The Court:	Regional Court Nitra
File mark:	9Co/51/2019
Court file identification number:	4618201098
Date of the decision:	12. 03. 2020
Name and surname of the judge, Higher Court Office:	Mgr. Andrea Szombathová-Poláková
ECLI:	ECLI:SK:KSNR:2020:4618201098.1

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

The Regional Court in Nitra in the panel composed of the President of the Senate Mgr. Andrea Szombathová-Poláková and members of the Senate Mgr. Ingrid Radošická Vallová and JUDr. Katarína Marčeková, in proceedings brought by the : Regional Prosecutor in Nitra, with registered office at the Regional Prosecutor's Office in Nitra, Damborského 1, with the participation of the intervener on the 's side: Slovak Land Fund, with registered office in Bratislava, Búdková 36, ID No: 17 335 345 against the defendant: E. L. A., born in Bratislava, with registered office in Bratislava, Búdková 36, ID No: 17 335 345 XX. XX. XXXX, residing at K. Z., G. no. XXX/X, i.e. L. for the execution of detention and L. for the execution of imprisonment, O., D. 5, represented by JUDr. Ing. Mikuláš Práznovszky, CSc., attorney at law, with registered office in Nové Zámky, Bočná 26, on the defendant's appeal against the judgment of the District Court of Topoľčany of 12 November 2018, No. 5C/20/2018-170, as follows

r u l e d :

The Court of Appeal upholds the contested judgment of the court of first instance.

The plaintiff and the intervener on the plaintiff's side are granted the right to reimbursement of the full costs of the appeal proceedings in relation to the defendant.

r e a s o n i n g :

1. By the judgment under appeal, the court of first instance ruled that the Slovak Republic is the exclusive owner of the immovable property registered in the cadastre of the Topoľčany District Office, Cadastral Department, on the ownership certificate No. XXXX for the cad. O., municipality O., district Topoľčany as :
-Parcel reg. "C" number with an area of m2 Type of land
2527/19 654 Arable land
-Parcels reg. "E" number with an area of m2 Type of land
2643/1 1874 Arable land
2643/2 1172 Arable land
2661 6880 Arable land
2723/1 223 Permanent grassland
2723/2 230 Permanent grassland
2725/1 326 Permanent grassland
2725/2 2134 Permanent grassland
2732/1 1537 Permanent grassland
2732/2 2078 Permanent grassland
2733 3010 Forest land
2734 1421 Forest land
2735 4805 Arable land

2736/1 1014 Permanent grassland
2736/2 4733 Permanent grassland
2739/1 1014 Permanent grassland
2739/2 903 Permanent grassland

2741 12337 Permanent grassland
2742 9071 Arable land
2743 3816 Forest land
2744 518 Other areas
2745 9959 Arable land
2748 1723 Permanent grassland
2836 1219 Permanent grassland
2895 1482 Permanent grassland
2896/1 2669 Permanent grassland
2896/2 49 Permanent grassland

In the second verdict, the court determined that the administrator of these lands is the Slovak Land Fund, with its registered office at Búdková 36, 817 15 Bratislava, ID No.: 17 335 345. It decided on the costs of the proceedings by not awarding the parties to the dispute the right to compensation for the costs of the proceedings. The decision was legally justified by the provisions of Article 93(1)(b), Article 137(c), Article 123, Article 126(1), Article 132(1) of the Civil Code, Article 1(1), (6), (7) of Regulation No 104/1945 Coll. of the National Council of the Slovak Republic, Article 34(3) of the Civil Code, Article 1(1), (6), (7) of the Act No 104/1945 Coll. 330/1991 Coll., § 1(1), § 17(1) of Act No. 330/1991 Coll., § 1(1), § 17(1) of Act No. 330/1991 Coll. 229/1991 Coll. on the regulation of ownership relations to land and other agricultural property, as amended. It stated that by the claim filed with the court on 20 April 2018, the claimant sought a determination that the Slovak Republic, administered by the SPF, is the exclusive owner of the immovable property registered on LV No. XXXX cad. O., which are specified in more detail in the operative part of the judgment, in their entirety on behalf of the defendant. On 13 June 2005, the defendant, intending to acquire the ownership right to the immovable property located in the cadastral territory of O., declared in the notarial deed No N 66/2005 of JUDr. Ján Bošek that he had acquired the entirety of the land immovable property in the cadastral territory of O. by virtue of the title of retention of possession. O., No 225, parc. no. 2527/6 - arable land with an area of 60,334 m2, parc. no. 2527/19 - arable land with an area of 654 m2, parc. no. 2661 - permanent grassland with an area of 6,880 m2, parc. no. 2643 - permanent grassland with an area of 3,046 m2, parc. no. 2723 - permanent grassland with an area of 453 m2, parc. no. No. 2725 - permanent grassland with an area of 2.460 m2, parc. no. 2732, permanent grassland with an area of 3.615 m2, parc. no. 2733 - forest land with an area of 3.010 m2, parc. no. 2734 - forest land with an area of 1.421 m2, parc. no. 2735 - arable land with an area of 4.805 m2, parc. no. 2734 - forest land with an area of 1.421 m2, parc. no. 2735 - arable land with an area of 4.805 m2, parc. no. 2736 - permanent grassland with an area of 5.747 m2, parc. no. 2739 - permanent grassland with an area of 1.917 m2, parc. no. 2741 - permanent grassland with an area of 12.337 m2, parc. no. 2742 - arable land with an area of 9.071 m2, parc. no. 2743 - forest land with an area of 3.816 m2, parc. no. 2744 - other area with an area of 518 m2, parc. no. 2743 - forest land with an area of 3.816 m2, parc. No. 2745 - arable land with an area of 9.959 m2, parc. no. 2748 - permanent grassland with an area of 1.723 m2, parc. no. 2836 - permanent grassland with an area of 1.219 m2, parc. no. 2895 permanent grassland with an area of 1.482 m2, parc. no. 2896 - permanent grassland with an area of 2.718 m2. On the basis of the notarial deed of JUDr. Ján Bošek dated 13. 06. 2015 sp. zn. N66/2005, NZ 26732/2005 The Cadastral Administration Topoľčany registered the ownership right in the said land to the ownership certificate No. XXXX - kat. úz. O. in cadastral procedure No. Z1972/05-155/05. At present, the parcels of register "E" No. 2643, 2723, 2725, 2736, 2739, 2896, which are under the ownership sheet No. XXXX - kat. úz. O. on subdivisions 1 and 2, are identical to the parcels "E" cited in notarial deed No. N 66/2005 Z 1972/05. This fact is evident from the statement of the Cadastral Department of the District Office Topoľčany dated 13.04.2018 No. 1439/2018. When processing the graphical part of the register of the renewed land registration in the cat. 180/1995 Coll., their division was carried out because the boundary of the original properties was divided by a linear construction (Methodological Instruction No. 74.20.73.47.00 § 13 letter c). Plot No 2527/6 arable land included in the notarial deed is no longer in the defendant's ownership. By the judgment of the District Court in Nitra file

