The Court:	Regional Court Žilina
File mark:	10Co/116/2018
Court file identification number:	5712206969
Date of the decision:	28. 05. 2020
Name and surname of the judge, VSU:	JUDr. Amália Paulerová
ECLI:	ECLI:SK:KSZA:2020:5712206969.4

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

The Regional Court in Žilina, as the Court of Appeal, in the Chamber composed of the President of the Chamber, JUDr. Amálie Paulerová, and the members of the Chamber, JUDr. Róbert Urban and JUDr. Erik Varga, in the legal case of the plaintiffs - 1/ B. A. C., nee. J. F., born in. X.X.XXXX, permanently residing at C. XXXX, C. X, Belgium, nationality Austria, 2/ V. J. F., born. J. F., born. XX.X.X.XXXX, permanently residing at T. da B., B. da N., N. de E., XXXX-XXX A., Portugal, nationality Portugal, the plaintiffs, both legally represented by - Advokátska kancelária JUDr. Ľuboš Novák, s.r.o. with registered office at Námestie Martina Benku 10, 811 07 Bratislava, ID No: 36 861 197 against the defendant - Slovak Republic, represented by - LESY Slovenskej republiky, š.p. with registered office at Námestie SNP 8, Banská Bystrica 975 66, ID No.: 36 038 351, represented by legal -HMG LEGAL, s.r.o. with registered office at Červeňova 14, 811 03 Bratislava, ID No.: 35 885 459, on the basis of the appeal of the plaintiffs 1/, 2/, against the judgment of the District Court Martin No. 9C/98/2012-745 of 15 January 2018, as follows

d e c i d e d :

Sets aside the judgment of the Court of First Instance.

The defendant is entitled to 100% of the costs of the appeal proceedings in respect of plaintiffs 1/ and 2/.

r e a s o n i n g :

1. The court of first instance (hereinafter referred to as the "district court") in the second judgment dismissed the claim (statement I.), by which the plaintiffs, after admitting its amendment by the resolution of the District Court Martin at the hearing on 18.10.2017, requested to determine that the precisely specified real estate registered on the LV No. XX at the District Office Turčianske Teplice Cadastral Department for the municipality and the cadastral area. N., currently as parc. No. 1392 - forest land with an area of 1.119.417 m2, No. 1393 - other area with an area of 7.178 m2, No. 1394 - forest land with an area of 7.372 m2, No. 1395 - other area with an area of 1.304 m2, No. 1513 - forest land with an area of 3.121 m2, No. 1514/1 - built-up area with an area of 64 m2, No. 1514/2 - forest land with an area of 2.336 m2, No. 1 177 - forest land with an area of 1.273.101 m2, further land registered on the LV No. XX kept by the District Office Martin - Department of Cadastre, for the Municipality of k.ú. E., as parc. No. 1178 - forest land with an area of 14.735 m2, No. 1179 - forest land with an area of 6.384 m2, No. 1180 - forest land with an area of 646.000 m2, No. 1181 - forest land with an area of 12.000 m2, No. 1181 - forest land with an area of 12.000 m2, No. 1180 - forest land with an area of 646.000 m2, No. 1181 - forest land with an area of 12.000 m2, No.082 m2, No. 1182 - forest land with an area of 17.105 m2, No. 1251 - other land with an area of 1.044.386 m2, No. 1252 - forest land with an area of 905.895 m2, belong to the inheritance of the late B. J., nee. F.,

deceased XX.XX.XXXX in E., alternatively to establish that each of the plaintiffs is a co-owner in 1 share.

2. The subject-matter of the action is a dispute over the determination of the ownership right to immovable property located in the territory of the Slovak Republic and the parties to the proceedings are: the plaintiff in the 1st row - a citizen of Austrian nationality and the plaintiff in the 2nd row - a citizen of Portuguese nationality. Both States are members of the European Union and, consequently, the District Court, acting in accordance with Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Chapter II - Jurisdiction, Section 6 - Exclusive jurisdiction, Article 22) in the version in force at the time the action was brought, found that it had jurisdiction to hear the case. In assessing the action for a declaration of title, he relied on Article 5 of Act No 97/1963 Coll. on private international law and procedure and proceeded in accordance with the law in force in the territory of the Slovak Republic.

3. At the initial stage, he dealt with an objection in which the defendant reproached the plaintiffs for failing to submit with their application the identification of the parcels of land which they had identified as the subject-matter of the dispute in their statement of claim. In a subsequent response, the plaintiffs supplemented the identification of the parcels dated 19.11.2012 (no. 279 of the file) with a retrospective identification - the court refers to no. 621-641 of the file, the said documentary evidence constitutes a graphic representation of the back-identification of the individual parcels, while the maps graphically show the parcels and their overlap with the former parcels,- in view of this fact, the district court saw no reason to question the back-identification drawn up by an expert in the relevant field and concluded that the identification of the parcels of 19.11.2011 and 19.11.2011 of the parcels of land of the plaintiffs.11.2012, supplemented by the retrospective identification of the parcels as submitted by the plaintiffs, can also form the basis for the hearing of the amended application, which amendment it admitted at the hearing by order dated 18.10.2017. He noted that it is a qualitative amendment of the plaint by which the plaintiffs are seeking a composite plaint.

4. The claimants justified their urgent interest in the application for a declaratory judgment on the grounds that the inheritance of their mother A. H. J. F., nee. A. and their grandmother B. J., nee. F. and subsequently their ownership of the properties in question registered in the Land Registry. They also relied on the judgment of the Supreme Court of the Slovak Republic 3Cdo 154/2010, according to which in the proceedings on the action by which the heir seeks a determination that a certain thing belongs to the inheritance of the testator, it is a matter of assessing whether the testator was the owner of that thing at the time of death, the proposed determination relates to the moment of the death of the testator and the circumstances that occurred after that cannot affect the decision of the court.

5. The Court of First Instance felt bound by the legal opinion of the Regional Court in Žilina expressed in Decision No. 10Co/158/2016-577 of 29.11.2016 (note of the Court of Appeal: the above mentioned decision annulled the first judgment of the District Court issued in the dispute under No. 9 C/98/2012-501 of 14.12.2015 and the case was remanded for further proceedings and a new decision) on the existence of a compelling legal interest of the plaintiffs in the filed declaratory action, when the case law of the general courts has already established that if the defendant is registered as the owner in the land register (as is the case in the litigated case), the plaintiff has a compelling legal interest in the declaratory action, because the court's decision may also be the basis for making a change in the registration in the land register. In deciding on the action, it was also guided by the instruction of the Court of Appeal according to which the substantive assessment of the question of ownership by means of a substantive decision, the resolution of whether or not a determination action with a specific determination petition(s) is justified in the case at hand, also as a result of the fact that in the other, validly concluded proceedings pending to date, although related, but only preliminary, partial issues were dealt with.

6. The District Court held that the plaintiffs had established their active standing in the case, which they derived from the fact that they were the legal successors of the late Mr. B. J., nee. F., deceased. XX.XX.XXXX and no. H. J. F., b. A., d. X.X.X.XXXX, further from the claim that they are the legal

heirs of H. J. F., nee. A., who, according to the will, became the heir of B. J. F., including the land which is the subject-matter of this dispute. This was proved by the plaintiffs by means of the death certificate and the will of B. J. F., translated into Slovak (Case Nos 21 to 30), the death certificate of H. J. F., nee. A. (no. 31 to 39 of the file), their birth certificates (no. 46 to 53 of the file). The Slovak Republic is registered as the owner of the real estate which is the subject of these proceedings in the land register on the individual title deeds and the Slovak Republic as the administrator is Lesy SR, š.p. Pursuant to Section 73 of the CSP in conjunction with Section 50(6) of Act No. 326/2005 Coll. on forests in the version in force on the date of filing of the action, the passive factual legitimacy of the defendant - the Slovak Republic represented by the state enterprise Lesy SR is thus given.

7. As to the composite petition asserted by the plaintiff, the court classified it as contingent and non-alternative. In the Court's view, an alternative pleading may be pleaded only in an action for performance, i.e. where the claimant seeks payment of a sum of money or the performance of a non-monetary obligation. Under substantive law, it may be invoked only where there is a specific obligation which can be discharged in several ways and where the debtor or the defendant has the right to choose the performance. In actions for declaratory relief, as in the present case, an alternative cause of action is not an option, since the plaintiffs do not seek performance from the defendant but a declaration that the defendant's immovable property belongs to their grandmother's inheritance and, failing that, they seek a declaration that they are/are each one-half joint tenants in common.

