Court:	Supreme Court
File number:	1Cdo/65/2021
Court file identification number:	5712206969
Date of decision:	29. 09. 2021
Name and surname of the judge,	
Higher Court Office:	JUDr. Ján Šikuta
ECLI:	ECLI:SK:NSSR:2021:5712206969.1

Resolution

The Supreme Court of the Slovak Republic in the legal case of the plaintiffs 1/ B. A. C., a national of B., residing in E., C. XXXX, C. X, 2/ V. J. F., a national of I., residing in I., T. Z. B. B. Z. N., N. Z. E., XXXXXXX A., both represented by law firm JUDr. Ľuboš Novák s. r. o., with registered office in Bratislava, Nám. Martina Benku No 10, ID No: 36 861 197, against the defendant Slovak Republic, represented by Forests of the Slovak Republic, state enterprise, with registered office in Banská Bystrica, Námestie SNP No 8, ID No: 36038 351, for the determination of the right of ownership, filed at the District Court Martin under file No 9C/98/2012, on the appeal of the plaintiffs against the judgment of the Regional Court in Žilina of 28 May 2020, file No 10 Co 116/2018, as follows

r u l e d :

The appeal is rejected.

The defendant is not awarded reimbursement of costs for the appeal proceedings.

r e a s o n i n g :

1. By the present action, the plaintiffs sought to establish the ownership of the confiscated immovable property specified in the application ('the immovable property at issue'). In support of their claim, they stated that they were the legal heirs of their mother, A. H. J. F., nee. A. ('their mother'), who was the heir of the testatrix B. F. by will of 20 March 1944. J., nee. F. ('the testatrix'), the original owner of the properties at issue. The plaintiffs sought a declaration that the testatrix was the owner of the disputed immovable property at the time of her death and that they, as her granddaughter and grandson, are now joint owners (in 1) of that property. The plaintiffs are the legal heirs in the direct line of descent from the testatrix, who, on her mother's side, descended from the B. family. All the property registered in the land register in the name of the testatrix as an inhabitant of the Czechoslovak Republic was untouched until her death (XX.Y.XXXX). Her testamentary heir was her daughter-in-law, the plaintiffs' mother, who was a citizen of Y.. 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 Resolution of the Presidium of the Slovak National Council of 9 October 1945, No 11343/1945 (hereinafter referred to as the 'Resolution of the Presidium of the Slovak National Council'), the testatrix's agricultural property was confiscated pursuant to Article 1(1)(b) of Slovak National Council Regulation of 23 August 1945, No 104/1945 Coll., on the confiscation and expeditious distribution of the agricultural property of Germans, Hungarians and traitors and enemies of the Slovak nation (hereinafter referred to as the 'Slovak National Council Regulation'). By confiscation notice No 21425/1945-I/B of 12 January 1946 issued by the Land and