no. 1T/23/2010-1380 of 27.12.2011 in conjunction with the judgment of the Regional Court in Nitra file no. 3To/42/2012-1447 of 06.11.2012, which became final on 06.11.2012, the defendant was found guilty of committing a particularly serious crime of fraud under section 221 paragraph 1, paragraph 4 letter a) of the Criminal Code. It follows from these facts that the defendant could not legally acquire the ownership right to the indicated land in the cad. O. as he was legally convicted for the declaration of the retention of title in the notarial deed and by this act he committed a particularly serious crime. The defendant violated the provisions of a generally binding legal regulation and committed a criminal offence with the intention of obtaining ownership of immovable property situated in the cad. O., he never held the land properly and should not have been registered as the owner of the properties in question. His ownership right is excluded. The prosecutor is, in accordance with § 93 para. 1 letter b) of the Civil Dispute Procedure Code (CSP), actively entitled to file this lawsuit. The plaintiff sought a court ruling to establish ownership rights to the specified properties in the cadastral area of O. in favor of the Slovak Republic. The land registry file No. 225 in the cadastral area of O. indicates that the properties were the property of Dr. B. A. The plaintiff asserted that the property of Count A. was confiscated and that, based on the confiscation, it passed into state ownership. The confiscation applied to all his property throughout the Slovak Republic, regardless of whether it was recorded in the land registry. The confiscation occurred ex lege in accordance with the Decree of the Slovak National Council No. 104/1945 Coll. on the confiscation and expedited distribution of agricultural property belonging to Germans, Hungarians, as well as traitors and enemies of the Slovak nation, as amended by Decree No. 64/1946. The date of acquisition of the State's right of ownership is, in accordance with Article 1(10) of Decree No 104/1945 Sb., 01.03.1945. According to this fact is apparent from the documents submitted by him, referred to in the application and annexed to the application. It may be noted that a confiscation order was issued in respect of all of Dr B.A.'s property and that all of his property was included in the list of confiscated property, while it is apparent from Resolution No 11987/45 of the Presidium of the Slovak National Council that Dr B.A. was regarded as a person of Hungarian nationality (ethnicity) pursuant to Article 1(1)(b) of Regulation No 104/1945 Sb. For this reason, his property is deemed to have been confiscated as of 1 March 1945, that is to say, irrespective of which cadastral area or municipality in the whole of Slovakia it is located in. The State became the owner of the property at the moment of confiscation. It follows from the foregoing that the owner of the immovable property in cadastral area O. forming the subject of this dispute is the state - the Slovak Republic, while to act before the court in this case for the state is authorized Slovak Land Fund, and also the rights of the owner, which are defined in the provisions of § 123 of the Civil Code is authorized to exercise for the state Slovak Land Fund. The court found that the defendant real estate, registered on LV No. XXXX for the cad. O. on the basis of the Certificate of Declaration of Possession of Ownership by Notarial Minute N66/2005, NZ26732/2005, NCRIs 26383/2005, drawn up by the notary JUDr. Ján Bošek, which certified the defendant's declaration of possession of the ownership right by virtue of possession, the defendant has acquired ownership of the property. On the basis of this certificate, the defendant was registered as the owner of the disputed immovable property under LV No. XXXX of the cadastral territory of O., municipality of O., district Topoľčany, part B. At present, with regard to the parcels of the register "E" No. 2643, 2723, 2725, 2736, 2739, 2896, which are subdivided in the LV No. XXXX of the cad. O., are identical to the 'E' parcels cited in the notarial deed, whereas parcel no. 2527/6 - arable land included in the notarial deed is no longer in the possession of the defendant. By the judgment of the District Court of Nitra, Case No. 1T/23/2010-1380, the defendant E. L. A. was found guilty of the continuing particularly serious crime of fraud under Section 221(1), (4)(a) of the Criminal Code. Pursuant to Section 287(1) of the Criminal Procedure Code, the court ordered the defendant to pay the Slovak Republic the damage caused to the victim in the amount of EUR 10,290.11. It is clear from the judgment that the possession of the immovable property (and of the defendant's immovable property in the present proceedings) was effected by the defendant's fraudulent conduct. The court considered that the evidence adduced by the plaintiff established that the defendant had never properly retained the plots in question and therefore should not have been registered as the owner of the property. From the foregoing, the court was satisfied that the defendant could not lawfully acquire title to the said properties, since he had been convicted of a misdemeanour for declaring a retention of title and had committed a particularly serious offence by that act. The defendant's title deed was obtained in breach of the provisions of Article 134 of the Civil Code and the defendant was also convicted of that offence. The Court further examined the reason for the transfer of ownership of the disputed immovable property to the Slovak Republic. The argued that the archival documents submitted showed that the property of Count Dr B.A. had been confiscated and had passed

into the ownership of the State by virtue of the confiscation. The confiscation applied to all his property, throughout the entire territory of the Republic, irrespective of whether that property was noted in the land and book insertions. The Court found, through the evidence taken, that a document had been found in the archives, namely Resolution No 11987/45 of the Presidium of the Slovak National Council, which had decided, on the proposal of the Credentials Committee of the Slovak National Council for Agriculture and Land Reform, that, pursuant to Article 1(1)(a) of the Constitution of the Slovak National Council, the confiscation of the land of the Slovak Republic would not be allowed. 1(a), (b) and (d) of SNR Decree No 4/1945 Coll. of 27 February 1945, all land and agricultural property belonging to Dr. B. A. shall be confiscated with immediate effect and without compensation for the purposes of land reform, the widow of A. Z., nee. A. and H. Z. situated in the cadastral territory of the municipalities of Z., X., V. and W. in the district of Z., O. in the district of V., E., E. S. and V. in the district of G. Q., and in the land-book insertions of these communes in the names of the aforementioned, booked or unbooked, situated at that time under temporary national administration. On 09.02.1946, all the relevant authorities such as the district national committees, tax offices, etc. were notified in writing of the confiscation of these land assets. The fact that the confiscation of Dr A.'s property concerned all his property is evidenced by another document, a statement by the Head of the Office of the Presidency of the National Council of the Slovak Republic dated 07.06.1946, announcing that by a resolution of the Presidency of the National Council of the Slovak Republic dated 18.02.1946 all of Dr B. A.'s agricultural property situated in the territory of the Slovak Republic had been confiscated. In Slovakia the confiscation was carried out in accordance with the regulations of the Slovak National Council and the local and district national committees were responsible for their implementation. Thus, it was up to the local officials to decide whom they would designate as an enemy and whose property would be forfeited to the State. According to SNR Decree No. 4/1945 Coll. on the confiscation and accelerated distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation of 27 February 1945, all property confiscated in the countryside belonged to the Slovak Land Fund, which, on the proposals of the local and district peasant commissions, distributed it to the new allottees. This regulation referred to the land reform and the land was to be distributed to the small peasants. Forest areas over 50 ha were taken over by the State Forests. In the field, work related to confiscation (inventories, commissions, minutes) was carried out by working groups of the Land and Land Reform Commission as the main appellate instance in problematic matters. Agricultural property was further characterised by Decree No 104/1945 Coll. on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation of 23 August 1945. The defendant's counsel contested the validity of Slovak National Council Regulation No 104/1945 Coll., also arguing that there was no decision according to which Dr B.A. was regarded as a person of Hungarian nationality (ethnicity). The Court stated that if the action for determination concerned confiscation (its process, effects, legality) pursuant to Slovak National Council Regulation No 104/1945 Sb. or the acts of revision of the first land reform, it should be emphasised that the burden of proof in question was on the owner of the confiscated property, who should have defended himself against confiscation in the sense of proving that the legal conditions for confiscation of the property had not been met at the time of confiscation. If the confiscation of the right of ownership took place in the period prior to 25.02.1948 (as was the case here), the original owner could seek to have the interference with his right of ownership and use of the property in question removed under the legislation in force at that time. This is also the case under the current system of restitution legislation, which is an expression of the legislator's intention to limit the redress of the property wrongs committed to the relevant period from 25 February 1948 to 1 January 1990, i.e. to the period of non-freedom, and not to the period preceding it, and which does not have such a statute. The confiscation of property pursuant to Decree No 104/1945 was a statutory act which cannot be considered in the light of the defects attached to it unless expressly authorised by law. As a rule, confiscation took place directly by operation of law, without administrative proceedings, if the owner was identified by the public authorities as the person whose property was subject to confiscation and unless he himself proposed that a decision be taken in an administrative procedure or the administrative authority itself considered it necessary to issue such a declaratory decision. The obligation to issue a decision as to whether the conditions for confiscation were met arose only in cases of doubt as to the identity of the owner or as to the definition of the property subject to confiscation. There is nothing in the provisions of Decree No 104/1945 Coll. which confirms the necessity of a decision in each individual case. Indeed, an administrative decision on whether a person or his property fell within the confiscation regime was necessary only if there was doubt. Confiscation occurred