8. In the factual definition of the action, the plaintiffs argued that they were the legal heirs in the direct line of descent from the deceased B. J., nee. F., who, on her mother's side, descends from the 'B.' family. Since 1540, when X. B. received Blatnica Castle from the King, this family was associated as the owner of extensive land and house properties, which, in addition to agricultural land and mainly forest property, included houses, farm buildings, gardens, parks, greenhouses, a library, antiques, paintings, pictures and the unique furnishings of the manor house in Mosovce and the castle in the municipality of B. B.. C. I. The entire property is registered in the land-registry entries in the name of the testatrix B. J., nee. F., as a resident of the Czechoslovak Republic, was, according to the plaintiffs, untouched until her death on XX.XX.XXXX. Her daughter-in-law, A. H., became the heir, the successor owner. J. F., nee. A., a Norwegian national, the plaintiffs' mother, since, under the law in force in Slovakia at the time of the death of the original owner, on the death of the testator the heir immediately (even without registration in the land register) entered into his rights and obligations, unless the testator expressly excluded it. By a resolution of the Presidium of the Slovak National Council dated 9 October 1945 under No. 11343/1945, the agricultural property B. J., nee. F. was confiscated pursuant to Section 1(1)(b) of Regulation No. 104/1945 Coll. of the Slovak National Council of 23 August 1945 on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation. The confiscation notice of 12 January 1946 issued by the Commissariat for Agriculture and Land Reform under the number 21424/1945-I/B was to be B. J., nee. F. was notified that her property in k.ú. N. and L. E. was to be confiscated in accordance with the abovementioned order with immediate effect and without compensation for the purposes of the land reform, with the confiscated property being located in the land registry of the district of N. and L. E., with the following provisions. Nos 33,1011,2,584, 585 pkn. vl. (No 112). The plaintiffs considered that they had proved by documentary evidence - the death certificate - that at the time of the entry into force of Regulation No. 104/1945 Coll. SNR, which was in force as of 1 March 1945 and at the time of the decision of the Presidium of the SNR on 9 October 1945 and the issuance of the notification of the Commissariat for Agriculture and Land Reform on 12 January 1946, the testatrix B. J., nee. F. was dead, the decision of the Presidency of the National Council of the Slovak Republic dated 9.10.1945 and the notification of the Commissariat for Agriculture and Land Reform dated 12.1.1946 were not B. J., nee. F., or her legal successors were never notified. Due to the confiscation of the property of B. J., nee. F. could not, nor was the inheritance from her ever discussed and the plaintiffs' mother, H. J. F., nee. A. has never been registered as the owner of the immovable property of B. J., nee. F. located in the cadastre. These claims were substantiated by the plaintiffs by means of an extract from the land register entries, a notification of the administration of the working group for land reform in Turčianske St. Martin dated 4 October 1950 (no. 113), which shows that H. F. F.'s name was not registered in the register of the property of the family of the plaintiff. J. F., nee. A. is not listed as the owner in the land register, and

neither in the collection of deeds at the Survivor's Department of that court and the District Court in Turčianske Teplice was the continuation of the estate, i.e. neither the estate of H. F. F. nor the estate of H. F. F. F. registered as the owner in the land register. J. F., b. A. could not be handed over.

9. The Court dealt with a preliminary ruling on a number of factual issues relating to the determination of the merits of the case:

a.) considered the 'first issue in dispute' to be whether the title to the properties in question was evidenced at the time of the death of Mrs B. J., nee. F. in her favour. The defendant referred to Land Register No 1, registered office no. N., where under B2 there is a note of encroachment and under B4 an inventory pursuant to Government Decree No 146/1939 (no. 173), these entries being made at the same time on the PKV No 2, land registry no. L.E. under B2 and B4 the requisition notes and under B7 the inventory made pursuant to Government Decree No 146/1939 (No 156). Government Decree No. 146/1939 is an inventory of agricultural real estate owned by foreign nationals, which included forestry real estate in the term agricultural real estate. In the defendant's view, those facts refute the plaintiffs' allegations that the State did not have possession of that property even before Mrs B's death. J., nee. F.. In its submissions of 9 May 2014 and 12 September 2017, the defendant referred to Act No 215/1919 Coll. and n. on the seizure of large land property (hereinafter referred to as the "Seizure Act"), which introduced the term "seizure", which, as a new terminus technicus of the land law system, means the act of taking over land by the State; the equivalent of this term is expropriation. In connection with that argument, the defendant referred to the citation of Articles 1, 5 and 16 of Act No 215/1991 Coll., and Article 9 of Act No 329/1920 Coll. on the taking over and compensation for land seized (the 'Compensation Act'). On the basis of the above-mentioned legislation (and the provisions referred to therein), the defendant was of the opinion that the right of ownership of the property in question was transferred to its legal predecessor, the Czechoslovak Republic, on the basis of the seizure of that land, which took place with the entry into force of the Land Seizure Act, i.e. even before the death of B. J., nee. F., the plaintiffs' predecessor in title, for which reason the disputed immovable property could not have been included in the inheritance from her and could not have become the plaintiffs' property by multiple inheritance.
On the disputed issue before it, the district court agreed with the plaintiffs' legal argument that the mere issuance of the impoundment law did not immediately enter the State into the property rights and obligations of the owner of the real property, as the property in question required an allotment of the property. In the present case, it has not been established that the property in question was the subject of an appropriation and, for that reason, the Czechoslovak Republic ('the State') did not become the owner of the seized property. In the opinion of the district court, the plaintiffs' legal argumentation was also supported by the case-law of the courts referred to by them, namely the conclusions of the judgment of the Supreme Court of the Slovak Republic, Case No 3Cdo/12/2010, and the finding of the Constitutional Court of the Slovak Republic, IV Constitutional Court No 294/2012. Finally, in order to prove their claims, the plaintiffs also submitted in the proceedings a resolution of the People's Court in Turčianske Teplice dated 25.8.1959 (at no. 332) on the basis of which the Czechoslovak State's ownership right to the land which is the subject of the present proceedings was transferred, but not as a result of the Zábora Law, the Replacement Law or the note of the intended transfer. Moreover, on the land book insertion No. 2 of the land registry no. L.E., under B5, it is noted that the State Land Office has requested the deletion of the noted taking. Both the encroachment notes and the inventory under Government Decree No. 146/1939 show that the estate of the testatrix B. J., nee. F. was affected by the State interference, since it was not possible for the testatrix to dispose of the property during the periods indicated by these entries in the relevant land registers. However, it has not been established that the plaintiffs' predecessor in title was deprived of her right of ownership. In the totality of all the circumstances found, the Court concludes that B. (B.) J., nee. F. was the owner of the property in question at the date of her death.

b.) Another "disputed issue" which the court addressed was whether the decision of the Presidium of the National Council of the Slovak Republic of 9 October 1945 No. 11343 of 1945 issued against Mrs. J., nee. F. (hereinafter referred to as "Decision No. 1"), the confiscation of the properties in question, i.e. the transfer of the ownership right to them to the State, or whether the confiscation of the properties in question took place on the basis of the decision of the Confiscation Commission in Turčianske St. Martin