Land Reform Board (hereinafter referred to as the 'confiscation notice'), the testatrix was to be notified that her property in the cadastral areas of N. and L.E. was to be confiscated in accordance with that Regulation with immediate effect and without compensation for the purposes of the land reform. It is an irrefutable fact that at the time when the Order of the National Council of the Republic of Poland entered into force, which was effective from 12 January 1945, and at the time when the Resolution of the Presidency of the National Council of the Republic of Poland was issued (9 October 1945), as well as at the time when the Confiscation Notice was issued (12 January 1946), the testatrix was no longer alive. Neither the Resolution of the Presidium of the SNR nor the Confiscation Notice was ever served on the testatrix or her successors in title. Because of the confiscation of the testatrix's property, the succession to her estate could not and was never settled, and the plaintiffs' mother was never registered as owner of the property. This fact is evidenced, in addition to the extracts from the land registers, by the Report of the Working Group for Land Reform in Turčianske Sväté Martin of 4 October 1950, which shows that the plaintiffs' mother is not registered as the owner in the land register and that no succession was pending in the collection of deeds at the Probate Department of that court and the District Court in Turčianske Teplice, and that therefore the estate of the plaintiffs' mother could not have been handed over either. Both the Resolution of the Presidency of the National Council of the Slovak Republic and the Notice of Confiscation were issued after the death of the testatrix, which means that they cannot be effective in relation to her, since she was no longer a competent subject of confiscation. The confiscation in her case was directed against a non-existent owner and therefore the Resolution of the Presidency of the SNR is a null and void act, not an administrative act, but a so-called pact, and the presumption of correctness does not apply to it. They justified the urgent legal interest in the requested determination by the fact that without an authoritative decision of the court, the inheritance of their mother and testatrix (their grandmother) cannot be settled and, consequently, their ownership of the properties in question cannot be registered in the land register. In doing so, they referred to the judgment of the Supreme Court of the Slovak Republic, Case No 3 Cdo 154/2010, according to which the proceedings on an action by which an heir seeks a determination that a certain item belongs to the inheritance of the deceased are concerned with the assessment of whether the deceased was the owner of that item at the time of his 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. If the court grants the action requesting that determination and the property is subsequently dealt with in the succession proceedings as the property of the testator, the succession decree (certificate) 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 creation of someone else's ownership (e.g. by possession) proceedings to establish whether that thing was already in the testator's possession at the time of his death, but such (later) facts are legally irrelevant. The plaintiffs requested the court to grant their extended petition for determination, including a declaration that the plaintiffs are co-owners in 1 share in the disputed properties as legal heirs of the heretofore unclaimed inheritance from their mother. On the basis of such a decision, it will be possible, after the conclusion of the succession proceedings after the death of their mother and grandmother, to register their ownership in the Land Register without the need for further legal proceedings. The second part of the petition, i.e. the determination that the heirs are currently joint owners of the immovable property even before the succession is settled, corresponds to the substantive law of Article 460 of Act No 40/1964 Coll. of the Civil Code ('the Civil Code') and to the long-established view of legal theory and case-law on the matter. In summary, they requested the court, after the evidence had been taken, to rule by judgment in respect of all the disputed immovable properties that they belonged to the estate of the deceased, the plaintiffs being each in 1 part co-owners of those immovable properties.

2. By judgment of 14 December 2015, Case No 9 C 98/2012 - 501, the Martin District Court (hereinafter referred to as the "Court of First Instance") dismissed the action (I.); it decided on the costs of the proceedings (II.). In the grounds of its decision, the Court of First Instance found that the plaintiffs did not have a compelling interest in establishing their ownership of the disputed immovable property.

3. The Regional Court in Žilina (hereinafter referred to as the "Court of Appeal"), by order of 29 November 2016, Case No. 10 Co 158/2016 (No. 577), annulled the judgment of the Court of First Instance and returned the case to it for further proceedings and a new decision. It is apparent from the grounds of that decision that the Court of Appeal, unlike the court of first instance, concluded that the plaintiffs had a pressing legal interest in the action for a declaratory judgment.

4. The Court of First Instance again decided the case by judgment of 15 January 2018, Case No 9 C 98/2012-745, dismissing the action (I.); it also decided on costs (II.).
    4.1. In the grounds for its decision, the Court of First Instance stated that the defendant had carried the burden of proof in the proceedings and had proved by a large amount of direct and circumstantial evidence that the disputed properties had been confiscated in accordance with the Regulation of the National Council of the Slovak Republic. In so far as the plaintiffs' application for a declaration of ownership was lodged almost 70 years after the public confiscation procedures had been carried out, and the defendant (the predecessor in title) had, since 1945, been regarded as the owner of the properties in question by virtue of the confiscation pursuant to the SNR Regulation, the legal certainty of the persons concerned and the necessary authority of the State require that the decision of the administrative authority, or, as the case may be, the decision of the court, the court, the court, the court, the court and the court's legal adviser, must be given the necessary weight. The legal certainty of the administrative authority and the legal certainty of the State, which is part of the Slovak legal order, on the basis of which a certain person (including the State) has acquired or has been deprived of ownership of a property, is an unquestionable legal fact, having effects into the future. Otherwise, it would be possible to claim defects in the proceedings after an unreasonably long period of time and to disturb a legal situation lasting several decades. Even if the confiscation of property (its process, its effects, its 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 to be given effect. The plaintiffs were not granted restitution as a result of failure to fulfil the legal conditions, including failure to prove the condition of the status of a person entitled under Article 4(1) of Act No 229/1991 Coll. on the regulation of property relations in respect of land and other agricultural property and the extinction of the right to restitution of the right of ownership by reason of preclearance. Consequently, the plaintiffs' success in the present proceedings would lead to a significant erosion of the principle of legal certainty in the legal relations relating to the disputed immovable property. In the light of the evidence adduced, the Court of First Instance concluded that the plaintiffs had failed to prove that their predecessors in title had retained the right of ownership; in this and similar legal proceedings they had failed to prove the nullity of the decision of the Resolution of the Presidency of the National Council of the Slovak Republic and the decision of the Confiscation Commission in Turčianske sv. Martin of 5 April 1948 No 223/222/48 (hereinafter referred to as 'the decision of the Confiscation Commission in Turčianske St. Martin') and, in so far as the fact alleged by the plaintiffs has not been proved beyond any doubt, they have not borne either the burden of proof or the burden of proof.