ex lege and at the same time also ex tunc. Confiscation thus entailed the absolute extinction of the ownership of the previous owner and, at the same time, a new original acquisition of ownership of the property by the new owner, in this case the State. The legal effects of the confiscation took effect at the moment of its legal binding force, i.e. on the date of its entry into force, 1 March 1945, by SNR Regulation No 104/1945. In so far as the confiscation was not noted in the PKV of the cadastral territory of O., the Court held that, according to the customary law in force in Slovakia until 31 December 1950, it was possible to acquire ownership of immovable property registered in the Land Register, as a rule, only by entering it in the Land Register. However, there were a number of exceptions to the so-called intabulation principle. The fact that the confiscated property was not 'land-booked' within the meaning of Act No. 90/1947 on the transfer of the land-book order of confiscated enemy property did not affect the acquisition of title by the State by confiscation as early as 01.03.1945. Although neither the aforementioned decree nor the other confiscation decrees dealt with the serious question of the principle of intabulation, there is no doubt that confiscation took place if the conditions of the law were fulfilled and that, therefore, the law itself was the legal basis for confiscation. Thus, the State acquired ownership of the properties in question without the need for intabulation. The implementation of the "book order" was the process by which the state of registration in the Land Register and the Land Registry was subsequently to be brought into conformity with the actual legal situation. No rights were created by the implementation of the Book Order, only publicity was given to the existing rights. Therefore, it cannot be inferred from the possible non-implementation of the Land Register Order that the right which should have been entered in the Land Register did not arise (judgment of the Supreme Court of the Slovak Republic of 31 January 2011, Case No. 4 Cdo 180/2009). On the basis of the foregoing, the Court of First Instance concluded that the State had acquired the properties in question by confiscation pursuant to Slovak National Council Regulation No 104/1945 Sb. on confiscation and accelerated distribution of the land property of Germans, Hungarians and traitors and enemies of the Slovak nation, as amended by Regulation No 64/1946 Sb., which amended Regulation No 104/45. The date of acquisition of the right of ownership is, in accordance with Article 1(10) of Decree No 104/1945 Coll., 01.03.1945. From the documents submitted, it can be concluded that a confiscation order was issued for the entire property of Dr. B.A. and that his entire property was included in the list of confiscated property. Therefore, his property is considered to have been confiscated on 1 March 1945, that is to say, irrespective of which cadastral area or municipality it is located in throughout Slovakia. The State became the owner of the property at the moment of confiscation. Under Art. 104/1945 Coll. on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation, which repealed the Regulation of the Presidium of the Slovak National Council No. 4/1945, the property of Dr. B.A. was confiscated as a traitor and an enemy of the Slovak nation, and it was irrelevant what nationality (ethnicity) he was. As regards the defendant's counsel's objection that the State was awarded damages in the amount of EUR 10 290,11 in the criminal proceedings in judgment No 1T/23/2013-1380 precisely as compensation for the defendant's immovable property in the categorised area of the town of B. A. B., the defendant's representative argued that the State was entitled to compensation for the defendant's immovable property in the amount of EUR 10 290,11. O., the court stated that the determination of ownership of the real estate in question in the Slovak Republic extinguishes its right to compensation for damages awarded in the criminal proceedings, otherwise there would be unjust enrichment on the part of the State - the Slovak Republic. As regards the defendant's objection that the court is obliged to examine whether the claim for compensation for damage has been satisfied, which would be a reason for the proceedings to be discontinued, it should be noted that the question of compensation for damage awarded in criminal proceedings does not preclude the person who considers himself to be the owner of the real estate, resp. the owner of the real estate, from being able to claim compensation for damage. 93 of the Civil Dispute Procedure Code , the prosecutor, in the case of the determination of ownership, if the provisions of a generally binding legal regulation have been violated, to bring an action for the determination of ownership, since the criminal proceedings deal with the issues of criminal liability of the subject for the violation of the right, which, in the event of disputability, are dealt with in civil proceedings. In the criminal proceedings, the defendant was obliged to pay compensation to the State - SR for the damage caused to all the properties that were the subject of the criminal proceedings and the amount of the damage was quantified by experts for the purposes of the criminal proceedings. The judgment of the court in the criminal proceedings does not create a bar to the matter being finally adjudicated, but means that the court is bound by the decision that a criminal offence has been committed and by whom it has been committed. On the basis of the aforementioned

reasoning, the Court of First Instance determined that the Slovak Republic is the owner of the real estate described in the operative part of the judgment, registered at LV No. XXXX for the cat. area XXXX, and that it is the owner of the real estate described in the operative part of the judgment. O., in its entirety. With regard to operative part II of the judgment, the court determined that the administrator of the aforementioned land is the Slovak Land Fund, with its registered office at Búdková 36, 817 15 Bratislava, ID No: 17 335 345. It is clear from the provisions of Section 34(3) of Act No 330/1991 Coll., Section 1(1), Section 17(1) of Act No 229/1991 Coll. that the Slovak Land Fund is authorised to exercise the rights of the owner on behalf of the State, which are defined in the provisions of Section 123 of the Civil Code. The court decided on the claim for costs pursuant to Article 255(1) of the Civil Dispute Procedure Code and did not award costs to the , who was fully successful in the case and would have been entitled to costs, since the requested that the court should decide that the parties were not entitled to costs and did not claim any costs in the proceedings.

2. The defendant lodged an appeal against the judgment within the statutory time-limit, claiming that the proceedings should be discontinued pursuant to Section 159 of the Civil Dispute Procedure Code or that the contested decision should be annulled pursuant to Section 389(1)(b) of the Civil Dispute Procedure Code. He criticised the Court of First Instance for failure to comply with the procedural requirements, for the fact that the judge who ruled was disqualified, for another defect in the proceedings which could have resulted in an incorrect decision in the case, for the failure of the Court of First Instance to take the evidence required to establish the relevant facts and for the fact that the decision of the Court of First Instance was based on an incorrect legal assessment of the case. He stated that on 08.09.2018, on the motion of the prosecutor of the Regional Prosecutor's Office of Nitra, under case No. 1T/23/2010, the District Court of Nitra initiated proceedings for the confiscation of property - land located in the cadastral area of O., in the municipality of O., in the district of Topoľčany, registered in LV No. XXXX, pursuant to Section 83(1)(g) of the Criminal Code, the owner of which is the defendant. The prosecutor requests the court to determine that the Slovak Republic, administered by the Slovak Land Fund, becomes the owner of the confiscated land. The proceedings have not been completed to date, the parties to the confiscation proceedings are the Prosecutor of the Regional Prosecutor's Office in Nitra and E. L. A.?dy, the subject of the proceedings are the immovable properties in the O. district of Topoľčany, registered at LV XXXX and the plaintiff claims ownership of the immovable properties in favour of the Slovak Republic. The dispute is therefore identical to the present dispute, which is a ground of appeal under Article 365(1)(a/) of the Civil Dispute Procedure Code (CSP) It is also a ground for staying the proceedings on the ground of lis pendens pursuant to Article 159 Civil Dispute Procedure Code (CSP) On 05.11.2018, the defendant, through his counsel, sent a letter No 2018/014/Kc/O-9 of 03.11.2018 to the President of the Topoľčany District Court, informing her of the facts on the basis of which he had initiated disciplinary proceedings against judge Mgr. Dagmar Snopeková. The bringing of disciplinary proceedings against a judge is undoubtedly ground for doubting his impartiality because of his relationship to the defendant and his counsel. In those circumstances, the judge was under an obligation to notify the President of the Court of that fact without delay and could take only such steps in the proceedings as did not allow delay. The decision in the matter by the impugned judgment dated 12/11/2018 and its pronouncement on the same date is certainly not such an act. In view of the above, it is held that the judgment was passed by a disqualified Judge, which is a ground of appeal under Section 365(1)(c) of the Civil Dispute Procedure Code (CSP). He further argued that the list of documents read out at the hearing included documents which had been served on the parties and therefore it was not necessary to take evidence of those documents by reading them out at all. The procedure is contrary to section 204, part after the semicolon. The minutes of the hearing on 20.10.2018 show that 22 exhibits should have been read out with a total of at least 118 sheets. The minutes further show that the hearing lasted from 9:00 a.m. to 9:25 a.m., i.e., 25 minutes. This means that in approximately 15 minutes at least 118 sheets should have been read, which is a maximum of 7.6 seconds to read one sheet, and the number of double-sided sheets is not known. Paragraph 9 of the grounds of the judgment under appeal lists only 14 documents which should have been read. The court has not explained how it evaluated the evidence by reading the other 8 documents and why it did not rely on them (once it should have done so, which is contrary to Article 220(2) of the Civil Dispute Procedure Code (CSP). Among the listed documents there are also those which were not delivered to the parties to the dispute (in particular documents from 1945 to 1948) and therefore could not have been challenged by the opposing party. In fact, the court proceeded by merely dictating the names of the

