The Court:	Martin District Court
File mark:	9C/98/2012
Court file identification number:	5712206969
Date of the decision:	15. 01. 2018
Name and surname of the judge, Higher Court Office:	JUDr. Miriam Štillová
ECLI:	ECLI:SK:OSMT:2018:5712206969.20

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

District Court Martin before Judge JUDr. Miriam Štillová in the dispute of the plaintiffs: 1/ B. A. C., B... J. F., Y.. X. X. XXXX, L. E. C. XXXX, C. X, E., SH. I. SH. B., X/ V. J. F., B.. J. F., Y.. XX. X. XXXX, L. E. T. Z. B., B. Z. N., N. Z. E., XXXX-XXX A., I., SH. I. I. I, both legally represented by law firm 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: SR represented by the administrator Forests of the Slovak Republic (Lesy SR) state enterprise with registered office at Námestie SNP 8, Banská Bystrica 975 66, ID No.: 36 038 351, legally represented by HMG LEGAL, s.r.o. with registered office at Červeňova 14, 811 03 Bratislava, ID No.: 35 885 459, on the determination of the ownership right as follows

r u l e d :

I. The action is dismissed.

II. The defendant is entitled to the costs of the proceedings in respect of plaintiffs 1/ and 2/ in their entirety. The amount of that compensation shall be determined by the Court by separate order after the final judgment has been delivered.

r e a s o n i n g :

The plaintiffs in rows 1/ and 2/ sought, by an application lodged with the court on 16 May 2012, a declaration of ownership. They founded their action on the ground that they are the legal heirs of A. H. J. F., B. A., who was the heir of the testatrix B. H. by will of 20 March 1944. J., B... F., the original owner of the confiscated immovable property, the ownership of which is the subject-matter of the claim. The defendant is the Slovak Republic as the current owner of the immovable property whose ownership is the subject of the determination, represented by the company Forests of the Slovak Republic (Lesy SR) state enterprise (Lesy SR) state enterprise, which is the administrator of the immovable forest property and other property owned by the Slovak Republic. The plaintiffs seek a declaration that the owner of the immovable property at the time of her death was the testatrix B. J., B.. F. and that the plaintiffs, as her grandson and granddaughter, are now the co-owners in 1-ici. It is a parcel of the register "C" under the parcel number 1392 - forest land with an area of 1 119 417 m2, registered on the LV No. XX I.re District Office Turčianske Teplice - Department of Cadastre, municipality of Mošovce, cadastral area Mošovce, then the parcel of the register "C" under the parcel number 1393 - other area with an area of 7 178 m2, also registered on the LV No. XX, further a parcel of register "C" under parcel number XXXX - forest land with an area of 7 372 m2, also registered on LV No. XX, parcel of register "C" under parcel number XXXX other area of 1 304 m2, also registered at LV No. 16, parcel of register "C" under parcel number 1513 - forest land of 3 121 m2, registered at LV No. XX, parcel of register "C" under parcel number XXXX/X - built-up area with an area of 64 m2, registered at LV No. XX, parcel of register "C" under parcel number XXXX/X - forest land with an area of 2 336 m2, registered at LV No. XX, then the parcel of the register "C" under the parcel number X XXX - forest land with an area of 1 273 101 m2, entered

on LV No. XX G.edenom District Office Martin - Department of Cadastre, Martin district, municipality Blatnica, cadastral territory Blatnica, parcel of the register "C" under the parcel number XXXX - forest land with an area of 14 735 m2, entered on LV No. XX, parcel of register "C" under parcel number XXXX - forest land with an area of 6 384 m2, registered at LV No. XX, parcel of register "C" under parcel number 1180 - forest land with an area of 646 000 m2, registered at LV No. XX, parcel of register "C" under parcel number XXXX - forest land with an area of 12 082 m2, registered at LV No. XX, parcel of register "C" under parcel number XXXX - forest land with an area of 17 105 m2, registered at LV No. XX, a parcel of register "C" under parcel number XXXX - other area of 1 044 386 m2, registered at LV No. XX and a parcel of register "C" under parcel number X XXX - forest land of 905 895 m2, registered at LV No. XX. The plaintiffs are the legal heirs in direct line from the deceased B. J., B. F., who on her mother's side descended from the Révay family. The entire property is registered in the land register in the name of the testatrix B. J., B... F. as a resident of the Czechoslovak Republic was untouched until her death on 30.11.1944. Her testamentary heir, i.e. the successor owner, was her daughter-in-law, A. H. J.F., B.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. However, by a resolution of the Presidium of the Slovak National Council of 9 October 1945 under No 11343/1945, the agricultural property of B. J., B... F. was confiscated pursuant to the provisions of Article 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 Poveriency for Agriculture and Land Reform under No. 21425/1945 - I/B, was to be B. J., B.. F. was notified that her property in the cadastral area of Mošovce and Turčianska Blatnica was to be confiscated in accordance with the above-mentioned order with immediate effect and without compensation for the purposes of the land reform. It is an irrefutable fact that, at the time of the entry into force of Regulation No 104/1945 Coll. of the National Council of the Slovak Republic, which was in force from 1 March 1945, and at the time of the decision of the Presidency of the National Council of the Slovak Republic of 9 October 1945, as well as at the time of the issue of the notification of the Land and Land Reform Board of 12 January 1946, I. B. J., B.. F. was dead. The decisions of the Presidium of the National Council of the Slovak Republic of 9 October 1945 and the notification of the Land and Land Reform Board of 12 January 1946 were not B. J., B.. F. and her successors in title were never served. On account of the confiscation of the property of I. B.V. J., B... F. could not and never was the succession after her and the plaintiffs' mother, A. H. J. F., B... A. was never registered title to the immovable property of the testatrix B. J., B... F., located in the cadastral territory of Mošovce and Turčianska Blatnica. This fact is evidenced, in addition to the extracts from the land registry entries, by the Report of the Working Group for Land Reform in Turčianske Sväté Martin of 4 October 1950, which shows that A. H. J. F., B... A. is not listed as the owner in the land register and neither in the collection of deeds at the Probate Department of the same court and the District Court in Turčianske Teplice was the continuation of the estate pending, thus the estate of Anne H. F., B... A. could not have been handed over either. The plaintiffs further pointed out that the decision of the Presidium of the National Council of the Slovak Republic of 9.10.1945, as well as the notification of the Land and Land Reform Commission dated 12.1.1946 on the confiscation of property were issued after the death of the testatrix B. J., B... F., that is to say, they could not be effective in relation to her, since she was no longer a liable subject of confiscation. The confiscation in her case was directed against a non-existent owner and, therefore, the decision of the Presidium of the National Council of the Slovak Republic of 9 October 1945 is a null and void act, thus not an administrative act but a so-called pact, and the presumption of correctness does not apply to it. The plaintiffs have an urgent legal interest in the declaration sought on the ground that, without an authoritative decision of the court, the succession of their mother, A. H. J. F., B. A. and their grandmother B. J., B... F. and subsequently their ownership of the properties in question registered in the Land Registry. The plaintiffs in the first row refer to the judgment of the Supreme Court of the Slovak Republic 3Cdo 154/2010, according to which the proceedings on the action by which the heir seeks a determination that a certain thing belongs to the inheritance of the testator, the issue is the assessment of whether the testator was the owner of that thing at the time of death. The determination sought here relates to the time of the testator's death and circumstances occurring after that time cannot affect the court's decision. It should be added that if the court grants the action requesting the said determination and the property is subsequently dealt with in the succession proceedings as the property of the testator,