of 5 April 1948, No. 223/222/48, issued against Mrs. H. J. F. nee. A. (hereinafter referred to as 'Decision No 2').
From the documentary evidence produced by the plaintiffs, he found that the Land and Land Reform Board in Bratislava on 12 January 1946 under No. 21425/1945-I/B issued a notification that the Presidency of the National Council of the Slovak Republic at its meeting on 9 October 1945 under No. 11343 decided on the confiscation of the agricultural property of J. B., nee J. B., nee J. B., nee J. B. F. in the cadastral area of N. and L. E., under Nos 33, 1011, 2, 584, 585 pkn. vl. 104/1945 Coll. no. 104/1945 Coll. n., pursuant to paragraph 1/b of § 1 of the Slovak National Council Regulation of 23 August 1945. SNR with immediate effect and without compensation for land reform purposes. The plaintiffs also submitted documents of the proposals of the Land and Land Reform Commission in Bratislava addressed to the District Court in Turčianske Sväté Martin, by which the Commission requested that the land register of the cat. territory of N. in inserts 1 and 2, cat. area N., be amended by the following documents L. E. in insert 2, vl. 585, 584, on the real estate registered for B. J., gen. F., confiscated by the aforementioned decision of the Presidium of the National Council of the Slovak Republic, to make a confiscation marking in accordance with Regulation No. 104/1945 Coll. n. No 64/1946 Coll. n., as amended by Regulation No 64/1946 Coll. n., as amended by Regulation No 64/1946 Coll. n. SNR for the purposes of land reform (nos. 336, 338). At the same time, the plaintiffs also submitted documents showing that the People's Court in Turčianske Teplice, by resolution of 25 August 1959, authorised the land register of the cat. No. 1, 2 of the entry of the property right for the Czechoslovak State, inserted the deletion of the note of confiscation pursuant to Regulation No. 104/1945 Coll. n. 64/1946 Coll. n. SNR (no. 332 to 334).
From the content of other documents (at No. 12, 327), the court found that the Confiscation Commission in Turčianske Sväté Martin on 6.4.1948 No. 223/222/48 decided that H. J. F.., nee. A., b. XX.X.X.XXXX as an unknown inhabitant must be regarded as a Hungarian pursuant to § 1 (1) (b) of Regulation No. 104/1945 Coll. n. No. 64/1946 Coll. n., as amended by Article I of Regulation No. 64/1946 Coll. n. SNR and Regulation No. 89/1947 Coll. n. SNR. Consequently, the agricultural property within the scope of Article 2 of Regulation No 104/1945 Coll. SNR belonging by right of ownership to H. J. F., nee. A. is confiscated as of 1 March 1945, irrespective of which cadastral area or municipality in the whole of Slovakia this property is located in.
The District Court refers to the result of the court proceedings before the District Court Bratislava I under file no. 9C/18/2002 (referred to it for the reason of appropriateness from District Court Martin on the basis of the decision of the Supreme Administrative Court of the Slovak Republic) to determine the ineffectiveness of the administrative acts and decisions referred to by the identical plaintiffs in the current dispute, namely the decision of the Presidium of the National Council of the Slovak Republic on the confiscation of the property of the B. J., nee. F. issued on 9.10.1945 under the number 21425/1945-I/B (decision No. I), the confiscation decision issued by the Confiscation Commission in Turčianske Sväté Martin on 5.4.1948 under the number 223/222/48 (decision No. 2) on the property of H. J. F., nee. A. as a Hungarian pursuant to Article 1(1)(b) of Regulation No. 104/1945 Coll. of the National Council of the Slovak Republic, both of these decisions (No. 1 and No. 2) are part of the plaintiffs' factual argumentation in the present case. The identical plaintiffs in proceedings under Case No 9C/18/2002 also sought a declaration that the State's ownership of the estate of the deceased B. J. F. had never been validly acquired on the basis of confiscation decisions. The court dismissed their claim for lack of a compelling legal interest in the requested determination and in the second instance decision of the Regional Court of Bratislava under Case No. 5Co/100/2005, on page 5, last paragraph (reference of the District Court to Case No. 270 of File No. 9C/18/2002) it was explicitly stated: 'The valid case-law of the Supreme Court of the Slovak Republic has resolved the issue of both the complexity of administrative acts and the question of when general courts are entitled to review administrative acts outside the scope of the administrative justice system. Null and void are those decisions which have been issued by such administrative authorities, which the particular administrative authority was not absolutely empowered to issue, and which are viewed as if they had never been issued, the so-called pacts. It is only such decisions which the ordinary courts are empowered to review outside the framework of the administrative justice system. It can therefore review administrative acts only in principle with regard to whether they are null and void, that is to say, whether they are so seriously defective that the presumption of their correctness does not apply. In the case of others, the presumption of correctness applies'.

The District Court refers to another proceeding held at the District Court Lučenec file no. 7C/100/2003 with identical plaintiffs, in which the Regional Court in Banská Bystrica in the judgment of 28.6.2006 (on page 4, paragraph 2) again adopted the opinion that a decision of the confiscation commission issued against a person who was already deceased at the time of its issuance or against a person who had not validly acquired an inheritance, or that the decision of the confiscation commission was not duly served on the person to whom the confiscation decision relates,- do not result in nullity, nullity of the confiscation decision, even if it is an illegal act. Consequently, it was again stated that only so-called null and void decisions which have been issued by administrative authorities which the particular administrative authority was not absolutely empowered to issue and which are viewed as if they had never been issued (so-called pacts) are reviewable by the General Court outside the framework of the administrative justice system. The contents of the further attached file 5C/7/2001 demonstrate that the identical plaintiffs sought by the present action to establish that the right of inheritance in respect of the property confiscated in breach of the law at the time of the confiscation decision was vested in B. J. F. and H. J. F., nee. A. Confiscation Commission in Lucenec is preserved and subsisting for the plaintiffs. Their application for a declaration to that effect was also dismissed with the substantive conclusion that the plaintiffs had the legal possibility of asserting their ownership of the immovable property in the proceedings before the administrative authority, which they did, but were not successful in doing so. It is possible to remedy or mitigate the consequences of certain property injustices committed against the owners of agricultural forestry property in the period 1948-1989 within the limits of the provisions of Act No 229/1991 Coll., as amended. However, in so far as the plaintiffs do not satisfy the legal conditions for the status of a person entitled under Article 4(1) of Law No 229/91 Coll., as amended, that deficiency cannot be remedied by a judgment of the court in civil proceedings. According to the content of the annexed files, the plaintiffs had the possibility, in the event of the alleged injustice, to seek redress in the context of restitution proceedings, provided that the conditions for redress were fulfilled. The restitution proceedings were opened for natural persons up to two times, which means that the plaintiffs had an objective opportunity to prove their allegations before the competent authorities in accordance with the restitution rules, if the conditions were met. However, as can be seen from the attached files, the proceedings were dismissed on the ground of the extinction of the right of ownership by reason of preclusion.

10. The Court discusses the outcome of the previously finalised proceedings in the immediate context of the preliminary assessment of the correctness of Decision No 1, Decision No 2, pointing out that the courts have already considered the decisions in question in the past in other proceedings (discussed in the preceding paragraphs) and have all come to the conclusion that both those decisions do not suffer from such defects that they can be regarded as null and void and must therefore be taken into account as correct decisions. Both Decision No 1 and Decision No 2 were issued on the basis of SNR Regulation No 104/1945 Sb. on the confiscation and accelerated distribution of the land and property of Germans, Hungarians and traitors and enemies of the Slovak nation, the effects of which, i.e. the confiscation of real estate, came into effect ex lege with the Regulation's entry into force on 1 March 1945, without the need to issue further decisions. In the district court's view, if the properties in question had belonged to Mrs B. J., nee. F., there is no doubt that, as a result of the Regulation in question, the ownership of the properties in question was lawfully transferred to the Czechoslovak State, while their confiscation was merely declared by the aforementioned Decision No 1 and Decision No 2, and any formal defects in those decisions cannot result in the retention of ownership by the plaintiffs' predecessors in title. The effects of the Regulation in question took effect in an original manner from its entry into force and not from the moment of service of the decisions, as presented by the plaintiffs. Finally, in the present case, the district court found it established that the defendant's predecessor in title, the Czechoslovak State, had acquired ownership of the subject-matter of the dispute by confiscation pursuant to Regulation No 104/1945 Coll. of the Slovak National Council.

11. According to Decisions No. 1 and No. 2, the confiscation of the property occurred on the ground that the plaintiffs' legal predecessors, their grandmother, their mother - B. J. F. and H. J. F., nee. A. pursuant to Art. § 1(1)(b) as persons of Hungarian nationality who did not have Czechoslovak nationality. Both the death certificate and the will of B. J. F., it is established that she was a person of Hungarian nationality and did not have Czechoslovak nationality. In the case of the plaintiffs' mother, H. J. F., nee. A., it has not been established that she was not of Hungarian nationality, the death certificate produced

by the plaintiffs merely states that she was born in Norway and died in Portugal, and the plaintiffs have not proved to the Court that she was of Norwegian nationality. The District Court also found their affidavits (reference to the Court's reference to file nos. 138, 139) to be contradictory, since plaintiff 1/ stated in them that she had not resided in Czechoslovakia since 1 January 1946 together with her mother and brother, and plaintiff 2/ stated that it had been since his birth, i.e. since 18 August 1946, and the plaintiffs did not offer the Court any other evidence to prove their allegations.