individual documents in the minutes without reading any part of them. The minutes do not indicate the contents of the various exhibits to the extent that they should have been read. The evidence given by the reading of the documents does not provide a sufficient basis as to which facts have come to light in the proceedings, contrary to the fundamental principle of the adversarial procedure laid down in Article 11(4) of the Civil Dispute Procedure Code (CSP) The minutes of the hearing of 20.10.2010 state that 'There are no comments on the documentary evidence read and noted'. How could there be, when by not reading the documents at all or recording their contents in the minutes, the court did not provide the defendant with a basis or an opportunity to comment on the evidence. The defects referred to above constitute a breach of the defendant's procedural rights, which, according to the Explanatory Memorandum to section 365(1) of the Civil Dispute Procedure Code (CSP) (section 358 in the Bill), are other defects which may have resulted in an erroneous decision in the case. Furthermore, the Court, by the above-mentioned procedure, prevented the defendant from exercising his procedural rights to such an extent as to infringe the right to a fair trial, in particular the first sentence of Article 182 Civil Dispute Procedure Code (CSP) (to comment on the evidence adduced and thus to influence the further course and outcome of the evidence). In paragraphs 10 to 25 of the grounds of the judgment under appeal, the Court of First Instance sets out the contents of the various documents of evidence, which does not comply with the procedural rules. By failing to read out the individual exhibits at the hearing, the court did not 'take evidence' of the exhibits at the hearing but only when the written judgment was drawn up, contrary to Article 188(1) Civil Dispute Procedure Code (CSP) Neither paragraph 9 of the judgment nor the minutes of the hearing of 20 November 2018 contain in the list of evidentiary documents that should have been read out the document that is most relevant in terms of the confiscation of Dr. B.A.'s property: either the decision of the Presidency of the Slovak National Council pursuant to Article 1(3) of the Regulation on the Confiscation of the Property of Dr. B.A. or the decision of the President of the Slovak National Council pursuant to Article 1(3) of the Regulation on the Confiscation of the Property of Dr. B.A.. 4/1945 Coll. n. SNR, or the decision of the Presidium of the Slovak National Council pursuant to § 1(6) of SNR Reg. 104/1945 Sb. n. SNR, or the decision of the confiscation commission pursuant to § 1(7) of the SNR Decree No. 1/1945 Coll. 104/1945 Sb. n. of the SNR. SNR as amended by Reg. 64/1946 Coll. n. of the SNR. SNR to the effect that the person of Dr. B. A.?dy is to be regarded as a person of German or Hungarian nationality (ethnicity). Only on the basis of that decision could Dr B. A.?dy's property be confiscated. The documentary evidence from the period 1945 to 1948, with which the court was required to take evidence, does not satisfy that requirement; it is merely an administrative act of execution in the event that confiscation took place. The existence of the actual legal title under which the property of Dr. B.A.? was to be regarded as confiscated on the date of entry into force of the Decree No .../.... SNR (i.e. the decision that Dr. B.A. should be regarded as a person of German or Hungarian nationality (ethnicity)), a fact the Court did not show. In the absence of a decision that Dr B.A. should be regarded as a person of German or Hungarian nationality (ethnicity), it is not even possible to determine which legal provision is to be applied to the alleged confiscation: whether SNR Regulation No 4/1945 Coll. SNR, or SNR Regulation No 104/1945 Coll. SNR. And without that, it is simply not possible, because the act must be subsumed under a single specific piece of legislation. In addition, without a decision on Dr B.A.?dy's nationality (ethnicity), it is not even possible to establish whether he was of German or Hungarian nationality (ethnicity), and whether the fact that Dr B.A.?dy was, according to his personal description which was to be annexed to the application for confiscation of his property (paragraph 17 of the grounds of the judgment under appeal), supposed to use the Hungarian and German languages in his family dealings is, according to Article 1(4) of Regulation (EC) No 40/94 of the European Parliament and of the Council on the confiscation of the property of Dr B.A.?dy, even a fact of Hungarian nationality (ethnicity), and not a fact of Hungarian nationality (ethnicity) at all. 4/1945 Coll. n. SNR or pursuant to Article 1(4) or (5) of Regulation (EC) No 40/94 of the SNR. 104/1945 Coll. n. of the National Council of the Slovak Republic. SNR only the basis for the assessment of membership of the German or Hungarian nationality (ethnicity), not the decision on membership of one of these nationalities (according to the court-quoted) § 1(6) of Reg. 104/1945 Coll. n. of the SNR. SNR. The fact that Dr. B. A.?dy is to be regarded as a state-unreliable person pursuant to Regulation No. 50/1945 Coll. n. SNR, and therefore as a traitor and enemy of the Slovak nation pursuant to Article 1(5) of Regulation No. 19/1945/1945 of the Slovak National Assembly. 4/1945 Sb. n. 5 or 6 of the Regulation. 104/1945 Coll. n. SNR, has also not been proven. Paragraph 17 of the grounds of the judgment under appeal merely states that only the political activities of Dr B.A. are known, which does not satisfy the conceptual element of unreliability under Regulation No. 50/1945 Coll. SNR. On the contrary, Dr. B. A.?dy was

acquitted by order of the District People's Court in Hlohovec No Tłud 28/1946 of 30 December 1946, which refutes any assertion that Dr. B. A.?dy should be an unreliable person and thus a traitor or an enemy of the Slovak nation. The resolution of the competent authority is therefore key evidence to assess whether or not Dr. B. A.?dy's property was confiscated. The error of the Court of First Instance is compounded by the fact that, in paragraph 29 of its reasoning, the Court quotes Article 1(6) and (7) of Regulation No 40/94 of the European Parliament and of the Council of 28 June 1999 on the protection of the rights of persons belonging to the State concerned. 104/1945 Coll. n. SNR, which regulate the function of the resolution on the German or Hungarian nationality (ethnicity) in relation to the confiscation of property, but does not draw any conclusions from these provisions, in particular by failing to carry out any proof of the existence of the resolution pursuant to Article 1(6) of Regulation No. 104/1945 of the National Assembly of the Republic of Poland of 1934 on the confiscation of property. 104/1945 Coll. n. SNR. In paragraph 29, the Topolčany District Court quotes § 1(1), (6) and (7) of Reg. SNR No. 104/1945 Coll. n. SNR. However, the preceding reasoning of the judgment under appeal (paragraphs 1 to 28) does not reveal any facts which could be subsumed under that provision and in that wording. In order to do so, it would be necessary to know whether and, if so, when the decision on Dr B.A.'s affiliation to the German or Hungarian nationality was ever taken. Only on the basis of the date of that decision would it be possible to establish under which legal provision Dr B.A.?dy's property was confiscated: whether, under Art. SNR No. 4/1945 Coll. SNR, or Art. No. 104/1945 Coll. n. SNR. SNR, respectively. No. 104/1945 Coll. n. SNR. SNR as amended by Reg. SNR No. 64/1946 Sb. n. SNR. However, the Court of First Instance has no relevant facts as to which of the two SNR regulations (No 4/1945 or No 104/1945) and which wording of Reg. SNR No. 104/1945 Coll. n. SNR is to be applied to the facts found by the court. In the light of the foregoing, it is not possible to examine whether the court correctly assessed the case in law. The defendant does not deny that, in so far as the judgment of conviction of the District Court of Nitra 1T/23/2010 is valid, he unlawfully retained the immovable property in question. However, that does not in itself establish the State's right of ownership, for that it is necessary to prove that Dr. B. A.'s property has been confiscated. In paragraph 35 of the grounds of the judgment under appeal, the Court of First Instance cites as evidence of the acquisition of ownership by the State Resolution No 11987/15 of the Presidium of the Slovak National Council, by which it decided to confiscate all agricultural property belonging to
Dr. B. A. A.?dy and others, as well as the statement of the Head of the Office of the Presidency of the National Council of the Slovak Republic of 18 February 1946 that all of Dr. B. A.?dy's agricultural property located in the territory of the Slovak Republic had been confiscated. However, the Court failed to note that neither of these documents is a resolution stating that Dr. B. A.?dy was a citizen of German or Hungarian nationality (ethnicity), which resolution should have been the basis for the confiscation of Dr. B. A.?dy's property? dy. These were merely administrative acts of implementation, but the legislation did not link the confiscation to them. The Court of First Instance erred in law in its assessment of the above facts. The provision of Article 1(6) of Regulation No 40/94 of the European Parliament and of the Council on the confiscation of property. 104/1945 Coll. no. SNR, as well as Article 1(6) of Reg. 104/1945 Coll. no. SNR, as amended by Reg. 64/1946 Coll. n. SNR apply without restriction to all persons whose property was to be confiscated. The legislation referred to did not provide for an exception to that requirement. The Court misinterpreted the provisions of the legislation referred to. Paragraph 40 of the grounds of the judgment under appeal states that: 'The Court concludes that the State acquired the properties in question by confiscation pursuant to Slovak National Council Regulation No 104/1945 Sb. on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians and traitors and enemies of the Slovak nation, as amended by Regulation No 64/1946 Sb., which amended Regulation No 104/45.' This statement does not correspond to the provisions quoted by the Court in paragraph 29 of the grounds, since they correspond to Regulation No. 104/2004 of the Council of Europe. No 104/1945 Coll. n. SNR before its amendment by SNR Decree No 64/1946 Coll. SNR. However, the Court notes here that the confiscation of Dr B.A.'s property was carried out on the basis of Ordinance No .... SNR 104/1945 Sb. n. SNR as amended, thereby contradicting itself. Be that as it may, the legal provision under which the confiscation took place cannot be determined, since the date of the order on Dr. B. A.?dy's nationality (ethnicity) is not known. In paragraph 41 of the grounds of the impugned judgment, the court states that: 'In terms of Reg. 104/1945 Coll. on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians and traitors and enemies of the Slovak nation, which repealed Regulation No 4/1945 of the Presidium of the National Council of the Slovak Republic, the property of Dr. B. A.?dy was confiscated as that of a traitor and enemy of the Slovak