the succession decree (Certificate of Succession) does not confirm that the testator is currently the owner of the property. After the death of the testator, there may generally be legal facts with which the law associates the acquisition of ownership by someone else (e.g., by possession;) however, proceedings to determine whether the thing was already in the possession of the testator at the time of his death are legally irrelevant to such (later) facts. The plaintiffs ask the court to grant their extended petition for a declaratory judgment, including a declaration that the plaintiffs are co-owners in 1-rights of the subject immovable property as the legal heirs of a heretofore unprobated inheritance from their mother, who did not refuse the inheritance. On the basis of such a decision, it will be possible to register their ownership in the Land Register without the need for further legal proceedings after the conclusion of the inheritance proceedings of their mother and grandmother. The second part of the petition, i.e. the determination that the heirs are currently joint heirs of the real estate before the succession is settled, corresponds to the substantive law of Article 460 of the Civil Code as well as to the long-established view of legal theory and case-law on this issue. In this connection, the plaintiffs referred to other decisions. As regards their petition, they asked the court, after taking evidence, to rule by judgment in respect of all the immovable properties referred to above that they belonged to the estate of B. K., B. F., deceased on 30.11.1944 in Budapest, the plaintiffs being each of them 1-st part-owners of those immovable properties.

2. By a submission served on the court on 3 September 2012, the defendant sent a statement of defence (Case No 126 of the court file), in which it stated that the defendant pointed out that the plaintiffs had brought proceedings pursuant to Article 80(1)(a) of the Civil Procedure Code (C.R.C.). (c) of the Code of Civil Procedure and considers that the plaintiffs in the present case have not demonstrated a compelling interest in the requested determination, since, in relation to the compelling interest in the requested determination, the plaintiffs merely state that without an authoritative decision of the court, the succession of their mother H. J. F., B... A. A. C. N. B. J., B.. F. and subsequently have their ownership registered in the Land Registry. The plaintiffs' claim does not stand up to scrutiny, since the plaintiffs omit in their application the decision of the Confiscation Commission in Turčianske Sväté Martin No. 223/222/48 of 5 April 1948, by which, pursuant to Regulation No. 104/1945 Coll. n. SNR of the National Council of the Slovak Republic on the confiscation of the property of the plaintiffs' mother, H. In this connection, the defendant points out that a preliminary issue in this type of action for a declaration of ownership is the examination of the facts relating to the creation of the right of ownership after the death of the testator, the proof of which entails the dismissal of the action for lack of an overriding legal interest. The lack of a compelling interest lies in the fact that even if the plaintiff hypothetically obtains a conclusive ruling on the ownership of the original testator at the date of death of specific immovable property, then the plaintiff would not be prevented from bringing a subsequent property action with the same set of parties, the subject matter of which would be to prove the creation of a right of ownership after the death of the testator, i.e., the court's ruling would be an academic ruling in the absence of an examination of the preliminary issue described above. For that reason, the defendant does not take a position on the further allegations made by the plaintiffs in the application and requests that the application be dismissed in its entirety.

3. According to Council Regulation (ES) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in force at the time the action was brought, Chapter II - Jurisdiction, Section 6 - Exclusive jurisdiction, Article 22 - the courts of the following Member States shall have exclusive jurisdiction, irrespective of domicile: 1. In proceedings concerning rights in rem in immovable property or the lease of immovable property, the courts of the Member State in which the property is situated. Since the subject of this case is the determination of ownership rights to real estate located in the territory of the Slovak Republic, and the participants in the case include, regarding the plaintiff in position 1/, a citizen with Austrian state affiliation and the plaintiff in position 2/ with Portuguese state affiliation, both Austria and Portugal being members of the European Union, it is therefore necessary, within the scope of jurisdiction, to proceed based on the relevant Regulation. In the court's opinion, the jurisdiction of the Slovak courts is established in this matter.

4. Pursuant to Act No. 97/1963 Coll. on Private International Law and Procedure, § 5, rights in rem in immovable and movable property shall be governed, unless otherwise provided for in this Act or in special regulations, by the law of the place where the thing is located.

5. In view of the above-mentioned provisions, the court, when assessing the present action for the determination of the right of ownership, proceeded according to the law in force in the territory of the Slovak Republic, since the real estate whose ownership or determination of the right of ownership is sought by the plaintiff in the present proceedings is located in the territory of the Slovak Republic.

6. The court took evidence in the case by questioning the parties to the dispute, documentary evidence submitted by the parties to the dispute, and by familiarizing itself with the attached files from the District Court of Bratislava, file No. 9C/18/2002, and from the District Court of Lučenec, file No. 7C/100/2003, which also included the file of the District Court of Lučenec, file No. 5C/7/2001.

7. The court decided the case by judgment No. 9C/98/2012-501 of 14.12.2015 and dismissed the action in its entirety on the ground that there was no compelling interest in establishing the ownership of the plaintiffs 1/ and 2/ to the disputed immovable property. The plaintiffs have appealed against that judgment. The appeal was decided by the Regional Court in Žilina, which, by order No 10Co/158/2016-577 of 29 November 2016, quashed the judgment of the District Court in Martin and returned the case for further proceedings. It pointed out that, respectively, it assessed the plaintiffs' appeal as well-founded and concluded that the plaintiffs have a compelling legal interest in the brought action for determination. It is established that the substance of the case is a dispute as to ownership, as to the plaintiffs' right of ownership, or as to whether the plaintiffs' predecessors in title were/were not, at the date of their death, the owners of the defendant immovable properties which are the subject-matter of the dispute. The plaintiffs have standing in the dispute. The defendant is the holder of passive standing. He is evidenced by the registration of title in the Land Registry to the subject-matter of the dispute. The case-law of the general courts has already established that if the defendant is registered in the Land Register as the owner of the immovable property, the plaintiff has a compelling legal interest in establishing its ownership right, since such a court decision may also be the basis for making a change in the registration in the Land Register. The substantive assessment of the question of ownership by a decision on the merits of ownership, the resolution of whether or not a claim for determination with a specific petition(s) for determination is justified, - is also justified as a result of the fact that in other proceedings which have been finally concluded so far, although related, but only preliminary partial questions have been resolved. This circumstance also confirms the existence of a compelling legal interest of the plaintiffs in bringing an action for determination in the light of Article 80(c) of the Civil Court Procedure Code (hereinafter referred to as 'OSP') in the version in force until 30 June 2016 and since 1 July 2016 in the light of Article 137(c) of Civil Dispute Procedure Code (hereinafter referred to as "CSP"), since, in the present case in particular, the determination of the question of ownership on the merits of the case in question will definitively resolve the existing dispute in the legal relationship in question, or will remove the controversy in question. This means that the district court is obliged to deal with the merits of the action brought and is obliged to conclude the dispute as to ownership on the merits. In the light of the results of other proceedings pending to date, it is necessary for the court of first instance to determine which substantive issues have been resolved, which are binding, and which are to be assessed in the light of the merits of the dispute. However, the Regional Court draws attention at this stage of the proceedings to the fact that the two defendants' petitions cannot stand side by side.

