

SVK-2017-1-001

a) Slovakia / b) [Constitutional Court](#) / c) First Chamber / d) 16-03-2016 / e) I. ÚS 549/2015 / f) / g) / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

[05.03.39](#) Fundamental Rights - Civil and political rights - **Right to property.**

Keywords of the alphabetical index:

[Good faith](#) / [Ownership](#) / [Ownership, protection](#) / [Ownership, title](#).

Headnotes:

The mere absence of ownership on the part of the seller does not automatically make the purchase contract invalid if the purchaser acted in good faith that he was buying from the rightful owner and had good reasons to believe so.

Summary:

I. The applicant acquired some real estate in 2000 from a private pharmaceutical company which, in turn, had acquired the property from a state-owned automobile company in the course of privatisation proceedings, i.e. from the state.

However, the acquisition of the real estate by the private company from the state-owned company gave rise to some controversy, since certain procedural requirements had not been observed. Accordingly, it was claimed by several entities that since this first acquisition was invalid, the second acquisition by the complainant was also necessarily invalid with reference to the principle *nemo plus iuris ad alium transferre potest quam ipse habet* ('no one can transfer a greater right than he himself has'). This was despite the fact that the purchase had been approved by another court when that pharmaceutical company was, too, in bankruptcy and was thus so confirmed in the Land Registry at the time the complainant was buying it.

In 2007, the automobile company, now a private joint-stock company, was declared bankrupt and a trustee was appointed by court to handle the bankruptcy proceedings. While listing the assets of the bankrupt company, the trustee included therein the real estate in question since he did not consider the pharmaceutical company the rightful acquirer, and therefore did not consider the complainant to be the rightful owner of the real estate. However, he included a note in the published inventory of the bankrupt company's assets that this inclusion was disputable.

The applicant disputed this inclusion and tried to settle the matter with the trustee.

He filed an unsuccessful lawsuit at the District Court in Trnava seeking to have the real estate in question withdrawn from the bankrupt company's assets. The court rejected the lawsuit in its 2010 judgment, holding that the complainant had failed to prove lawful acquisition of property rights to the real estate in question on the part of his legal predecessor, partly also for procedural reasons. Therefore, the court continued in its reasoning, the complainant could not

have become the rightful owner of the real estate in question on the basis of the submitted purchased contract. The applicant appealed the judgment.

The appellate court, the Regional Court in Trnava, rejected the appeal in its 2013 judgment, agreeing with the argumentation of the lower court. The complainant filed an appeal on points of law with the Supreme Court. In 2014, the Supreme Court declared the application inadmissible for being manifestly unfounded.

In 2015, the applicant filed a constitutional complaint with the Constitutional Court. He claimed that the previous courts were unreasonably selective when quoting Czech case law relevant to bona fide acquisition of real estate, omitting those parts of the case law which supported the applicant's position. He further claimed that the courts had imposed an excessive burden of proof on him as regards his predecessors' rights to state assets and accused the courts of undue formalism when assessing procedural questions as well as his quality as a bona fide purchaser.

II. The Constitutional Court had reiterated on many occasions that ordinary courts are obliged to examine and take into account the specific circumstances of each individual case in order to reach a just decision, i.e. so that «overly scrupulous adherence to the exact wording of the law which is in favour of one party to proceedings does not lead to glaring injustice on the part of the other party».

The Court noted at the outset of its argumentation that under Article 20 of the Constitution, the property rights of all owners have the same value and enjoy the same protection and that the state is obliged to protect these rights if they are violated. The Court further recalled that the primary objective and purpose of civil procedure is the protection of violated rights.

The Court conceded that with the exception of acquisition by prescription, the Civil Code does not explicitly allow for acquisition of property solely on the basis of bona fides. However, the Court held that this cannot lead to the immediate conclusion that the mere absence of ownership on the part of the transferor automatically renders the purchase contract invalid. The Court recalled at this point that the transfer of property rights was approved by the competent state authorities and was confirmed in the relevant state-administered registry.

Thus, this was a case of a conflict between two principles – the principle of protecting *bona fide* purchasers and the principle of protecting the property rights of the original owner. Since it was impossible to fully satisfy both principles, it was necessary to perform a balancing exercise, taking into account the principle of universal justice. The Court arrived at the conclusion that it is the negligent owner who is to bear the higher risk here rather than the bona fide purchaser, since the latter had no real chance to find out about how the real estate in question got on the title deed of his seller. The Court recalled this position was shared by the Czechoslovak interwar case law as well as the legislation and case law of other European states, citing especially a similar decision by the Czech Constitutional Court.

Finally, the Court stated that the law does not exist in order to legitimise unreasonable and unjust outcomes, but instead to regulate relationships between individuals in a rational and equitable manner.

The Court found a violation of Article 46.1 of the Constitution (right to fair trial) and of the corresponding right in [Article 6.1 ECHR](#), annulled the decisions of the Regional Court in

Trnava and of the Supreme Court and remitted the case back to the Regional Court for further proceedings. The Constitutional Court ordered the lower court to thoroughly examine and take into account good faith on the part of the complainant in deciding on whether to withdraw the real estate in question from the bankrupt company's assets.