nation, and it was irrelevant of what nationality (ethnicity) he was. This assertion of the court has no support in the evidence taken; on the contrary, Dr. B. A.?dy was acquitted of the charge by the District People's Court in Hlohovec, and it is therefore impossible that he could be regarded as an enemy of the Slovak nation. The Court does not cite any evidence on which it relied in making the above assertion. The judgment under appeal is not supported in this respect by the evidence adduced. In paragraph 42 of the judgment under appeal, the Court concludes that '... the determination of ownership ... of the properties in question extinguishes the Slovak Republic's entitlement to compensation for the damages awarded in criminal proceedings, otherwise there would be an unjustified enrichment. It is apparent from this statement of the Court of First Instance that it is aware of the duplication of these proceedings with criminal proceedings at the District Court of Nitra under case No. 1T/23/2010, nevertheless, he acted and decided in these proceedings instead of discontinuing them due to an obstacle to the case being decided. Nor does the court's conclusion stand, that the Slovak Republic's entitlement to the damages awarded in criminal proceedings. This would require the annulment of the final and enforceable conviction, which will not be achieved by the contested judgment becoming final. An award of damages in an adversarial proceeding equal to the price of the immovable property is an obstacle to the award of the right of ownership of the same immovable property in a case which has been finally decided, otherwise it would constitute unjust enrichment.

3. On the defendant's appeal, the intervener on the plaintiff's side made a written submission and stated that the District Court of Topoľčany in its decision had sufficiently dealt with the grounds set out in the application for a declaratory judgment. It provided clear and sufficient information on the facts on which the court's decision was based. It agrees with the legal assessment and the application of the relevant provisions to the present case, while disagreeing with the defendant's legal opinion that the court had not established the existence of a legal title on the basis of which Dr B.A.'s property should have been considered confiscated. The confiscation applied to the entirety of Count A.'s property throughout the country, regardless of whether it was indicated in the land registry entries. The confiscation took place ex lege in accordance with SNR Decree No. 104/1945 S.b. on the confiscation and expeditious distribution of the landed property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation, as amended by Decree No. 64/1946. The date of acquisition of ownership by the State is, in accordance with Article I(10) of Decree No. 104/1945 Coll., as of 01.03.1945.

4. The plaintiff has also written to the defendant's appeal, stating that in the present proceedings and in the proceedings for restraint of trade and in the adhesion proceedings there is no identity of the dispute within the meaning of Article 159 of the Civil Dispute Procedure Code , which is determined by two criteria, namely the identity of the parties and the identity of the subject-matter of the dispute. The identity of the parties is not at issue in the present case, since the dispute in the adversarial proceedings referred to by the defendant was between the injured Slovak Land Fund and the defendant. In the present proceedings, the dispute is between the Regional Prosecutor in Nitra and the defendant. In the adhesion proceedings, the subject-matter of the proceedings was compensation for damage caused by the convicted person F.X. A.?dym to the Slovak Land Fund, in the present proceedings the issue is the determination of the right of ownership, which implies that the subject matter of the dispute is not identical. Compensation for damages and the determination of ownership are two different institutes of law. The proceedings for confiscation of property under the Code of Criminal Procedure involve the same parties: the public prosecutor and the convicted person, E.L.A., but the subject-matter of the proceedings is the imposition of a protective measure on the convicted person (confiscation of the property) and not a dispute as to the determination of ownership. It is therefore clear that the subject-matter of the dispute is not identical in these proceedings either. It follows from the foregoing that the lis pendens bar did not exist at the time when the proceedings for the declaration of title were instituted and that the defendant's plea in law does not therefore stand. The defendant submits that the judge should have been disqualified from hearing the case, as on 05.11.2018 he sent a complaint to the President of the Court for disciplinary proceedings to be initiated against the judge. The case-law does not consider the mere initiation by a litigant of disciplinary proceedings against a judge to be a qualified relationship to a party, but only the fact that disciplinary proceedings are initiated against a judge (Resolution of the Supreme Court of the Slovak Republic of 29 April 2013 Case No.

1Nc/7/2013). No disciplinary proceedings were initiated against the judge who issued the judgment appealed against during the proceedings and even up to now, therefore the judge could not be excluded from hearing and deciding the case within the meaning of Article 49(1) of the Civil Dispute Procedure Code (CSP) In the light of the foregoing, it is clear that the case was not decided by a disqualified judge. The defendant considers another defect in the proceedings to be the fact that at the hearing on 22.10.2018, evidence was taken by taking cognisance of documentary evidence by reading it out, which could not realistically be done in time. As regards that objection, the submits only that the defendant's counsel was present at the hearing, actively participated in the hearing, yet at the hearing he did not object at all to the manner in which the evidence was adduced and did not have any comments on the documentary evidence read out and familiarised with, which is recorded in black and white in the minutes of the hearing. In any event, the court's conduct in taking the documentary evidence could not have resulted in an erroneous decision in the case. The court did not make the defendant's evidentiary position at all difficult and allowed him to take all the evidence he proposed. That fact is confirmed by the content of the minutes of the hearing, which expressly record the statement of the defendant's lawyer that he had no comments to make on the documentary evidence read out and consulted, nor did he have any further proposals to supplement the evidence. Accordingly, the defendant's plea of another defect in the proceedings consisting in the improper taking of documentary evidence at the hearing on 22 October 2018 does not stand as a ground of appeal either. The defendant further argued that there was no evidence of confiscation of Dr. B. A.?dM.o's property in favour of the State. Here, the plaintiff refers to the six documentary exhibits submitted by him with the plaint, all of which are specified and identified as exhibits in paragraph IV of the plaint, which clearly show that there has been confiscation of the properties forming the subject matter of the dispute. The defendant itself does not dispute that evidence, but merely refers to it as administrative acts of execution in the event that confiscation has taken place. The fact that Dr. B. A.'s property was confiscated directly by law has already been decided in a legally identical case by the Regional Court in Nitra by judgment of 30 October 2014, Case No. 8Co/167/2014. Therefore, this objection of the defendant is considered to have already been resolved by the courts and there is no reason to comment on it in more detail. The defendant argues that if Dr. B. A.?P. B. A. was acquitted by the District People's Court in Hlohovec pursuant to SNR Regulation No. 33/1945 Coll. SNR on the punishment of fascist criminals, occupiers, traitors and collaborators and on the establishment of a people's judiciary, his property was not subject to confiscation. However, the defendant failed to mention that Dr. B. A.?dy's property was confiscated pursuant to Article 1(1) of Slovak National Council Regulation No. 104/1945 Coll. (a), (b) and (d) of the SNR, and not under subparagraph (c) on the ground that Dr. B. A.?dy was a traitor and an enemy of the Slovak and Czech nation and of the Czechoslovak Republic. In the light of the foregoing, the appellant requested the Court of Appeal to uphold the judgment of the Court of First Instance as substantively correct pursuant to Article 387(1) of the Civil Dispute Procedure Code.