12. The District Court emphasises that confiscation under Regulation No 104/1945 Coll. was ex lege and ex tunc at the same time, which is also given by the wording of Article 1(1) of the Regulation (".....with immediate effect and without compensation".....is confiscated) with effect from 1 March 1945. However, if the conditions for confiscation were fulfilled, confiscation occurred ipso iure, irrespective of the existence of decisions declaring that those conditions had been fulfilled. Confiscation entails the absolute extinction of the ownership of the previous owner and, at the same time, a new original acquisition of ownership by the new owner, in this case the State. It follows from the principles inherent in the nature of confiscation that its legal effects take effect at the moment of its legal binding force, that is to say, on the date of the entry into force of Regulation No 104/1945 Coll. of the National Council of the Slovak Republic (Article 27).

13. In the dispute, the defendant bore the burden of proof and proved by a number of direct and indirect evidence that the disputed properties were confiscated in accordance with the Regulation of the National Council of the Slovak Republic No. 104/1945 Coll. The Court adds that, in the case of the plaintiffs' application for a declaration of ownership almost 70 years after the public confiscation procedures were carried out, the defendant - or its predecessor in title - was considered to be the owner of the properties in question from 1945 onwards on the basis of the confiscation pursuant to Regulation No 104/1945 Coll, - both the legal certainty of persons and the necessary authority of the State require that a decision of an administrative authority, or a hitherto effective legal provision forming part of the Slovak legal order, on the basis of which a person (including the State) has acquired or been deprived of ownership of property, is an unquestionable legal fact having future effects. If the confiscation of property (its process, effects, legality) is challenged (contested) in a declaratory judgment action, the burden of proof is on the party challenging the confiscation to prove that the confiscation did not take place. The passage of time is thus a material fact to be given effect.

14. The Court also referred to the fact that the plaintiffs were not granted the restitution claim due to the failure to fulfil the legal conditions, including the failure to prove the condition of the status of a beneficiary under Section 4(1) of Act No 229/1991 Coll. and the extinction of the right to restitution of the right of ownership due to preclusion. As a result, the plaintiffs' success in the present litigation would lead to a significant erosion of the principle of legal certainty in legal relations relating to immovable property.

15. In the totality of all the context and considerations cited, the district court dismissed the plaintiffs' action in its entirety, holding that the plaintiffs had failed to prove that their predecessors in title had retained title, had failed to prove the nullity of Decision No. 1 and Decision No. 2, either in the present or similar proceedings, and, insofar as the fact alleged by the plaintiffs had not been proved beyond any reasonable doubt, had not carried either the burden of pleading or the burden of proving it.

16. Pursuant to section 255(1) of the Civil Procedure Code ("C.P.C."), the District Court awarded the defendant, who was fully successful in the litigation, the costs of the proceedings against the unsuccessful claimants 1/, 2/. It added that it would decide on the amount of the costs after the decision on the merits had become final.

17. The plaintiffs appealed against the judgment within the statutory period. They seek to change the judgment and, as part of this, request the claim to be upheld and to determine the properties/lands: plot of land register C-KN no. 1392 - forest land with an area of 1,119,417 m², C-KN no. 1393 - other area with an area of 7,178 m², plot of land register C-KN no. 1394 - forest land with an area of 7,372 m², C-KN no. 1395 - other area with an area of 1,304 m², plot of land register C-KN no. 1513 - forest land with an area of 3,121 m², C-KN no. 1514/1 - built-up area with an area of 64 m², C-KN no. 1514/2

- forest land with an area of 2,336 m², all recorded on LV no. XX in the Administration of the Cadastral Office of Turčianske Teplice for the municipality and cadastral area of N., further plot of land register C-KN no. 1177 - forest land with an area of 1,273,101 m², C-KN no. 1178 - forest land with an area of 14,735 m², plot of land register C-KN no. 1179 - forest land with an area of 6,384 m², C-KN no. 1182 - forest land with an area of 17,105 m², C-KN no. 1251 - other area with an area of 1,044,386 m², plot of land register C-KN no. 1252 - forest land with an area of 905,895 m², all recorded on LV no. XX at the Administration of the Cadastral Office of Martin, municipality and cadastral area of E., as inheritance from B. (B.) J., née F., who died on XX.XX.XXXX in E., or to determine that each of them is a 1/ share co-owner.

18. According to the plaintiffs, the Court of First Instance made erroneous findings of fact on the basis of the evidence adduced and erred in law.

19. Initially, they stated that the district court was concerned with the question whether there was a violation of the decision of the Presidium of the SNR dated 9.10.1945 No. 11343 issued against B. J., nee. F. ('Decision 1'), the confiscation of the immovable property at issue, i.e. whether the transfer of ownership of the immovable property to the defendant had taken place, or, alternatively, whether the confiscation had taken place on the basis of the decision of the Confiscation Commission in Turčianske sv. Martin of 5 April 1948 No 223/222/48 issued against H. J. F., nee. A. (hereinafter referred to as 'Decision 2'), the confiscation of the immovable property in question took place. Referring to the court proceedings brought by the District Court of Lučenec under case No 7C/100/2003, by the District Court of Bratislava I under case No 9C/18/2002 and by the District Court of Lučenec under case No 9C/18/2002, the plaintiff claims that the Court should not be held liable for the loss of the property of the plaintiff. 7C/100/2003, the court considered the nullity of Decision 1 and Decision 2 to have been resolved, however, in the appellants' opinion, in none of the above proceedings did the courts deal with the nullity of Decision 1 and Decision 2, they did not assess the claims in terms of substantive law but dismissed them for lack of a compelling legal interest in the requested determination, for which reason any opinions of the courts regarding the nullity of Decision 1 and Decision 2 cannot be considered relevant and correct for the purposes of the present dispute, but on the contrary, they are arbitrary.

20. The plaintiffs argue that Decision 1 was issued on 9 October 1945, i.e. after the death of B. J. F., who died on XX.XX.XXXX. Decision 1 was thus issued against a person who did not have the capacity to have rights and obligations, that is to say, the decision suffers from a defect which renders the administrative act null and void.

21. The plaintiffs quote from the conclusions of the judgment of the Supreme Court of the Slovak Republic of 31.5.2016 Case No. 1 SZa/11/2016: 'If the administrative authority has issued a decision which it has addressed to a person who does not exist in the legal sense, i.e. who does not have the capacity to have rights and obligations, this decision suffers from a defect. Such a defect - an absolute mistake as to the person of the addressee - renders the administrative act null and void according to the legal theory and practice of the general courts." They also quote from the decision of the Supreme Court of the Slovak Republic 3Cdo 21/2000 in the following wording: "If the confiscation decision was addressed to the legal predecessor of the entitled person, who was no longer alive at that time, and not to the legal successor - the heir, it must be rightly inferred from this fact that the confiscation decree must be viewed as if it had never been issued."

22. According to the appellants, based on the established case law of the Supreme Court, it must be concluded that an administrative decision issued against a deceased person, who therefore lacks legal personality, is null and void and constitutes a so-called paakt (a legally non-existent act). Such an administrative decision cannot be subject to the presumption of correctness, and the general court is entitled to review and assess the legal consequences of null and void administrative acts (paakty). However, the District Court failed to address this objection in the contested decision and did not express any position on it.

23. They criticise the District Court for incorrectly assessing Decision 1 and Decision 2 in the context of SNR Regulation No 104/1945 Sb. on the confiscation and expeditious distribution of the agricultural

property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation ('the Confiscation Regulation'). In the plaintiffs' view, the District Court's finding that the Confiscation Regulation takes effect ex lege, with the Confiscation Regulation coming into force, i.e. without the need for any further decisions, is incorrect. The Confiscation Order constitutes the basis for the confiscation decision and does not in itself cause the transfer of ownership. It is necessary that the confiscation order should also be lawfully decided. The appellants derive the fact in question from the fact that the Confiscation Ordinance contains the same construction of confiscation, Presidential Decree No 12 and No 108/1945 Coll., with the result that the same conclusions must be drawn in assessing the moment of the transfer of ownership to the State as those set out in the articles submitted by Milan Kindl and Prof. Viktor Knapp published in the journal Právní rozhledy (Legal Proceedings). In this connection, they also refer to the judgment of the Supreme Court of the Slovak Republic, Case No 5 Cdo/110/2000, according to which 'the provisions of the Administrative Code (Government Regulation No 8/1928 Coll.) also applied to confiscation proceedings.

