

Research Article

LEGAL AND PRACTICAL IMPLICATIONS OF DIGITIZING THE SLOVAKIAN CADASTRE: CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Background: *Acquiring ownership rights to real estate in Slovakia is complex and frequently encounters hurdles. The formal procedures governing this process can be stringent, resulting in challenges when transferring ownership rights. This article critically evaluates the obstacles and potential advantages as the Slovakian Cadastre shifts towards a digital system.*

The authors also explore the scope of contractual freedom and governmental intervention in acquiring property rights alongside recent challenges encountered by the digitalized system under both Slovakian and European law. The study analyses the theoretical framework guiding decision-making by Slovak administrative authorities in cadastral proceedings, underscoring the critical role of formal legal procedures in ensuring legal certainty and stability. Additionally, the research underscores the importance of accurately registering changes to property rights within the digitalized real estate registration system to uphold the integrity and transparency of title records.

Methods: *The research follows a qualitative methodology, employing various qualitative methods, including historical description and analysis, in-depth document analysis, inductive method, comparative analysis, and case studies rooted in legal theory, administrative law and property law. It may utilise conceptual frameworks like legal certainty and stability to inform its examination. The methodology may not involve empirical data collection or statistical analysis but rather a critical examination of the existing legal framework and theoretical perspectives.*

Results and conclusions: *Acquiring ownership rights to real estate in Slovakia is a complex process hindered by discrepancies between registered and actual property statuses, outdated maps and inaccuracies in parcel boundaries. The lack of clarity and precision significantly affects legal certainty and private property rights. In response, the Office of Geodesy, Cartography and Cadastre has proposed a comprehensive amendment to the Cadastral Act, aiming to update the classification of land, regulate electronic submissions, and simplify application processes. However, the proposed amendment may restrict public access to information contained in the Cadastre, which could negatively impact the exercise of property rights and the right to freely access information.*

1 INTRODUCTION

Pursuant to Section 2 of Act No. 162/1995 Coll. as amended (hereinafter: the Cadastral Act),¹ the purpose of registration in the Slovak Cadastre of Real Estate is, in addition to the protection of rights to real estate, also tax purposes, fiscal purposes, protection of the environment, forest and land fund and others. The basic purpose of keeping real estate records in the Cadastre is to protect legal relations to real estate. For the Land Registry (the Cadastre) as a state registration system to serve all the above-mentioned purposes, especially the protection of ownership relations, the records must be made on the basis of legally relevant documents. These documents (deeds) must be in accordance with the data of the cadastral register - the data that enters the Cadastre.

The digitization of cadastral maps began in 1991, with the first attempts to register real estate using scanners. The digitization of cadastre maps has been fully launched since 1996.² Today, the Slovakian Land Register is entirely digitized and publicly accessible. However, the data it contains is insufficient in many respects.

The current digitized Cadastre offers several advantages, including its public form, online public accessibility, clarity, and the regular updating of data on owners and properties or rights to these properties. Thus, these data can be relied upon for local tax purposes, protection of public interests, and, in particular, in the disposal of real estate.

Disposal of real estate refers to various processes in which cadastral data plays a vital role. This includes contractual transfers in the acquisition of ownership of the real estate, security measures, information relating to real estate (long-term lease contracts for agricultural land are linked to them), protection of cultural monuments (special conditions for the transfer of such properties, in particular, the right of the State to purchase them), nature

1 Act no 162/1995 coll of the Slovak Republic 'On the Real Estate Cadastre and the Entries of Ownership and other Rights to the Real Estates (Cadastral Act)' (amended 2024) <<https://www.zakonypreludi.sk/zz/1995-162>> accessed 31 May 2024.

2 Renáta Kmetková a Petra Pechová, 'Digitalizácia katastrálnych máp Slovenskej republiky a tvorba ich metaúdajov' (2012) 21(2) Kartografické listy 14.

conservation (preventing the transfer of small areas of agricultural and forestry land to secure its economic purpose), and expropriation for public utility buildings.

The present study examines the complex legal and practical implications associated with the digitalization of the Slovakian Cadastre, focusing on the challenges and opportunities this transformative process presents. In Slovakia, the acquisition of ownership rights to real estate is a challenging endeavour that involves a two-stage procedure: the execution of a valid legal act, typically a contract, followed by a decision from the Cadastre office, the administrative authority responsible for authorising the registration of ownership. This formalised approach is crucial for upholding legal certainty and ensuring the stability of property rights within the jurisdiction.

However, the digitization of the Cadastre has unveiled several challenges under national law. Discrepancies between the registered and actual status of properties, compounded by outdated maps and inaccuracies in parcel dimensions, contribute to a pervasive lack of legal certainty and transparency in property transactions. Additionally, historical complications stemming from the communist era, during which private ownership was largely disregarded and records poorly maintained, continue to impact the current property rights landscape. The existing registration process is often viewed as rigid and formalistic, creating barriers that impede efficient property transactions and market fluidity.

