to say, failure to discharge the burden of proof, has the consequence that a fact which the party has not alleged at all and which has not otherwise come to light in the proceedings will, as a rule, not be the subject of proof. If it is a fact which is determinable under substantive law, then failure to discharge the burden of proving that fact will usually result in a decision adverse to the party. The law imposes on the parties the obligation to allege all necessary facts; the necessity, i.e. the range of decisive facts, is determined by the hypothesis of the substantive rule of law which regulates the disputed legal relationship of the parties. This norm determines, in principle, both the scope of the burden of proof, i.e. the range of facts which must be proved as decisive, and the bearer of the burden of proof."

79. Pursuant to Section 93(3), first sentence, of the Bankruptcy Act (ZKR) the purchaser in the case of a transfer for consideration of an item registered in the inventory acquires the right of ownership even if the bankrupt was not the owner of the item, unless he knew or should have known that the bankrupt or a third party whose property secures the bankrupt's obligation is not the owner of the item.

80. From the cited legal provision, it follows that the facts contained in the hypothesis of this legal norm, which must be asserted or, where necessary, proven in order for the disposition of the legal norm to apply (i.e., the legal consequence of acquiring ownership of an asset in bankruptcy regardless of whether the insolvent party was its owner), consist of two conditions: one positive (must occur) and one negative (must not occur). The positive condition is the remunerated transfer of an asset recorded in the inventory of the insolvent party’s bankruptcy estate to the buyer. The negative condition is the fact that the buyer knew or must have known that the insolvent party or a third party whose assets secured the insolvent party’s obligation was not the owner of the asset. Depending on whether the conditions stated in the hypothesis of the legal norm are met, the disposition of the legal norm either applies or does not apply, meaning that the legal consequence either occurs or does not occur. The legal consequence—acquisition of ownership of an asset in bankruptcy by the buyer, regardless of whether the insolvent party was its owner—is not a factual assertion by a party to the dispute that could be inconsistent with reality and require evidence. Rather, it is not a matter of evidence but of legal assessment by the court.

81. At the hearing held on 14.09.2020 at the court of first instance, as well as in the written rejoinder served on the plaintiff's then legal representative less than ten months earlier (on 28.11.2019 - see file no. 338), the defendant presented its procedural defense in the sense that it claimed that the defendant's predecessor in title - the company E, S. r. o. had acquired land parcels 1 and 2 by way of a voluntary auction in bankruptcy in an original manner, as it could have acquired them from a non-owner pursuant to the provisions of section 93(3) of the Bankruptcy Act (ZKR). The defendant's counsel quoted the wording of section 93(3) of the Civil Code in this connection. The defendant rightly pointed out that no evidence was produced in court and none was offered by the plaintiff to show that E., s. r. o. knew or should have known that the land is the subject of some dispute, is confiscated, is land that actually belongs to the Slovak Republic in the administration of the Forests of the Slovak Republic (Lesy SR, state enterprise), The plaintiff did not respond in writing or orally at the hearing in question to this assertion of the defendant and the cited legislation through its counsel, i.e. it did not argue that the company E., s.r.o., as the purchaser of parcels 1 and 2 in bankruptcy, was not the (original) owner because it knew or ought to have known that it was acquiring the property from a non-owner. Section 185(2) C. s. p. allows the court to take evidence from public registers and lists even without a motion, but requires that the registers or lists show that the factual allegations of the parties are contradicted by the facts. The trial court did not expressly state which factual allegations of the parties were to be contradicted by the facts. The defendant's factual assertion that E., S. r. o. had acquired parcels 1 and 2 by way of a transfer for consideration (in the form of a bankruptcy auction of the land) was not contrary to the facts. The contradiction of this factual assertion does not arise from the public register or list - the Commercial Bulletin. On the contrary, in order to prove this fact, the defendant proposed to take evidence by consulting the extract from the Commercial Bulletin No. 135/2015 of 16.07.2015 (section 329 of the file). The plaintiff or his counsel in the proceedings did not even dispute the defendant's assertion that there had been a voluntary auction with such a result, but only legally disputed the original acquisition of ownership of the property at the voluntary auction, disregarding the special case that it was a bankruptcy auction. Accordingly, with regard to the court's proof of the defendant's factual assertion without a motion, the condition required by Article 185(2) of the C. S. P was not met. The plaintiff did not argue in the proceedings before the court of first instance that E., S. r. o. knew, or at least should have known, that it had acquired in bankruptcy Lots 1 and 2 from a non-owner. The absence of a factual allegation cannot be proved by applying Article 185(2) of the C. S. P. This material corrective to the principle of formal truth, on which the Civil Dispute Procedure Code is based, does not apply to the obligation of the parties to the dispute to make allegations, but only to an exception to their burden of proof. It was therefore not justified, in the light of the provisions of the Civil Dispute Procedure Code, for the court to have sought to prove, without a request, a fact which had not even been alleged by the plaintiff in the proceedings.