    4.2. The costs of the proceedings were decided pursuant to Section 255(1) of Act No. 160/2015 Coll. of the Civil Dispute Procedure Code (hereinafter referred to as the "CSP").
5. On the plaintiffs' appeal, the Court of Appeal, by judgment of 28 May 2020, Case No 10 Co 116/2018 (Case No 849), upheld the judgment of the court of first instance (I.); it also ordered the costs of the appeal proceedings (II.).
    5.1. The decision of the first-instance court was considered substantively correct, and therefore, it was upheld pursuant to § 387(1) of the Civil Dispute Procedure Code (CSP). The appellate court stated that the first-instance court had sufficiently argued the factual circumstances in the reasoning of its decision, identified the evidence it had examined, and used it to establish the relevant facts of the case. In its reasoning, the first-instance court also addressed the decisive questions (both factual and legal) that led to the dismissal of the claim.

5.2. The disputed issue was the confiscation of the testatrix's property (its process, effects and legality), whereby the plaintiffs sought to designate specific specified lands as her inheritance, claiming that at the date of her death their grandmother (the testatrix) was the owner of them, since in relation to her the Regulation of the National Council of the Slovak Republic, the Resolution of the Presidium of the National Council of the Slovak Republic and the Notice of Confiscation were legally ineffective as they were directed against a person who was no longer alive at the time of the confiscation.

5.3. Pursuant to Article 1(1)(b) of the Regulation of the National Council of the Slovak Republic, with immediate effect and without compensation, land and agricultural property in the territory of Slovakia owned by persons of Hungarian nationality (ethnicity) who did not have Czechoslovak nationality (citizenship) on 1 November 1938 shall be confiscated for the purposes of the land reform. Which persons were to be regarded as persons of Hungarian nationality (ethnicity) within the meaning of this provision was decided by the Presidium of the SNR on a proposal from the SNR Land and Land Reform Board, submitted in agreement with the SNR Home Affairs Board. Neither in the facts of the action nor in the appeal did the plaintiffs argue that their legal predecessor (the testatrix) did not satisfy the 'nationality principle (ethnicity)' of confiscation of property within the meaning of Article 1(4) of the Regulation of the SNR. On the contrary, it was established from the death certificate and the testatrix's will that the testatrix was a person of Hungarian nationality (ethnicity) and did not have Czechoslovak nationality (citizenship). In her case, the procedure laid down in Article 1(6) of the Regulation of the SNR was followed. Pursuant to Article 1(7) of the Regulation of the SNR, by decision of the Presidium of the SNR pursuant to paragraph 6, the property of such a person shall be deemed to have been confiscated pursuant to paragraph 1 on the date of the entry into force of the Regulation of the SNR. No complaint may be lodged with the Supreme Administrative Court against this decision. The Court of Appeal held that the plaintiffs' objection concerning whether or not the Resolution of the Presidium of the SNR had been delivered to their predecessors in title was legally irrelevant, since the Resolution of the Presidium of the SNR was not constitutive but declaratory in nature, i.e. it declared, in relation to the deceased, that the conditions for confiscation laid down in the Regulation of the SNR had been fulfilled, i.e. that the conditions of the law had been fulfilled. The confiscation of property under specifically defined conditions was provided for by the legislation. In that connection, the Court of Appeal based its reasoning on the legal conclusion expressed in the Order of the Constitutional Court of the Slovak Republic of 29 March 2017, Case No I.ÚS 379/2016 (incorrectly referred to by the Court of Appeal as Case No I.ÚS 379/2018), according to which 'the legal title of the transfer of ownership by confiscation was not a legal act, but the decree itself'. Such a legal opinion also follows from the Supreme Court's resolution of 29 September 2015, Case No. 4 MCdo 12/2014, which was subject to review by the Constitutional Court of the Slovak Republic (Case No. I. ÚS 379/2016). In the opinion of the Court of Appeal, the non-delivery of the Notice of Confiscation is also without legal significance, because, based on its content, this notice does not have the character of a decision of an administrative authority, it has the character of a mere administrative order by which the competent authorities of the State at the time were notified of the confiscation of the property, which, within the scope of their competence (and their official activity defined by law), should have carried out the necessary official procedures. In the totality of these circumstances, the Court of Appeal concluded that, as a result of the confiscation of the property in question, the testatrix had lost title to the property and that it was therefore not possible to designate it as her inheritance.

