

Restitution Process in the Slovak Republic²

Abstract

The paper examines the restitution process in the Slovak Republic, focusing on the restitution of agricultural and forest land. The purpose of restitution was to restore the original legal status of the ownership of the expropriated real property. The author also specifies the historical circumstances that led to the adoption of the restitution legislation (land reforms and nationalisation). Furthermore, the related issues of church restitution and the settlement of property claims in cooperatives are addressed. At present, it is no longer possible to file a restitution claim under the restitution laws, as the time limits for restitution provided for in the restitution laws have already expired. However, in judicial practice, there are cases of restoration of ownership of real property expropriated during the period of non-freedom after the time limits for restitution expired, by means of an action for the establishment of ownership brought under the general rules of civil law. In this context, the paper analyses the current issue of the competition between a restitution action and an ownership action by referring to various opinions on the solution of the issue. Finally, it analyses not only the decision-making practice of the courts of the Slovak Republic in this area, but it also includes a comparison with the relevant case law of the Czech Republic.

Keywords: land, real estate, restitution proceedings, ownership, civil law

1. Introduction

During the so-called 'relevant period', the period of non-freedom,³ the state committed extensive property injustices on the territory of the Slovak Republic, which consisted of depriving natural and legal persons of the ownership of land and other real property, with the aim of gradually eliminating private ownership of land. After the end of socialism and the transition to a democratic system in 1990, it was

1 | Associate Professor, Pavol Jozef Šafárik University in Košice, Department of Civil Law.

<https://orcid.org/0000-0001-9038-8018>

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3 | Act No. 480/1991 Coll. on the period of non-freedom.



necessary to redress the property injustices by means of restitution legislation. Land restitution is the process of restoring the ownership of land or other real property taken by the state during the so-called 'relevant period' (the period of non-freedom) to the original owner or, if that is not possible, either the provision of adequate compensation (in the form of replacement land), or the provision of cash compensation (if the entitled person does not agree with the allocation of replacement land) is ensured. The restitution alleviated the consequences of certain pre-1990 property injustices. The purpose of the restitution is to restore the original legal status of the expropriated real property. The legal content of the restitution was to remove the unlawfulness of the transfer of ownership or the unlawful interference with ownership by restoring the property to its original legal status.⁴

The first restitution laws, under which it was possible to seek redress for certain property injustices of the previous regime, date back to the period of the Czech and Slovak Federal Republic. The restoration of ownership was regulated under Act No. 403/1990 Coll. on the alleviation of the consequences of certain property injustices, Act No. 87/1991 Coll. on extrajudicial rehabilitation, and Act No. 229/1991 Coll. on the regulation of ownership of land and other agricultural property (Land Act). The restitution of land used by cooperatives was regulated by Act No. 42/1992 Coll. on the regulation of property relations and the settlement of property claims in cooperatives (Transformation Act).

Constitutional Act No. 542/1992 Coll. resulted in the dissolution of the Czech and Slovak Federative Republic and the establishment of the independent Slovak Republic on 1 September 1993.⁵ Since then, the Constitution of the Slovak Republic of 1 September 1992 (Constitutional Act No. 460/1992 Coll.) has been in force in Slovakia, which guarantees the equality of all subjects of the ownership rights.⁶ Important restitution laws from the period of the independent Slovak Republic were church restitution laws, namely Act No. 282/1993 Coll. on the alleviation of certain property injustices caused to churches and religious communities and Act No. 161/2005 Coll. on the restoration of the ownership of real property to churches and religious communities and the transfer of ownership of certain real property. The restoration of the ownership of agricultural and forest land, which the entitled persons did not claim under the Land Act (Act No. 229/1991 Coll.), was regulated by Act No. 503/2003 Coll. on the restoration of the ownership of land, amending Act No. 180/1995 Coll. on certain measures for the arrangement of the ownership of land.

The application of the restoration of ownership by the restitution was time-limited. The time limits for the filing of restitution claims were of a mandatory nature. If the entitled persons did not file their claims within the statutory time limit, their restitution claims were extinguished. In case law, it is possible to sporadically

4 | Gaisbacher 2003, 34.

5 | Krunková 2017, 55–66.

6 | Krunková 2022, 161–169.

encounter cases of restoration of the ownership of real property expropriated during the period of non-freedom even after the expiry of the restitution time limits (referring to the non-limitation of the ownership right) if the expropriation, during the period of non-freedom, occurred without legal justification. In legal practice, the question arises whether it is possible in the Slovak Republic to claim the restoration of the ownership of real property after the expiry of the restitution time limits. We use the basic hypothesis that it is not possible to claim such ownership under the general rules of civil law after the time limits set by the special restitution laws have expired.

The paper focuses on the different opinions on the possibility of filing claims by the entitled persons after the expiry of the mandatory restitution time limits by means of an ownership action and the possible problems in filing the claims in this way. The aim of this paper is to analyse these two opinions and to offer a solution to the relationship between a restitution action and an ownership action, given that, in practice, there is competition between them.⁷ Furthermore, it explores the issue of consistency with legal principles, legal norms, and judicial practice. In order to assess the relationship between the two actions, it is necessary to start from the relationship between the restitution laws and the Civil Code. The method of analysis and synthesis, as well as the comparative method, are mainly used in the paper. The paper analyses the relevant case law of the Supreme Court of the Slovak Republic and the Constitutional Court of the Slovak Republic, as well as a comparison with the case law of the Supreme Court of the Czech Republic and the Constitutional Court of the Czech Republic, which deal with similar issues.

2. Historical aspects

After the establishment of the independent Czechoslovak state on 28 October 1918, an important role of the state was to implement the land reform. The interwar land reform sought to parcel out large estates and, subsequently, create small and medium-sized agricultural estates and redistribute land among landless and small peasants.⁸ Land belonging to German and Hungarian owners was taken over without compensation.⁹ The aim of the first land reform was to allocate agricultural and forest land to the domestic population, especially to small farmers.¹⁰ From a legal point of view, the basis of the first land reform was formed by three laws, namely the Expropriation Act (Act No. 215/1919 Coll.), the Allocation Act (Act No. 81/1920 Coll.), and the Compensation Act (Act No. 329/1920 Coll.).¹¹ Its aims were

7 | Jehlička, Švestka & Škárová 2004, 436.

8 | Sombati 2020, 55.

9 | Gunst 2001, 63; Csák 2007, 3.

10 | Fajnor & Zátarecký 1998, 98.

11 | Beňa 2001, 19.

only partially fulfilled. The allocation of land to the landless and peasants did not reflect the actual demand for land.¹² Even after the actual creation of new small and medium-sized agricultural estates, the structure of land ownership did not change fundamentally, as the large estates retained a relatively important position due to the survival of the so-called residual estates.¹³

Already during the Second World War, the idea of implementing a second land reform resonated, which was to consist of confiscating the land of selected owners without compensation. The second land reform consisted of three stages. The legal framework for the first stage was Decree of the Presidency of the Slovak National Council No. 4/1945 Coll. on the confiscation and expedited allotment of agricultural land of Germans, Hungarians, and traitors and enemies of the Slovak people of 27 February 1945, and other legal norms.¹⁴ Klement Gottwald's Building Government Programme, presented to the Constituent National Assembly on 8 July 1946, was the starting point for the second stage of the land reform. It was to focus on the revision of the interwar land reform, namely the revision of the residual estate allocations and the release of land from expropriation according to Section 11 of the Expropriation Act.¹⁵ The legal framework for the revision of the first land reform was Act No. 142/1947 Coll. on the revision of the first land reform of 11 July 1947. Land was allocated to small peasants for agricultural production, and it was also possible to allocate land for the construction of houses or gardens. Forest land was mainly allocated to the state. Land was allocated to persons with Czechoslovak citizenship. For the land covered by the Land Reform Revision Act, the original owner was entitled to cash compensation. The revision of the first land reform resulted in the acquisition of much more forest land than agricultural land, which was of interest to peasants and the landless. Of the total amount of the agricultural land expropriated, only 8% was distributed among those interested in the land.¹⁶ Most of the agricultural land became the property of the state.

