Court:	Regional Court Nitra
File mark:	11S/67/2015
Court file identification number:	4015200351
Date of the decision:	09. 12. 2015
Name and surname of the judge, Higher Court Official:	JUDr. Marta Molnárová
ECLI:	ECLI:SK:KSNR:2015:4015200351.1

JUDGMENT ON BEHALF OF THE SLOVAK REPUBLIC

Regional Court in Nitra, in the Chamber composed of the President of the Chamber, JUDr. Marta Molnárová, and the members of the Chamber, JUDr. Dana Kálnayová and JUDr. Viola Takáčová, PhD., in the legal case of the plaintiff: Civic Association Te Ügyed Kör, with registered office at Mederčská 21/7, Komárno, represented by JUDr. Tamás Puskás, attorney, with registered office at Alžbetínske nám. 1203, Dunajská Streda, against the defendant: Monuments Office of the Slovak Republic, with registered office at Cesta na Červený most 6, Bratislava, on review of the legality of the defendant's decision of 29 January 2015 No PUSR-2015/2457-2/6640/3/NEM, as follows

r u l e d :

The Court d i s m i s s e s the action.

Awards the plaintiff no costs.

r e a s o n i n g:

The sued administrative authority, by decision of 29 January 2015 No. PUSR-2015/2457-2/6640/3/NEM, annulled the decision of KPÚ Nitra No. KPÚNR-2014/4573-8/66742/THT of 16 October 2014 and, pursuant to Article 30(1)(e) of the Act No. KPÚNR-2014/4573-8/66742/THT of 16 October 2014, annulled the decision of KPÚ Nitra No. KPÚNR-2014/4573-8/66742/THT of 16 October 2014. 71/1967 Coll. on Administrative Procedure (hereinafter referred to as the Administrative Procedure Code), as amended, the proceedings on the intention to modify the property located on A. Street in E. parc. no. XXX, k. ú. E. in the conservation area of the Komárno Conservation Area in the scope of placing a memorial column with a concrete base has been stopped.

The plaintiff brought an action before the local court seeking annulment of the defendant's decision on the ground that it was unlawful and a referral of the case back to the defendant for further proceedings. In his application, he specified the reasons for the unlawfulness of the defendant's decision as a breach of the principle of legal certainty (he referred to the decisions of the Constitutional Court of the Slovak Republic, e.g. I. ÚS. 87/93, PL. ÚS 16/95 and II. ÚS 80/99, III. ÚS 80/99, III. ÚS 356/06), insofar as the Monuments Office justified its decision on the grounds that it was not possible to approve an already implemented plan after it had been established on 15 April 2014 that the monument stood in its final form.

In the action, he stated that on the basis of the application of the Civic Association Te Ügyed Kör, with its registered office at Mederčská 21/7, Komárno, dated 12 April 2010 for the issue of a binding opinion on the placement of a memorial column in the Monument Zone of the City of Komárno on Jókaiho Street on parc. No XXX, the Regional Monuments Office in Nitra issued a binding opinion on 14 April 2010, by

which the Regional Monuments Office in Nitra agreed to the placement of the memorial column according to the project documentation submitted by the plaintiff without any comments. Subsequently, by letter of 26 May 2010, the Monuments Office cancelled the binding opinion of the first-instance administrative authority and decided that the plaintiff's intention to place the memorial column was not permissible due to it's with the Act. 270/1995 Coll. on the state language.

The plaintiff lodged an appeal against the first-instance decision, which the defendant administrative authority rejected and confirmed the first-instance decision. On the basis of an action filed with the Regional Court in Nitra, the decision of the Monuments Office was annulled, and the case was returned for a new proceeding (proceedings before the court under Case No. 11S/81/2012). In the repeated proceedings, the KPÚ Nitra decided by decision of 16 October 2014 and stopped the proceedings on the grounds that the plaintiff did not submit a binding opinion of the Ministry of Culture of the Slovak Republic and on the plaintiff's appeal, the defendant administrative authority, by decision of 29 January 2015, cancelled the first-instance decision and stopped the proceedings on the intention to modify the real estate.

In its application, the plaintiff states that, although in its request it only asked for a binding opinion, it is of the opinion that the submissions of a party to an administrative procedure must be interpreted according to their content and not according to their designation. Thus, if, before issuing a binding opinion on the location of the memorial column, it was also necessary to decide on the intention to modify the property required for the location of the memorial column, the KPÚ Nitra should have acted on that issue as well. In the plaintiff's view, it was the administrative authority of the first instance that made the error and not the plaintiff. Following the issuance of the binding opinion, the plaintiff proceeded with the placement of the memorial column and acted in good faith on the basis of the binding opinion of the Nitra Regional Administrative Court, according to which the administrative authority agreed to the placement of the memorial column without any objections. The Memorial Office subsequently revoked the binding opinion, but the memorial column had already been placed and, in his opinion, the Memorial Office was not entitled to revoke the binding opinion of the Nitra Conservation Office, as this did not arise from the Act No. 49/2002 Coll. on the Protection of the Monument Fund. The plaintiff further submits that the Nitra Conservation Office should have asked the plaintiff to stop the works in 2010 until a decision was issued, but the Nitra Conservation Office decided by decision of 24 June 2010 No NR-10/663-20/5745/Du that the plaintiff's intention to place the memorial column was not permissible.

On the basis of the judgment of the Regional Court in Nitra of 30 April 2013, Case No. 11S/81/2012-46, the defendant administrative authority annulled the decision of the KPÚ Nitra and returned the case for a new hearing and decision, and despite the information about the location of the memorial column, the defendant administrative authority did not instruct the first-instance administrative authority to stop the proceedings due to the impossibility of a decision on the intention to modify the property, but instructed to request documents and subsequently to issue a decision pursuant to Section 32 (5) of the Monuments Act.