8. The District Court, bound by the legal opinion of the Regional Court that there is an urgent legal interest in the subject declaratory action, continued the proceedings by examining the merits of the lawsuit. The court scheduled a hearing for June 14, 2017 (document no. 589). At the hearing, the plaintiffs submitted a change to the claim and requested the court to determine that the real estate involved in this case belongs to the inheritance of B. K. J., B. F., P. XX. XX. XXXX in Budapest, or alternatively, the plaintiffs are each co-owners of these properties in equal shares. They pointed out that in the decision of the Regional Court, it was established that the plaintiffs have an urgent legal interest in the filed lawsuit, and the court should now focus on examining the factual situation. Regarding the factual situation, they adhered to all written statements and arguments presented at the hearing, and they believe the lawsuit is well-founded. As for the defendant, in response to the proposed amendment to the lawsuit, he stated that his right to a 5-day preparation period had not been respected. He also addressed the identification of the parcels that the plaintiffs had submitted to the proceedings. Since the motion to amend the lawsuit was delivered only at the hearing, the court adjourned the hearing to allow the defendant to properly comment on the proposed amendment to the lawsuit.

9. In a submission delivered to the court on July 3, 2017 (document no. 613), the defendant stated that the plaintiffs had not provided the identification of the parcels they had marked as the subject of the dispute in their claim (note: the plaintiffs only submitted graphical materials without the descriptive part of the identification). The plaintiffs submitted the identification only at the hearing held on September 25, 2014, at which time they were warned that the letter from the Land Registry Office of Turčianske Teplice (document no. K1 850/2012, note: incomplete and unsigned) including its attachments (note: parcel identification) was not complete. At the hearing on June 14, 2017, the plaintiffs delivered a motion to amend the lawsuit dated June 13, 2017, again referring to the parcel identification prepared on November 19, 2012, and delivered at the hearing on September 25, 2014. The parcel identification from November 19, 2012 cannot serve as the basis for the plaintiff's original lawsuit filed on May 16, 2012, nor for the motion to amend the lawsuit dated June 13, 2017. Because the plaintiffs in their lawsuit, as well as in their motion to amend the lawsuit, provide the areas of the parcels, which are not included in the November 19, 2012 identification, or more precisely, are not mentioned at all, since the numerical quantification of the parcels involved in the dispute is connected with a verbal description, such as: "part of p." In the November 19, 2012 identification, the C KN parcels intersecting with the original PK parcels are not quantified; and the plaintiffs, both in their lawsuit and their motion to amend the lawsuit, also incorrectly indicate the intersection of individual parcels, which the defendant proves with the pars pro toto evidence – evidence of a part representing the whole, for example: the plaintiffs in their lawsuit, as well as in the motion to amend the lawsuit, mention C KN parcel no. XXXX as being composed of PK parcel no. XXX/XX, but the opposite is not indicated in the November 19, 2012 identification, as the PK parcel no. XXXX/XX does not list C KN parcel no. XXXX. Furthermore, in the case of PK parcel no. XXXX/XX, the November 19, 2012 identification does not include C KN parcel no. XXXX, but in the lawsuit, as well as in the motion to amend the lawsuit, the plaintiffs mention PK parcel no. 1360/24 as part of C KN parcel no. XXXX. For these reasons, the defendant proposes that the court issue a resolution not to accept the motion to amend the lawsuit dated June 13, 2017. The defendant also pointed to Article 44(5) of the Constitution of the Slovak Republic, according to which agricultural and forest land, as non-renewable natural resources, enjoy special protection by the state and society. The defendant further argued that the plaintiffs failed to carry the burden of both the allegations and the evidence, which by itself is grounds for rejecting the entire lawsuit.

10. The plaintiffs also commented on the above, by filing delivered to the court on 6.7.2017 (no. l.617), where they submitted to the court a map of retrospective identification of the parcel of the C KN register no. XXXX, XXXX, XXXX, XXXX, XXXX/X, XXXX/X, a map of retrospective identification of the parcel of the C KN register no. 1251, 1252, a map of retrospective identification of the parcel of the C KN register no. XXXX, XXXX, XXXX, XXXX, XXXX, XXXX, XXXX. They pointed out that these exhibits constitute a graphic representation of the retrospective identification of the individual parcels of the C KN register, the maps showing the C KN parcels and the overlap of the former parcels with the C KN parcels. These maps thus clearly show the current location of the land subject to these proceedings and its overlap with the C KN parcels. In particular, e.g., parcel No. XXXX/XX is contained on the map of the C KN register of the retroactive identification of the C KN register parcels No. XXXX, XXXX, XXXX, XXXX/X, XXXX/X, where it is precisely defined, specified and contained, while the other parcels are contained in the same way on the submitted maps. As to the defendant's contentions that it is not apparent to him on what factual basis the plaintiffs are presenting in their spreadsheets the so-called "XXXX-XXXX" and "XXXX-XXXX". The plaintiffs again referred to the submitted maps of retrospective identification, which were drawn up at a scale of 1:5000, i.e. from that data it is possible to specify and determine the total area of the individual parcels by means of the maps. In particular, once the individual side lengths of a particular geometric object are known, it is possible to calculate the total content of those sides and then multiply the content by the scale of the map. By this procedure, the surveyor arrives at the relevant parcel dimensions. The plaintiffs also draw the court's attention to the fact that the defendant has disputed the expert report drawn up by a specialist in the field in question without producing his own expert report, i.e. the defendant's objections in relation to the back-identification cannot be taken into account, since the defendant is not a person qualified to assess the back-identification drawn up, or the knowledge arrived at by the surveyor, in a relevant manner. They also pointed out that the original maps were produced before the hearing. As appendices, the plaintiff submitted the back-identification of the parcels (Case Nos 621 to 641).

11. At the hearing held on 18.10.2017 (No. 679), the plaintiffs submitted in the proceedings a back identification of the individual parcels, including the maker's identification and the relevant stamp, stating that the back identification is absolutely identical to the documents that were sent to the court. The individual parcels, the maps and their overlaps are indicated, and a rather large map is always shown behind each parcel, where the overlaps of the former parcels are clearly defined. They insisted that they had submitted to the court deeds containing the back-identification of the individual parcels, and these exhibits are a graphical representation of the back-identification of the individual parcels, with the maps showing the parcels and their overlaps with the former parcels graphically. These maps clearly show the current location of the land which is the subject of these proceedings. This is a retrospective identification drawn up by a surveyor, i.e. there is no reason to question the retrospective identification in question, which was drawn up by an expert in the field. In view of this fact, at the hearing in question, the court admitted the amendment of the claim in the plaintiff's submission of 13.6.2017, in accordance with §§139 et seq. CSP, as the parties to the dispute were present. Procedurally, the court held that the identification of the parcels dated 19.11.2012 (no. 279 of the file), supplemented by the retrospective identification of the parcels (no. 621 to 641), as submitted by the plaintiffs, can be the basis not only for the action, but also for the motion to amend the action, and the results of the proceedings to date can be the basis for the hearing of the amended action. The Court considered that this was a qualitative amendment of the application, i.e. the plaintiffs were seeking to amend the application with a composite statement of claim. The fact that an order granting leave to amend the application had been made was recorded in the minutes of the hearing.