The third stage of the land reform was to implement a process of changing the land ownership relations through the distribution of all land above the maximum area of 50 hectares and, in justified cases, also below this area, through the distribution of so-called speculative land (on which the owner was not actively farming). The third stage of the land reform was regulated by Act No. 46/1948 Coll. on the new land reform. The Act introduced a permanent regulation of the ownership of agricultural and forest land according to the principle that the land should belong to those who work on it. It stipulated that no more than 50 hectares of land could be privately owned by any one person, including members of a joint farming family. Under the New Land Reform Act, land over 50 hectares was expropriated from the

12 | Krajčovičová 1994, 14.

13 | Janšák 1931, 324–325.

14 | Průcha 2009, 60–63.

15 | Cambel 1972, 134.

16 | Zeman 2013, 85–86.

owners who were engaged in agricultural production. The land of those owners who did not work on it was expropriated in its entirety, regardless of the area of the land. At their request, these persons were allowed to retain 1 hectare of land.

The land covered by the New Land Reform Act was purchased by the state for compensation and then allocated to interested persons. The local peasant commission first had to conclude an agreement with the owner. If no agreement was concluded, or if the agreement was not approved by the district national committee, this committee would decide on purchasing the land. The land was allocated to small farmers who could prove they had Czechoslovak citizenship. Before the redistribution was completed, the collectivisation of agriculture began to take place.

The issues related to nationalisation are linked to the events of February 1948, when the transition from a democratic system to a Soviet-style totalitarian system began, and the demand for the introduction of the institution of national administration in the fields of private wholesale trade, medium-sized industrial enterprises, and handicraft production emerged. At the time of nationalisation, the Czechoslovak state acquired ownership.¹⁷ The nationalisation laws of 1948, which followed on from the decrees of the President of the Republic of 1945, continued the nationalisation process and, in their introductory provisions, provided the list of enterprises subject to nationalisation according to their economic sector. In 1948, seed and plant breeding enterprises and agricultural and forestry research institutes were nationalised. By the end of 1948, 94% of all enterprises had been nationalised. Most enterprises were nationalised without compensation – the compensation was paid only in exceptional cases.

During the Second World War, the communists were extensively preparing to take power in Czechoslovakia. After the events of February 1948, the communists assumed power throughout the country. On 9 May 1948, the new Constitution of the Czechoslovak Republic was adopted (Constitutional Act No. 150/1948 Coll.). Czechoslovakia was declared a people's democratic republic. The Constitution stipulated that the maximum permissible area of land that could be privately owned by an individual, joint owners, or a family farming together was 50 hectares. Private ownership of land was guaranteed up to 50 hectares for farmers who worked on the land. The state began to favour cooperative land management.¹⁸

The adoption of Act No. 69/1949 Coll. on unified agricultural cooperatives was important for the introduction of collectivisation in agriculture.¹⁹ The aim of the Act was to gradually deprive the peasants of their land. The cooperatives were joined voluntarily, mainly by landless persons. Landowners were not interested in joining a cooperative, but were forced by the State to join it. The establishment of the

17 | Gábriš 2015, 17–53.

18 | Pekárek & Průchová 2000, 69.

19 | Švecová 2009, 53–63.

unified agricultural cooperatives was to be the basis for the introduction of large-scale production in agriculture. In addition to the unified agricultural cooperatives, agriculture was also practised on the so-called 'state farms'. The state farms used land owned by the state. The state had acquired this land by confiscation or nationalisation, and the state farms also used land that had been acquired under the land reform but had not been allocated to anyone. In the beginning, joining a cooperative was supposed to be voluntary. From 1950 onwards, growing opinions advocated speeding up the collectivisation by imposing harsher penalties on those who refused to join the cooperative. The land associated with the cooperative remained the property of the individual members, but the cooperative acquired an unrestricted right of usufruct over it. Crops, machinery, and animals were the property of the cooperative. There were cases of forced evictions of the families of the richest farmers from the village. Political trials were conducted against the enemies of collectivisation.

In 1955, further measures were taken to promote the collectivisation of land management. According to Government Regulation No. 50/1955 Coll. on certain measures to ensure agricultural production, the district national committee was to convince the peasants of the advantages of cooperative agricultural production and of joining the unified agricultural cooperatives. Moreover, the district national committee was to convince the landowners to give their land to the cooperative for use. If a landowner did not agree to this and, in the opinion of the district national committee, could not ensure the proper management of the agricultural land, the land could be transferred to the unified agricultural cooperative.²⁰

In order to strengthen cooperative land management, Act No. 49/1959 Coll. on unified agricultural cooperatives was adopted. The members of the cooperative were obliged to give all their land to the cooperative for use. Its ownership by the members of the cooperative was preserved. Machinery and animals were handed over to the cooperative, which acquired the ownership of them. Act No. 122/1975 Coll. on agricultural cooperatives was adopted with a view of extending cooperative land management.

The adoption of Constitutional Act No. 100/1960 Coll., the Constitution of the Czechoslovak Socialist Republic, on 11 July 1960 marked the transition from a people's democratic state to a socialist republic. State ownership and cooperative ownership were considered the basic forms of ownership in the spirit of socialist ideology.²¹ Private ownership was to be gradually liquidated. Act No. 40/1964 Coll. Civil Code, in force from 1 April 1964, stipulated that land could not be privately owned, as it was a basic means of production, and the means of production could only be in socialist society ownership. In order to suppress the ownership of land by natural persons, the institution of personal use of land was created as a substitute

20 | Kolesár 1980, 57.

21 | Kuklík 2008, 536.

for ownership. There was a gradual disappearance of the institution of private ownership, since in the spirit of socialist ideology, the needs of natural persons would be met exclusively through socialist society ownership. A contract for the transfer or lease of agricultural or forest land required the consent of the district national committee. All these measures were designed to gradually deprive natural persons of private ownership.

After the period of non-freedom, it was necessary to redress the property injustices that had occurred, particularly the deprivation of ownership from the original owners. Constitutional Act No. 100/1990 Coll. abolished the distinction between different forms of ownership that had been applied during the period of non-freedom. Equality of all forms of ownership was introduced. Act No. 114/1990 Coll. (amending Act No. 123/1975 Coll. on the use of land and other agricultural property for production) enabled owners to demand the return of their land, which had been used by socialist organisations. In order to redress the property injustices of the previous period, it was necessary to implement a restitution process, which required the adoption of special restitution laws.

3. Restitution legislation

3.1. Alleviation of the consequences of certain property injustices

The first restitution law is Act No. 403/1990 Coll. on the alleviation of the consequences of certain property injustices, as amended (the Act on the Alleviation of the Consequences of Certain Property Injustices), which entered into force on 1 November 1990. This Act covered the consequences of property injustices caused to natural persons and private legal persons by the deprivation of ownership of real property and, where applicable, movable property as a result of nationalisation on the basis of ministerial decrees issued after 1955 and referring to the nationalisation laws of 1948.

The alleviation of the consequences of property injustices consisted in the restitution of the property to the natural or legal person from whom it had been expropriated, the payment of cash compensation or the reimbursement of the purchase price, or the payment of the difference between the cash compensation and the purchase price. The entitled person could be not only the owner of the property, but also his or her legal successor (testate heir, children, spouse, parents, or siblings).²² A person who was a foreign citizen or a permanent resident outside the territory of the Czech and Slovak Federative Republic could also be an entitled person under this Act. The condition of having Czechoslovak citizenship was not required for a

²² | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Cdo 70/92 of 30 September 1992.

restitution claim under this Act. A legal person could also be an entitled person. The obliged person was a legal person who was in possession of the property as at the date of entry into force of the Act.