The plaintiff further stated that the Monuments Office, contrary to its previous decision of 16.09.2013, which annulled the first-instance decision of the KPÚ Nitra with the fact that the plaintiff's application was supplemented in the proceedings and after the submission of all the documents, issued a decision pursuant to Section 32(5) of the Monuments Act, no longer dealt with the intention to modify the property, but halted the proceedings for other reasons than those stated by the first-instance administrative authority. The plaintiff was thus not given the opportunity to comment on the above conclusions on the possibility/impossibility of issuing a decision on the plan and was only informed of the reasons given by the appellate authority's decision. In the plaintiff's view, he was deprived of his right to appeal or to a two-instance administrative procedure, since the reasons for the discontinuance of the proceedings were communicated to him only in the decision of the appeal body, against which no appeal is admissible. The plaintiff was thus unable to comment in the administrative procedure on the question of when the authority received information about the location of the memorial column. The Monuments Office itself did not carry out any evidence and, in accordance with the Administrative Procedure Code, should have referred the case back to the Nitra Conservation Office for a new procedure and decision.

In the application, the plaintiff submitted that the defendant administrative authority had misjudged the case in law as regards the possibility of issuing a decision on the intention to redevelop the property. The plaintiff referred to Article 32(5) of the Law on Monuments, which states only that a decision on the intention to alter the property must be applied for before construction can begin. Thus, that provision refers only to the making of an application, but it does not state that a decision must also be made before construction can commence. The plaintiff is of the opinion that on 12.04.2010 it submitted an application to the Nitra Regional Planning Authority for a binding opinion and it is clear from the content of that application and the content of the annexes attached to the application that it was also an application for a decision on the intention to alter the property in the conservation area. The plaintiff is of the opinion that Section 32(5) of the Act regulates not only the situation where the owner commences the alteration of the property after the decision has been issued, but also the situation where the owner commences the alteration of the property without a valid decision on the intention to alter. Thus, the Act also regulates the situation where the owner has already started the development of the property, and the administrative authority may nevertheless issue a decision on the intention to develop the property. The plaintiff submits that, if the defendant's interpretation of the case is to be accepted, the CPO cannot issue a planning decision even in that case, since it can no longer impose an obligation on the owner to notify it in advance of the commencement of the development of the immovable property. The defendant's view is therefore contrary to the law, since it follows from section 32(5) of the Monuments Act that a decision on the intention to alter a property may be issued even after the new construction has begun.

The defendant filed a written statement to the application and requested that the application be dismissed. It stated that pursuant to Article 10(2)(f) of the Monuments Act, in force since 01.07.2014, the Monuments Office of the Slovak Republic examines binding opinions of regional monuments offices and at the time of the issuance of the binding opinion referred to by the plaintiff in the action, this area was regulated by Article 10(2)(e) of the Monuments Act. The defendant, having established that the Nitra Conservation Office, in violation of Article 19(2) of the Administrative Procedure Code, did not consider the plaintiff's submission as an application for the issuance of a decision on a plan to alter a property in a conservation area pursuant to Article 32(5) et seq. of the Monuments Act and issued a binding opinion No NR-10/663-20/5745/Du on 14 April 2010 pursuant to Article 32(12) of the Monuments Act, by which it agreed to the placement of the memorial column without any objections. By binding opinion No PU-10/825-1/3068/Kúb of 26 May 2010, the defendant annulled the binding opinion of the Nitra Regional Administrative Office and obliged the first-instance administrative authority to issue a decision on the intention to modify the property in accordance with the Monuments Act. At that time, the KPÚ Nitra was aware of the fact that work had begun on the placement of the monument, but it had not been fully implemented. The defendant takes the view that it is clear from the quoted provision of the Monuments Act that the defendant has the competence to review binding opinions of the regional monuments offices, and the defendant has in no way exceeded that legal competence. The defendant is of the opinion that it acted correctly when it obliged the Nitra Regional Monuments Office to issue a decision on the intention to alter the property pursuant to Section 32(5) et seq. of the Monuments Act. It does not follow from the Monuments Act that binding opinions of regional monuments offices may not be altered or revoked. The defendant may not revoke the binding opinion of the KPU only if it is the basis for the decision of the building authority, so as not to make it impossible for the building authority to decide on the matter.
At the time of the issuance of the decision of the KPÚ Nitra on 24.06.2010 and the defendant's confirmatory decision of 20.07.2012, the authorities of the state administration for the protection of the monument fund did not have the information that the monument was standing in a definitive form on the property in question in accordance with the appellant's original application from 2010. This fact emerged only from the oral hearing combined with the local inquiry held on 15 April 2014, the minutes of which were drawn up under No KPÚNR-2014/4573-5/24582/PHT. From the above, it is clear that at the time of the decision on the intention to alter the property, the memorial had not been implemented in its entirety and therefore it was possible to make a decision on the intention to alter the property in the proceedings.

The plaintiff submits that the fact that the memorial column had been erected was apparent much earlier from the minutes of the oral hearing of 08.06.2010 and other documents contained in the file, but that no such minutes are contained in the file. It is not possible to ascertain to which minutes of the application