12. The subject-matter of the action, including the amendment thereof, is a declaration that certain immovable property referred to in the application is part of the inheritance of B. K. J., B.. F., P. XX. XX. XXXX in Budapest, alternatively that the plaintiffs should each be 1-share co-owners of those properties. This is a so-called declaratory action at the time of filing of the action pursuant to Section 80(c) of the C.C.P., and as of 1 July 2016 in view of Section 137(c) of the CSP., according to which the action may be brought to request a decision, in particular, to determine whether or not there is a right if there is a compelling legal interest; a compelling legal interest need not be proved if it arises from a special provision. In the adversary petitions, the plaintiffs sought an award of costs.

The prerequisite for the success of any action for a declaratory judgment is substantive standing and the existence of a "compelling interest".

13. The plaintiffs derive their standing from the fact that they are the legal successors of the deceased B. J.F., P.. XX.XX.XXXX A. Y.. H. J. F., B... A., P.. X.X.X.XXXX, on the ground that they are the legal heirs of H. J. F., B... A., who by the will of the testatrix B. J. F. became her heir, including the land which is the subject of these proceedings. This was proved by the plaintiffs by the death certificate and the will of B.P. J.F., translated into Slovak (see paragraphs 21 to 30 of the file), and the death certificate of H. J.F., B.A. (see paragraphs 31 to 39 of the file), the plaintiffs' birth certificates (see paragraphs 46 to 53 of the file). The Slovak Republic is registered as the owner and Forests of the Slovak Republic (Lesy SR) state enterprise, as the administrator on the title deeds of the properties which are the subject of these proceedings. Pursuant to Section 73 of the CSP in conjunction with Section 50(6) of Act No 326/2005 Coll. on Forests in force at the time the action was brought, the defendant, i.e. the Slovak Republic, represented by the State Enterprise Forests of the Slovak Republic (Lesy SR) ., is also granted passive legitimacy. In the light of the foregoing, the Court is of the opinion that both active and passive standing of the parties to the dispute in the present proceedings is established. On the basis of the legal opinion expressed by the Regional Court in Žilina in its order, the Court considers that there is a compelling legal interest of the plaintiffs in the action for determination. At the same time, the Court refers to the conclusions expressed by the Regional Court in its order (No 583, 584), where it found that the two defendants' petitions cannot stand side by side.

14. As to the composite petition asserted by the plaintiff, the court found it to be contingent and not alternative. An alternative pleading can only be pleaded in an action for performance under section 137(a) of the CSP, i.e. where the claimant seeks payment of a sum of money or the performance of a non-monetary obligation. Thus, by means of an alternative petition, the plaintiff requests the court to order the defendant to make two or more alternative payments. Under substantive law, it can 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 determination under section 137(c) of the CSP, such as the present action, the plaintiffs' alternative petition is not an option, since the plaintiffs are seeking to determine whether or not there is a right, i.e. they are not seeking to obtain performance from the defendant. The plaintiffs seek primarily a declaration that certain immovable properties are inherited from their grandmother and, if that cannot be established, that the plaintiffs are each one-half joint owners of those properties.

15. The court requested at that time a complete excerpt from the land registry from the Land Registry Office in Martin for Land Register Sheet (PKV) no. 1 for the cadastral area of Mošovce and an excerpt from PKV no. 2 for the cadastral area of Turčianska Blatnica, including all parts A, B, and C. These were delivered to the court, as evidenced by PKV no. 2 for the cadastral area of Turčianska Blatnica (documents no. 153 to 161), as well as PKV no. 1 for the cadastral area of Mošovce (documents no. 169 to 184). The plaintiffs submitted PKV excerpt no. 584 for the cadastral area of Turčianska Blatnica and PKV no. XXX I for the cadastral area of Turčianska Blatnica.

16. If it is necessary for the purpose of legal transactions to establish the previous legal status and ownership of the property, a retrospective identification of the parcels shall be made. With regard to the retrospective identification of the parcels submitted by the plaintiffs, the Court refers to the reasoning in paragraphs 10 and 11 of this judgment and considers that the identification of the 'C' register parcels with the land registry is sufficiently established.

17. The plaintiffs claimed that they are the legal heirs in the direct line of Y. B.P. J., B.. F., who, on her mother's side, came from the "RÉVAY" family. Since 1540, when X. B. received the Blatnica castle from the king, this family had been associated as the owner of extensive land and real estate, which, in addition to agricultural land, mainly consisted of forest property, houses, farm buildings, gardens, parks, greenhouses, a library, antiques, paintings, and unique furnishings of the Mošovce castle and the castle in the cadastral area of Sklabinský Podzámok. The entire property recorded in the land registry books under the name of the decedent B. J., B.. F., as a resident of the Czechoslovak Republic, remained untouched until her death on November 30, 1944, according to the plaintiffs. The heir, i.e., the new owner, became her daughter-in-law A. H. J. F., B.. A., a Norwegian national, the mother of the plaintiffs. This was in accordance with the law in effect in Slovakia at the time of the original owner's death, under which the heir immediately (even without registration in the land registry) inherited the decedent's rights and obligations, unless the decedent explicitly excluded this. By a resolution of the Presidency of the Slovak National Council on October 9, 1945, under number 11343/1945, the agricultural property of B. J., B.. F. was confiscated according to Section 1(1)(b) of Decree No. 104/1945 Coll. of the Slovak National Council of August 23, 1945, on the confiscation and expedited distribution of agricultural property belonging to Germans, Hungarians, and traitors and enemies of the Slovak nation. The notice of confiscation issued on January 12, 1946, by the Ministry for Agriculture and Land Reform under number 21424/1945-I/B, stated that B. J., B.. F. was informed that her property in the cadastral areas of Mošovce and Turčianska Blatnica was being confiscated under the aforementioned decree, effective immediately and without compensation, for the purposes of land reform, with the confiscated property located in the cadastral areas of the villages Mošovce and Turčianska Blatnica under numbers 33, 1011, 2, 584, 585. The plaintiffs argued that they had proven by documentary evidence – the death certificate – that at the time the decree 104/1945 Coll. came into effect on March 1, 1945, and at the time of the decision by the Presidency of the Slovak National Council on October 6, 1945, and the notice by the Ministry for Agriculture and Land Reform on January 12, 1946, B. J., B.. F. had already died. The plaintiffs argued that the decisions of the Presidency of the Slovak National Council from October 9, 1945, and the notice from the Ministry for Agriculture and Land Reform from January 12, 1946, were never delivered to B. J., B.. F., or her legal successors. Due to the confiscation of B. J., B.. F.'s property, the inheritance could not and had never been processed, and the mother of the plaintiffs, H. J. F., B.. A., was never registered as the owner of the real estate of the decedent B. J., B.. F. located in the cadastral areas of Mošovce and Turčianska Blatnica. These facts claimed by the plaintiffs were supported by land registry excerpts, as well as by a notice from the Land Reform Working Group in Turčiansky Sv. Martin from October 4, 1950 (document no. 113), which shows that H. J. F., B.. A. was not listed as the owner in the land registry and that the inheritance proceedings had not been processed

in the probate department of the District Court in Turčianske Teplice, meaning the estate of H. J. F., B.. A. could not have been passed on.