5. The defendant responded to the written pleadings of the and the intervener on the 's side, stating that it maintains its position that the case is one of identity of dispute under section 159 of the Civil Dispute Procedure Code (CSP) In the adversarial proceedings, the State's claim for damages was not asserted by the Slovak Land Fund, but directly by the public prosecutor, on the ground that, although the compensation was awarded to the Slovak Land Fund, that compensation was a revenue of the State. If it were accepted that the Slovak Land Fund was a party to the adhesion proceedings, then it could not be an intervener on the part of the , which, according to Article 84 of the Civil Dispute Procedure Code , forms an indissoluble community with the . However, the Court admitted the intervention of the Slovak Land Fund, thereby indirectly admitting, at least in relation to the Slovak Land Fund, an obstacle to the final decision of the proceedings. With regard to the 's argument on the basis of the resolution of the Supreme Court of the Slovak Republic, Case No. 1Nc/7/2013, the Court stated that it was not published in the Collection of Opinions and Decisions of the Supreme Court of the Slovak Republic, therefore it is not a judicial decision of fundamental importance, which should serve to unify the interpretation of the law, therefore for the case of Judge Mgr. Dagmar Snopeková is not binding. The fact that his counsel did not object at the hearing to the manner in which the evidence was taken and did not have any comments on the documentary evidence read and consulted is not decisive, since the proper taking of documentary evidence is

a legal obligation of the judge under Section 204 of the Civil Dispute Procedure Code (CSP), irrespective of whether a party had comments or not, and it is not possible to have comments on documentary evidence that has not been read and not consulted. He further maintained that there was no confiscation of Dr. B. A.'s property. Contrary to the 's view, the defendant did not fail to point out that Dr B.A.?dy's property had been confiscated pursuant to Article 1(1) of Slovak National Council Regulation No 104/1945 Coll. SNR subparagraphs a/, b/ and d/, and not pursuant to subparagraph c/ on the ground that he was a traitor and an enemy of the Slovak and Czech nation and of the Czechoslovak Republic. Only by responding to paragraph 17 of the grounds of the judgment under appeal, to the effect that Dr B.A.?P. was a person of German or Hungarian nationality (ethnicity), the did not submit a resolution pursuant to Article 1(6) of SNR Regulation No. 104/1945 Coll. SNR as a statutory prerequisite for confiscation, which is sufficient for the court to have misjudged the case in law.

6. Subsequently, the , in a written statement in response to the defendant's statement of defence, stated that it remained of the opinion that none of the defendant's grounds of appeal described in the notice of appeal were valid and that its statement of 18 January 2019 did not contain any facts or evidence capable of causing the judgment of the court of first instance to be varied or set aside.

7. The Regional Court in Nitra, acting as the appellate court (§ 34 CSP), bound by the scope and reasons of the appeal filed by the defendant (§ 379 and § 380(1) CSP), reviewed the case without ordering an appellate hearing, with a public announcement of the judgment. After reviewing the case, it concluded that the defendant's appeal was unfounded. Therefore, it upheld the contested judgment of the first-instance court as substantively correct pursuant to § 387(1) CSP, as the first-instance court correctly determined the facts of the case and also correctly assessed the legal aspects.

8. The subject of the proceedings in this case, based on the claimant's action, is the determination of the ownership right to the immovable property located in the municipality of O., cadastral territory of O., registered on the ownership certificate No. XXXX (specified in the filed action) in favour of the Slovak Republic, with the simultaneous determination that the administrator of these immovable properties is the Slovak Land Fund with its registered office at Búdková 36, Bratislava, ID No.: 17 335 345. It follows from the grounds of the action that the defendant, intending to acquire the ownership right to the real estate situated in the cadastral territory of O., declared on 13 June 2005, in the notarial deed No N 66/2005 by JUDr. Ján Bošek, that he had acquired the entirety of the land real estate in the cadastral territory of O. in wave No 225 (specified in the action) by virtue of the title of retention of possession. On the basis of this notarial deed, the Cadastral Administration of Topoľčany registered the ownership right to the land specified therein in the title deed No XXXX for the cadastral territory of O. in cadastral procedure No Z 1972/05-155/05. At present, the parcels of register "E" No. 2643, 2723, 2725, 2736, 2739, 2896, which are subdivided in LV No. XXXX into subdivisions 1 and 2, are identical to the parcels of "E" cited in notarial deed N 66/05. By the judgment of the District Court in Nitra No. 1T/23/2010-1380 of 27.12.2011 in conjunction with the judgment of the Regional Court in Nitra No. 3To/42/2012-1447 of 06.11.2012, which entered into force on 06.11.2012, the defendant was found guilty of having committed a particularly serious crime of fraud pursuant to Section 221(1)(4)(a/) of the Criminal Code. It follows from the above that the defendant could not have legally acquired the ownership right to the real estate in question, since he was legally convicted for the declaration of retention of title in the notarial deed and committed a particularly serious crime by that act. The defendant's right of ownership is excluded. The claimed that the property of Count A.? had been confiscated and had become the property of the State by virtue of the confiscation. The confiscation applied to all his property throughout the Slovak Republic, irrespective of whether it was noted in the land and book insertions. The confiscation occurred ex lege in accordance with Slovak National Council Regulation No. 104/1945 Sb. on the confiscation and expeditious distribution of the landed property of Germans, Hungarians or even traitors and enemies of the Slovak nation, as amended by Regulation No. 64/1946. The date of acquisition of the State's right of ownership is, in accordance with Article 1(10) of Decree No 104/1945 Sb., 01.03.1945. In the 's judgment, it can be established from the documents submitted by him in support of his application that a

confiscation order was issued in respect of the entire property of Dr B.A.?P. and that his entire property was included in the list of confiscated property, while it is apparent from the resolution of the Presidium of the National Council of the Slovak Republic No 11987/45 that Dr B.A.?dy is regarded as a person of Hungarian nationality (ethnicity) pursuant to Article 1(1)(b) of Regulation No 104/1945 Sb. For this reason, his property is deemed to have been confiscated on 01.03.1945, that is to say, irrespective of which cadastral area or which municipality in the whole territory of Slovakia it is located. The state became the owner of the property at the moment of confiscation. It follows from the foregoing that the owner of the real estate in the cadastral territory of O., which is the subject of this dispute, is the State - the Slovak Republic, while the Slovak Land Fund is authorised to act for the State before the court in this case, and the Slovak Land Fund is also authorised to exercise the rights of the owner, which are defined in the provisions of Section 123 of the Civil Code, on behalf of the State.

9. Pursuant to Article 387(1) of the Civil Dispute Procedure Code (CSP) the appellate court upholds the decision of the court of first instance if it is correct in its operative part.

10. Pursuant to Section 379 Civil Dispute Procedure Code (CSP), the appellate court is bound by the scope of the appeal, except if/ the decision on the contested judgment depends on a judgment which was not affected by the appeal b/ the parties are an indissoluble community pursuant to Section 77 and the appeal was filed only by one of the parties c/ a certain method of arranging the relationship between the parties arises from a special provision.

11. Pursuant to Article 380(1) of the Civil Dispute Procedure Code (CSP), the Court of Appeal is bound by the grounds of appeal.

12. The appellate court's review activity encompasses both substantive and procedural law. The appellate court must therefore examine not only the legality of the decision with respect to substantive law, but also the legality of the proceedings from which the challenged proceedings arose. In deciding on an appeal against a judgment appealed against, the Court of Appeal is bound both by the scope of the appeal (except as provided for in section 379 of the Civil Dispute Procedure Code and by the grounds of appeal. In the notice of appeal, the appellant, by his dispositive act, effectively defines not only the scope but also the grounds for the appellate court's review.

13. According to the opinion of the appellate court, the first-instance court correctly established the facts of the case and derived the correct legal conclusion from these findings. Based on these reasons, the appellate court upheld the contested judgment of the first-instance court as substantively correct. At the same time, it found that the procedural conditions for the court's substantive decision in the form of the contested judgment were met, that the first-instance court did not commit the procedural errors alleged by the defendant, which, as the defendant claims, would have resulted in a violation of his right to a fair trial. Furthermore, the appellate court found that the first-instance court, in the reasoning of the contested judgment, addressed all legally relevant facts that influenced the assessment of the validity of the plaintiff's claim.

14. If the defendant in the filed appeal in relation to the pending case indicates that there is an obstacle to the initiation of proceedings (lis pendens) pursuant to § 159 CSP, with regard to the proceedings held at the District Court of Nitra under file No. 1T/23/2010 for the confiscation of the property - land located in the cadastral area of O., XXXX (which are the subject of the present proceedings), which proceedings have not yet been concluded and in which the prosecutor requests the court to determine that the Slovak Republic becomes the owner of the confiscated land, the Court of Appeal does not share such a view of the defendant.