the plaintiff refers. The file contains the minutes of 04.06.2010 and 09.06.2010. The minutes of the state building inspection of 04.06.2010 state that it was not possible to ascertain and establish reliably whether the building in question was a construction in progress or a temporary installation of a work of art, since the object in question was covered. However, the plaintiff refused to sign the minutes of the oral hearing of 09.06.2010 in order to confirm that he agreed with their content. In the case at hand, the Nitra KPÚ issued a binding opinion on 14.04.2010, as a courtesy to the plaintiff, two days after the initial application of 12.04.2010, which was also the only consenting statement from the State administration authorities for the protection of the monument fund, but it must be stressed that the consenting opinion was issued on the basis of misleading and deliberate misrepresentation of information by the applicant. The applicant submitted an incomplete application on 12.04.2010, in which it withheld material information. Only subsequently did the KPÚ Nitra learn from the press of facts which were not contained in the application and which it could not have foreseen, e.g. that a poem in Hungarian was to be engraved on the memorial. Throughout the proceedings, the first-instance administrative authority repeatedly and unsuccessfully called on the applicant to supplement the information which would have demonstrated the conceptual justification for the placement of the memorial column with the text of the poem in the Hungarian language in the conservation area of the Komárno Conservation Area. It is clear that the addition of the Hungarian text has changed the facts of the case and was not deliberately included by the applicant in the original application. In this respect, the defendant referred to the judgment of the Regional Court in Nitra, Case No 11S/81/2012-46, and is of the opinion that the applicant himself, by his own actions and by constantly changing the original application of 12 April 2010, caused such a state of affairs that even the state authorities for the protection of the monument fund considered the decision on the intention to be possible.

With regard to the objection concerning the failure to stop the works before the decision on the plan was issued, the defendant noted that the plaintiff deliberately continuously diverted attention from the fact that it had started the works aimed at the installation of the memorial column without a legally valid decision of the Nitra Conservation Office and, after the decision on the inadmissibility of the implemented plan had been issued, it had carried out the modification of the real estate in question and had installed the memorial column in the conservation area of the Komárno Conservation Area in violation of the basic protection of the conservation area pursuant to Section 29, Paragraph 1 of Article 29 of the Act on the protection of the monuments of Komárno. 1 of the Monuments Act negatively affected the appearance of the monument value and the presentation of the monument area. The binding opinion of 14 April 2010, to which the applicant refers, expressly states that this binding opinion does not replace the decisions, permits or statements required under specific legislation. On that basis, it is clear that the applicant could not have acted in good faith in erecting the memorial column, as he claims in his application. The defendant firmly rules out what the applicant claims to be a breach of the constitutional principle of legal certainty, since all the steps taken by the public authorities in the field of the protection of monuments in the proceedings are foreseeable and enshrined in the legal order. The situation which the applicant claims to be a breach of the constitutional principle of legal certainty was not brought about by the state authorities in the field of the protection of the heritage fund, but by the applicant himself, when he installed the memorial column without a legally valid decision on the plan.

With regard to the claimant's objection that he was deprived of the right to appeal proceedings when the defendant, by decision of 16 September 2013, annulled the decision of the Nitra KPO and ordered it to complete the claimant's application in the proceedings and to issue a decision pursuant to Section 32(5) of the Monuments Act, the defendant stated that the claimant was duly informed about the possibility of filing an appeal against the decision of the Nitra KPO of 16 October 2014, which the claimant made use of, and the defendant administrative authority decided on his appeal on 29 January 2015. In the present case, it is clear that the fact alleged by the applicant that the right to appeal was withdrawn is not based on truth. The defendant did not address in the appeal proceedings the possibility of implementing the proposed plan to erect a memorial column on the property in question, since, when examining the file documentation, the defendant found that the memorial stands in definitive form on the property in question and the Monuments Act does not allow the authorities of the State administration for the protection of the monument fund to subsequently approve an already implemented plan. It is clear from the amendment to the Monuments Act, namely section 32(7), that the KPU has a duty to require the owner to give prior notice of the commencement of the alteration of the property and the anticipated end

of the alteration of the property. In this case, when the plan is realised, the first-instance administrative authority can only express a binding opinion pursuant to Section 32(12) of the Monuments Act on the building authority's proceedings for a supplementary building permit conducted pursuant to Section 88a of the Monuments Act. No. 50/1976 Coll. on spatial planning and building regulations as amended, whether the construction is not contrary to the protected public interests. The defendant therefore disagrees with the applicant's objection that it is possible to issue a decision on the intention to develop the property even if it has been fully implemented. It further submits that it cannot accept the applicant's claim that his right to a lawful decision has been infringed, since his right to a lawful decision remains, but since the plan has already been fully implemented, the law on monuments does not provide for or contain the institution of a supplementary building permit. Only the building authority is then competent in this matter in the procedure for additional building permits under the Building Act, and the authorities for the protection of the heritage fund can only express a binding opinion in this procedure pursuant to Section 32(12) of the Heritage Act.

The defendant is of the opinion that the KPÚ Nitra should have stopped the administrative proceedings on the intention to modify the property according to § 30 (1) (e) of the Administrative Procedure Code on the grounds that it is not competent for the proceedings and the matter cannot be referred to the competent authority. Therefore, the defendant annulled the decision of the first-instance administrative authority of 16.10.2014 pursuant to Article 59(2) of the Administrative Procedure Code and terminated the proceedings on the above grounds. In support of its claims and in order to prove that it had acted in accordance with the possibilities provided for by law, the defendant administrative authority referred to the provisions of the Monuments Act (Article 17(1), Article 29(1), Article 32(5)-(7), Article 32(12)) and the Administrative Procedure Code (Article 3(1), (2), (5), Article 30(1)(e), Article 32(1) and Article 46), which were the basis for the contested decision.

After receiving the defendant's statement of defence, the plaintiff filed a written statement in which it stated that the minutes of the oral hearing of 09.06.2010 state that the subject of the oral hearing was "unauthorised modification of the property", which was to consist, according to the minutes, "in the placement of a memorial column on the territory of PZ Komárno in the immediate vicinity of the NPK: College Building, ÚZPF No 210/0, plot No XXX, Jókaiho Street, Komárno, in accordance with the identified changes". It considers that the defendant had information about the location of the memorial column as early as 09.06.2010. With regard to the defendant's claim that they knew about the partial location of the memorial column, but only that they did not know about the final location of the memorial column, the applicant submits that the memorial column is a work of art, the placement of which does not require complex construction work, but that the memorial column can be placed in a short space of time. Thus, there is no provisional placement and no definitive placement for a memorial column, but only the placement of the memorial column. The applicant repeatedly points out that it placed the work of art - the memorial column - on the basis of a binding opinion of the Nitra Regional Planning Authority, and the defendant issued a decision revoking the binding opinion only after the completion and placement of the work of art, when no changes could be made to the work of art anymore. The defendant's action gives the applicant the impression that he is looking for a reason at any cost to avoid having to issue a decision. In conclusion, he maintains the action in its entirety.