18. In the course of the trial, the court had to address several issues for a preliminary ruling on the merits. The first issue in dispute was whether the title to the properties in question was vested in Mrs B.V. at the time of her death. J., B.F. in her favour. In this connection, the defendant referred to Land Registration No. 1, par. Mosovce, where under B2 the note of the requisition and under B4 the execution of the inventory pursuant to Government Decree No 146/1939 ('l.173) are indicated. These entries are also made on PKV No 2, k.ú. Turčianska Blatnica under B2 and B4, as seizure notes, and under B7 as an inventory carried out 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 forest real estate under 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 death of Mrs B. J., B.. F..

19. In its submissions of 9 May 2014, 12 September 2017 (No 254, 660 et seq. of the file), the defendant also referred to Act No 215/1919 Coll. and n. on the seizure of large landed property (hereinafter referred to as the 'Seizure Act'), which, according to the defendant, introduced the concept of 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 that concept is expropriation. It pointed out that the content framework of the concept of encroachment is given by the cited law, in particular:

- paragraph. § 1 according to which: " In order to regulate land ownership, the State shall occupy the large landed property (§ 2) lying within the territory of the Czechoslovak Republic, including the large tied property, and a land office shall be established.";
- paragraph. § 5 according to which" "The Czechoslovak Republic shall offer the rights to take over and allocate the assets referred to in § 1.";
- paragraph. § 16, according to which: "The confiscated property shall be investigated and made visible by a book note, if it is confiscated. Even if this note is not in the books, no one can plead that without fault he did not know about the seizure of land property pronounced in § 1.

According to the defendant, it follows from the above that the legal predecessor of the Slovak Republic, i.e. the Czechoslovak Republic, acquired the ownership right to the subject matter of the dispute ex lege and already on the date of effectiveness of the Záborového law. The State's right of ownership in question, which arose constitutionally directly from the law, was merely declared by a note in the land register. In that connection, he referred to section 16 of the Land Act. That is to say, its effectiveness did not require intabulation in accordance with the Land and Land Registry Code of 15.12.1855, which was in force in the territory of the Slovak Republic until 1.1.1951. At the same time, he also pointed out in this respect another provision of the Land Acquisition Act, from which the nature of the land acquisition as an act of taking over land by the State, as an expropriation, is apparent, namely

- Paragraph 14 of the Land Appropriation Act, which states: “If the local need for land is urgent, and if the seized land is insufficient, or if the common good requires it, the land office may expropriate land even below the limits set by § 2.”
- Paragraph 9 of Act No. 329/1920 Coll. on the acquisition and compensation for seized property (hereinafter referred to as the “Compensation Act”), which states: “The note of intended acquisition acts as a note of intended deletion of the property if it does not encompass all properties registered in the entry and simultaneously as a note of expropriation.” (File No. 661).

According to the defendant, it follows from the foregoing that in addition to the note under Section 16 of the Takeover Act, there was also a note of intended takeover, and the following legal effects are associated with the note of intended takeover:

- if the subject of the note of intended taking is the entire so-called book body, then the note always has the legal effect of expropriation in favour of the State (§ 26 of the Replacement Act),
- if the subject of the note of intended taking is a part of the so-called circular body, then this note has the effect of writing off the real estate to another insertion, with which is associated at the same time the entry of the ownership right for the State (§ 27 of the Replacement Law),
- the expiry of the 30-day limitation period under Section 31 of the Compensation Act, according to which it is not possible to claim recognition of the right of ownership of the immovable property taken

over, neither against the State nor against the persons who received the immovable property by way of allotment, it being irrelevant whether the registration of the right of ownership was made immediately after the expiry of this period. At the same time, the defendant referred in this respect to the opinions of legal science contained in the books which he had submitted in the proceedings with his statement of 9 May 2014 (no. 254). According to the defendant, the ownership right to the properties in question was transferred to the defendant's predecessor in title, the Czechoslovak Republic, on the basis of the seizure of those lands, which took place with the entry into force of the Zábora Law, i.e. because of the death of Rozalia Hubay, née K. Hubay, née K. Hubay. Cebrian - the plaintiffs' legal predecessor. For that reason, the disputed immovable property could not have been included in her inheritance and therefore could not have become the property of the plaintiffs by virtue of multiple inheritance.

20. The plaintiffs in their submission of 6 January 2013 (no. 209) and in their closing speech (no. 711) were of the opinion that the mere enactment of the Law of Enclosure did not constitute an immediate entry by the State into the property rights and obligations of the owner of the property (no. 714 of the file). They referred to the above-mentioned provision of Section 5 of the Land Act and, however, in the case of the property in question, there had been no appropriation of that property. It is true that Section 5 of the Land Acquisition Act lists the rights which the State acquires as a result of the requisition, which do not include the right of ownership of the requisitioned property. Nor has it been shown that the property in question was subject to appropriation.
The plaintiffs also pointed out

- paragraph. § Section 7(1) and (2) of the Law on Confiscation: 'The alienation, lease, commitment and division of confiscated property requires official consent (Section 15) and has no legal consequences against the State without it. Paragraph 1 Alienation, division, commitment and lease of confiscated property requires the consent of the Land Office and is null and void without it. Paragraph 2 - the Land Office grants the election, may impose conditions and make reservations. It is also clear from these provisions of the Land Seizure Act that the State was not the owner of the seized property and for that very reason made the disposition of it conditional on official consent;
- paragraph. §13 of the Act on the Recruitment according to which: "Before the actual takeover must be given notice to persons who farm that time on the land, ojiž jejiž převzetí jde. More detailed provisions will be issued by a special law'. In the present case, it has not been established that notice was given to the plaintiffs' predecessor in title;
- paragraph. § Section 26 of the Replacement Act. § Section 28 of the Replacement Act: 'if the land office has previously decided to allocate, change or transfer the taken over real estate to the ownership of others, there is no need to make the appropriate entry of the ownership right for the State, and the courts shall, on the proposal of the land office, transfer the ownership right directly to the acquirer designated by the land office'.

21. The Court agrees with the plaintiffs' legal reasoning set out in paragraph 20 of the grounds of the present judgment, which was also supported by the case-law relied on by the plaintiffs, namely

- Judgment of the Supreme Court of the Slovak Republic Case No. 3Cdo/12/2010 (No. l. 227), according to which: ' .....In the aforementioned folder, there is a note on the seizure of property pursuant to Act No 215/1919 Coll. on the seizure of large landed property (the so-called Land Seizure Act). However, that note did not have the legal effect of transferring ownership to the State, as the plaintiffs incorrectly claimed. In so far as the property was taken, the State did not acquire ownership of it, but only the right to take it over and assign it for use, the more detailed procedure for the taking over of that property by the State being governed by Act No 329/1920 Coll. on the taking over of and compensation for land property taken over (the so-called 'compensation act'). Nor did the note of intended taking over....' itself have the effect of transferring ownership to the State;
- Judgment of the Supreme Administrative Court Rc 3438/35 (File No. 219), which states: “The mere appropriation of real estate under Act No. 215/1919 Coll. does not result in their legal transfer (acquisition of title according to § 424 of the Civil Code) in favor of the state.”
- the ruling of the Constitutional Court of the Slovak Republic IV. ÚS 294/2012 (no. l. 213), according to which: "The Substitute Law uses in its text, inter alia, the terms 'intended taking in connection with a note in the land register' (e.g. § 3, § 9, etc.), as well as uses the term 'intended taking' in connection with a note in the land register: " Actual taking ", e.g. § 12, § 15, § 24. The whole of Part 2 of this Act is entitled: " On taking ", which concerns the registration of title, in this context, e.g. the