The procedure for restitution required the entitled person to submit a request to the obliged person²³ within six months from the entry into force of the Act. Otherwise, the claim was extinguished,²⁴ as this was a mandatory time limit. The obliged person had to return the property to the entitled person without delay at the latter's written request. Subsequently, both parties had to conclude an agreement on the return of the property and the mutual settlement of claims, with the obliged person required to return the property within thirty days. If the obliged person failed to comply with these obligations, the entitled person could file his or her claims to the court within one year of the entry into force of the Act. As the time limit for filing a restitution claim was short, it was extended until 31 August 1991.

If the real property could not be returned, the entitled person could claim cash compensation from the Ministry of National Property Administration and Privatisation. According to the Act, it was not possible to return the land on which the right of personal use had been established or the land on which a structure²⁵ was built after the state had taken over the land.²⁶

3.2. Extrajudicial rehabilitation

Act No. 87/1991 Coll. on extrajudicial rehabilitation, as amended (the Extrajudicial Rehabilitation Act), entered into force on 1 April 1991. The Act covered the alleviation of the consequences of certain property injustices caused by civil and administrative acts during the so-called relevant period, i.e. between 25 February 1948 and 1 January 1990, which were contrary to the principles of a democratic society (respecting the rights of citizens as expressed in the Charter of the United Nations, the Universal Declaration of Human Rights, and the subsequent international covenants on civil, political, economic, social and cultural rights).

The alleviation of the consequences of the property injustices consisted in the return of property, cash compensation, or the annulment of certain administrative acts. In contrast to Act No. 403/1990 Coll. on the alleviation of the consequences of the property injustices, only a natural person²⁷ with Czechoslovak citizenship and permanent residence on the territory of the Czech and Slovak Federative Republic could be an entitled person. According to the Extrajudicial Rehabilitation Act, the

23 | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Cz 2/92 of 29 January 1992.

24 | Judgment of the Supreme Court of the Slovak Republic in Case No. 2 Cdo 98/92 of 27 November 1992.

25 | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Cdo 188/96 of 21 February 1997.

26 | Judgment of the Supreme Court of the Slovak Republic in Case No. 1 Cdo 49/92 of 27 August 1992.

27 | Judgment of the Supreme Court of the Slovak Republic in Case No. 2 Cdo 25/93 of 29 June 1993.

entitled person could not be a foreign citizen or a legal person. The legal successor of the original owner (testate heir, children, spouse, parents, or siblings) could also be an entitled person. The obliged person was the state or legal persons who were in possession of the property as at the date of entry into force of this Act.²⁸

Upon written request, the obliged person had to return the property to the entitled person, who had to prove his or her claim to the property and indicate the manner in which it was taken over by the state. The entitled person had to request the obliged person to return the property within six months of the entry into force of this Act, as this was a mandatory time limit. If the right was not exercised within this time limit, the restitution claim was extinguished. Subsequently, the obliged person had to conclude with the entitled person an agreement on the return of the property and to return the property within thirty days. If the obliged person failed to comply with the request, the entitled person could file his or her claims to the court. The action had to be brought within one year of the entry into force of the Extrajudicial Rehabilitation Act. As the time limit for filing a restitution claim was short, subsequent amendments extended the time limit for filing an application for compensation to 31 December 1992 and later to 31 March 1997.

The entitled person could claim the return of real property if he or she could prove the so-called restitution title.²⁹ The obligation to return the property applied in cases where, during the relevant period, the property had been transferred to the state:

- | by means of a contract of donation of real property concluded by the donor under duress;
- | on the basis of a court decision declaring null and void a contract of transfer of property by means of which a citizen had transferred the property to a third party before leaving the country;
- | by means of a contract of sale concluded under duress and under manifestly unfavourable conditions;
- | on the basis of a refusal to accept the inheritance in succession proceedings made under duress;³⁰
- | by expropriation³¹ with compensation, provided that the property exists and has never served the purpose for which it was expropriated;
- | by expropriation³² without compensation; or
- | by nationalisation carried out in violation of the legal provisions in force at the time.

28 | Peceň 1995, 17.

29 | Judgment of the Supreme Court of the Slovak Republic in Case No. 5 Cdo 22/2000 of 30 November 2000.

30 | Judgment of the Supreme Court of the Slovak Republic in Case No. 5 Cdo 93/97 of 30 October 1997.

31 | Tomaš 2019, 71–83.

32 | Palšová 2011, 206–210.

There was also an obligation to return the real property if the state had taken it without legal justification.

If the original real property could not be returned, the entitled person was entitled to cash compensation. Cash compensation could be claimed if the real property to be returned had been devalued in the meantime to the extent that it was unfit for use,³³ if the structure had lost its original structural and technical nature as a result of extensive reconstruction,³⁴ or if neither the land on which a structure had been built after the state took over, nor the land on which the right of personal use had been established, was returned.

3.3. Restitution under the Land Act

The restitution of agricultural and forest land was regulated by a special restitution law. Act No. 229/1991 Coll. on the regulation of ownership of land and other agricultural property, as amended (Land Act), was intended to alleviate the consequences of certain property injustices caused to the owners of agricultural and forest land between 1948 and 1989 and to improve the management of agricultural and forest land by restoring the original ownership of the land. The Act covered the restitution of agricultural or forest land, the restitution of residential buildings, farm buildings and other buildings belonging to the original farmstead, including built-up land, the restitution of residential and farm buildings and structures used for agricultural and forestry production or related water management, including built-up land, and the restitution of other agricultural property (e.g. agricultural machinery and animals).³⁵

Only a natural person with Czechoslovak citizenship and permanent residence on the territory of the Czech and Slovak Federative Republic could be an entitled person, i.e. a person who could file a restitution claim. At the same time, the condition had to be met that the land, buildings, and structures belonging to the original farmstead had been transferred to the state or to other legal persons in the relevant period,³⁶ i.e. between 25 February 1948 and 1 January 1990. The entitled person could also be the legal successor of the original owner listed in the Land Act (testate heir, children, spouse, parents, siblings). Agricultural and forest land could not be returned to foreign citizens or persons not permanently resident on the territory of the Czech and Slovak Federative Republic. Legal persons could not be entitled persons under this Act. The obliged persons against whom a restitution claim could be filed were the state or legal persons who were in possession of the real property as at the date of entry into force of the Land Act.³⁷

33 | Judgment of the Supreme Court of the Slovak Republic in Case No. 2 Cdo 149/96 of 27 March 1997.

34 | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Cdo 27/96 of 1 January 1997.

35 | Judgment of the Supreme Court of the Slovak Republic in Case No. M Cdo 16/2003 of 1 May 2006.

36 | Judgment of the Supreme Court of the Slovak Republic in Case No. 9Sžr/132/2015 of 24 June 2015.

37 | Průchová 1997, 47.

The entitled person had to prove the restitution title, i.e. the legal basis on which the real property had been transferred to the state during the relevant period. The restitution titles were formulated more broadly than in the Extrajudicial Rehabilitation Act.³⁸ The Land Act also extended the restitution titles to cases where the entitled persons were to be given back real property which had been transferred to the state or another legal person as a result of an expropriation without compensation pursuant to Act No. 142/1947 Coll. on the revision of the first land reform or Act No. 46/1948 Coll. on the new land reform, as a result of political persecution or a practice violating universally recognised human rights and freedoms, or as a result of the transfer of the property to the ownership of a cooperative. Land that had been transferred to the state or another legal person could be returned to any entitled person up to a maximum of 150 hectares of agricultural land or 250 hectares of all land (agricultural and forest land). However, between 18 February 1992 and 15 July 1993, the provision on the maximum area was deleted from the Land Act. Therefore, during this period, entitled persons could claim the full area of the land.