The Regional Court, as a court having jurisdiction in the matter and place (§ 246(1), § 246a(1) of the OSP), examined the decision of the defendant challenged in the action as well as the proceedings preceding its issuance within the scope of the grounds of the action (§ 249(2) of the OSP - Občiansky súdny poriadok - Code of Civil Procedure) and came to the conclusion that the action is not well-founded, therefore it dismissed it pursuant to § 250j(1) of the OSP. The Court of First Instance thus ruled by a 3:0 majority (Article 3(9) of the Civil Procedure Act). No 757/2004 Coll. on Courts and on Amendments and Additions to Certain Acts, as amended).

In the administrative justice system, courts hear cases on the basis of actions in which a natural or legal person claims to have been deprived of his or her rights by a decision and procedure of an administrative authority and requests that the court review the legality of that decision and procedure (Article 247(1) of the OSP).

From the administrative file of the defendant, which also includes the file of the administrative body of the first instance, the court found that the Regional Monuments Office Nitra by decision No KPÚNR-2014/4573-8/66742/THT of 16 October 2014, pursuant to Section 30(1)(d) of the Administrative Procedure Code, the proceedings in the matter of the intention to modify the property located on Jókaiho Street in Komárno, parcel No. XXX, area No. E. in the monument area of the Komárno Monument Zone in the scope of placing a memorial column on a pedestal with a concrete base, stopped because the Monument Office of the Slovak Republic as a competent appellate authority pursuant to § 59 (3) of the Administrative Procedure Code by decision of 16 September 2013 No. PÚ-13/13609-4/5891114/68/KUB cancelled on the basis of the judgement of the Regional Court in Nitra No. 11S/81/2012-46 of 30 April 2013 of the decision of the Regional Monuments Office Nitra (hereinafter referred to as "KPÚ Nitra") No. NR10/663-20/5745/Du of 24 June 2010 regarding the intention to place a memorial column on a pedestal with a concrete base on Jókaiho Street, plot No. XXX in the cadastral district of Nitra, in the area of the city of Nitra. E. initiated on 12.04.2010 on the basis of a request from the Te Ügyed Kör Civic Association, returned the case to the first-instance administrative authority for a new hearing and decision. The first-instance administrative authority, following the legal opinion in the annulled decision, by letter of 14.02.2014 invited the Te Ügyed Kör Civic Association to complete its application by 31.03.2014. The applicant supplemented the application on 27.03.2014 through its legal representative, and subsequently the first-instance administrative authority convened an oral hearing with a site visit on 15.04.2014, at which it assessed the supplemented documentation submitted and found that the memorial column was standing in definitive form on the property in question and that the applicant had implemented its 'intention'. At the oral hearing, the applicant's legal representative asked the administrative body to extend the time limit for completing the statement on the request for clarification of the context and continuity of the object of the national cultural monument - the Collegium, registered in the central list of the Monuments Office under No 2101, to the events that the memorial column is to commemorate (04.06.1920) and also requested a stay of the proceedings pending the receipt of the statement. The administrative authority of the first instance, pursuant to Article 19(3) of the Administrative Procedure Code, invited the civic association (applicant) to complete the application by 30 September 2014, to comment on the request for an explanation of the context and continuity of the object of the National Monument of the Collegium to the events that the memorial column is to commemorate (04 June 1920) and to submit a binding opinion of the Ministry of Culture of the Slovak Republic in the matter of the assessment of the submitted proposal in the light of the Act of the National Assembly of the Slovak Republic No. 270/1995 Coll. on the national language of the Slovak Republic. For this reason, the administrative authority suspended the proceedings pursuant to Section 29(1) of the Administrative Procedure Code with the applicant being instructed that if he fails to submit the required documents by 30 September 2014, the administrative proceedings will be discontinued. According to the instruction, the applicant did not complete the application concerning the intention to place a memorial column on a pedestal with a concrete base on the property in question within the time limit set by the administrative authority and therefore the administrative authority discontinued the proceedings in this matter.

On the appeal of the applicant (plaintiff), the defendant administrative authority, in accordance with § 59 (1), (2) of the Administrative Procedure Code, annulled the decision of the first-instance administrative authority of 16 October 2014 and discontinued the proceedings pursuant to § 30 (1) (e/) of the Administrative Procedure Code on the intention to modify the property. It concluded that the first-instance administrative authority incorrectly assessed the actual state of affairs in the administrative proceedings pursuant to Section 32(1) of the Administrative Procedure Code when it issued the contested decision, which, pursuant to Section 30(1)(d) of the Administrative Procedure Code, discontinued the proceedings due to the applicant's failure to remedy the deficiencies in the submission and continued the proceedings pursuant to Section 32(5) of the Monuments Act (Act No. 49/2002 Coll. on the protection of the monument fund as amended), despite the fact that at the oral hearing associated with the local inspection on 15 April 2014 he found that the monument stands in a definitive form on the property in question in accordance with the original application of the appellant from 2010 without the issuance of a decision on the intention to modify the property. In its decision, the defendant administrative authority referred to Section 32(7) of the Monuments Act, the content of which implies and determines for the first instance administrative authority that the Regional Monuments Office is obliged to require the owner to notify in advance the beginning of the modification of the property and the expected end of the

modification of the property. In the present case, once it has been established that the plan has been implemented, the first-instance administrative authority can only express a binding opinion pursuant to Section 32(12) of the Monuments Act on the building authority's proceedings for a supplementary building permit pursuant to Section 88a of the Monuments Act, which are to be conducted in accordance with the provisions of the Act. No. 50/1976 Coll. on spatial planning and building regulations (hereinafter referred to as the Building Act), as amended, whether the construction is not contrary to the protected public interests. The Regional Monuments Office Nitra is obliged to assess the impact of the construction on the protected monument values from the point of view of the protection of the monument fund. The first-instance administrative authority should have stopped the administrative proceedings on the intention to modify the property pursuant to Section 30(1)(e) of the Administrative Procedure Code on the grounds that it is not competent to act and the matter cannot be referred to the competent authority.