82. Given the above, the appellate court considers the plaintiff’s reference in the appeal proceedings to Article 3(1) and Article 16(2) of the Fundamental Principles of the Civil Dispute Procedure Code (C. s. p.) to be an attempt to remedy the lack of procedural activity by the plaintiff’s legal representative in the proceedings before the court of first instance. Initially, the plaintiff’s legal representative did not even know what the court of first instance intended to prove by introducing the bankruptcy files into the evidence (see audio recording of the hearing held on September 14, 2020). It was only after this evidence was taken, at the hearing held on December 3, 2020, that the plaintiff’s legal representative realized that the purpose was to determine whether E., s. r. o. knew or must have known that it was acquiring plots 1 and 2 from a non-owner. It was only during the closing arguments that the plaintiff’s representative presented claims regarding the personal connections between the defendant’s legal predecessors through the defendant, the chronological context of the formation of the respective commercial companies A., s. r. o. and E., s. r. o., and challenged the good faith of E., s. r. o. in acquiring plots 1 and 2 in bankruptcy, arguing that it had acquired them from an actual owner (see minutes of the hearing dated December 3, 2020).

83. In agreement with the defendant, the Court of Appeal is of the opinion that, after the court of first instance had obtained the bankruptcy files on its own initiative, the defect that the court had taken evidence without a motion could not have been cured by the plaintiff's additional consent or motion to take evidence immediately before the taking of evidence, because the Court of First Instance, by that

procedure, actually induced the plaintiff to make that proposal in order to have a basis for the evidence taken, thereby favouring the plaintiff in the proceedings and thereby infringing the principle of equality of arms between the parties to the proceedings. Accordingly, such a submission by the plaintiff is no longer legally effective.

84. According to the Court of Appeal, Article 16(2) of the Basic Principles of the Civil Dispute Procedure Code must be interpreted as meaning that evidence may be obtained unlawfully by a litigant or his representative, but this does not justify the court in securing and taking evidence unlawfully. In accordance with the explanatory memorandum to the Civil Dispute Procedure Code, it can be argued that a court may execute evidence obtained in violation of the law if the right of the opposing party is constitutionally assessed as a stronger right in a particular case than the violated right of the one at whose expense the right is exercised (the so-called test of proportionality of mutually conflicting constitutional rights). These are most often cases of conflict between the right to protection of personality (privacy) and another constitutionally protected right. "Thus, for example, if the court takes into account electronic communications or the recording of images and sound by electronic means, which were obtained without the consent of the person whose speech was so recorded, it must justify that the right to protection of the personality of that subject is proportionally weaker in the particular case compared to the constitutional right whose violation is to be proven by the evidence obtained in this way (in the sense of case law conclusions, it may be, for example, a proportionally stronger right to racial, gender or other non-discrimination)." (Števček, M., Ficová, S., Baricová, J., Mesiarkinová, S., Bajánková, J., Tomašovič, M., et al. Civil Litigation Procedure Code. Commentary. Prague: CH.Beck, 2016, p. 66). Therefore, in the opinion of the Court of Appeal, the justification of the court's procedure under Article 185(2) of the C. S. P, contrary to its wording, by the provision of Article 16(2) of the C. S. P in conjunction with Article 3(1) of the C. S. P, is not relevant in the present dispute.