wording in § 27 is relevant: " Unless the whole book body is the subject of the taking..."). It is clear from the foregoing that in this section a book (legal) taking is considered to be a taking, which effectively means the entry of the title in the land register. The ambiguity of the determination of the moment of the transfer of the ownership right to the State is also supported by the fact that in the Czech Republic this issue was only resolved by legislative intervention, i.e. by an amendment to Act No 229/1991 Coll. ; in the Slovak Republic, however, such a regulation is absent. In this context, the Constitutional Court refers to its previous case-law on the interpretation of legislation. According to this case-law, the Constitutional Court also assesses as constitutionally incompatible (violating the complainant's fundamental rights) those decisions of the general courts in which laws or subordinate legislation have been interpreted in extreme contradiction to the principles of justice as a result of, for example, excessive formalism;
In support of their claims, the plaintiffs have also documented in the proceedings the resolution of the People's Court in Turčianske Teplice of 25.8.1959 (No. 332), and on the basis of this decision the Czechoslovak State's ownership right to the land which is the subject of these proceedings was inserted, but it was not inserted as a result of the Zábora Law, the Substitute Law or the note of the intended transfer. Also on the PKV No. 2 k. ú. Turčianska Blatnica, under B5 it is indicated that the State Land Office has requested the deletion of the noted encroachment.
It is true that the mortgage notes in question, as well as the inventory under Government Decree No. 146/1939, prove that the estate of the testatrix Rosa Hubay, nee. Cebrian affected by 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 PKVs. However, it has not been established that there was a deprivation of the right of ownership of the plaintiffs' predecessor in title, that is to say, Ž. B. J., B.. F. was the owner of the immovable property in question at the date of her death.

22. The court subsequently reviewed the documentary evidence submitted by the plaintiffs. The plaintiffs presented documentary evidence (record no. 112 of the court file), from which the court established that the Commission for Agriculture and Land Reform in Bratislava, on January 12, 1946, under number 21425/1945-I/B, issued a notice stating that the Presidium of the Slovak National Council (SNR), at its session on October 9, 1945, under number 11343, decided to confiscate the agricultural property of J. B., B. F., located in the cadastral territories of Mošovce and Turčianska Blatnica, under numbers XX, XXXX, X, XXX, and XXX, land registry entries, according to paragraph 1(b) of Section 1 of SNR Decree No. 104/1945 Coll. of August 23, 1945, with immediate effect and without compensation, for the purposes of land reform. Additionally, the plaintiffs submitted documents—proposals from the Commission for Agriculture and Land Reform in Bratislava addressed to the District Court in Turčiansky Svätý Martin—where the commission requested the land registry in the cadastral area of Mošovce (entries 1 and 2) and Turčianska Blatnica (entry 2, numbers 585, 584), for properties registered to B. J., B. F., which were confiscated under the above-mentioned Presidium decision, to record the confiscation in the land registry according to Decree No. 104/1945 Coll. of SNR as amended by Decree No. 64/1946 Coll. of SNR for the purposes of land reform (records no. 336, 338). The plaintiffs also provided documents showing that the People's Court in Turčianske Teplice, by a resolution dated August 25, 1959, approved the entry of ownership rights for the Czechoslovak State in the land registry of the cadastral territory of Mošovce, under entries 1 and 2, and deleted the note of confiscation under Decree No. 104/1945 Coll. of SNR as amended by Decree No. 64/1946 Coll. of SNR (records no. 332 to 334). Both the plaintiffs and the defendant submitted additional documentary evidence (records no. 12, 327), from which the court established that the Confiscation Commission in Turčiansky Svätý Martin, on April 6, 1948, under number 223/222/48, decided that H. J. F., B. A., born on XX.X.XXXX, as an unknown resident, should be considered Hungarian under Section 1, paragraph 1(b) of Decree No. 104/1945 Coll. of SNR as amended by Article I of Decree No. 64/1946 Coll. of SNR and Decree No. 89/1947 Coll. of SNR. Consequently, the agricultural property within the scope of Section 2 of Decree No. 104/1945 Coll. of SNR, owned by H. J. F., B. A., was confiscated as of March 1, 1945, regardless of its location within the territory of Slovakia.

23. Another disputed issue which the court dealt with in the present proceedings 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., B... F. ('Decision No 1') led to the confiscation of the immovable property in question, i.e. to the transfer of the ownership right to it to the State, or whether, on the basis of Decision

No 223/222/48 of the Confiscation Commission in Turčianske St. Martin of 5 April 1948 issued against Mrs H., the confiscation of the immovable property in question was carried out by virtue 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., B. A. ('Decision No 2') to confiscate the immovable property in question.

24. Regarding Decision No. 1, that is, the decision of the Presidency of the National Council of the Slovak Republic dated 9 October 1945 No. 11343/1945 issued against Mrs. J., B. F., on which the plaintiffs submitted (Case 711 et seq.) that Decision No 1, as well as the notification of the Land and Land Reform Commission of 12 January 1946 on the confiscation of property, were issued after the death of the testatrix B. F. J., B.. F.. Therefore, the confiscation proceedings in respect of the testatrix B. J., B... F. effective, since she was no longer a competent subject of confiscation. The confiscation in her case was directed against a non-existent owner, since the latter did not exist as a subject of rights and obligations as a result of her death. In the plaintiffs' view, Decision No 1 is a null and void act. It is therefore not an administrative act, but a so-called 'paact', and the presumption of correctness does not apply to it. The plaintiffs have referred to several decisions - judgment of the Supreme Administrative Court of the Slovak Republic, Case No 3Cdo 21/2000, judgment of the Supreme Administrative Court of the Slovak Republic, Case No 1 Sžo 37/2008, concerning the confiscation decision. At the same time, the plaintiffs submitted that it was the task of the state authorities to issue a final decision against the correct addressee and only as a result of such a final decision could legal consequences ex lege arise against the addressee. The plaintiffs maintain that such a decision against Rozalia Hubay, nee. Cebrian was not made and the subsequent confiscation decision against their mother must be regarded as a null and void administrative act as a result of the facts already established by them. The plaintiffs also consider that the above-mentioned second confiscation decision, i.e. Decision No. 2, issued against the plaintiffs' mother, H. J. F., B.A., on the basis of Slovak National Council Regulation No 104/1945 Coll., as unlawful, incorrect and void in substance. The plaintiffs' mother is incorrectly referred to as Hungarian on the confiscation decision, but the plaintiffs submitted evidence to the court during the proceedings which proved that the plaintiffs' mother was of Norwegian nationality (ethnicity) and that, therefore, neither Regulation No 104/1945 Coll. of the National Council of the Slovak Republic nor the confiscation decision in question could have applied to her. They consider the decision in question against the plaintiffs' mother to be unlawful, erroneous and void in substance. At the same time, in view of the fact that the confiscation of the property in question had already been decided earlier against B.V. J., B.F., and that decision was in no way annulled - that is to say, the confiscation committee lacked the power to make the decision in question against the plaintiffs' mother, while that decision was also in flagrant contravention of the principle of ne bis in idem, which is a fundamental principle of administrative punishment. The decision in question was not notified or served on the plaintiffs' mother in any way, that is to say, it never took effect and was never valid. The decision in question was not even published by the defendant's predecessor. The defendant's predecessor in title was also registered by virtue of Decision No 1 against the original owner, not by virtue of the second confiscation decision, as Decision No 2. The second confiscation decision No. 2 issued does not apply to the disputed properties, i.e., they are not even subject to it, and the title of the defendant's predecessor in title was registered on the basis of a null and void deed.