15. The statutory provision of Section 159 of the Civil Dispute Procedure Code (CSP) contains one of the obstacles to civil proceedings, which prohibits simultaneous proceedings in the same court or in different courts on the same matter. The court shall take into account the impediment to the commencement of proceedings ex officio at any time during the proceedings. If such an

impediment arises, one of the proceedings must be discontinued and, as a rule, the court shall discontinue the proceedings on the application which was lodged at a later date. The lis pendens presupposes the identity of the two pending cases. Identity of the case is established if the subject-matter and the basis of the claim and the subjects of the legal relationship are identical. If one of the simultaneous proceedings ends with a decision of the court, irrespective of whether it is a decision on the merits or a procedural decision terminating the proceedings (discontinuance of the proceedings or rejection of the application), the court may no longer discontinue the second of those proceedings on the ground of the lis pendens bar, even if the decision terminating the first proceedings has not yet become final. If the court in one of the pending proceedings finally decides on the merits of the case, the second proceeding will no longer be prevented by the lis pendens bar, but by the final decision bar (Art. 159(3) Civil Court Procedure Code (OSP). It should be added that the court decides on the lis pendens bar according to the situation as it exists at the time the decision is pronounced (issued).

16. The obstacle of litispendence arises when the new proceedings concern the same matter as another ongoing case. However, the mere fact that the subject of the proceedings involves the same right or that the same parties are involved in both disputes does not necessarily mean that the cases are identical. The identity of a case is determined by specific characteristics, which must be present simultaneously. These include identity of the parties and identity of the subject matter of the proceedings. The identity of the subject matter exists when the same claim or legal status, as defined in the claim petition, arises from the same factual allegations that form the basis of the claim—meaning the claim is based on the same legal grounds and stems from the same factual circumstances. Regarding the identity of the parties, it is not decisive whether the same participants have different procedural roles in the various proceedings. If even one of these characteristics is missing, the cases are not identical, and therefore, the ongoing court proceedings cannot constitute an obstacle of litispendence.

17. When assessing in a particular case whether there is an obstacle to a previously commenced proceeding (lis pendens), it is necessary to state that in the proceedings before the District Court of Nitra under case No. 1T/23/2010 (commenced at the request of the Regional Public Prosecutor's Office of Nitra on 08 September 2016), in which it is decided to confiscate land located in the cadastral territory of O., XXXX under Section 83(1)(g) of the Criminal Code (as well as under the provisions of Section 83(2) of the Criminal Code that the owner of the confiscated land is the Slovak Republic in the administration of the SPF), it should be noted that, in general terms, the purpose of criminal proceedings under the Criminal Procedure Code is to ensure that criminal offences are duly detected and their perpetrators are justly punished in accordance with the law. The purpose of the Code of Criminal Procedure is not otherwise explicitly stated and therefore the proper object of criminal proceedings is to establish the offences and to punish their perpetrators justly. It is clear from the foregoing that the statutory purpose of the procedure followed by the law enforcement authorities is not to hear, decide and adjudicate on the claim for determination of ownership, as the same is civil in nature. Thus, the applicability of Section 83(2) of the Criminal Code in criminal proceedings cannot be a matter of law in the sense in which it is conceived in terms of the application of the law in civil proceedings, since that conclusion excludes the purpose of criminal proceedings, their object and the fundamental principles on which the achievement of that purpose rests. The provision of Art. 2 of the Code of Criminal Procedure states that, as a result of the seizure of an item, the State becomes the owner of the item seized, without addressing any civil law aspects of the State's acquisition of ownership from the perspective of what is at issue in these proceedings, where the fact that the State acquires ownership of the item as a result of its seizure is the result of the process of seizure of the item, and not an assessment of whether the State is the rightful owner of the item in terms of the fulfilment of the statutory prerequisites for the acquisition of ownership within the meaning of the relevant provisions of the Civil Code. The declaration that the State becomes the owner of the confiscated property is, in criminal proceedings, only a consequence of the court's decision to confiscate the property and, in criminal proceedings, that decision does not become a matter in itself constituting the subject matter of the proceedings, which is the confiscation of the property, when it is precisely the action for the determination of the ownership right to the disputed immovable property that can be considered

an effective means of protecting the rights of the plaintiff (or, as the case may be, of the State). SR) in relation to the ownership of the disputed immovable property, given that such an action defines the claim of the plaintiff (SR) for the determination of the ownership right as a separate subject matter of the dispute in civil litigation proceedings, which is definitely not the case in criminal proceedings within the meaning of the provisions of Article 83(2) of the Code of Criminal Procedure in this respect and in these aspects. In view of the above, then, it is not possible to discuss the identity of the case in the context of two concurrent judicial proceedings and, therefore, the bar of lis pendens which would lead to the discontinuance of these proceedings.

18. Insofar as the defendant argued in the appeal that the case was decided by a disqualified judge, pointing to the fact that he had sent the President of the District Court Topoľčany a complaint for disciplinary proceedings against the statutory judge, in which situation the judge could only take such actions in the case which did not allow for delay, the Court of Appeal does not agree with such an appeal argument of the defendant. In this respect, it is necessary to give credit to the , who, in his statement of appeal, referred to the decision of the Supreme Administrative Court of the Slovak Republic, Case No 1Nc/7/2013, and to the fact that it is not the mere initiation of disciplinary proceedings against a judge by a litigant that is considered to be a qualified relationship with a party, but only the fact that disciplinary proceedings against a judge have been initiated. The Court of Appeal states, by way of supplementary information, that the decision of the Supreme Administrative Court of the Slovak Republic, Case No. 1Nc/7/2013, was subject to constitutional review in the proceedings before the Constitutional Court of the Slovak Republic under Case No. IÚS/709/2014-60, in which proceedings the complainant's complaint was rejected. It also follows from the aforementioned decision of the Supreme Administrative Court of the Slovak Republic that, in the opinion of the Supreme Administrative Court of the Slovak Republic, "the circumstance of disciplinary prosecution alone cannot raise doubts about the objectivity of the judge, but in the given case there are also contextual factors present, which may already raise doubts about the objectivity of the decision-making. In the circumstances of this case, the occurrence of a situation - disciplinary proceedings against the President of the Chamber (which are immediately related to the substantive decision in the case) initiated by the defendant - may give rise to doubts as to the impartiality of the judge."

19. Thus, the mere fact that the respondent has initiated disciplinary proceedings against the lawful judge Mgr. Dagmar Snopek, which disciplinary proceedings were never initiated on the basis of that complaint, can in no way give rise to doubts as to the objectivity and impartiality of the judge, which would reasonably lead to the conclusion that the case was decided by a biased judge, as wrongly stated by the defendant in the appeal.

20. Insofar as the defendant further argued that the court's procedure for taking judicial notice of documentary evidence violated the provisions of Section 204 of the Civil Dispute Procedure Code (CSP), the Court of Appeal did not find merit in the defendant's objection either.

21. Pursuant to § 204 CSP, evidence by document is carried out by the court either reading the document or a part of it aloud or announcing its content. However, this does not apply if a copy of the document was delivered to the party during the proceedings and if neither the document nor its content has been disputed by the opposing party.

22. The content of the file shows that the documentary evidence, which is part of the file and on which the court of first instance based its decision, was delivered to the court by the plaintiff together with the filed action and these were subsequently delivered to the defendant as appendices to the action for comments, as it is clear from the court's letter of the court of first instance dated 03.05.2018. It does not appear from the contents of the file that the defendant disputes the content of those documents. Insofar as the court of first instance did not take evidence of the documents by reading them or by familiarising itself with their contents, as it also recorded in the minutes of the hearing of 22.10.2018, where it stated that the parties to the dispute did not request to read the contents of the documents served on them, it acted in accordance with the provisions of Section 204 of the Civil Dispute Procedure Code (CSP) In this regard, the defendant's point that it

would take only 7.6 seconds to read one document in terms of the number of documents involved and the duration of the hearing is misplaced, when it is clear that the court did not read the contents of those documents or familiarise itself with the contents of those documents. The fact that the Court of First Instance proceeded in the manner envisaged by Article 204 Civil Dispute Procedure Code (CSP) does not mean that the parties were deprived of their right to be heard. The contents of the minutes of the hearing at the court of first instance on 22.10.2018 show that the parties to the dispute had no comments on the documents they had seen, and then the defendant's argument that the court did not provide him with a basis or an opportunity to comment on the evidence is also unfounded. In view of the above, then, the defendant's contention that by not reading the documentary evidence at the hearing, the court did not "take evidence" of the documents at the hearing but only at the drafting of the written judgment cannot be accepted either, because the documentary evidence was taken by the trial court in accordance with the procedure permitted by section 204 of the Civil Dispute Procedure Code (CSP) and was taken at the hearing.