24. They further refer to the opinion of the Supreme Administrative Court of the Czech Republic, according to which "the mere requisition of immovable property pursuant to Act No 215/1919 does not result in its legal transfer (acquisition title) in favour of the State."

25. The plaintiffs add that under the law in force and in force at the time of B. J.F., on the death of the testator, the heir immediately entered into the rights and obligations of the deceased, unless the testator had expressly excluded it. In other words, on the death of B. J. F. on XX.XX.XXXX, title to the disputed immovable property passed to the testamentary heir A. H. J. F., nee. A., i.e. to their mother. This fact was not taken into account by the court in the judgment under appeal, nor did it take any legal position on it.

26. At the time Decision 1 was issued and the Confiscation Order was in force, the disputed properties were in the exclusive ownership of A. H. J. F., nee. A., meaning that Decision 1 issued against another person could not apply against her person.

27. In the case of Decision No. 2, the Confiscation Order cannot apply to A. H. J. F., née A., also because it has been proven beyond doubt that their mother was not of Hungarian nationality but of Norwegian nationality. The appellants point out that the defendant neither denied nor disputed in any way the evidence and factual claims regarding A. H. J. F.'s Norwegian nationality. Referring to the citation of § 1(1)(a), (b), (c), (d), and (e) of the Confiscation Order, the appellants argue that only the property of persons specifically listed in this provision could be subject to confiscation. A. H. J. F., née A., does not fall within this category, and therefore, Decision No. 2 could not have been issued against her, and the Confiscation Order cannot apply to her. The Confiscation Order clearly establishes that the essential requirement for confiscation is the nationality [ethnicity] of the person, not their citizenship. Since A. H. J. F., née A., was born to Norwegian parents, she acquired Norwegian nationality at birth, and this nationality remains unchanged throughout a person's lifetime. Therefore, A. H. J. F., née A., cannot be considered a person of Hungarian or German nationality, not even within the limits of § 1(5) of the Confiscation Order.

28. The argument that A. H. J. F., nee. A. was not of Hungarian nationality is a so-called negative fact, which is not proven in the evidence before the court in accordance with the established court practice and the case law of the Supreme Court of the Slovak Republic (the appellants refer to the judgment of the Supreme Court of the Slovak Republic of 28 March 2012, Case No. 6 MCdo/17/2010), while the defendant did not prove in any way throughout the proceedings that A. H. F. was a Hungarian national and that A. H. F. was a Hungarian national. J. F., nee. A. of a nationality allowing her to be the subject of confiscation (the plaintiffs also refer to documentary evidence - a letter of the District National Committee of Turčiansky sv. Martin dated 16.3.1948). In the evidence in question forming part of the court file or the attached court proceedings, it is explicitly stated that A. H. J. F., nee. A. "was therefore never a person of German or Hungarian nationality". This is documentary evidence which is unequivocal, unquestionable and establishes that A. H. J. F., nee. A. could not have been a subject of Decision 1 or the Confiscation Order.

29. They are of the opinion that the administrative act - Decision 2 - was issued in flagrant contravention of the statutory provisions, cannot enjoy legal protection and cannot benefit from the presumption of correctness. Lastly, the Court of First Instance did not deal in any way with the question of the competence of the administrative authority to issue Decision 2 in a situation where the same immovable property had been confiscated in another proceeding against B. J.F. and that decision had not been annulled at the time Decision 2 was issued.

30. The confiscation order did not apply to A. H. J. F., nee. A. and, in direct connection with that, the confiscation commission in Turčianske St. Martin did not even have the power to issue Decision 2 against that person, which renders the administrative act - Decision 2 - null and void and must be regarded as an act. On the legal level, they refer to the jurisprudence of the Supreme Court of the Slovak Republic, namely to the legal opinion expressed in the judgment of the Supreme Court of the Slovak Republic, Case No. 2Sžo/31/2011 of 18 April 2012, stating that the lack of competence is such a serious defect in the proceedings that leads to the annulment of such a decision and to the declaration that it is a null and void decision (paakt). The nullity of an act is in itself a ground for its annulment by the court, irrespective of whether the action contested that fact or sought annulment of the decision on other grounds. A null and void act is an administrative act issued by an administrative authority which has absolutely no substantive (functional) competence and from which no legal consequences arise.

31. The appellants point out that the properties at issue have been the subject of litigation for more than 20 years, and that, in view of the previous state establishment in the territory of the Slovak Republic - a totalitarian regime denying fundamental human rights ... - they have not been able to exercise their property rights in respect of them for more than 40 years, their rights have been undermined for more than 70 years, violated by unlawful State action, and therefore the period of time since the date of confiscation of the properties at issue is irrelevant.

32. The plaintiffs submit that they have sufficiently established the nullity of Decision 1 and Decision 2 and that the defendant has not been able to disprove beyond reasonable doubt the grounds demonstrating the nullity of those decisions.

33. Lastly, they also complain that the reasons given for the decision are inadequate, since the court did not deal with all the issues raised by them in the decision, thereby infringing their right to a fair trial.

34. The defendant, in its written statement of appeal, seeks confirmation of the judgment on the grounds that it is substantively correct and claims costs against the plaintiffs.

35. The Court finds absolutely unfounded the argumentation in which the plaintiffs reproach (and also object to) the District Court for taking into account, when assessing the nullity of Decision 1 and Decision 2, the conclusions pronounced already in the court proceedings before the District Court Bratislava I under Case No 9C/18/2002, before the District Court Lučenec under Case No 7C/100/2003 and before the District Court Lučenec under Case No 5C/7/2001.

36. The legal conclusions on the presumption of correctness pronounced in the court proceedings before the District Court Bratislava I under Case No 9C/18/2002 were directly related not only to similar, but even identical decisions as in the present case, namely Decision 1 and Decision 2. The defendant repeatedly refers to the wording of the conclusions of the Regional Court in Banská Bystrica in the judgment No. 15Co/109/2006-181 of 28 June 2006, which confirmed the rejection of the plaintiffs' claim by the District Court in Lučenec under case No. 7C/100/2003: "The fact that the decision of the confiscation commission was issued against a person who at the time of its issuance was already deceased or against a person who had not validly acquired the inheritance, or even the fact that the decision of the confiscation commission was not duly served procedurally on the person to whom the confiscation decision relates, does not result in nullity, nullity of the confiscation decision, even if it is an illegal act. The defendant notes that the cited legal opinion adopted by the Regional Court in Banská Bystrica was confirmed by the Supreme Court of the Slovak Republic in its judgment under Case No. 2Cdo/24/2007 of 29 April 2008. The plaintiffs' claims that the legal conclusions pronounced by the courts in the above-mentioned proceedings are inapplicable to the present case on the ground that the actions

were dismissed in those proceedings for lack of a compelling legal interest are not supported by any legal provision or by settled case-law. Although the actions in the aforementioned previous proceedings were dismissed for lack of an overriding legal interest, the courts did, however, express in the reasons for their decisions a legal opinion on the correctness/validity of Decision 1 and Decision 2, which is not prohibited by any legal provision, on the contrary, it only reinforces the correctness and quality of those decisions, and therefore the plaintiffs' argumentation according to which the application of any conclusions reached in the aforementioned proceedings must be regarded as incorrect must be considered, in the defendant's view, both arbitrary and purposive. Moreover, it is also absurd that the plaintiffs object to the taking into account of the conclusions of law adopted in the aforementioned court proceedings, when the court files in the present proceedings were annexed precisely at their/the plaintiffs' initiative (submission of 3.11.2014).

37. On pages 14, 15 and 16 of the decision, the District Court, following the court proceedings before the Bratislava I District Court under Case No 9C/18/2002, before the Lučenec District Court under Case No 7C/100/2003 and before the Lučenec District Court under Case No 5C/7/2001, duly, properly and in detail explained why it is necessary to proceed from the presumption of correctness in respect of Decisions 1 and 2, that they do not suffer from such legal defects as to be characterised as null and void legal acts. It concluded, in accordance with the settled legal opinion of the highest judicial authorities, that only a court in the context of administrative justice could determine that a decision of an administrative authority was contrary to law and, consequently, annul it, whereas a court in the context of civil litigation is not entitled to review the correctness or legality of legal acts.