The procedure for filing a restitution claim was that the entitled person had to file the claim with the district office³⁹ and, at the same time, request the obliged person to return the real property. The obliged person had to conclude with the entitled person an agreement on the return of the real property within sixty days of the request. The agreement was subject to approval by the district office in the form of an administrative decision. If the agreement was not concluded, the district office decided on the ownership of the real property by the entitled person. If necessary, the district office could establish or abolish an easement (e.g. a right of way) on the transferred real property. The right for restitution of real property had to be exercised by 31 December 1992.⁴⁰ If the right was not exercised within this time limit, the restitution claim was extinguished. Evidence of the restitution claim filed had to be submitted to the Land Office by the substantive time limit of 31 December 1995.⁴¹

In comparison with the Extrajudicial Rehabilitation Act, the Land Act formulated cases in which it was not possible to return the original real property on a wider scale. Land or parts of land could not be returned:

- | if the land was owned by a natural person or if a right of personal use had been established over the land;
- | if there was a cemetery on the land;

38 | Judgment of the Supreme Court of the Slovak Republic in Case No. 2 Sžo-KS 1/2004 of 1 November 2006.

39 | Bandlerová et al. 2013, 353.

40 | Judgment of the Regional Court in Banská Bystrica in Case No. 23 S 16/2001 of 1 November 2003.

41 | Judgment of the Regional Court in Banská Bystrica in Case No. 23 S 89/01 of 11 April 2002.

- | if the land was located in the sanitary protection zone of first-class water sources, formed the bed of a watercourse, or if there were natural curative springs and sources of naturally occurring table mineral waters on the land;
- | if the land was built-up after it had been transferred to the ownership of the state or another legal person (however, the land could be returned if the structure did not interfere with agricultural or forest use);⁴²
- | if allotment gardens or cottage settlements were established on the land;
- | if physical education and sports facilities were located on the land;
- | if the land could be expropriated in the public interest, and;
- | if the land was located within the perimeter of the land improvement project, and the implementation of the land improvement project was approved.

In these cases, the entitled person was entitled to be allocated replacement land, and if he or she did not agree with the allocation of replacement land, he or she could claim cash compensation. The Slovak Land Fund was responsible for allocating replacement land of adequate size and quality or granting cash compensation.

The right to cash compensation could also be exercised in the case of destroyed or substantially damaged structures and forest plantations. Compensation was granted to the entitled person within six months from the date of delivery of the request. It was also possible to claim cash compensation for equipment and livestock (agricultural machinery and animals). In order to ensure the agricultural or forestry production, the original owner of equipment and livestock was entitled to compensation if they had been brought into the agricultural cooperative by the original owner or taken away from the original owner between 25 February 1948 and 1 January 1990. If the original owner died or was declared dead, the legal successor of the entitled person under the Land Act was entitled to compensation to ensure the agricultural or forestry production.

3.4. Restoration of the ownership of land

The time limits for filing restitution claims under the Land Act were short and mandatory. Not everyone who met the conditions for restitution could file a claim within this time limit, and the ownership of many agricultural and forest lands remained unsettled. With the adoption of Act No. 503/2003 Coll. on the restoration of the ownership of land, amending Act No. 180/1995 Coll. on certain measures for the arrangement of the ownership of land, as amended (the Act on the Restoration of the Ownership of Land), the time limits for filing restitution claims were renewed. The Act entered into force on 1 January 2004. Its purpose was to enable the entitled persons who had not filed their restitution claims

42 | Ruling of the Supreme Court of the Slovak Republic in Case No. SŽ-o-KS 90/2003 of 1 September 2004.

within the time limit set by the Land Act to file their claims within the new one-year time limit.

The Act on the Restoration of the Ownership of Land regulates cases of restitution of agricultural and forest property. It provides for the restoration of the ownership of agricultural land (the unpaved roads were included)⁴³ and of forest land, provided that such land was not returned in accordance with the previous restitution laws. In legal practice, the question of whether land should have the nature of agricultural or forest land at the time of its expropriation by the state or at the time of the entry into force of the Act on the Restoration of the Ownership of Land was hard to answer. It was a shortcoming not only of this Act but also of the Land Act that this question was not explicitly addressed. In legal practice, the prevailing opinion was that land which, at the time of its expropriation by the state, had the nature of agricultural or forest land should be subject to restitution. Thus, it was the nature of the land at the time of the expropriation (not at the time of the decision on the restitution claim) that was relevant. The subject of the restoration of ownership was land for which restitution claims had not been filed or had been filed after the statutory time limit.⁴⁴ Unlike the Land Act, the Act on the Restoration of the Ownership of Land did not provide for the restoration of the ownership of structures, but only for the restoration of the ownership of land, and it did not allow for the restoration of the ownership of equipment and livestock (machinery and animals). Under the Act on the Restoration of the Ownership of Land, it was not even possible to claim compensation for destroyed real property.

The eligible persons for the restoration of the ownership of real property were defined in the same way as in the Land Act. Only a natural person who was a citizen of the Slovak Republic with permanent residence on its territory and whose land was transferred to the state or another legal person between 25 February 1948 and 1 January 1990 could exercise the right to restoration of the ownership of land under the Act on the Restoration of the Ownership of Land. Dual citizenship was not excluded, but the permanent residence had to be on the territory of the Slovak Republic. With regard to the question of the date as at which the person filing the restitution claim had to meet the conditions of an entitled person, it was sufficient if he or she met the characteristics of an entitled person as at the date on which he or she filed the restitution claim. Thus, the entitled person did not have to meet all the conditions as at the date of entry into force of the Act on the Restoration of the Ownership of Land. In the event of the death of the entitled person, the restitution claim could be filed by a legal successor, i.e. the testate heir, children, spouse, parents, or siblings.⁴⁵ The obliged persons were legal persons that had the right to

43 | Judgment of the Supreme Court of the Slovak Republic in Case No. 6 Sžo 95/2009 of 16 December 2009.

44 | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Sžo 100/2015 of 26 May 2016.

45 | Judgment of the Supreme Court of the Slovak Republic in Case No. 1 Sžo 67/2007 of 18 December 2007.

manage or administer land owned by the Slovak Republic and agricultural cooperatives. According to the Act on the Restoration of the Ownership of Land, not every legal person administering land subject to restitution was an obliged person. In contrast to the Land Act, municipalities and towns were no longer obliged persons (even if they administered land subject to restitution).

According to the Land Act, if there was more than one entitled person (several co-owners of the real property) and only one person filed a restitution claim, the entire real property was returned to that person. According to the Act on the Restoration of the Ownership of Land, an entitled person could only claim his or her share, not more. Thus, if an entitled person claimed his or her share and the other entitled persons did not claim their shares, the entitled person did not receive the entire real property but only his or her ownership share. The maximum area of land to be returned was the same as in the Land Act (150 hectares of agricultural land and a maximum of 250 hectares of agricultural and forest land in total). In order to file a claim under the Act on the Restoration of the Ownership of Land, it was necessary to prove one of the restitution titles. These were listed exhaustively, could not be extended by analogy, and their definition corresponded to that in the Land Act. The restitution titles were thus similar to the restitution titles under the Land Act.

Like the Land Act, the Act on the Restoration of the Ownership of Land defined land that could not be returned to the original owner. The cases where the original land could not be returned were listed exhaustively. In the case of agricultural land, replacement land was allocated by the Slovak Land Fund. Where forest land was the subject of restitution, replacement land was allocated by the state forestry organisation (*Lesy Slovenskej republiky, štátny podnik*). If the entitled person did not agree with the allocation of replacement land, he or she was entitled to cash compensation. The Slovak Land Fund was responsible for paying the cash compensation.