25. Three other court files were attached to the present case file, case nos. 9C/18/2002, 5C/7/2001, 7C/100/2003, which were duly brought to the attention of the parties to the litigation, they were given access to them, which they confirmed at the hearing held on 14.12.2015 (no. 499).

26. The Court refers to the proceedings pending before the District Court Bratislava I under file no. 9C/18/2002, in which the question of the validity and effectiveness of Decision No. 1 and Decision No. 2 was addressed. It appears directly from the grounds of the judgment and from the case-file that the proceedings in question were initiated on 31 March 1998 before the District Court of Martin and, following a decision of the Supreme Administrative Court of the Slovak Republic, were transferred to the District Court of Bratislava I for reasons of expediency. On the basis of the order of the District Court Bratislava I, a change of the plaintiffs, who are identical to the plaintiffs in the present proceedings, was admitted and the subject-matter was also the determination of the ineffectiveness of the administrative acts and decisions relied on by the plaintiffs in the present proceedings. In particular, the decision of the Presidium of the National Council of the Slovak Republic on the confiscation of the property of B. J., B...

F., issued on 9 October 1945 under No 21425/1945-I/B, as well as the confiscation decision issued by the Confiscation Commission in Turčianske Sväté Martin on 5 April 1948, No 223/222/48, against the property of H. J. F., B. A. as a Hungarian, pursuant to Article 1(1)(b) of Regulation No. 104/1945 Coll. of the National Council of the Slovak Republic, requesting a declaration that these decisions are legally ineffective administrative acts from the outset. Both of these decisions form part of the plaintiffs' arguments in the present proceedings and were directly relied on in the plaintiffs' application. In Case 9C/18/2002, the plaintiffs also sought a declaration that the State had never validly acquired title to the estate of the late Rosalia Hubay Cebrian by virtue of those confiscation decisions. The present action was dismissed for lack of a compelling interest in law. In this respect, the Court refers to the first instance decision of the District Court Bratislava I, as well as the second instance decision of the Regional Court Bratislava under Case No. 5Co/100/2005, which was issued in the present proceedings, where on page 5, last paragraph (Case No. 9C/18/2002, p. 270) it is explicitly stated that: 'the valid case-law of the Supreme Court has resolved the question of both the complexity of administrative acts and the question of when general courts are entitled to review administrative acts outside the framework of the administrative justice system'. Null and void are those 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, 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 acts, i.e. defects which are so serious that the presumption of their correctness does not apply. In the case of others, the presumption of correctness applies'.

27. From another attached file of the District Court Lučenec file No. 7C/100/2003, the court also refers to the judgment of the Regional Court in Banská Bystrica dated 28. 6. 2006, where on page 4, paragraph 2, it is stated again that the fact that the decision of the confiscation commission was issued against a person who was already deceased at the time of its issuance 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 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. Thus, the District Court as a general court would not be empowered to review the facts alleged by the petitioners. In the present proceedings in Case No. 7C/100/2003 also, the parties who are the plaintiffs in Series 1/, 2/ were also parties to the present proceedings as plaintiffs in Series 1/ and 2/. Thus, once again, the Regional Court in Banská Bystrica stated that only so-called null decisions, which were issued by such administrative authorities, for the issuance of 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 paacts, only such decisions are entitled to be reviewed by the General Court outside the scope of the administrative justice system. It can therefore review administrative acts only in principle with regard to whether they are null and void acts, i.e. defects which are so serious that the presumption of their correctness does not apply. In the case of others, the presumption of correctness applies.

28. At the same time, the Court also refers to another attached file to the proceedings in Case No 5C/7/2001, where the parties were again the plaintiffs in row 1/ and 2/ appearing in these proceedings and the subject matter was a proceeding on the existence of a right of inheritance, that is to say, it was an action for a declaration that the right of inheritance over property confiscated in violation of the law at the time of the confiscation decision was for the benefit of B. J. F. A. H. J. F., B. A. by the confiscation commission in Lučenec, is preserved and subsisting for the plaintiffs. That declaratory action was also dismissed and it was held there that the plaintiffs had a legal opportunity to assert their title to the immovable property in proceedings before the administrative authority, which they did, but were unsuccessful in those proceedings. It should be emphasised that it is possible and regulated by law to remedy or mitigate the consequences of certain property injustices committed against the owners of agricultural forestry property in the period 1948-1989, namely by Act No 229/1991 Coll. as amended and supplemented. It should be emphasised that, in so far as the plaintiffs do not fulfil 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 court judgment in civil proceedings. It is also apparent from the annexed files that the plaintiffs had the possibility, if they had the prerequisites for claiming any redress or the alleged wrong, to apply in the context of the restitution proceedings. The restitution proceedings

have been opened for natural persons only twice, which means that in the present case it was objectively possible for the plaintiffs, if they had the prerequisites with which they wished to prove their allegations before the authorities which were competent to do so under the restitution rules. The proceedings, as is apparent from the annexed files, were dismissed on the ground of extinction of the right of ownership by reason of preclusion, as is apparent from the two annexed files, which were before the District Court in Lučenec.

29. The Court also refers to those decisions on the ground that it is necessary to assess the correctness of Decision No 1 and Decision No 2 on a preliminary basis, bearing in mind that those decisions have already been considered by the courts in the past in the context of other judicial proceedings (see paragraphs 26, 27 and 28 above), and all of them have come to the conclusion that they do not suffer from such defects as to render them null and void and that they must therefore be regarded as correct decisions. Both Decision No 1 and Decision No 2 were issued on the basis of SNR Decree No 104/1945 Coll. on the confiscation and expeditious distribution of the landed 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 entry into force of that Decree on 1 March 1945, i.e. without the need to issue further decisions. The Court is therefore of the opinion that, if at the time of her death the properties in question had belonged to Mrs B. J., B.F., there is no doubt that, as a result of the issue of the ordinance in question, the ownership of the properties in question was lawfully transferred to the Czechoslovak State, the confiscation of which was merely declared by the aforementioned Decree No 1 and Decree No 2, and therefore their possible formal defects cannot have the effect of preserving the ownership right of the plaintiffs' predecessors in title. The effects of the order in question were therefore genuinely given effect by the effectiveness of the order and not at the time of service, as the plaintiffs put it, not to mention that the burden of proving that allegation is wrongly shifted from the plaintiffs to the defendant, since, in accordance with the principle of the presumption in favour of public decisions, that burden lies with the plaintiffs. In the proceedings, it was established that the defendant's predecessor in title, the Czechoslovak State, acquired the right of ownership by confiscation pursuant to Slovak National Council Regulation No 104/1945 Coll. The above was supported by the documentary evidence referred to above:

- Notification from the Ministry of Agriculture and Land Reform in Bratislava dated January 12, 1946, under number 21425/1945-I/B, stating that the Presidium of the Slovak National Council (SNR) decided at its meeting on October 9, 1945, under number 11343, to confiscate the agricultural property of J. B., located in the cadastral areas of Mošovce and Turčianska Blatnica, under numbers 33, 1011, 2, 584.
- Decision No 2,
- The proposals of the Land Management and Land Reform Authority in Bratislava addressed to the District Court in Turčianske Sväté Martin, by which the Authority requested the land register of the cat. territory of Mošovce in inserts 1 and 2, cat. area. Turčianska Blatnica in insert 2, vl. 585, 584, on the real estate registered for B. J., B... F., which were 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. of the SNR, as amended by Decree No. 64/1946 Coll. n. SNR for the purposes of land reform,
- documents, from which it is clear that the People's Court in Turčianske Teplice by resolution dated 25.8.1959 allowed in the land register cat. No. 1, 2 of the entry of the property right for the Czechoslovak State, inserted the deletion of the note of confiscation according to the Regulation No. 104/1945 Coll. n. 64/1946 Sb. n. SNR (see No 332 to 334).