5.4. As regards the appellant's objection that on the death of the testatrix (30 November 1944) the title to the subject-matter of the dispute passed to the testatrix, the plaintiffs' mother, and that at the time of the validity of the Regulation of the National Council of the Republic of Lithuania the land was already in her exclusive possession, the Court of Appeal stated that it could not accept this objection either. The evidence showed that the testatrix had appointed her daughter-in-law (the plaintiffs' mother) as her testamentary heir. According to the law on succession in force until 1950, an heir acquires his inheritance by operation of law on the death of the testator, without any further contribution on his part. The principle

of the acquisition of the inheritance at the time of the death of the testator is that acts occurring later (e.g. agreement as to inheritance, refusal of inheritance) always have retroactive effects, i.e. they operate ex tunc (retroactive to the date of the death of the testator). The legislation in force at the time also allowed for succession by testamentary succession. However, if the heir wished to acquire an inheritance, he had to apply for it in court and the court, by its judgment, ordered such an inheritance. In the present case, there was no such process of transfer of the estate - the specific property of the testatrix - to the testatrix. On the contrary, in relation to the testatrix, the legal effects of confiscation by operation of law were triggered by the loss of ownership of the subject-matter of the dispute.

5.5. With regard to the plaintiffs' further appeal objection concerning the legal validity of the decision of the Confiscation Commission in Turčianske St. Martin, issued against their mother, by which they challenged the legal effects of the confiscation against her person in the light of the Regulation of the National Council of the Republic of Lithuania, the Court of Appeal stated that already in other civil court proceedings of the same plaintiffs the courts had commented on the legal effects or the nullity of confiscation decisions in a "preliminary" manner. The preliminary conclusion that a general court in civil proceedings (litigation) is not entitled to review the substantive correctness of an individual administrative act also applies in the present case. The decision of the Confiscation Commission in Turčianske St. Martin was issued by a body empowered to issue it. In that regard, the Court of Appeal referred to the legal reasoning of the Supreme Court of the Slovak Republic ('the Supreme Court') in its judgment of 29 April 2008, Case No 2 Cdo 24/2007, in which the Supreme Court, in its capacity as the Court of Appeal, considered an appeal brought by identical plaintiffs and, among other things, addressed the appeal objection concerning the ineffectiveness of confiscation decisions. It stated that "null and void are those decisions which were 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 'paacts' [translator’s note: null and void administrative acts]. 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, that is to say, acts which are so seriously flawed that the presumption of their correctness does not apply'. In the Court of Appeal's view, the fact that the decision of the Confiscation Commission in Turčianske St. Martin was made against a person who was already deceased at the time it was made does not render the confiscation decision 'null and void'. It follows, therefore, that, in the civil proceedings under review, it is not possible to examine the substantive correctness of that decision on the issue contested by the plaintiffs; there is a presumption that it is correct.