The Act on the Restoration of the Ownership of Land, like all previous restitution laws, provided for a prohibition on the transfer of land covered by the restitution law. If the obliged person transferred such land to a third party (whether by purchase or by donation, regardless of the agreed price), such a legal act was absolutely null and void from the outset as an act contrary to the law in terms of its content.⁴⁶

According to the Act on the Restoration of the Ownership of Land, a restitution claim had to be filed with the district land office in whose district the land was located. The time limit for filing a restitution claim was 31 December 2004. This time limit was mandatory, i.e. the entitled person's restitution claim was extinguished upon its expiry in vain. The time limit was of a substantive nature, i.e. it

⁴⁶ | Judgment of the Supreme Court of the Slovak Republic in Case No. 3Sžr/102/2014 of 7 September 2015.

was not sufficient to send the claim by post on the last day of the time limit, but the entitled person's claim for restitution of his or her land had to be delivered to the district land office on the last day of the time limit at the latest. The district land office decided either to return the original land to the entitled person or to transfer to the entitled person, free of charge, replacement land of similar quality and size to the original land, if possible in the same municipality where most of the original land was located (provided that the entitled person agreed, or the entitled person received cash compensation).

The proceedings before the district land office were also governed, as under the previous restitution laws, by Act No. 71/1967 Coll. on administrative proceedings (Code of Administrative Procedure), as amended.⁴⁷ They were, therefore, typical administrative proceedings. Proceedings before the district land office could only be initiated upon application, not *ex officio*. The decision of the district land office could be appealed to the court. In such cases, the decision was made within the administrative justice system.⁴⁸

As far as the costs of the restitution proceedings were concerned, there was a difference with the Land Act. Under the Land Act, the costs related to the valuation of the real property, the identification of the parcels, and the demarcation of the boundaries of land were borne by the state. The Act on the Restoration of the Ownership of Land exempted the entitled persons from paying some, but not all, of these costs. If an entitled person needed the identification of a parcel or requested an extract from the land register, these acts were exempt from an administrative fee pursuant to Act No. 145/1995 Coll. on administrative fees, as amended. Similarly, if an appeal was lodged against a decision of the district land office, it was decided within the administrative justice system,⁴⁹ and these proceedings were exempt from a court fee pursuant to Act No. 71/1992 Coll. on court fees and the fee for an extract from the criminal records, as amended.⁵⁰ If it was not possible to return the original land and the entitled person claimed cash compensation, such cash compensation was also exempt from income tax.^{51 52} However, the cost of the demarcation of the boundaries of land had to be borne by the entitled person. The same applied to the costs of land valuation if the entitled person did not agree with the allocation of replacement land. The Slovak Land Fund paid cash compensation in the amount determined in accordance with the price regulation valid as at the date of entry into force of the Land Act, i.e. Decree of the Ministry of Finance of the Slovak Republic No. 465/1991 Coll. on the prices of structures, land, permanent crops, payments for establishing the right of personal use of land and

47 | Jakab 2018, 13–21.

48 | Tomaš 2022, 469–496.

49 | Orosz 2009, 262.

50 | Štrkolec 2006.

51 | Vartašová & Červená 2019, 75.

52 | Štrkolec & Prievozníková 2008, 189–197.

compensation for temporary use of land, as amended. The Decree regulated the official price of land, which was lower than the market price of land, so it was more advantageous for the entitled person to claim replacement land rather than cash compensation.

3.5. Cooperative land and the Transformation Act

Before 1990, land was used extensively by cooperatives because, during the period of non-freedom, the state forced natural persons to hand over land to the cooperative. It was also necessary to hand over agricultural machinery and animals to the cooperative. As a result, the landowners suffered property injustices because the cooperatives had permanent free use of other people's land. Only the so-called bare ownership (*nuda proprietas*) remained to the owners. Cooperatives violated the ownership rights of the landowners. Agricultural cooperatives carried out agricultural production on other people's land in the form of the right of cooperative land use. Housing cooperatives built residential and non-residential buildings on other people's land. Consumer and producer cooperatives also often had their buildings constructed on other people's land without the consent of the landowners. This resulted in property injustice to the landowners.

After 1990, it was necessary to transform the cooperatives into their present form and to alleviate the property injustices caused to landowners during the period of non-freedom. In connection with the transition of cooperatives to the new legal regime after 1990, Act No. 42/1992 Coll. on the regulation of property relations and the settlement of property claims in cooperatives, as amended (the Transformation Act), was adopted. This Act provided for the alleviation of property injustices suffered by entitled persons because cooperatives used other people's land during the period of non-freedom.

According to the Transformation Act, any person whose land was used by a cooperative as at the date of entry into force of Act No. 229/1991 Coll. on land (24 June 1991) became an entitled person towards the cooperative. The Transformation Act provided for the distribution of the cooperative's assets among the entitled persons by establishing the key according to which the cooperative's assets were to be distributed. Fifty per cent of the cooperative's assets were distributed among the entitled persons according to the area of land used by the cooperative, irrespective of the quality of the land or the length of time the land had been used by the cooperative. Thirty per cent of the cooperative's assets were distributed among the entitled persons according to the equipment and livestock used by the cooperative, while twenty per cent were distributed among the entitled persons according to the number of years worked in the cooperative.

The entitled person under the Transformation Act received a share in the cooperative's assets, expressed in monetary terms. The final amount of the

entitled person's share in the cooperative's assets was determined in a transformation project. According to the Transformation Act, the entitled person was the person who filed a claim against the cooperative by 28 April 1992. Anyone who did not register his or her claim with the cooperative within this time limit did not become an entitled person and could not receive a share in the cooperative's assets, as this was a mandatory time limit. The transformation project was decided at a joint general meeting, which all entitled persons were to attend. At this joint general meeting, a vote was taken to approve the transformation project. The transformation project included a list of entitled persons and their share in the cooperative's assets.⁵³

The Transformation Act recognised two forms of alleviation of property injustices suffered by entitled persons.⁵⁴ The first form was for people who worked as self-employed peasants.⁵⁵ These persons could request the cooperative to return their land, equipment, and livestock or to pay them cash compensation. The entitled person had to receive the property share within 90 days from the date of the written request.⁵⁶ Other persons were subject to the second form of alleviation of property injustices – the issuance of share certificates, i.e. an entitled person who had not started agricultural activities was entitled to a share certificate. A share certificate was a security that stated the amount of the entitled person's share in the cooperative's assets, expressed in monetary terms. The cooperatives were obliged to issue share certificates to the entitled persons by 30 June 1996 at the latest. The obligation to issue share certificates was fulfilled by notifying the Securities Centre of the information required for registration.

The share certificate entitled its holder to apply to the cooperative for membership, and the cooperative could not refuse membership without a substantive reason. Otherwise, membership was decided by the court. The share certificates could be sold on the stock exchange or, after a period of seven years from the approval of the transformation project, the entitled person could offer the share certificate to the cooperative for redemption. In practice, the entitled persons who used the first form of alleviation of property injustices were in a more advantageous position, as they received cash compensation. The entitled persons who offered their share certificates to the cooperative for redemption had a less favourable outcome, as many cooperatives went bankrupt in the 1990s. In practice, most share certificates were not registered with the Securities Centre, so they could not even be traded on the stock exchange.

53 | Pokorný & Holub 2000, 51.

54 | Judgment of the Supreme Court of the Slovak Republic in Case No. 5Obdo/24/2020 of 16 February 2021.

55 | Judgment of the Supreme Court of the Slovak Republic in Case No. 2 Cdo 156/96 of 18 February 1997.

56 | Judgment of the Supreme Court of the Slovak Republic in Case No. 3 Cdo 130/2005 of 27 October 2005.