38. The defendant noted that Decision 2 would be a null and void legal act provided that it was issued by an administrative authority which was not absolutely empowered to issue that administrative act, i.e. another authority such as the Confiscation Commission in Turčianske St. Martin, which, according to the Confiscation Ordinance, had the power to issue a confiscation decision. In the reasons for judgment, the District Court dealt adequately and sufficiently with the plaintiffs' arguments and evidence on the contested issue of the nullity of Decisions 1 and 2, which has been considered in other proceedings in which other courts of different instances have reached the same legal conclusion as the District Court in the present case, namely that Decisions 1 and 2 do not suffer from such legal defects as to be regarded as null and void legal acts, and that a presumption of correctness therefore applies to them.

39. The plaintiffs submitted on appeal that the Confiscation Order does not in itself cause the transfer of ownership to the State. In this connection, they referred to the judgment of the Supreme Court of the Slovak Republic under Case No 5Cdo/110/2000 ('Judgment 2') and the judgment of the Supreme Administrative Court of the Czech Republic under Case No: Rc 3468/35 ('Judgment 3'), but in the defendant's view those judgments in no way confirm the plaintiffs' argument that the confiscation of the disputed immovable property did not take place ex lege with the entry into force of the Confiscation Order, i.e. on 1 March 1945. Furthermore, it is not clear to the defendant on what basis the plaintiffs are arguing in support of a decision which does not concern at all the moment of the transfer of ownership to the State pursuant to the Confiscation Order, but relates to Law No 215/2019. In the defendant's view, the plaintiffs' objection to the assessment of the effects of the transfer of ownership to the State is completely unfounded; the Court of First Instance correctly assessed the confiscation of the disputed immovable property in the present case and made the correct findings of fact on the basis of the evidence adduced.

40. The application of the negative evidence theory is not absolute under the settled view of legal scholarship. In some cases a party may fairly be required to prove a negative. This is the case where the non-existence of a fact can be proved in some other way, e.g. by the existence of a fact which excludes it. He/the defendant cannot fairly be required to prove that A. H. J. F., nee. A. was of Hungarian nationality, especially when Decision 2, as an administrative act, is entitled to a presumption of correctness. On the contrary, it was the plaintiffs' burden of proof in the present proceedings that A. H. J. F., nee. A. was not of German or Hungarian nationality within the meaning of the Confiscation Ordinance. Even if the plaintiffs had established that fact, it is irrelevant to the resolution of the present dispute, since the court hearing the present case does not have jurisdiction

to assess the correctness of Decision 2. The plaintiffs have not established in the dispute that A. H. J. F., nee. A. was of Norwegian nationality and they purposely present a negative evidentiary theory in the appeal in order to shift the burden of proof onto him/the defendant.

41. In their written response to the defendant's previous statement, the plaintiffs fully adhered to their previous arguments and claims, and assessed the views presented by the defendant in its written statement of appeal as completely unfounded.

42. In their view, the court cannot dogmatically base its assessment of the nullity of administrative acts solely on the findings of other courts and it is necessary for the court to assess those administrative acts independently. For that reason, the courts' views on the presumption of correctness of Decision 1 and Decision 2 adopted in other proceedings in relation to Decision 1 and Decision 2 relevant to the present dispute cannot be regarded as relevant and correct. The failure to consider the new evidence and reasoning in relation to the contested administrative acts has precisely the effect of arbitrariness, unreviewability, infringement of their right to a fair trial and, directly, an error of law in the assessment of the whole case. It is necessary to assess Decision 1 and Decision 2 also in the light of the new case-law and judicial practice, quoting from the conclusions of the judgment of the Supreme Court of the Slovak Republic, Case No. 1SZa/11/2016 of 31 May 2016, and from the judgment of the Supreme Court of the Slovak Republic, Case No. 3 Cdo/21/2000 (in the wording identical to that in the appeal).

43. According to the plaintiffs/appellants, the administrative authority – the confiscation commission in Turčianske sv. Martin – lacked the authority to issue Decision 2 against a subject who did not meet the legal requirements to be subject to confiscation. This lack of authority directly renders the administrative act null and void. On this issue, they cite identical conclusions from the judgment of the Supreme Court of the Slovak Republic, Case No. 2Sžo/31/2011, dated April 18, 2012, as in their appeal.

44. Throughout the proceedings, they argued that A. H. J. F., nee. A. was of Norwegian nationality, rationally inferring that fact from the fact that she had been born to Norwegian parents and had acquired Norwegian nationality by birth. This is unchanging throughout the lifetime of any person, and therefore A. cannot be regarded as a national of the same nationality. H. J. F., nee. A. as a person of Hungarian or German nationality. Although they do not possess contemporary documents or other documents proving the Norwegian nationality of A. H. J. F., nee. A., but the defendant has not adduced any evidence to dispute her nationality; consequently, a negative evidentiary theory is required in the case of the assessment of the nationality of A. H. J. F., nee. A. and to consider her to be of Norwegian nationality. Lastly, her Norwegian nationality has been proved by such evidence, the need for which is indicated by the defendant in the judgment of the Supreme Court of the Czech Republic in Case No 22 Cdo/3108/2010.

45. Plaintiffs add that they have stated a colorable claim in their complaint, have sustained the burden of proof in the litigation, and seek reversal of the district court's judgment on appeal.

46. The defendant, in its rejoinder to the plaintiffs' reply, seeks confirmation of the judgment on the merits and an award of costs against the plaintiffs. In particular, it emphasises that the legal conclusions regarding the presumption of correctness of Decision 1 and Decision 2 expressed in the judgment of the Regional Court in Banská Bystrica No 15Co/109/2006-181 of 28.6.2006, which upheld the dismissal of the plaintiffs' action in the proceedings before the Regional Court in Lučenec under case No 15Co/109/2006-181 of 28.6.2006, are not correct. 7C/100/2003 and to which he/the defendant also referred in his/her statement of appeal, - were confirmed by the Supreme Court of the Slovak Republic in its judgment under case no. 2Cdo/24/2007 of 29.4.2008, where it was stated that "Administrative acts may be reviewed only with regard to whether they are null acts, i.e. such defects which are so serious that the presumption of their correctness does not apply. In the case of others, the presumption of correctness applies. The fact that the decision of the confiscation commission was issued to a person who was no longer living at the time it was issued does not render the confiscation decision null and void. The District Court, as a general court, is therefore

not entitled to examine the facts alleged by the petitioners'. Given that the judgment of the Supreme Court referred to above concerned the assessment of the nullity of Decision 1 and Decision 2, which are the subject-matter of the present dispute, the aforementioned legal opinion of the Supreme Court, in accordance with the principle of legal certainty, clearly and comprehensibly set out the direction in which the nullity of Decision 1 and Decision 2 should be, and ultimately was, assessed in the present dispute, i.e. that Decision 1 and Decision 2 are entitled to a presumption of correctness.

47. The plaintiffs' objection that the confiscation commission in Turčianske St. Martin did not have the power to issue Decision 2 against A. H. J. F., nee. A. and is therefore a null and void legal act, is not supported by any evidence, nor is that conclusion of the plaintiffs supported by any legal provision, since, pursuant to Article 1(7) of the Confiscation Ordinance, the Confiscation Commission in Turčianske St. Martin had the power to issue Decision 2. The plaintiffs, as in their reply, reiterate the previously alleged and unsubstantiated facts which the Court of First Instance dealt with adequately and sufficiently in the grounds of its judgment and concluded that they do not suffer from such legal defects as to be capable of being characterised as null and void legal acts and that, therefore, a presumption of correctness applies to them.