5.6. The costs of the appeal were decided in accordance with Article 255(1) of the Civil Dispute Procedure Code.

6. The plaintiffs jointly brought an appeal against the judgment of the Court of Appeal, the admissibility of which they claim to be based in particular on the provisions of Article 421(1)(a/), (b) and (c) of the Civil Dispute Procedure Code (Case 873 et seq.).

6.1. In their opinion, the appellate court (as well as the first-instance court) deviated from the established case law of the Supreme Court of the Slovak Republic in its legal views regarding the possibility of reviewing the confiscation decision by ordinary courts (a/) and in its assessment of when such a decision should be treated as if it had never been issued (b/), by incorrectly legally evaluating the nullity of the confiscation decisions. Specifically, the appellate court in its decision stated that the notification does not have the character of a decision of an administrative authority but is merely an administrative letter by which the relevant state authorities were informed of the confiscation of property (of the affected person - the decedent) at that time, and which, within their competence (and their official activities defined by law), were required to carry out the necessary administrative procedures, referring to the judgment of the Supreme Court of the Slovak Republic, case no. 2 Cdo 24/2007. According to the plaintiffs, the appellate court thus limited the possibility of reviewing decisions solely to cases of decisions issued by authorities without the competence to issue them. However, the Supreme Court repeatedly ruled that if the

confiscation decision was addressed to the legal predecessor of the entitled person, who was already deceased at the time, and not to the legal successor (the heir), it should be reasonably inferred from this fact that the confiscation order should be regarded as if it had never been issued (Supreme Court judgment of November 26, 2011, case no. 3 Cdo 21/2000). The plaintiffs further support their claims with the legal conclusions expressed in the Supreme Court judgment of September 16, 2008, case no. 1 Sžo 37/2008. The minimum assessment of the issue of the nullity of the confiscation against a deceased person, according to the plaintiffs, has been consistently established and adjudicated by the appellate court, and the appellate court deviated from this case law.

6.2. The plaintiffs address the admissibility and merits of the appeal under the remaining two grounds of appeal pursuant to Article 421(1)(b) and (c) of the CSP in point 'II.B' of their appeal. They consider the Court of Appeal's legal conclusion that it is not entitled to review the substantive correctness of an individual administrative act where the judgments submitted by the plaintiffs on that issue have been examined by the administrative courts to be alibi. That legal opinion does not hold good, since the plaintiffs also referred to judgments of the Supreme Court in civil proceedings in which that legal opinion (on the need to establish whether the act was not a paact) was expressed (judgment of the Supreme Court of 26 November 2011, Case No 3 Cdo 21/2000). It is not clear to the plaintiffs why the Court of Appeal should not be bound by the judgments of the chambers of the Administrative Collegium of the Court of Appeal. Whether the administrative act in question was null and void, or whether it was a paact, should also be considered by the civil law court as a preliminary question. In this respect, they refer repeatedly to the reasoning of the Supreme Court in the judgment of 26 November 2011, Case No 3 Cdo 21/2000, as well as to the judgment of 31 May 2016, Case No 1 SZa 11/2016. In the context of proving the nullity of the confiscation decision, the plaintiffs have also referred on appeal to the decision of the European Court of Human Rights, which held in Bosits v. Slovak Republic, Application No. 75041/17, that a confiscation decision which was never delivered to the owner of the immovable property renders the confiscation decision null and void. In this connection, the plaintiffs take the view that contrary decisions on analogous claims have no place in a state governed by the rule of law, and it cannot be said that the case-law on restitution claims is uniform, as shown by the divergent assessment of the question of review of confiscation decisions in the judgment of the Supreme Court in Case No 2 Cdo 24/2007, which was cited by the Court of Appeal in support of its erroneous conclusions of law. Moreover, the case-law of the Supreme Court has never dealt with the assessment of the legal question of nullity or, on the contrary, respected the presumption of correctness in the case of repeated confiscation of property (of an heir) after the same property has already been confiscated once (from the testator at a time when the testator was already deceased).