23. In so far as the defendant further argued that the existence of the very legal title on the basis of which Dr. B.A.?P.'s property should have been considered confiscated was not established by the court, it should be noted that the court of first instance had sufficient factual basis to establish its correct legal conclusion.

24. Confiscation within the meaning of Art. Regulation 104/1945 Coll. n. SNR was a public law measure on the basis of which the State acquired ownership of the property of the persons affected by it in an original manner, irrespective of the principle of intabulation. The confiscation of property occurred ex lege and also ex tunc, so that it was not necessary for the administrative authority to decide that the conditions for confiscation had in any event been fulfilled. It was not for the courts to deal with that question, since that was at that time a matter for the competent administrative authorities alone.

25. In the context of the above, the Court of Appeal, in agreement with the Court of First Instance, concluded that the evidence presented clearly established that the property of Count A.? was confiscated. In this regard, the Court of First Instance correctly referred to Resolution No. 11.987/45 of the Presidency of the National Council of the Slovak Republic (SNR), which, at its meetings on August 7, 1945, and August 14, 1945, resolved to confiscate, with immediate effect and without compensation, all agricultural property belonging to Dr. B. A.?P., the widow Z. Z., née A.?P., and H. Z., located in the cadastral areas of the municipalities of Z., X., V., and W. in the district of Z., O. in the district of V., E., E. S., and V. in the district of G. Q., as recorded in the land registry records of these municipalities in the names of the aforementioned individuals, or even if not recorded, provided that they were under temporary national administration. The Commission for Agriculture and Land Reform of the SNR was notified of this resolution. This documentary evidence, in conjunction with other evidence submitted by the plaintiff, as cited by the Court of First Instance in paragraphs 16 to 24 of the reasoning of its decision, provides a reliable basis for concluding that all the property of Dr. B. A.? was subject to confiscation. This applies regardless of the fact that the confiscation decision concerning properties in the cadastral area of O. was not obtained in this proceeding. It must again be emphasized that the confiscation applied to the entire property of the individual subject to confiscation, and therefore, the property of Count A.?P. in the cadastral area of O. was also subject to confiscation. The date on which ownership was transferred to the state, in accordance with § 1(10) of Decree No. 104/1945 Coll., was March 1, 1945. In this regard, the Court of Appeal also referred to the decision of the Constitutional Court of the Slovak Republic, case no. I ÚS/379/2016 of March 29, 2017, which reviewed the decision of the Supreme Court of the Slovak Republic, case no. 4MCdo/12/2014. The Constitutional Court stated that: "A mere assertion of defects in the confiscation proceedings does not, in itself, challenge the effects of the confiscation, because the legal basis for the transfer of ownership was not the administrative act in question but the decree itself." According to the correct opinion of the Court of Appeal, in cases such as this one, it is in the interest of fair decision-making to apply the general principle that extensive reinterpretation cannot be used to challenge or reopen matters that established legal relations many decades ago. In disputes where the time elapsed since the decisive events significantly exceeds both the limitation periods for adverse possession and the statutory retention

periods for records, the requirement to prove the existence of legal acts (decisions) is inappropriate, as the principle of the presumption of correctness applies in cases of doubt. In the view of the Court of Appeal, this reasoning answers the appellant's objections that none of the documentary evidence constitutes a resolution establishing the confiscation of Dr. A.?'s property and that the court did not determine the date of issuance of such a resolution. The fact that the Court of First Instance cited provisions of Decree No. 104/1945 Coll. of the SNR in its original form, before its amendment by Decree No. 64/1946 of the SNR, while simultaneously stating that the confiscation of P.'s property was carried out under Decree No. 104/1945 Coll. as amended by Decree No. 64/1946 Coll., does not affect the correct legal conclusion of the Court of First Instance that all the property of Dr. Erd?dy, for the reasons set out in the challenged decision, was subject to confiscation. Like the Court of First Instance, the Court of Appeal also points out that a similar factual and legal matter has already been decided by the Regional Court in Nitra, specifically in case no. 8Co/167/2014, in which, by its decision of October 30, 2014, it reached the same legal conclusions regarding the confiscation of all the property of Dr. B. A.?. Although this decision of another panel of the Regional Court in Nitra is not a ruling of the highest judicial authorities, as envisaged by Article 2(2) of the Civil Dispute Procedure Code (CSP), the consistent decision-making activity of the Court of Appeal ensures the fulfillment of the principle of legal certainty and predictability of court decisions, which is one of the fundamental pillars of civil litigation.

26. If the defendant, in the appeal filed, claimed that Dr. B. A.?dy was acquitted by the resolution of the District People's Court in Hlohovec, case no. Tľud 28/1946, dated December 30, 1946, which is supposed to refute any assertion that Dr. A.?dy was an unreliable person and thus a traitor or enemy of the Slovak nation, and submitted an illegible photocopy of the said resolution as evidence, it must be stated that this appellate objection, along with the submitted evidence, was evaluated by the court under § 366 of the Civil Dispute Procedure Code (CSP) as an inadmissible novelty introduced by the defendant in the appellate proceedings. The defendant neither demonstrated nor claimed that this means of procedural defense could not have been submitted in the proceedings before the Court of First Instance.

27. Regarding the defendant's objection to the need to suspend these proceedings due to the obstacle of res judicata, the appellate court states that the obstacle of res judicata is one of the procedural conditions, and its determination leads to the termination of the proceedings at any stage. This obstacle arises when the same matter is to be reviewed in a new proceeding. It concerns the same matter when the new proceedings involve the same claim or situation that has already been definitively decided, or when the proceedings involve the same subject matter and the same parties. The defendant argued that the Republic of Slovakia (or the State Property Fund) had already been awarded compensation for damages in the ancillary proceedings, and this fact represents an obstacle of res judicata if the civil lawsuit was filed only after a decision had been made regarding the award of damages in the criminal proceedings. According to the defendant, it is inadmissible for the plaintiff's claim (or the Republic of Slovakia with the State Property Fund's administration) to be decided duplicatively in two different proceedings. In this regard, it should be noted that the subject of these proceedings is not a claim for damages but rather the determination of ownership rights. In this case, it is not the same matter, as the subject of the proceedings is defined differently, and the judgment in the criminal proceedings does not create an obstacle of res judicata for this proceeding, as correctly concluded by the first-instance court. However, unlike the first-instance court, the appellate court is of the opinion that both claims—namely the claim for damages in the ancillary proceedings and the claim for the determination of ownership rights—are distinct claims that can coexist, and the acknowledgment of one does not preclude a favorable decision on the other. This is because the decision on both of these claims is based on different factual and legal grounds, and the fact that the court grants the claim for determining ownership rights does not imply that this results in the extinction of the claim for damages awarded by a final decision, as the court in the ancillary proceedings decided on this claim based on the assessment of the fulfillment of legal liability conditions (without the condition of another proceeding), and only these could justify the award of damages. These conditions are not influenced by the circumstances that are crucial for the court's decision regarding the determination of ownership

rights to real estate. This conclusion of the first-instance court, however, does not affect the correctness of its decision regarding the validity of the plaintiff's awarded claim.

28. With regard to all the above-mentioned reasons, the Court of Appeal upheld the judgment of the Court of First Instance as substantively correct, pursuant to § 387(1) of the Civil Dispute Procedure Code (CSP).

29. The Court of Appeal decided on the claim for reimbursement of costs for the appellate proceedings in accordance with § 396(1) in conjunction with § 255(1) of the CSP. It granted the plaintiff and the intervener on the plaintiff's side, as the successful parties in the appellate proceedings against the defendant, the right to full reimbursement of the costs of the appellate proceedings, the amount of which will be determined by the Court of First Instance in a separate resolution.

This decision was adopted in the Senate by a vote of 3 to 0.

Notice:

An appeal against the decision of the appellate court is admissible if the law permits it (§ 419 CSP) within two months of the delivery of the decision of the appellate court to the authorized party at the court that decided the case at first instance. If a corrective resolution was issued, the time limit starts anew from the delivery of the corrective resolution, but only with respect to the correction made (§ 427(1) CSP). In the appeal, in addition to the general requirements for submissions, it should specify which decision is being appealed, to what extent this decision is being contested, the reasons why the decision is considered incorrect (grounds for appeal), and what the appellant seeks (appeal request) (§ 428 CSP). The appellant must be represented by an attorney in the appeal proceedings. The appeal and other submissions from the appellant must be drafted by an attorney (§ 429(1) CSP).