48. The defendant in the next part of the statement of defence quotes the wording of the provision of Article 205 of the Civil Procedure Code, according to which 'documents issued by public authorities within the limits of their competence, as well as documents which are declared public by a special regulation, confirm the truth of what is attested or confirmed in them, unless the contrary is proved.' According to the defendant, it is clear from this provision that the burden of proving that A. H. J. F., nee. A. was not of German or Hungarian nationality is placed solely on the plaintiffs, who challenge the authenticity of Decision 2 as a public document by alleging that the plaintiff was of Norwegian nationality. Lastly, in order to resolve the dispute, the question of the alleged Norwegian nationality of A. H. J. F., nee. A. is irrelevant, since the Court has no jurisdiction in the present dispute to assess the correctness of Decision 2. Lastly, the Court of First Instance correctly and sufficiently assessed the factual allegations and the evidence concerning the alleged lack of Hungarian nationality of A. H. J. F., nee. A..

49. The Regional Court in Žilina, as a court of appeal (§ 34 of the Civil Procedure Code, hereinafter referred to as "CSP"), having ascertained that the appeal had been filed by the parties entitled to do so, within the statutory time limit, against the judgment against which the appeal is admissible, bound by the scope and grounds of the appeal, without ordering an appeal hearing, by a procedural procedure pursuant to § 378(1) in conjunction with § 219(3) of the CSP, upheld the judgement of the District Court pursuant to § 387(1) of the CSP.

50. Part of the content of the fundamental right to a fair trial under Article 46 of the Constitution of the Slovak Republic and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms is also the right of a party to the proceedings to the reasons for the court decision, which clearly and comprehensibly provides answers to all legal and factually relevant questions related to the subject matter of the judicial protection, i.e. according to the opinion of the Constitutional Court of the Slovak Republic, the general court does not have to give an answer to all the questions raised by the party to the proceedings, but only to those which are of substantial importance for the case, or which sufficiently clarify the factual and legal basis of the decision. The reasoning of the general court's decision, which briefly and clearly explains the factual and legal basis of the decision, is sufficient to conclude that the fundamental right of a party to a fair trial is fully realised in this respect (see also the decision of the Constitutional Court IV.ÚS 115/03).

51. In the reasons for its decision, the district court sufficiently substantiated the facts on which the plaintiffs based their claim for the establishment of the ownership right to the precisely specified land, currently registered on the title deed as a parcel of the CKN register in the cadastre of real estate to the defendant. In the decision, he referred to the evidence which he had taken and from which he had made relevant findings of fact. In the grounds of the decision, it answered the decisive

questions (factual and legal) which led it to reject the action, identified the relevant legal provisions under which it was guided in its legal assessment of the case and also took into account the decisions of the courts (which it also referred to and quoted from) which were directly relevant to the conclusion of the dispute in the present case. In the Court of Appeal's view, the written reasoning of the district court's decision not only formally but also substantively guarantees the right of the parties to a fair trial and complies with the criteria adopted by the Constitutional Court of the Slovak Republic on the question of the reasoning of decisions of general courts.

52. It is not disputed that the plaintiffs have a compelling interest in the declaratory relief action, that they have standing in rem and that the defendant has passive standing. The plaintiffs are the grandchildren of the testatrix - Mrs. J. and children of Mrs. A. H. J. F., née A., testamentary heiress (according to the testatrix's will of 20.3.1944) and the subject-matter of the dispute - defined in the petition of the action specifically as the land parc. reg. C currently registered on the individual title deeds to the defendant in the land register are identical to the land which in the land register - as parc. pkn in the land register entries were registered in the name of the testatrix B./B. J. at the date of her death. Lastly, the conclusion of the district court from the evidence taken that, although, according to the entry in the land register, the subject-matter of the deceased's ownership was affected by the State's intervention - on the basis of the so-called 'Land Grabbing Act' - but that ownership did not pass to the State by virtue of that title, since the subject-matter of the land grabbing had not been allocated to any other entity, the process of the 'land grabbing' had not been completed in law, remained undisputed.

53. The content of the file clearly shows that: “By the Resolution of the Presidium of the Slovak National Council (SNR) dated October 9, 1945, No. 11343, the agricultural property of B. J., née F., was confiscated under Section 1, Paragraph 1, Letter b) of Regulation No. 104/1945 Sb. SNR of August 23, 1945, on the confiscation and expedited distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation” (referred to by the court as Decision No. 1). The Commissioner of the Department of Agriculture and Land Reform in Bratislava, on January 12, 1946, under No. 21425/1945-I/B, issued a “Notification” – regarding the matter (subject) of J. B., née F., in the cadastral area N. and L. E. – “confiscation of property” – notifying: District National Committee in Turč. Sv. Martin, National Committee in Mosovce, Turč. Blatnica, the Tax Office in Turč. Sv. Martin, the Cadastral Measurement Office in Turč. Sv. Martin, the Working Group for Land Reform in Turč. Sv. Martin, PPPR, Trade Union of the Ministry of the Environment, Trade Union of the Ministry of the Environment, Trade Union of the Ministry of the Environment. III/B in Bratislava, PPPR odb. IV/B in Bratislava, PPPR odb. V/B in Bratislava, the Central Directorate of State Forests in Bratislava, the Administration of Estates for Pos. Reform in Bratislava, - that 'the Presidium of the Slovak National Council at its meeting on 9 October 1945 decided on the proposal of the Land and Land Reform Directorate submitted in agreement with the Interior Directorate that the confiscation pursuant to paragraph l/b of § 1 of the Slovak National Council Regulation of 23 August 1945 No. 104/1945 Coll. n. SNR with immediate effect and without compensation for the purposes of the land reform, the land property of J. B., née J. B., with immediate effect and without compensation for the purposes of the land reform. F.. The confiscated property is located in the cadastral territory of the municipalities of N. and Turč. E. in pkn. vl. no. 33,1011,2,584,585.

54. The plaintiffs challenge the confiscation of the property (its process, effects, legality) of their predecessor in title - B. J., nee. F., and by the action brought - in its first petition - they seek to designate the specified land (currently parcel reg. C) as her inheritance, claiming that at the date of her death their grandmother was the owner of the land, since the order, resolution, notice of confiscation of the property are legally ineffective in relation to her, since they are directed against a person who was no longer alive at the time they were issued.

55. Regulation of the National Council of the Slovak Republic No. 104/1945 Coll. SNR of 23.8.1945 was one of the legal regulations of 1945, which after the war dealt with the property conditions of persons of German, Hungarian nationality and persons considered traitors, enemies of the Slovak nation and regulated the issue of loss of ownership by confiscation of property. The Regional Court

agrees with the District Court that confiscation under Slovak National Council Regulation No 104/1945 Coll. occurred ex lege and at the same time ex tunc, which is determined by the wording of its provision - § 1(1). If the conditions for confiscation were fulfilled, confiscation occurred ipso iure. Confiscation entails the absolute extinction of the ownership of the previous owner and, at the same time, a new original acquisition of ownership by the new owner (in the present case, the State). The legal effects of confiscation take effect at the moment of legal binding, that is to say, on the date of the entry into force of Regulation No 104/1945 Coll. of the Council of Ministers (§ 27).

56. Pursuant to Article 1(1)(b) of Slovak National Council Regulation No. 104/1945 Coll. on the confiscation and expeditious distribution of the landed property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation (in accordance with the above-mentioned provision of the legislation, the confiscation of property was also carried out in relation to the plaintiffs' legal predecessor - Mrs. J. nee. F.) - 'with immediate effect and without compensation, for the purposes of the land reform, land and agricultural property in the territory of Slovakia owned by persons of Hungarian nationality who did not have Czechoslovak nationality on 1.11.1938 shall be confiscated. The decision as to which persons were to be regarded as persons of Hungarian nationality within the meaning of Article 1(1)(b) of the Regulation was taken by the 'Presidium of the Slovak National Council on a proposal from the Slovak National Council for Land and Land Reform, submitted in agreement with the Slovak National Council for Internal Affairs. Neither in the facts of the action nor in the appeal did the plaintiffs allege that their predecessor in title, R. J. did not satisfy the 'nationality principle' of confiscation as defined in Article 1(4) of the Regulation. Moreover, the death certificate, the will of B. J. F. (the documents submitted by the plaintiffs for the purposes of the proceedings), it was established beyond dispute that she was a person of Hungarian nationality and did not have Czechoslovak nationality. According to Article 1(7) of the Regulation, by decision of the Presidium of the Slovak National Council pursuant to paragraph 6, the property of such a person shall be deemed to have been confiscated pursuant to paragraph 1 on the date on which the Regulation comes into force. No complaint to the Supreme Administrative Court shall be admissible against this decision.