85. The Court of Appeal also referred to Article 3(2) of the Basic Principles of the Civil Dispute Procedure Code, according to which the interpretation of that Act must not contradict what is clear and unmistakable in its words and sentences. However, no person may invoke the words and sentences of this Act contrary to their purpose and meaning under paragraph 1. It should be noted that section 185(2) C. s. p. clearly states when a court may, without a motion, take evidence derived from public registers and lists, and only if such evidence is intended to show that the factual allegations of the parties are contrary to fact, i.e., as the Court of Appeal has already pointed out, such evidence cannot be taken where there is no factual allegation at all which should be contrary to fact. The purpose pursued by Article 185(2) C. s. p. is therefore different from that which the plaintiff seeks to infer from Article 3(1) and Article 16(2) of the Basic Principles of C. s. p. Its interpretation would in fact relieve the litigant of the procedural obligation to allege the decisive facts and thus of responsibility for the outcome of the dispute.

86. In this connection, the Court of Appeal refers to Article 8 of the Basic Principles of the Civil Dispute Procedure Code, according to which a litigant is obliged to identify the factual allegations relevant to the decision in the case and to support his allegations with evidence, in accordance with the principle of economy and as directed by the court. That principle is an expression of the responsibility of the litigant for the outcome of the dispute. In this connection, the Court of Appeal once again refers to the resolution of the Supreme Court of the Slovak Republic, Case No. 4 Cdo 13/2009 of 24.02.2010, which also states: 'The initiative in gathering evidence lies principally with the parties to the proceedings. A party who has failed to identify the evidence necessary to prove its claims bears the adverse consequences in the form of a court decision based on the facts established on the basis of the evidence taken. The same consequences also apply to a party who, although he has adduced evidence of the truth of his allegations, the court's assessment of the evidence adduced has led to the conclusion that the evidence has not established the truth of the party's factual allegations. The law defines the burden of proof as the procedural responsibility of a party for the outcome of the proceedings in so far as it is determined by the result of the evidence taken. The consequence of a party's allegation not being proved (in the sense that the court does not consider it to be true), either on the basis of the evidence adduced or on the basis of evidence adduced by the court without an application, is that the decision is unfavourable to the party."

87. Theoretically, the procedure under the first sentence of Article 181(4) of the C. s. p. , according to which, if a party or its representative is unable to present the essential and decisive factual allegations and to identify or produce evidence to prove them, the court may set them a period of time for additional compliance with this obligation, was also considered. However, the court of first instance did not choose such a procedure and adjourned the hearing held on 14 September 2020 on the ground that the bankruptcy files had been secured without a motion by the parties to the dispute for the purpose of familiarising themselves with their contents. Moreover, it is questionable whether such leniency on the part of the court would have been warranted, since the plaintiff, or rather his counsel, had (as stated above) the defendant's factual and legal argumentation regarding section 93(3) of the Bankruptcy Act (ZKR) available to him almost 10 months before the hearing on 14.09.2020, i.e. he had sufficient time to prepare his counter-argumentation.

88. Thus, the correct procedure in the proceedings before the Court of First Instance should have been that after the defendant had argued in the proceedings that its predecessor in title, E., S. r. o., had acquired Lots 1 and 2 in bankruptcy and that it was therefore irrelevant whether it acquired them from the owner or a non-owner, the plaintiff should have responded with a factual allegation that E., S. r. o. knew or should have known that it was acquiring those lots in bankruptcy from a non-owner. Only then could the eventual evidentiary phase of the proceedings have taken place. Since that did not happen, the Court of Appeal concludes that the Court of First Instance could not have taken evidence from public lists and registers without the plaintiff's request in respect of a fact which he did not even allege. It is therefore unnecessary for the determination of the present dispute to address the question whether Article 185(2) of the C. s. p. permits the taking of evidence without an application by consulting the entire insolvency file or only the contents of the relevant documents published in the Commercial Bulletin.