30. Pursuant to Article 1(1) of Slovak National Council Regulation No 104/1945 Coll. on the confiscation and accelerated distribution of the land property of Germans, Hungarians, as well as traitors and enemies of the Slovak nation, land property in the territory of Slovakia owned by (a) persons of German nationality (ethnicity), (b) persons of Hungarian nationality (ethnicity) who on 1 November did not have Czechoslovak state affiliation etc., shall be confiscated for the purposes of land reform with immediate effect and without compensation. According to Decree No 1 and No 2, the confiscation of the property took place on the ground that the plaintiffs' predecessors in title, i.e. their grandmother, mom - B. J. F. A. H. J. F., B.. A. by cit. 1(1)(b) as persons of Hungarian nationality (ethnicity) who on 1 November did not have Czechoslovak state affiliation From the death certificate as well as the will of B. J. F., it is

established that she was a person of Hungarian nationality (ethnicty) and did not have Czechoslovak state affiliation. As regards the plaintiffs' mother, H. J. F., B.A., it has not been established that she was not a person of Hungarian nationality (ethnicity), the death certificate produced by the plaintiffs merely states that she was born in Norway and died in Portugal and thus the plaintiffs' allegations that she was of Norwegian nationality (ethnicity) have not been proved to the satisfaction of the Court. The court also considers the plaintiffs' affidavits (no. 138, 139) to be contradictory, since plaintiff 1) stated in them that she had not resided on the territory of Czechoslovakia since 1 January 1946 together with her mother and her brother, plaintiff 2/ stated that it had been since his birth, i.e. since 18 August 1946, and the plaintiffs did not offer any other evidence to the court in order to prove these allegations.
Confiscation under Decree No. 104/1945 Coll. occurred ex lege and at the same time ex tunc, it is determined by the emotions. § 1 (1) of this Regulation (".....with immediate effect and without compensation.....is confiscated) and their effectiveness from 1.3.1945. 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 triggers 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 the legal effects of confiscation take effect at the moment of its legal binding force, that is to say, on the date of the entry into force of SNR Decree No 104/1945 Coll. (§ 27).

31. The Court is of the opinion that the defendant bore the burden of proof and proved by a number of direct and circumstantial evidence that the disputed properties were confiscated pursuant to Slovak National Council Regulation No. 104/1945 Coll. At the same time, the Court notes that, in so far as the plaintiffs' application for a declaration of ownership was lodged almost 70 years after the public confiscation procedures were carried out, the defendant - or its predecessor in title - was regarded as the owner of the properties in question from 1945 onwards on the basis of the confiscation pursuant to Decree No 104/1945 Coll, the legal certainty of persons as well as the necessary authority of the State require that the 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. Otherwise, it would be possible to claim defects in the proceedings after an unreasonably long period of time and to disturb a legal situation that has lasted for several decades. Where the confiscation of property (its process, effects, legality) is challenged by the application for a declaration, 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 which must be given effect.

32. At the same time, the Court also points to the fact that the claimants were not granted the restitution claim as a result of the fulfilment of the legal requirements, including the failure to prove the condition of the status of the entitled person pursuant to 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. Consequently, the plaintiffs' success in the present proceedings would lead to a significant erosion of the principle of legal certainty in legal relations relating to immovable property.

33. In the light of all the above, the Court is of the opinion that the plaintiffs have failed to prove the retention of title by the plaintiffs' predecessors in title and the nullity of Decision No 1 and Decision No 2 in this and similar proceedings. In so far as the fact alleged by the plaintiffs in the proceedings has not been proved beyond reasonable doubt, the plaintiffs have not sustained the burden of proof or the burden of allegation, and the Court therefore dismisses the action in its entirety.

34. The court decided on the costs of the proceedings in accordance with Article 255(1) of the Civil Dispute Procedure Code (hereinafter referred to as "CSP"), according to which the court shall award costs to a party according to the success of the case. The defendant was fully successful in the proceedings and the court therefore awarded him the costs of the proceedings in respect of the plaintiffs in their entirety. The amount of those costs will be decided by the court after the final decision on the merits.

Notice:

An appeal against this decision may be lodged within 15 days of the delivery of the decision with the court against which it is directed.
Pursuant to Section 363 of the CSP", in addition to the general particulars of the application, the appeal shall state which decision it is directed against, the extent to which it is contested, the grounds on which the decision is considered to be incorrect (grounds of appeal) and what the appellant seeks to have set out (grounds of appeal).
Pursuant to Section 364 CSP", the appellant may extend the scope of the challenge only until the expiry of the time limit for filing an appeal.
According to Section 365(1) of the CSP", an appeal may only be
justified on the grounds that (a) the procedural conditions have not
been met,
(b) the court, by an irregular procedural procedure, has prevented a party from exercising its procedural rights to such an extent that the right to a fair trial has been infringed; or (c) an excluded judge or an improperly constituted court has ruled,
d) the proceedings have another defect which may have resulted in an incorrect decision in the case,
e) the court of first instance failed to carry out the proposed evidence necessary to establish the relevant facts,
f) the court of first instance made erroneous findings of fact on the basis of the evidence adduced,
g) the findings of fact do not stand because other procedural defences or other means of procedural attack are admissible and have not been invoked, or
h) the decision of the Court of First Instance is based on an error of law.
Pursuant to Section 365(2) of the CSP", an appeal against a decision on the merits may also be based on the fact that the final order of the court of first instance which preceded the decision on the merits has a defect referred to in paragraph 1, if that defect affected the decision on the merits of the case.
Pursuant to Article 365(3) of the CSP", the grounds of appeal and the evidence to prove them may be amended only until the expiry of the time-limit for lodging the appeal.
According to Section 366 CSP", means of procedural attack or means of procedural defence which were not invoked in the proceedings before the court of first instance may be invoked on appeal only if (a) they relate to procedural conditions,
b) relate to the disqualification of a judge or to the improper staffing of a court,
c) they have to prove that there were defects in the proceedings which could have resulted in an incorrect decision in the case; or
d) the appellant, through no fault of his own, was unable to assert them in the proceedings before the Court of First Instance.

If the obligation established by this judgment is not voluntarily fulfilled, a petition for execution may be filed pursuant to Act No. 233/1995 Coll. on bailiffs and execution activity (the Execution Code) and on amendments and supplements to other acts.