57. In view of the legal significance of the cited provisions of the Regulation (in the preceding paragraph), the Court of Appeal finds it legally irrelevant whether the delivery of the resolution of the Presidium of the Slovak National Council of 9 October 1945 (referred to by the District Court as Decision No. 1) to the plaintiffs' predecessors in title was/was not carried out, since the "resolution in question" was not of a constitutive nature but of a declaratory nature, i.e., in relation to Mrs. B. J.F., it declared that the conditions for confiscation (in respect of the property in question) laid down in Regulation No 104/1945 Coll. had been fulfilled - that is to say, that the conditions of the law had been fulfilled. The confiscation of property under specifically defined conditions was provided for by a legal provision, the law itself. In this regard, the Court of Appeal also refers to the legal conclusion of the Constitutional Court of the Slovak Republic in its ruling I ÚS 379/2018 of 29 March 2017, in which, inter alia, on a similar substantive issue (the legal effects even of confiscation decisions) it was stated that " the legal title of the transfer of ownership by confiscation was not a legal act, but the decree itself " , similarly, the legal opinion is also presented by the Supreme Court of the Slovak Republic in its decision No. 4 M Cdo 12/2014 of 29 September 2015. In the opinion of the Court of Appeal, the appellants' objection to the non-delivery of the "Notification" of the Commission for Agricultural and Land Reform dated 9.10.1945 is also without legal significance, because, based on its content, the said Notification does not have the character of a "decision" of an administrative authority, it has the character of a mere administrative note, by which they were notified of the confiscation of the property of (the person concerned - R. J.F.) to the competent authorities of the State at that time, which, within the framework of their competence (and their official activities as defined by law), were to carry out the necessary official procedures.

58. In the totality of the circumstances, the Court of Appeal concluded that, as a result of the confiscation of the property which forms the subject-matter of the present dispute, the legal predecessor of the plaintiffs, B. J. F.) lost title to them, for which reason the land specified in the application cannot be designated as her inheritance.

59. The plaintiffs/appellants further alleged that the death of B. J. F. on XX.XX.XXXX, the ownership right to the subject matter of the dispute passed to the testamentary heir - A. H. J. F., i.e. their mother, and at the time of the validity of the confiscation order the land was already in her sole possession - on that basis, as her successors in title (the children), they seek a declaration of ownership in the proportion of 1. The Court of Appeal could not accept this argument of the plaintiffs either.

60. It is undisputed from the evidence that the testatrix B. J. F. had appointed her daughter-in-law A. H. J. F. (the plaintiffs' mother) as her testamentary heir. Under the law on succession in force until 1950, an heir acquires his succession by operation of law on the death of the testator without any further contribution on his part. The principle of the acquisition of the inheritance at the time of the death of the testator is that acts occurring at a later date - e.g. agreement as to succession, refusal of inheritance - always have retroactive effects (ex tunc), i.e. retroactive to the date of the death of the testator. The legislation in force at the time also allowed for succession by testamentary succession. However, if the heir wanted to acquire the inheritance, he had to apply for it in court and the court by its verdict ordered the estate (see - p. 559 Outline of private law in force in Slovakia... Authors. Dr. Vladimír Fajnor and Dr. Adolf Záturecký - 3rd edition of the original work). In the present case, it is clear that there was no process of transfer of the " estate (the specific property of the testatrix) to the testatrix " by the court's bequest of the estate. However, it must be stressed that, in relation to the testatrix R. J.F., the legal effects of confiscation by operation of law have arisen through the loss of ownership - of the subject-matter of the dispute.

61. The appellants, by contesting the legal effect of the Confiscation Commission's decision in Turčianske Sväté Martin dated April 5, 1948, No. 223/222/48 (referred to by the court as Decision No. 2), issued against their mother, H. J. F., née A., challenge the legal consequences of the confiscation under the Regulation. They argue that the decision could not apply to their mother because she was neither of Hungarian nor German nationality, but rather Norwegian nationality. They claimed that the decision was issued unlawfully and that the presumption of correctness should not apply to it. The Court of Appeal emphasizes that in a previous civil court proceeding involving the same plaintiffs, the courts had already preliminarily ruled on the legal effects/nullity of "confiscation decisions". The first-instance court correctly pointed out that, in a civil dispute, a general court is not authorized to review the substantive correctness of an individual administrative act. This principle applies to the present case as well. The appellants referred to the legal conclusion of the Supreme Court of the Slovak Republic expressed in the judgment 2Sžo/31/2011 dated April 18, 2012 to support their argument. However, based on that decision, it is not possible to declare the confiscation decision (Decision No. 2) null and void in this case, nor to consider it a paakt (a legally non-existent act). The referenced Supreme Court ruling was issued in administrative judicial proceedings concerning the review of a specific individual act of an administrative authority, confirming that such a review can only be conducted in accordance with the principles and rules of administrative judicial proceedings. Moreover, in the present case, Decision No. 2, issued against Mrs. A. H. J. F., was issued by a competent authority with the jurisdiction to make such a decision. The Court of Appeal refers to the legal reasoning of the Supreme Court of the Slovak Republic, acting as the court of cassation, in judgment No. 2 Cdo 24/2007 dated April 29, 2008, which reviewed an appeal by the same plaintiffs in a different court proceeding. In that case, the Supreme Court evaluated the alleged invalidity of confiscation decisions, such as the confiscation decision issued by the Confiscation Commission in Lučenec on March 16, 1948, against Mrs. A. H. J. F.. The Supreme Court stated that "null and void" decisions are those issued by administrative authorities that had absolutely no jurisdiction to issue them and that such acts are considered as if they were never issued—so-called paakty (legally non-existent acts). Only such decisions can a general court review outside the framework of administrative justice. A general court may review administrative acts only to determine whether they are null and void, meaning whether they suffer from defects so serious that the presumption of their correctness does not apply. Additionally, the Supreme Court noted that the fact that the decision of the Confiscation Commission was issued against a person who was already deceased at the time does not result in the nullity (absolute invalidity) of the confiscation decision. From this conclusion, it follows that in this civil legal proceeding, the substantive correctness of the confiscation decision cannot be reviewed.

62. Plaintiffs have not carried their burden of proof on their claim that they are descended from their mother, Mrs. A. H. J. F.the owners (1 each) of the specified land.

63. In the totality of the circumstances, the Court of Appeal could not uphold the plaintiffs' appeal.

64. In the related order on costs, the District Court correctly based its decision on the principle of success/success of the parties in the litigation and its decision in this part is supported by the procedural law of Section 255(1) of the C.C.P.

65. Pursuant to section 396(1) of the Civil Procedure Code, read in conjunction with section 255(1) of the Civil Procedure Code, the Court of Appeal awarded the defendant (the unsuccessful party in the dispute) the costs of this appeal against the unsuccessful plaintiffs. It adds that the amount of the costs of this appeal will also be decided by the District Court in accordance with the procedure laid down in Article 262(2) of the Civil Procedure Code.

66. This decision of the Court of Appeal was adopted by a 3-0 vote of the Senate.

Instruction:

This judgment is appealable on the grounds set out in Article 420 of the Civil Procedure Code.

In addition to the general particulars of the application referred to in Article 127(1) of the CCP (to which court it is addressed, who makes it, which matter it concerns, what it seeks to achieve and signing), the appeal shall state against which decision it is directed, to what extent the decision is contested, on what grounds the decision is considered to be incorrect (grounds of appeal), and what the appellant seeks to have appealed against (the appeal application) (Article 428 of the CCP).

An appeal admissible under section 420 of the Civil Procedure Code may be based only on the fact that one of the above-mentioned defects occurred in the proceedings. The ground of appeal shall be defined by the appellant stating the grounds on which that defect is based.

The appeal shall be lodged within 2 months of the delivery of the decision of the Court of Appeal 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 date of service of the order to the extent of the rectification made (Article 427(1) of the C.C.P.).

An appeal is also timely if it is filed with the competent court of appeal or appellate court (Article 427(2) of the CCP).

Pursuant to Section 429(1) of the C.C.P., the appellant must be represented by a lawyer. The appeal and other submissions of the appellant must be drawn up by a lawyer. The obligation under Article 429(1) C.C.P. does not apply in the cases defined in Article 429(2) C.C.P.