89. Just like the defendant, the appellate court is of the opinion that due to the violation of the defendant's right to a fair trial by the incorrect procedural approach of the court of first instance, which involved violating the principle of equality of arms between the parties, it is not necessary to annul the judgment of the court of first instance and remand the case for further proceedings and a new decision. This deficiency can be remedied in the appeal proceedings under Section 389(1)(b) of the Civil Dispute Procedure Code (C. s. p.) a contrario by the appellate court disregarding the evidence presented by the court of first instance without a motion or based on the ineffective motion of the plaintiff. The appellate court acknowledges that, as a result, it is operating from a different factual state than that which the court of first instance used, namely, only from the factual state as established by the court of first instance up to the moment the court began reviewing the content of the bankruptcy files. According to the literal grammatical interpretation of Section 385(1) C. s. p., the appellate court would therefore need to repeat the evidence-taking regarding the decisive facts. However, the appellate court did not schedule a hearing in this case, applying Section 204 C. s. p., which stipulates that evidence by document is taken by the court reading the document or announcing its contents, except when the document has been delivered to a party during the proceedings and its content has not been challenged by the opposing party. All the evidence taken by the court of first instance up to the moment of reviewing the bankruptcy files was delivered to the parties in the proceedings before the court of first instance, who had the opportunity to familiarize themselves with its contents and did not challenge the content of these documents during the proceedings. Since the parties had the opportunity to familiarize themselves with the content of these documentary evidences, were served with them, and did not challenge their contents, there was nothing to address during the hearing. Therefore, the appellate court is not bound by the factual state as determined by the court of first instance in its entirety.

90. Essential for the decision of the dispute was to prove the fact that the company E., s. r. o. acquired the land 1 and 2 at the auction organized within the bankruptcy of the bankruptcy of the bankrupt company A., s. r. o., as evidenced by the evidence - an extract from the Commercial Bulletin No. 135/2015 dated 16.07.2015, thereby acquiring the property, even if from the non-owner bankrupt. This fact was not disputed by the plaintiff in the proceedings in the light of the above, therefore it can be considered as undisputed within the meaning of Section 151(1) of the C. s. p.. Based on the established and settled facts corresponding to the law, the Court of Appeal, applying Section 93(3) of the C. s. p. , dismissed the plaintiff's claim for the determination of his ownership right to land parcels 1 and 2 in its entirety as unfounded. The Court of Appeal therefore also assessed the defendant's grounds of appeal

under Article 365(1)(f) of the Civil Dispute Procedure Code, i.e. that the court of first instance made erroneous findings of fact on the basis of the evidence adduced, and under Article 365(1)(h) of the Civil Dispute Procedure Code, i.e. that the decision of the court of first instance was based on an erroneous legal assessment of the case. In view of the above, the Court of Appeal does not consider it necessary and legally significant to deal with the arguments of the parties to the dispute concerning the process of confiscation and registration in the land register, the fulfilment of the conditions of possession, whether by the plaintiff or the defendant, or the passivity of the State in the process of the ZRPS or the ROEP. , as well as the possibility of acquiring immovable property only on the basis of the good faith of the acquirer in conflict with the property right of the previous (negligent) owner from whom the good faith acquirer did not acquire the property. In this regard, the Court of Appeal refers to the resolution of the Supreme Court of the Slovak Republic, Case No. 5 Cdo 218/2010 of 23 November 2010, which states, inter alia: 'The fact that the right to proper reasoning of a court decision is one of the fundamental principles of a fair trial clearly follows from the established case law of the ECtHR. Thus, the case-law of this Court does not require that every argument of a party, even those which are irrelevant to the decision, must be answered in the reasons for the decision. However, if it is an argument which is decisive for the decision, a specific reply to that very argument is required (Ruiz Torija v. Spain, 9 December 1994, Series A no. 303-A, p. 12, § 29; Hiro Balani v. Spain, 9 December 1994, Series A no. 303-B; Georgiadis v. Greece, 29 May 1997; Higgins v. France, 19 February 1998)."