In the decision, the defendant administrative authority referred to the provisions of Sections 31(1), 43(1), 42(1)(h) and 43(4) of the Monuments Act, which regulate "another administrative offence in the field of the protection of the monument fund" with the possibility of imposing a fine if the administrative authority finds that the owner of the property does not ensure the basic protection of the cultural monument under Section 27 or the property in the conservation area under Section 29, if it does not come to remedy at its own expense.

The plaintiff was not satisfied with the defendant's decision and brought an action under Title Two, Part Five of the C.C.P. before the county court within the time limit prescribed by law.

Pursuant to § 27 of the Act. 49/2002 Coll. on the protection of the monument fund,
(1) The basic protection of a cultural monument is a set of activities and measures carried out to prevent threat, damage, destruction or theft of the cultural monument, to permanently maintain the good condition, including the environment of the cultural monument, and to use and present it in a way that corresponds to its monumental value and technical condition.

(2) In the immediate vicinity of the immovable cultural monument, it is not possible to carry out construction activities and other activities that could endanger the monument's monumental values. The immediate surroundings of an immovable cultural monument shall be the area within a radius of ten metres from the immovable cultural monument; ten metres shall be calculated from the building envelope if the immovable cultural monument is a building, or from the boundary of the property if the property is also an immovable cultural monument.

Pursuant to § 29 of the Act. 49/2002 Coll. on the protection of the monument fund,
(1) The basic protection of a conservation area is a set of activities and measures by which the state administration bodies and local government bodies in cooperation with property owners ensure the preservation of monument values in the area, their good technical, operational and aesthetic condition, as well as the appropriate use of individual buildings, groups of buildings, complexes or urban complexes and appropriate technical equipment of the conservation area.

(2) The Regional Monuments Office draws up principles for the protection of the conservation area, which are documents for the implementation of the basic protection under paragraph 1 and are the basis for the land-use plan. The principles are part of the spatial projection of the protection of cultural values of the territory, which is the basis for the processing of spatial planning documentation according to a special regulation.

Pursuant to Section 30(1) of the Act, the Act on the Protection of the Rights of Persons with Disabilities, Art. 49/2002 Coll. on the Protection of the Monuments Fund, everyone is obliged to behave in such a way that their actions do not endanger the basic protection of cultural monuments according to § 27 and the basic protection of conservation areas according to § 29 and do not cause adverse changes in the condition of the monuments fund and the condition of archaeological sites.

(4) A binding opinion of the regional conservation authority is required for all decisions of other state and local government authorities that may affect the interests protected by this Act.

Pursuant to § 32 of the Act. 49/2002 Coll. on the protection of the monument fund,
(5) Before commencing a new construction or alteration of land or a building which is not a cultural monument (hereinafter referred to as "alteration of the property"), but which is located in a conservation area, the owner of such property is obliged to request a decision of the regional conservation authority by submitting an application for the issuance of a decision on the intention to alter the property in the conservation area. If the owner commences the alteration of a property in a conservation area without a valid decision on the intention to alter, the regional conservation office shall initiate administrative proceedings by issuing a notice of commencement of alteration of the property in the conservation area, which shall be delivered to the owner of the property and shall request him to stop the work until the decision is issued. The alteration of the property does not mean the removal of the building in the conservation area.

(6) To the application for a decision on the intent to modify the property in the conservation area, the owner shall attach the intent to modify the property, which includes data about the property, basic property data about the property, the planned use of the property, and a specification of the anticipated area and spatial changes.

(7) In the decision pursuant to paragraph 5, the regional conservation authority shall indicate whether the proposed project is permissible from the point of view of the interests protected by this Act, and shall determine the conditions for the implementation of modifications to the property in the conservation area, in particular the principles of volumetric zoning, height arrangement and architectural design of the exterior of the property. The Regional Monuments Office shall also determine whether such modifications may be carried out only on the basis of research and other preparatory documentation and project documentation, and shall impose an obligation on the owner to notify it in advance of the start of the modification of the property and the expected end of the modification of the property.

Pursuant to § 30 of Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code),
(1) The administrative authority shall discontinue the proceedings if
d) the party to the proceedings did not remedy the deficiencies of its submission at the request of the administrative authority within the specified time limit and was informed of the possibility of discontinuing the proceedings,
e) finds that it is not competent to proceed, and the matter cannot be referred to the competent authority,
(2) A decision to discontinue proceedings under paragraph (1)(b), (c), (f), (g) and (h) shall not be subject to appeal.

Pursuant to § 59 of Act No. 71/1967 Coll. on Administrative Proceedings,
(1) The appellate body shall review the contested decision in its entirety; if necessary, it shall supplement the previous findings or, where appropriate, remedy the defects found.
(2) If there are grounds for doing so, the appellate body shall reverse or annul the decision, otherwise it shall dismiss the appeal and uphold the decision.