3.6. Restitution of church property

After 1948, all church land came under the administration of the state authorities, forest land was taken over by state forestry organisations, and agricultural land was given to state farms or unified agricultural cooperatives. Property injustices before 1990 did not only affect natural persons. Legal persons were not exempted from the unlawful expropriation of real property, and thus, churches and religious communities also lost their real property. Since the legal personality of churches and religious communities was fully restored after the fall of the socialist regime, the issue of returning church real property to its rightful owners – churches and religious communities – had to be addressed within restitution proceedings.

The restitution of church property differed from the restitution of real property of natural persons. In general, the restitution laws can be divided into those relating to the restitution of the property of natural persons and those relating to the restitution of the property of legal persons. These laws differ, in particular, in regard to granting the so-called replacement compensation. The question of replacement compensation arose when it was not possible to return the original real property to the entitled person in the cases provided for by law. Unlike in the case of restitution to natural persons where, if it was not possible to return the original real property, replacement compensation was granted (either in the form of replacement land or cash compensation), in the case of restitution of property to legal persons (churches and religious communities), the real property was returned in the condition in which it was as at the date of entry into force of the Restitution Act, and where it was not possible to return the real property (in the cases exhaustively listed in the Act), the church or religious community was not entitled to any replacement compensation.

An important property law was Act No. 298/1990 Coll. on the regulation of certain property relations of religious orders and congregations and of the Archbishopric of Olomouc. The purpose of the Act was to redress the property injustices caused by the unlawful expropriation of mainly real property in the 1950s. It provided for the restitution of property exhaustively listed in the Annexes to the Act. Restitution of other property was not possible. The property was returned in the condition in which it was as at the date of entry into force of the Act. The real property was transferred to the entitled persons directly *ex lege*. No decision by a state authority or agreement between the entitled person and the obliged person was required for the acquisition of ownership.

The general church restitution law was Act No. 282/1993 Coll. on the alleviation of certain property injustices caused to churches and religious communities, as amended (Act No. 282/1993 Coll.). This Act was the general restitution law because it did not apply only to specific religious orders and congregations but defined an entitled person, in general terms, as a registered church or religious community

that was unlawfully deprived of its property during the period precisely defined by the Act. No specific real property which was to be subject to restitution was enumerated in this Act.

The purpose of Act No. 282/1993 Coll. was to alleviate the property injustices caused to churches and religious communities by the deprivation of their ownership during the relevant period in violation of the principles of a democratic society and the documents on fundamental rights and freedoms. The relevant period was from 8 May 1945 but, in the case of Jewish religious communities, from 2 November 1938 to 1 January 1990. Only registered churches and religious communities (registered by the Ministry of Culture of the Slovak Republic) were entitled persons, provided that they were deprived of their property for the benefit of the state or a municipality during the relevant period. The obliged person was the state or a municipality, or a legal person established by the state or a municipality, which was in possession of the property subject to restitution as at the date of entry into force of the Church Restitution Act. Natural persons were obliged to return the property only if they had acquired it from the state or the municipality in violation of the laws in force at that time, or if the person acquiring the property had been unlawfully favoured.

The procedure for the restitution of property was such that the entitled person had to request the obliged person to return the property, and the request had to be made in writing and contain the specification of the property, the names of the entitled person and the obliged person, the manner in which the property was taken, when the taking took place, and the restitution title. The property was returned to the entitled person in the condition in which it was as at the date of entry into force of the Restitution Act. If the real property subject to restitution was devalued, the entitled person was not entitled to compensation from the obliged person. The entitled person could not file any claims against the obliged person for restitution other than those stipulated in this Act. For example, the entitled person could not claim damages, unjust enrichment, or rent for the use of real property against the obliged person.

The restitution claim (as in other restitution laws) could not be filed directly in court. Instead, the entitled person had to first request the obliged person to return the property.⁵⁷ The Act gave the entitled person a time limit of 12 months from the date of entry into force of the Act (it entered into force on 1 January 1994) to make a written request to the obliged person. This time limit was mandatory, i.e. after its expiry the restitution claim was extinguished. On the date of delivery of the request to the obliged person, an agreement on the return of the property had to be concluded between the entitled person and the obliged person within the period of 90 days.⁵⁸ If no agreement on the return of the property was reached

57 | Finding of the Constitutional Court of the Slovak Republic in Case No. 1 ÚS 12/2010 of 7 July 2010.

58 | Judgment of the Supreme Court of the Slovak Republic in Case No. 1 SŽ-o-KS 2/04 of 29 June 2004.

within this 90-day period, only then could the restitution claim be filed in court. The time limit for bringing a restitution action was 15 months from the date of delivery of the request to the obliged person. Act No. 282/1993 Coll. also provided for cases in which land or parts of land were not to be returned. These cases were exhaustively listed. In these cases, the entitled person was not entitled to replacement land or cash compensation (unlike in the case of restitution to natural persons).

Within the church property restitution process in the Slovak Republic, the most recent law was Act No. 161/2005 Coll. on the restoration of the ownership of real property to churches and religious communities and the transfer of ownership of certain real property (Act No. 161/2005 Coll.). The Act entered into force on 1 May 2005. The purpose of the Act was to restore the ownership of real property that had not been returned under the previous restitution law (Act No. 282/1993 Coll.). Entitled persons could exercise their right to the restoration of ownership until 30 April 2006. In contrast to Act No. 282/1993 Coll., the subject of restitution under Act No. 161/2005 Coll. was real property only. It could be agricultural and forest land, including farm buildings and related structures. The definition of the entitled person and the restitution title were the same as in the previous restitution law. The real property was also returned in the condition in which it was as at the date of entry into force of Act No. 161/2005 Coll. Furthermore, the entitled person could not file any claims under Act No. 161/2005 Coll. other than those directly provided for in the Act. For example, it was not possible to claim damages or unjust enrichment. A similar provision was made for cases where real property was not returned. In this case, there was no claim for the replacement real property or cash compensation. In contrast to Act No. 282/1993 Coll., the new Act defined the obliged person differently. It could not be a natural person, but only a legal person who administered the real property owned by the Slovak Republic or a municipality or who was in possession of such real property.

The right to the restoration of the ownership of real property could not be claimed directly in court. Firstly, the entitled person had to deliver a written request to the obliged person to return the real property. The Act provided for a mandatory time limit of 30 April 2006 for delivering the request to the obliged person. The entitled person had to conclude an agreement on the return of the real property with the obliged person. If no agreement on the return of the real property was concluded, the entitled person could file the restitution claim in court within 12 months of the delivery of the written request to the obliged person. On 17 March 2005, the National Council of the Slovak Republic adopted Resolution No. 1551 on Act No. 161/2005 Coll., which included a declaration that the process of restitution of property belonging to churches and religious communities would be considered closed with the entry into force of this Act.

4. Restitution proceedings and current practice

4.1. Competition between an ownership action and a restitution action

In view of the fact that the time limits for filing restitution claims under the restitution laws have already expired, it is of particular interest, from the perspective of legal theory and judicial practice, to address the question of the relationship between a restitution action and an ownership action.⁵⁹ It should be reiterated that the restitution time limits were of a mandatory nature. All the restitution laws contained the rule that if a restitution claim was not filed within the time limit, it would be extinguished.⁶⁰ In 1999, the Constitutional Court of the Slovak Republic ruled that the setting of the time limits for filing restitution claims did not violate Article 20 or Article 46 of the Constitution of the Slovak Republic (Constitutional Act No. 460/1992 Coll., as amended).⁶¹ The restitution laws are, in relation to Act No. 40/1964 Coll. Civil Code, as amended (the Civil Code), special laws. In practice, it often happens that the entitled person who has missed the time limit for filing a restitution claim according to the restitution laws files the claim even now by means of a general ownership action. In such cases, the entitled persons file their claims by means of an action for the establishment of ownership⁶², referring to the non-limitation of the ownership right pursuant to Section 100(1) of the Civil Code.