91. For the sake of completeness (even if the court of first instance had not exceeded its authority regarding the ex officio taking of evidence), the appellate court adds that the extract of the company E., s.r.o. from the Commercial Register of the Slovak Republic does not indicate any personal connection between the company and the defendant. The plots 1 and 2, which were purchased by E., s.r.o. in the bankruptcy auction on July 13, 2015, were not immediately sold to the defendant. The transfer only occurred after E., s.r.o. initiated a request to Forests of the Slovak Republic (Lesy SR, state enterprise) for the handover of the plots for its use. In response, Lesy SR issued a negative reply on March 7, 2016, refusing to hand over the plots, as they considered the state to be the owner (document no. 11 in the file—evidence submitted by the plaintiff with the lawsuit). Therefore, the fact of whether E., s.r.o. knew or must have known that it was acquiring the plots from a non-owner is, in the appellate court’s opinion, debatable and not clearly proven. Such knowledge on the part of the defendant is irrelevant, as he was not the buyer of plots 1 and 2 in the bankruptcy proceedings.

92. Since the Court of Appeal changed the judgment of the court of first instance by dismissing the plaintiff's action in its entirety, it proceeded to annul the interim measure ordered after the commencement of the proceedings by the order of the court of first instance No. 4C/18/2018-186 of 08 January 2019 in conjunction with the confirmatory order of the Regional Court in Banská Bystrica No. 15Co/23/2019-253 of 20 February 2019, which entered into force on 22 March 2019 and which ordered the defendant to refrain from carrying out deliberate logging and from allowing third parties to carry out deliberate logging within the meaning of Section 22(2)(a) of Act No. 326/2005 Coll. on Forests on parcels 1 and 2 until the final decision of the court on the merits of the case. Although the Court of Appeal is aware that the interim measure would expire on expiry of the period for which it was ordered, i.e. on the final decision of the Court of Appeal, it could, in accordance with the strict wording of Article 335(2) of the C. s. p. , have revoked the interim measure already when dismissing the action.

93. The Court of Appeal also ruled without a motion pursuant to Section 396(1) of the C. s. p. in conjunction with Section 262(1) of the C. s. p. and Article 255(1) and (2) C. s. p. on the claim for reimbursement of the costs of the proceedings at first instance and on appeal, since it reversed the decision of the first instance (Article 396(2) C. s. p.). Since the defendant was fully successful in the proceedings as a whole, the court awarded him 100 % of the costs against the plaintiff. The Court of First Instance will decide on the amount and the recipient of the compensation for costs by a separate order after the judgment has become final, in particular recital III of the judgment on the entitlement to compensation for costs pursuant to Article 262(2) of the C. s. p. Accordingly, the Court of Appeal determined that the time-limit for the payment of compensation for costs pursuant to Article 232(2) of the C. s. p. would start from the final decision of the Court of First Instance on the amount of the compensation for costs.

94. This decision was adopted by the Chamber of the Court of Appeal by 3 votes to 0.

Notice:

An appeal is admissible against the decision of the Court of Appeal if the law so permits (Article 419 of the C. s. p.).

An appeal shall lie from any decision of the Court of Appeal on the merits or terminating the proceedings if
a) a decision has been taken on a matter which does not fall within the jurisdiction of the courts,
b) the one who acted as a party in the proceedings did not have procedural personality,
c) the party did not have full capacity to act independently before the court and was not represented by a legal representative or a procedural guardian,
d) the same matter has already been finally decided or proceedings have already been initiated in the same case,
e) a disqualified judge or an improperly seated court has ruled, or
f) the court has, by an irregular procedural procedure, prevented a party from exercising its procedural rights to such an extent that the right to a fair trial has been infringed (Art. 420 C. s. p.).

An appeal is admissible against a decision of the Court of Appeal upholding or reversing a decision of the court of first instance where the decision of the Court of Appeal depended on the resolution of a question of law,
a) the Court of Appeal departed from the established decision-making practice of the Court of Appeal,
b) which has not yet been resolved in the decision-making practice of the Court of Appeal or
c) is decided differently by the Court of Appeal (Art. 421(1) C. s. p.).

An appeal in the cases referred to in section 421(1) is not admissible where the Court of Appeal has decided on an appeal against an order under section 357(a) to (n) of the C. s. p. (section 421(2) of the C. s. p.).