Section 249(2) of the Civil Procedure Code implies the principle of iudex ne eat ultra petita partium (the judge should not go beyond the parties' proposals), i.e. a specific allegation by the claimant (a specific requirement of the action) that he or she has been deprived of his or her rights by an unlawful decision of an administrative authority, which must be a subjective right arising from a legal provision. However, the applicant must point to the specific facts from which he alleges an infringement of the right. However, the administrative court proceedings are not ongoing administrative proceedings, the court does not take evidence (it does not replace the administrative authority's fact-finding activities), the court is bound by the situation that existed at the time the decision was issued (Article 250i(1) of the OSP). Thus, the administrative court is not a court of fact when reviewing a decision of the administrative authorities (except in cases under Section 250i(2) of the OSP), but the court only considers legal issues of the contested procedure or decision of the tax authority.

The Court therefore confined itself to the question whether the evidence relied on by the administrative authority was relevant, in particular because of the source on which it was based, or whether any procedural principles of administrative procedure had been breached, and further examined whether the evidence relied on logically made the factual conclusion reached by the administrative authority possible. The Court further examines whether the administrative authority applied the relevant legal provisions (both procedural and substantive) to the legal case in question, whether the administrative authorities obtained the grounds for the decision in a lawful manner and concludes that the administrative authority consistently followed the procedural principles laid down in the generally binding legal regulation (Art. 4, § 32(1), § 34(3) of Act No. 71/1967 Coll. on Administrative Procedure, as amended), which is referred to in § 44(4) of Act No. 49/2002 Coll. on the Protection of the Monument Fund.

Pursuant to Article 3 of the Administrative Procedure Code governing the basic rules of procedure, the decision of the administrative authorities must be based on a reliably established state of affairs. The proceedings must be conducted in such a way as to strengthen citizens' confidence in the correctness of the decision-making, to ensure that the decisions taken are convincing and to lead citizens and organisations to voluntarily fulfil their obligations (Article 3(4) of the Administrative Procedure Code). Pursuant to Article 32(1) of the Administrative Procedure Code, the administrative authority is obliged to ascertain accurately and fully the true state of affairs and, to that end, to obtain the necessary supporting documents for the decision. In doing so, it is not bound only by the proposals of the parties to the proceedings.

Pursuant to Section 46 of the Administrative Procedure Code, the decision must be in accordance with the laws and other legal regulations, must be issued by the competent authority, must be based on a reliably ascertained state of affairs and must contain the prescribed particulars. Pursuant to Article 47(2) of the Administrative Procedure Code, the operative part shall contain the decision on the matter, indicating the provision of the legal provision pursuant to which the decision was taken and, where appropriate, the decision on the obligation to pay the costs of the proceedings. Where the decision imposes an obligation on a party to the proceedings to comply with it, the administrative authority shall set a time-limit for that obligation; the time-limit may not be shorter than the time-limit laid down by a specific legal provision.

In the case under review, the content of the defendant's file material shows that on 12 April 2010 the plaintiff submitted an application to the first-instance administrative authority for the issuance of a binding opinion on the placement of a "memorial column" on the land parc. no. XXX (owned by the Reformed Christian Church in Slovakia - Komárno Church), cat. E., which property is located on the territory of the Komárno Monument Zone, which is part of the monument fund, i.e. the national cultural monument "Kolégium", registered in the central list of the monument fund under No. 2101. This application did not comply with Act No 49/2002 Coll. and was unclear (the applicant himself referred to the building as a 'memorial column', did not specify the object in detail, nor did he describe what monument the applicant wished to commemorate by its implementation, in so far as he wished to place it in the Komárno Monuments Zone and is not even the owner of the land). KPÚ Nitra issued a binding opinion on 14 April 2010 No NR-10/663-20/5745/Du pursuant to Article 32(12) of the Monuments Act, by which it agreed to the placement of the commemorative column, although the competent building authority had not initiated building proceedings at the request of the applicant. The file shows that the City of Komárno, as the competent building authority, only by a notification of 17 May 2010 initiated the building procedure connected with the zoning procedure in the matter of the applicant's application for the issue of a building permit for the construction 'Placement of a commemorative column on the plot of land no. XXX cat. E.". The City of Komárno discontinued the construction procedure by decision of 26.07.2010.

The defendant by virtue of its competence under Section 10(2)(e) of the Act (in force at the time of the decision) and the performance of the survey after finding that the KPÚ Nitra did not assess the plaintiff's submission as an application for the issuance of a decision on the intention to modify the property in the conservation area pursuant to Section 32(5) et seq. of the Monuments Act, by Decision No. PU-10/825-1/3068/Kúb dated 26 May 2010 cancelled the binding opinion of the KPÚ Nitra, because according to the application and the attached technical report (the placement of a hewn - wooden memorial column,

anchored to the concrete base) it was the intention of the implementation of the construction in the Monument Zone of Komárno, not its implementation.

At the request of the first instance administrative authority, the applicant supplemented the application (delivered to the administrative authority on 03. 06. 2010) by requesting the issuance of a decision on the change of a new building - a memorial column in the conservation area within the meaning of Section 32 (5), (11) of Act No. By this submission, he also supplemented his application with a text in the Hungarian language, which was not accompanied by an official translation, without any justification as to why such a date (1920.junius 4) with the text of a poem in the Hungarian language should be placed on the 'memorial column' in question.

KPÚ Nitra by decision No NR-10/663-20/5745/Du dated 24 June 2010 decided on the inadmissibility of the applicant's intention to place a carved memorial column on a pedestal with a concrete base on parc. no XXX in the cat. E. on the territory of the Monument Zone in Komárno, Jókaiho Street according to the submitted proposal on the grounds that the original proposal was supplemented with text contrary to Art. 7 of the State Language Act and the memorial column is placed in a position perceptible to the general public, it has become an element of the monument-protected interior of the Komárno Monument Zone, which is part of the national cultural monument 'Kolégium', registered in the central list of the monument fund under No. 2101, which decision was confirmed by the defendant administrative authority.