In the decision-making practice of the courts (both common courts and the Constitutional Court), not only in the Slovak Republic but also in the Czech Republic, there are two opposing opinions on the solution of this issue. According to the first opinion, if the time limit for filing a restitution claim has expired in vain, the entitled person can file his or her claim by means of an ownership action under the Civil Code, arguing that the ownership right is not subject to statutory limitation and that the Civil Code, as a general law, contains provisions on the protection of the ownership right, which can be used in the event that it is not possible to use the protection under a special (restitution) law. According to the opposite opinion, once the restitution time limits have expired, it is no longer possible to file a claim by means of an ownership action because if there is a special law (restitution law), a general law (Civil Code) cannot be applied; an ownership action cannot circumvent the purpose and meaning of the restitution laws.

59 | Kindl 1993, 7.

60 | Pekárek 1996, 459.

61 | Ruling of the Plenary Session of the Constitutional Court of the Slovak Republic in Case No. PL. ÚS 23/1998 of 1 July 1999.

62 | Holub, Pokorný & Bičovský 2002, 59.

4.2. The first opinion: Possibility to file a claim by means of an ownership action

The essence of this opinion lies in resolving the question of whether the adoption of the restitution laws extinguished the ownership rights of persons whose property had previously been taken by the state without legal justification. The proponents of this opinion argue that the taking of real property by the state without legal justification has not extinguished the ownership right and that, therefore, there is nothing to prevent the entitled person from filing his or her claim by means of an action under the general rules of civil law. According to some opinions, the claim may be filed by means of an action under the Civil Code, particularly in cases where there is no document, decision, or legal provision justifying the conclusion that the state or another legal person has acquired ownership of the real property.⁶³

In 1998, the Supreme Court of the Slovak Republic⁶⁴ stated that, in the case of restitution laws, there is a relationship between general and special laws. On the one hand the principle applies that restitution laws have the nature of a special law in relation to the Civil Code (*lex specialis derogat legi generali*), but on the other hand if the restitution laws do not apply to certain persons or cases, then the general law, i.e. the Civil Code, applies.

It follows from the Judgment of the Supreme Court of the Slovak Republic in Case No. 5 Cdo 36/99 of 20 August 1999 that the filing of claims under the Civil Code cannot be excluded if the extinction of the ownership right of the original owner has not been proven and the property has only been taken *de facto* by the state or a legal person. The restitution laws are intended only to facilitate the filing of claims by the entitled persons, not to exclude them under general laws.

In another decision⁶⁵, the Supreme Court of the Slovak Republic concluded that although the restitution laws have the nature of a *lex specialis* in relation to the Civil Code, they do not exclude the possibility of seeking protection of the ownership right under the provisions of the Civil Code by means of an action for the establishment of ownership after the expiry of the restitution time limits if it is ascertained that the provisions of the *lex specialis* cannot be applied to a particular case.

Moreover, in the case law of the Constitutional Court of the Slovak Republic, in its earlier decisions, there was an opinion that it was possible to file an action for the establishment of ownership according to the general rules of civil law if the time limit for filing a restitution claim according to the restitution laws had already expired. In general, the proponents of this opinion argue that where property has

63 | Spáčil 2002, 90.

64 | Judgment of the Supreme Court of the Slovak Republic in Case No. Cdo 1/98 of 29 April 1998.

65 | Ruling of the Supreme Court of the Slovak Republic in Case No. 3 Cdo 205/2009 of 17 February 2011.

been taken by the state without legal justification, the entitled person has not lost his or her ownership of that property and there is nothing preventing him or her from filing his or her claim or seeking cash compensation by means of an action based on the general rules of civil law.⁶⁶ In 2009, the Constitutional Court of the Slovak Republic came to the same conclusion as in the case of Decision III. ÚS 178/06, i.e. it is possible to seek the ownership by means of an action to obtain a declaratory ruling even if the entitled person did not make use of the possibility to file his or her claim on the basis of the restitution laws.⁶⁷

In a further finding in 2011, the Constitutional Court of the Slovak Republic stated that if the legislature provided in Section 6(1)(p) of the Land Act a separate restitution ground consisting in the fact that the real property which was transferred to the state or another legal person as a result of taking the real property without legal justification, the purpose of this provision was to facilitate the registration of the entitled persons as owners in the Land Register in cases where the state, abusing its position in the period of non-freedom, allowed the change of the registration of the ownership in the Land Register without fulfilling the basic requirements arising from the law in force at that time. The facilitation of the position of the entitled persons was also intended to allow them to obtain the correction of the registration of their (still existing) ownership right in a relatively simple administrative procedure and not to be obligated to seek judicial protection of their ownership right. It was not the purpose of the Land Act to provide for a prohibition of obtaining a revision of the state's actions during the relevant period after the expiry of the time limit for filing a restitution claim.⁶⁸

4.3. Opposing opinion: Impossibility to file a claim by means of an ownership action

Controversial opinions on the relationship between a restitution action and an ownership action can also be found in the decision-making practice of the Supreme Court of the Czech Republic and the Constitutional Court of the Czech Republic. They ruled in 2003–2005 that an entitled person whose real property was taken over by the state in the relevant period under the conditions set out in the restitution laws cannot seek protection of the ownership right under the general laws.⁶⁹ At the same time, it has often been pointed out in the decision-making practice of Czech courts that the European Court of Human Rights has accepted

66 | Ruling of the Constitutional Court of the Slovak Republic No. III. ÚS 178/06-5 of 20 June 2006.

67 | Ruling of the Constitutional Court of the Slovak Republic No. II. ÚS 231/09-29 of 11 June 2009.

68 | Finding of the Constitutional Court of the Slovak Republic No. II ÚS 249/2011-30 of 29 September 2011.

69 | Judgment of the Supreme Court of the Czech Republic in Case No. 31 Cdo 1222/2001 of 11 September 2003, Ruling of the Supreme Court of the Czech Republic in Case No. 28 Cdo 1782/2002 of 15 April 2003, Finding of the Constitutional Court of the Czech Republic in Case No. IV ÚS 298/05 of 8 August 2005.

in its decisions that states have the right to set their own conditions for the legal restitution of property.⁷⁰

In the past, the Supreme Court of the Slovak Republic issued several decisions on the question of the impossibility of filing a restitution claim by means of an ownership action under the Civil Code. For example, it follows from the operative part of Decision No. R 28/2001 *argumentum a contrario* that if the restitution law establishes a certain legal fact as a ground for restitution, the claimant may not seek in a lawsuit the invalidity of a contract on the transfer of real property concluded during the so-called relevant period under the general law (pursuant to Section 126 of the Civil Code).⁷¹

The Supreme Court of the Slovak Republic in its decisions in 2009–2010 (Case No. 4 Cdo 130/2007 of 25 February 2009, Case No. 5 Mcd0 4/2009 of 24 February 2010, and Case No. 4 Cdo 300/2008 of 27 October 2010) unified the decision-making practice on the competition between a restitution action and an ownership action. It argued that:

1. If the protection of a right may be sought through a procedure under a restitution law as a special law, i.e. if a restitution claim is filed, a claim for the protection of property under general laws may not be filed.
2. Only in cases expressly provided for in the restitution laws was there a ground for the return of property. At the same time, this precluded the possibility of exercising this right in any other way, i.e. under the general laws.
3. Failure to make use of the possibility of claiming restitution within the statutory time limit results in the irreversible extinguishment of the right and, thus, in the impossibility of obtaining a revision of the state's actions during the so-called relevant period by means of an action for the establishment of ownership.
4. After the expiry of the restitution time limits in vain, the entitled person can no longer be considered as the owner of the property.
5. One of the fundamental principles of the rule of law is the principle of legal certainty. At a certain point in time, the obliged person must be sure who owns the real property.
6. It cannot be said that the rights of the original owners have been violated. These owners had the opportunity to exercise their ownership right within sufficiently long periods of time and under the conditions laid down in the restitution laws, and if they did not do so or were unsuccessful, their ownership right was extinguished (in the same way the ownership right is extinguished as a result of acquisition of ownership by another person by prescription).