An appeal pursuant to Article 421(1) of the C. s. p. is not admissible if
a) the contested judgment of the Court of Appeal on the financial compensation does not exceed ten times the minimum wage; no account shall be taken of the accessories,

b) the contested judgment of the Court of Appeal on monetary compensation in disputes involving the protection of the weaker party does not exceed twice the minimum wage; no account is to be taken of the accessories,
c) the subject-matter of the appeal proceedings is only the amount of the claim and the amount of the claim at the time of the commencement of the appeal proceedings does not exceed the amount referred to in points (a) and (b) (Article 422(1) of the C. s. p.); for the purpose of determining the amount of the minimum wage in the cases referred to in paragraph 1, the date on which the action was brought before the court of first instance is decisive (Article 422(2) of the C. s. p.).

An appeal against the grounds of the decision alone is not admissible (Article 423 C. S. P).

An appeal may be lodged by the party against whom the decision was rendered (Article 424 of the C. s. p.).

An appeal may be brought by an intervener if he and the party on whom he appeared formed an indissoluble partnership under section 77 (section 425 C. s. p.).

The public prosecutor may bring an appeal if the proceedings were initiated by his action or if he intervened in the proceedings (Article 426 of the C. s. p.).

The appeal shall be lodged within two months of the delivery of the decision of the appellate court to the person entitled before the court which ruled at first instance; if a rectification order has been made, the time limit shall run again from the delivery of the rectification order only to the extent of the correction made (Article 427(1) of the C. s. p.); the appeal shall also be filed in time if it has been lodged within the time limit before the competent appellate or appellate court (Article 427(2) of the C. s. p.).

In addition to the general particulars of the application (i.e. which court it is addressed to, who makes it, which matter it concerns, what it seeks to achieve and signature), the appeal shall state against which decision it is directed, the extent to which the decision is contested, the grounds on which the decision is considered to be incorrect (grounds of appeal) and what the appellant seeks to establish (grounds of appeal) (Art. 428 C. s. p.).

If the law does not require special particulars for the submission, the submission shall state (a) to which court it is addressed,
b) who makes it,
c) to which the matter relates,
d) what it is pursuing and
e) signature
(Article 127(1) C. s. p.).

If the application is made in a pending proceeding, the file number of that proceeding is also an element of the application (Article 127(2) of the C. s. p.).

The appellant may extend the extent to which the decision is challenged only until the expiry of the time-limit for lodging an appeal (Article 430 of the C. s. p.).

The grounds of appeal may be amended only until the expiry of the time-limit for lodging an appeal (Article 434 of the C. s. p.).

The parties to the dispute have the option of choosing a lawyer or applying to the Legal Aid Centre for legal aid (Article 160(2) of the C. s. p.). An plaintiff who is in danger of missing the deadline may, at the same time as his/her application, apply to the Centre for interim legal aid (Section 11(1) of Act No 327/2005 Coll.).

The appellant must be represented by a lawyer in the appeal proceedings; the appeal and other submissions of the appellant must be drawn up by a lawyer (Article 429(1) C. s. p); the obligation under paragraph 1 does not apply if the
a) the appellant is a natural person who has a second degree in law,
b) the plaintiff is a legal person and its employee or a member acting for it has a second-class university degree in law,
c) a claimant in disputes with the protection of the weaker party under Title Two of Part Three of this Act represented by a person founded or established for the protection of consumers, a person entitled to representation under the provisions on equal treatment and protection against discrimination or a trade union organisation, and if their employee or a member acting for them has a second-class university degree in law (Article 429(2) of the C. s. p).

If the conditions under § 429 C. s. p have not been met, or the appeal is defective pursuant to Section 429 of the C. s. p, despite the appellant having been duly informed of his obligation pursuant to Section 429 of the C. s. p in the appeal proceedings, or despite the request of the court of first instance addressed to the appellant to remedy the defects and the appellant having been informed of the consequences of failure to remedy the defects in the appeal, the Court of Appeal shall dismiss the appeal (Section 447(e) of the C. s. p in conjunction with Section 436(1) of the C. s. p).