As stated by the parties, the defendant's decision was subject to judicial review in the proceedings under Case No 11S/81/2012. By judgment of 30 April 2013, the Regional Court ruled in the case by annulling the defendant's decision of 20 July 2012 under Article 250j(2)(c) of the Code of Civil Procedure and referring the case back to the defendant for further proceedings, in which it also gave its legal opinion.

The Regional Court in its decision in the proceedings under case No. 11S/81/2013 took a position on the claimant's application and explained the essence of the statutory regulation of the application for a change of the real estate development and the application for a binding opinion on the intention to develop the real estate within the meaning of Act No. 49/2002 Coll. z. The court also guided the administrative authorities that only after clearly specifying the application, providing documentation and documents in accordance with the law, the administrative authority can decide on the application, as the Act no. 49/2002 Coll. clearly regulates and differentiates the decision-making activity of the KPÚ implemented in the form of a decision on the intention to modify the real estate in the conservation area pursuant to Section 32(5) of the Act. 49/2002 Coll. (the applicant's application for the intention to place a memorial column in the territory of the Komárno Monuments Zone) and the decision-making activity of the KPÚ implemented by issuing a binding opinion on the intention to modify a property in the protected zone for the purposes of the construction procedure (Article 32(12)).

The Regional Court clearly stated in its judgment that according to the outcome of the proceedings and the evidence taken, it would assess the application and either decide on the matter in accordance with the Monuments Act or proceed in accordance with Section 30 of the Administrative Procedure Code, since at the time of the court's decision it could be concluded from the file that the applicant had not complied with the statutory procedure, whether under the Monuments Act or the Building Act, and had partially started the construction (according to the photo documentation, the building was covered), even though the construction procedure had been stopped and it did not have a decision of the Monuments Authority.

In the present case, the applicant refers again in the present application to this binding opinion, according to which the administrative authority agreed to the placement of the memorial column without comment, after which the applicant started the placement of the memorial column and proceeded in good faith. In the applicant's view, the error was committed by the administrative authority of first instance and not by the applicant, since the Monuments Office did not have the power to revoke the binding opinion of the Nitra Conservation Office and its procedure infringed the principle of legal certainty, since it follows from the Monuments Act that the issue of a decision on the intention to alter immovable property is possible

even after the start of a new building and the Nitra Conservation Office did not call on the applicant to stop the work until the decision had been issued.

The Court considers that the plaintiff's objections could not be upheld; they are repetitive and too general and are not capable of affecting the substantive correctness of the contested decision. The applicant misinterprets the application of the law on monuments to his case. The Court regards those objections as an expedient defence on the ground that the applicant carried out his 'construction plan to install a memorial column in the town's conservation area' without the decisions of the competent administrative authorities (the CPO and the building authority). On the contrary, the applicant is aware of its unlawful conduct. On the basis of the file and the established facts, the applicant could not have been in good faith in the implementation of his plan (after the issuance of the binding opinion on 14 April 2010), as he claims, because, in the opinion of the court, the binding opinion itself, without a building permit, did not entitle him to carry out the construction, moreover, in the territory of the Komárno Monuments Zone, since the implementation of such a construction is governed by a special law.

In this case, there is no doubt and therefore no dispute, as stated by the defendant, that the subject of the judicial review is the decision on the intention to modify the property, and not the annulled binding opinion in this matter, which was canceled by the defendant’s decision on May 26, 2010, No. PÚ-10/825/1/3068/KUB. From a legal standpoint, this decision does not exist (it cannot produce the legal effects stated in it), even though it is included in the case file. This is because the subject of the proceedings before the first-instance administrative authority was the plaintiff’s application for the intention to place a memorial column in the Monument Zone in Komárno, under § 32(5) of Act No. 49/2002 Coll., dated June 4, 1920, with the text of a poem in Hungarian inscribed on the ‘memorial column’ in question.

The court is of the opinion that the defendant acted in accordance with the annulling judgment of the Regional Court, case no. 11S/81/2012. The defendant administrative authority, as the appellate administrative authority, annulled the decision of the Regional Monuments Office Nitra (KPÚ Nitra) and returned the case for a new proceeding and decision. At the time when the Regional Court ruled on the plaintiff’s lawsuit in this matter, it was not clear what type of structure was involved under Act No. 49/2002 Coll., and at that time, the text that the plaintiff intended to place on the memorial column was also known.

The administrative authority of the first instance acted in the matter and by a call of 14 February 2014 invited the applicant to supplement the application with the required documents in accordance with the judgment of the Regional Court within the time limit of 30 March 2014 and on 15 April 2014 ordered an oral hearing with a local survey (minutes), when the KPÚ Nitra found that in the case in question is a definitive building, which is already installed in the Monument Zone of the City of Komárno. However, the KPÚ Nitra left unnoticed the very fact that the construction had been carried out, without issuing a decision pursuant to Section 32(5) of the Act on the Protection of the Monuments of the Monuments of the City of Monuments of the Slovak Republic. 49/2002 Coll. and decided in the matter by issuing a decision pursuant to Section 30(1)(d) of the Administrative Procedure Code on the grounds that the applicant, as the applicant, had not remedied the defects in his application. On the applicant's appeal, the defendant administrative authority, having established that the applicant had installed the memorial column with the text in Hungarian in the definitive version on the property in question in accordance with the original application from 2010, which fact the defendant administrative authority had established from the oral hearing held on 15 March 2010, together with the local inquiry. 04. 2014 (minutes), in accordance with Section 59(2) of the Administrative Procedure Code, amended the decision of the first-instance administrative authority by annulling it and replacing it with a new decision pursuant to Section 30(1)(e) and discontinued the proceedings. This was also due to the fact that the Monuments Act had been changed with effect from 01 July 2014 and according to Section 10(2)(f) of the Monuments Act, the Monuments Office of the Slovak Republic only examines binding opinions of regional monuments offices. The defendant correctly based his decision on the amendment to the Monuments Act, namely Section 32(7), according to which it is clear that the KPÚ is obliged to require the owner to notify in advance the beginning of the alteration of the property and the anticipated end of the alteration of the property. In this case, once the plan is implemented, also in the opinion of the court, the first-instance

administrative authority can only express a binding opinion pursuant to section 32(12) of the Monuments Act on the individual proceedings of the building authority under the Building Act.