6.3. According to the plaintiffs, the correct assessment of the legal question of the nullity of the confiscation by the testatrix should have been that there was no confiscation in respect of that person and that the defendant (her predecessor in title) did not become the owner of the disputed immovable property as at 1 March 1945. The defendant's defence of the absence of a judicial assignment of the estate to the plaintiffs' mother cannot be sustained precisely because the State did not make such an assignment of the estate, referring to the (null and void) confiscation against the testatrix. The defendant's factual assertion above constitutes an acknowledgement that the ownership was not transferred to the State by the Resolution of the Presidium of the National Council of the Slovak Republic in conjunction with the Regulation of the National Council of the Slovak Republic. Apart from the fact that confiscation could not be carried out against the plaintiffs' mother precisely because the State had prevented her from acquiring full property rights in her inheritance through the denegatio iustitiae process, the State authorities did not even have the power to confiscate any of the plaintiffs' mother's property, since at the time of the confiscation the evidence in the administrative proceedings had already established her Norwegian nationality (ethnicity); the fact that she was supposed to have been a traitor or an enemy of the Slovak nation was not alleged by the administrative authorities at the time or by the defendant

either. The lack of competence and the fundamental legal defect of the decision of the Confiscation Commission in Turčianske sv. Martin are also due to the fact that, contrary to the provisions of the administrative regulations in force at the time (Government Decree 8/1928), the legal situation was not dealt with in any way when the State's title to acquire the disputed properties, which was the Resolution of the Presidium of the National Council of the Slovak Republic, was already quite obviously null and void. However, without the annulment of that decision, the State authorities were not given the power to decide again on the confiscation of the same immovable property.

6.4. Therefore, referring to their grounds of appeal, they request the Supreme Court to set aside the judgment of the Court of Appeal and to refer the case back to it for further proceedings; they also request the Supreme Court to rule in their favour on the costs of the appeal proceedings.

7. The defendant did not comment on the plaintiffs' appeal within the 10-day time-limit set by the court of first instance.

8. The Supreme Court, as an appellate court (§ 35 CSP), having found that the appeal was lodged within the prescribed time limit (§ 427(1) CSP) by a party represented in accordance with the law (§ 429(1) CSP), to whose detriment the contested decision was rendered (§ 424 CSP), and without ordering a hearing (§ 443 CSP), came to the conclusion that the plaintiffs' appeal should be dismissed. A brief statement of the reasons (first sentence of Article 451(3) CSP) for the Court of Appeal's decision is set out in the following paragraphs.

9. An appeal is an extraordinary remedy. The extraordinary nature of the appeal is reflected in the legal rules governing its admissibility. Pursuant to Article 419 of the CSP, an appeal is admissible against a decision of the Court of Appeal (only) if the law so permits. This means that if the law does not expressly state that an appeal is admissible against a decision of the Court of Appeal, such a decision cannot be (successfully) challenged by way of an appeal. The decisions of the Court of Appeal against which an appeal is admissible are listed in the provisions of Sections 420 and 421 of the CSP.

10. The appellants derive the admissibility of their appeal specifically from the provisions of Article 421(1)(a/,b/, c/ of the CSP.
    10.1. Pursuant to Section 421(1) of the CSP, an appeal is admissible against a decision of the Court of Appeal confirming or modifying a decision of the Court of First Instance if the decision of the Court of Appeal depended on the resolution of a question of law in the resolution of which the Court of Appeal departed from the established decision-making practice of the Court of Appeal (point (a/)); which has not yet been resolved in the decision-making practice of the Court of Appeal (point (a)). (b/); is decided differently by the Court of Appeal (c/).
    10.2. Only a question of law (not a question of fact) may be relevant under section 421(1) of the CSP It may be both a question of substantive law (which depends on the interpretation of, for example, the Civil Code, the Commercial Code, the Labour Code, the Family Law Act) and a question of procedural law (the resolution of which depended on the application and interpretation of procedural provisions).