70 | For example, *Kopecný v. Slovakia, Zvolský and Zvolská v. Czech Republic, Jantner v. Slovakia*. See Hubáľková 2004, 63.

71 | Judgment of the Supreme Court of the Slovak Republic in Case No. 5 Cdo 36/99 of 20 August 1999.

On the competition between a restitution action and an ownership action, the Plenary Session of the Constitutional Court of the Czech Republic issued a unifying position in 2005,⁷² according to which, an action for the establishment of ownership cannot circumvent the meaning and purpose of the restitution laws. This position was also reflected in another finding of the Constitutional Court of the Czech Republic in 2006, published in the Collection of Findings and Rulings of the Constitutional Court of the Czech Republic.⁷³ However, despite the above-mentioned unifying position of the Constitutional Court of the Czech Republic, there are also occasional decisions to the contrary, according to which it is possible to file a claim even after the expiry of the restitution time limits by means of an action for the establishment of ownership.⁷⁴

The Constitutional Court of the Slovak Republic adopted a position on the competition between a restitution action and an ownership action in 2013.⁷⁵ It follows from this decision that after the expiry of the restitution time limits, it is no longer possible to bring a general ownership action for the establishment of ownership of real property. If it were still possible to seek the return of the property (eviction) under Section 126 of the Civil Code, which could have been claimed under a restitution law, or to seek the establishment of ownership of such property, the legal certainty of persons who acquired the real property after it had become clear that the real property could no longer be returned under the restitution law would be collectively undermined.

4.4. Current decision-making practice

A shift in opinion can be observed in the current decision-making practice. A change of opinion in the decision-making practice of the Constitutional Court of the Slovak Republic occurred in some decisions issued in 2017 and 2020 (decisions in Cases No. I. ÚS 460/2017 and No. IV. ÚS 628/2020), when the Constitutional Court tended to the opinion that each case of claim for the return of real property under the general laws must be assessed individually. According to the Constitutional Court of the Slovak Republic, it is necessary to focus on the question of whether there are specific circumstances in each case for which the claimants could not realistically make use of the restitution laws. In these decisions, the Constitutional Court bases its opinion on the different position published on the Ruling of the Constitutional Court of the Slovak Republic in Case No. III. ÚS 177/2013 of 24 April

72 | Position of the Plenary Session of the Constitutional Court of the Czech Republic in Case No. Pl. 21/05 of 1 November 2005.

73 | Decision of the Constitutional Court of the Czech Republic in Case No. II. ÚS 14/04 of 25 January 2006.

74 | Decision of the Constitutional Court of the Czech Republic in Case No. I. ÚS 89/07 of 25 June 2009 and Case No. I. ÚS 3503/10 of 19 April 2012.

75 | Ruling of the Constitutional Court of the Slovak Republic in Case No. III. ÚS 177/2013 of 24 April 2013.

2013,⁷⁶ according to which the entitled person could not lose his or her ownership right if the property was taken over by the state without legal justification. It should be noted that this could reopen the way for the filing of restitution claims in respect of real property that was not returned to the entitled persons under the previous restitution laws.

5. Conclusion

Contrary to some recent decisions of the Constitutional Court of the Slovak Republic, we are inclined to take the opposite opinion. In our opinion, protection by means of an ownership action under the Civil Code should not be allowed after the expiry of the restitution time limits laid down in the restitution laws, as this would undermine the principle of legal certainty in legal relations concerning real property. This would mean a reopening of the restitution process in Slovakia. One of the fundamental pillars of the rule of law is legal certainty. Disputes over ownership shall be judged in this light, particularly where the grounds for challenging it are not found in the present, but in events that occurred decades ago. Allowing claims covered by the restitution laws to be filed by means of an ownership action under the general rules of civil law could have adverse legal consequences. It would also lead to the possibility that persons who were unsuccessful in the restitution proceedings, persons who did not file their claim in the restitution proceedings within the statutory time limit, and persons who could not file their claim in the restitution proceedings because they did not meet one of the conditions necessary for filing a restitution claim (e.g. the condition of citizenship or the condition of permanent residence in the territory of the Slovak Republic) could file their claim.⁷⁷

A restitution claim could only be filed under the restitution laws on exhaustively specified grounds. If the claim could be filed through an ownership action, it would be possible to claim the return of real property or cash compensation on grounds other than those set out in the restitution laws. It would also be possible to claim the return of real property which was not returned under the restitution laws and for which only cash compensation or adequate replacement land was provided. Furthermore, it would be possible to claim the return of land over the maximum areas specified in Act No. 229/1991 Coll. on the regulation of the ownership of land and other agricultural property, as amended, or Act No. 503/2003 Coll. on the restoration of the ownership of land, as amended (e.g. it would be possible to claim the ownership of agricultural land over an area of 150 hectares). The obliged person would not only be the state, legal persons that have the right to manage or

76 | The author of the paper participated in the drafting of this decision as an external advisor to the Constitutional Court of the Slovak Republic.

77 | Decision of the Supreme Court of the Czech Republic in Case No. 28 Cdo 2166/2006.

administer the real property, municipalities and agricultural cooperatives, but also any person who was in possession of the real property in question. It would also be possible to claim the return of real property that has been transferred to a third party in the meantime (unless the real property was acquired by prescription). Such persons would have to be compensated.

If the return of the original real property was not possible (e.g. the real property was demolished), the question arises as to the amount of cash compensation – should it be based on the current market price or the official price according to the restitution laws? The legislation governing the official price of real property (Decree of the Ministry of Finance No. 465/1991 Coll. on the prices of structures, land, permanent crops, payments for establishing the right of personal use of land and compensation for temporary use of land) was repealed on 31 December 2003. If the cash compensation were to be granted to the entitled person at the current market price, this would favour persons who filed their claims late, i.e. after the expiry of the restitution time limits, since according to the restitution laws the cash compensation was granted to the entitled persons in the restitution proceedings only at the official price, which was lower than the market price. Entitled persons who filed their claims in due time (i.e. within the time limits set by the restitution laws) would then be able to claim the difference between the current market price and the official price.

For the final resolution of the issue of the relationship between the restitution action and the ownership action, it is essential that the restitution legislation has the nature of *lex specialis* in relation to the Civil Code, which is *lex generalis*. If the entitled person missed the time limit for filing a claim covered by the restitution legislation or was unsuccessful in the restitution proceedings, he or she could not defend himself or herself under Section 126 of the Civil Code by bringing an action for the return of the property (eviction), referring to the non-limitation of the ownership right (Section 100(2) of the Civil Code) and the subsidiary application of the provisions of the Civil Code, which governs the protection of the ownership right in general. A claim that was provided for in the restitution legislation for the return of real property expropriated during the relevant period cannot be filed either on the basis of an action for the return of the property (eviction of the real property), or on the basis of an action for the establishment of ownership. An action for the establishment of ownership cannot circumvent the purpose and meaning of the restitution legislation, which has the nature of *lex specialis*. Therefore, there is no compelling interest in bringing such an action to obtain a declaratory judgment as required by Section 137(b) of Act No. 160/2015 Coll. Code of Civil Adversarial Procedure, as amended.

We are of the opinion that allowing the entitled persons to file the claims provided for in the restitution laws by means of actions under the general rules of civil law would reopen the entire restitution process, which would ultimately significantly undermine the principle of legal certainty in legal relations concerning

real property, since in such a case restitution claims could be filed indefinitely. In view of the fact that in Slovakia there are still different opinions on the competition of a restitution action and an ownership action in the decisions of the chambers of the Constitutional Court, it can be assumed that the Plenary Session of the Constitutional Court of the Slovak Republic will adopt a definitive position on this issue in the future.

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