In the case under review, it is not disputed that the applicant seeks judicial review of the decision to discontinue the administrative proceedings, which by its nature is a procedural decision, but does not concern the conduct of the proceedings, but terminates the proceedings without a decision on the merits (e.g. Resolution of the Supreme Administrative Court of the Slovak Republic, Case No. 2Sž-oKS 71/04). At the same time, it cannot be overlooked that the public interest in the matter requires increased protection of the historic core of the city as a cultural heritage, while it should be considered necessary to adopt such solutions so that unconceptual interventions in the historic building stock are not repeated now or in the future and the gradual endangerment (disappearance) of monuments and monument sets does not occur (e.g. Washington Charter of 1987 on the Protection of Historic Places).

The public interest in the preservation of cultural heritage is also expressed in the provisions of Section 32 of Act No. 49/2002 Coll., Section 1(1) of the Act on the Protection of the Monument Fund, as amended, regulates the conditions for the protection of cultural monuments and sites in accordance with scientific knowledge and on the basis of international treaties in the field of European and world cultural heritage, to which the Slovak Republic is bound.

The Court considers it necessary to point out that the decision of the administrative authority must have the form prescribed by law, which consists of substantive and formal requirements. The Administrative Procedure Code makes a distinction between the substantive and formal elements of a decision. The operative part of the decision is the most important part of the decision, since it contains the decision on the matter, which must be clearly specified. Only in the operative part of the decision may the establishment, modification or termination of an individual legal relationship be pronounced, which establishes rights, determines obligations or modifies legal relationships.

In the reasoning of the decision, the administrative authority must respond to two sets of issues: the facts and the legal assessment of the case. In particular, the facts must be regarded as facts which have been established beyond reasonable doubt and their legal significance. The legal assessment of the matter means that the administrative authority subsumes the established facts under the relevant provision of substantive law. There must be a logical relationship between the legal assessment and the findings of fact. The legal assessment of the case must contain a specific reference to the relevant legal provision on which the administrative authority based the operative part of the decision and from which it derives the legal assessment.

The defendant administrative authority, in the opinion of the court, acted in accordance with the law, since according to Article 59(2) of the Administrative Procedure Code, it has wide competences and can therefore also annul the first instance decision if it finds such a mistake of the first instance administrative authority that results in the illegality of the decision and replace it with its own decision if the first instance authority applied an incorrect legal conclusion to the correctly established facts.

In accordance with the law, the defendant concluded that in this factual situation the first instance administrative authority should have discontinued the proceedings pursuant to Section 30(1)(e) of the Administrative Procedure Code on the grounds that it was not competent to proceed and the matter could not be referred to the competent authority, since the application no longer relates to the intention to install a building (a commemorative column) in the future, because it related to an already implemented construction, i.e. another procedure in which the administrative authority decides under different conditions.

In view of the above, the court then considered the applicant's objections in the filed action regarding the incorrect legal assessment, etc. as unfounded, because the court concluded that the defendant administrative authority properly justified its decision within the constitutional and statutory procedural and substantive framework (in accordance with the ruling of the Constitutional Court of the Slovak Republic I ÚS 241/07, I ÚS 342/2010, etc.). The procedural legal framework is primarily constituted by the principles of due and fair procedure (Article 46 et seq. of the Constitution of the Slovak Republic and

Article 6(1) of the Convention), which preclude arbitrariness in decision-making, since it is the duty of the administrative authority to assess the evidence convincingly and correctly and to give proper reasons for its decision. Similarly, taking into account the reasonableness of the contested decision, as well as pointing out that the content of the fundamental right to judicial protection (as well as the right to a fair trial) is not the right to a decision in accordance with the legal opinion of a party to the proceedings, or the right to succeed in the proceedings (e.g. the resolution of the Constitutional Court of the Slovak Republic IV.ÚS 63/2014, II.ÚS 218/02, III.ÚS 198/07).

The contested decision sufficiently sets out the grounds on which the operative part of the decision is based. The Court draws the applicant's attention to the decision of the ECtHR in Garcia Ruiz v. Spain of 21 January 1999 and points out that neither the case-law of the ECtHR nor that of the Constitutional Court requires that every argument of a party to proceedings be answered in the grounds of the decision, but only such an argument as is decisive for the decision of the case and requires a specific answer.

With reference to the above, the conclusion made by the respondents and settled in their decision is in accordance with the principles of logical reasoning and sound discretion and is also in accordance with the substantive provisions of both the Monument Act and the Administrative Procedure Code. For these reasons, it was necessary to rule as set out in the operative part of this judgment and to dismiss the action pursuant to Article 250j(1) of the Code of Civil Procedure. The defendant administrative authority has dealt with the applicant's objections in a logical and factually correct manner and the Court has not found any defects in the proceedings which it is required to take into account pursuant to Article 250i(3) of the Code of Civil Procedure.

The court decided on the costs of the proceedings pursuant to Section 250k(1) of the Civil Procedure Code as set out in the operative part of this decision and did not award the unsuccessful applicant any costs.

Notice:

This judgment may be appealed to the Supreme Court of the Slovak Republic in Bratislava, within 15 days from the date of delivery, by the undersigned, in duplicate.

In addition to the general particulars (Article 42(3)), the appeal must state which decision it is directed against, the extent to which it is contested, the extent to which the decision or the court's procedure is considered to be incorrect, and what the appellant claims (Article 205(1) of the OSP).