11. Considering the plaintiffs' appeal according to its content (§ 124(1) CSP), the Court of Appeal established that the plaintiffs, in the context of the alleged departure from the settled decision-making practice of the Court of Appeal (§ 421(1)(a/) CSP), defined two legal issues, namely a/ the question of the possibility of review of the confiscation decision by the general courts and b/ the question of the assessment of when such a decision is regarded as if it had not been made. They identified c/ the question of 'nullity', i.e. the nullity of the legal act(s) in the context of the decisions on confiscation of the disputed immovable property in the proceedings in question, as a legal question which has not yet been resolved in the decision-making practice of the Court of Appeal (Article 421(1)(b) of the CSP). Lastly, they identified question d/ of the review of the confiscation decisions in the present

proceedings as a legal question which, in their opinion, is decided differently by the Court of Appeal (Article 421(1)(c) of the CSP). 11.1 Given the substantive identity of all the legal questions (a/, b/, c/, d/) identified by the appellants within the framework of the grounds of appeal under Article 421(1)(c) of the CSP 1(a/, b/ c/) of the CSP, by which they summarily challenge the legal assessment of the validity and effectiveness of the decisions of the competent authorities on the confiscation of the disputed immovable property in the present proceedings, the Court of Appeal has considered them together and notes the following with regard to all four of them.

12. The relevance under Article 421(1) of the CSP is a question of law (not of fact) on which the decision of the Court of Appeal was based. It must be a question of law which, in the appellant's view, was incorrectly resolved by the Court of Appeal (cf. Section 432(1) CSP) and which, having regard to the individual circumstances of the case, is at the same time such that, if it had been resolved correctly, the courts would necessarily have decided differently, in a manner more favourable to the appellant.

13. The legal assessment of the case is the application of the law to the facts found. It is the court's activity consisting in subordinating the established facts to the relevant legal norm, which leads the court to a conclusion on the rights and obligations of the parties to the legal relationship. In doing so, the court resolves questions of law (questio iuris), the resolution of which is preceded by the resolution of questions of fact (questio facti), i.e. the ascertainment of the facts. A legal assessment is generally incorrect if the court has erred in that activity, i.e. if it has assessed the matter according to a legal rule which does not apply to the facts established or has misinterpreted a correctly determined legal rule or has misapplied it to the facts in question.

14. Given the formulation of the legal questions defined by the appellants in relation to the individual grounds for appeal, the Supreme Court concluded that these do not correspond to the legal question on the resolution of which the decision of the appellate court being challenged on appeal depended. As correctly stated by the appellate court in its decision (point 57 of the reasoning), the contested confiscation decisions (their unlawfulness, nullity) did not have a constitutive nature, but rather "only" a declaratory nature. They declared the fulfillment of the conditions for confiscation in accordance with the SNR Decree. The transfer of ownership to the state (the defendant) occurred ex lege with the effectiveness of this decree, regardless of the potential unlawfulness or nullity of these decisions. Even if the unlawfulness or nullity of the contested confiscation decisions were proven, this would not result in the state (the defendant) not becoming the owner of the disputed real estate. This legal conclusion of the appellate court is in line with the legal opinion expressed by the Supreme Court in the ruling of September 29, 2015, case no. 4 MCdo 12/2014, which was subject to review by the Constitutional Court of the Slovak Republic in the Ruling of March 29, 2017, case no. I. ÚS 379/2016.

14.1. The legal assessment raised in the appeal concerning the resolution of the legal questions defined by the appellants could only be relevant under § 421(1)(a), (b), (c) of the Civil Procedure Code (CSP) if the outcome of resolving these questions (the assessment and evaluation) represented the sole and exclusive reason for the decision in their disfavour.

15. In view of the above, the Supreme Court dismissed the plaintiffs' appeal as procedurally inadmissible pursuant to Article 447(c) of the CSP; it did not give reasons for its decision on the claim for costs on the appeal (Article 451(3), second sentence of the CSP).

16. This resolution was adopted by the Senate of the Supreme Court by a vote of 3 to 0.

Notice:

No appeal shall lie against this order.