At the European Union level, adapting the Slovak Cadastre to align with the EU Succession Regulation (Brussels IV) introduces further complexities. The exclusive availability of cadastre information in Slovak creates significant language barriers for foreign notaries, complicating their navigation of the registration system. Furthermore, the stringent formal requirements for registering inherited property often conflict with the Regulation's objectives, adding another layer of complexity to compliance efforts.

The interaction of diverse legal frameworks among EU member states also generates tensions that challenge the harmonisation efforts mandated by the Regulation. The first part of this article examines the theoretical foundation of administrative authorities' decision-making process, such as those at the Cadastre office, when it comes to acquiring property rights to real estate in Slovakia. The description of this formal legal process serves as a basis for the presentation of the complexity of the Slovak legislation in the registration of property rights to real estate in the state registration system.

The subsequent section delves into the Cadastre itself, discussing aspects of its development and practical implications, which helps outline the initial subset of challenges it faces following the launch of digitalization. Furthermore, we explore current European trends and challenges related to implementing European Union standards into national legislation. We exemplify these challenges through the application of decisions of foreign judicial authorities in the context of the EU Succession Regulation.

2 METHODOLOGICAL RESEARCH FRAMEWORK

The research framework of the present study is based on qualitative research due to the complex and multifaceted legal issues associated with the digitalization of land registries. This methodology enables an in-depth exploration of intricate aspects of legal theory, substantive administrative law, and property law.³ From a procedural law perspective, the study draws upon the empirical experiences of notarial practice, elucidating the implications of digitalisation on private property rights and the principle of legal certainty. Employing a qualitative lens, the research focuses on uncovering the subjective experiences and interpretations of various stakeholders involved in digitalizing land registries. This approach provides a deeper understanding of the perspectives of those affected by this transition. To achieve the objective, the study employs various qualitative methods, including historical description and analysis, in-depth document analysis, inductive inquiry, comparative analysis, and case studies.⁴

A key element of the methodology is document analysis, which involves examining existing legal texts, statutes, and administrative guidelines pertaining to the Land Registry. This analysis helps clarify the development of property rights and the legal frameworks governing them, enabling a comprehensive understanding of the issue.

The research examines the existing legal framework regulating property rights in Slovakia, focusing on relevant legislation, regulations, and administrative practices. This review offers insight into the legislative environment affecting property rights and acquisition processes. Additionally, the analysis considers how administrative bodies make decisions related to property registration, scrutinising the criteria and procedures integral to these determinations. Understanding these mechanisms is crucial for identifying barriers and inefficiencies in the current system. The descriptive analysis also identifies specific challenges faced by stakeholders within the existing system, such as bureaucratic inefficiencies, legal ambiguities, and issues regarding information accessibility. Identifying these challenges serves as the basis for proposing practical solutions to improve the efficiency and effectiveness of the Slovakian Cadastre.

The analysis includes an exhaustive examination of the decision-making processes within administrative bodies, such as the cadastral office, regarding the authorisation of property registrations. By examining these processes, the research highlights the complexities of the Slovak legislative environment concerning property registration and potential challenges that may arise during the transition to a digital system. To provide a detailed overview of the theoretical foundations and formal legal processes governing property acquisition in Slovakia, elements of historical-descriptive analysis are applied. By considering the

3 Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (3rd edn, Edinburgh UP 2024).

4 Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2017).

historical development of land law in Slovakia, the study contextualises contemporary challenges within a broader legal and political framework, enriching the analysis with insights on how historical developments continue to influence current issues. Based on inductive reasoning, the researchers propose actionable solutions and recommendations to address identified challenges, including amendments to the Cadastral Act or introducing new administrative practices.

The presented model of scientific inquiry is consequently based on the principle of the inductive scientific method. Induction involves inferring general principles from specific facts and cases. In this form of argumentation, the process moves from empirical premises to empirical conclusions, with the findings not strictly derived from the premises. Thus, inductive argumentation represents an amplificatory type of reasoning whereby more is inferred than is explicitly contained in the premises. Inductive reasoning is used to conclude the analysis of the legal framework and theoretical perspectives.⁵ This method enabled the authors to identify patterns and trends in the challenges faced by the digitalized Slovak Land Registry. By examining aspects of the historical development of land law, the impact of political regimes, and conflicts between national and European law, the study aims to provide a comprehensive and causal understanding of contemporary problems.

Case studies offer contextual depth, illustrating specific instances of how the digitalization process is implemented. This approach reveals not only successes but also points out issues encountered during the transition, thus providing a nuanced view of the process.⁶

Legal comparison is partially employed to examine the challenges faced by the digitalized Slovak Land Registry in relation to national and European Union law. This comparative analysis allows for identifying discrepancies and conflicts between the Slovak legal framework and the harmonisation efforts of the European Union. By briefly comparing the Slovakian Cadastre with land registration systems in other European countries, the research sheds light on best practices and potential obstacles in the digitalization process. The study examines how the Slovak Land Registry aligns with EU regulations and directives, identifying areas of agreement and conflict. Understanding these dynamics is crucial to ensuring digitalization efforts meet broader European standards and expectations. Furthermore, by analysing land registration systems in other EU member states, the research identifies best practices that could serve as reference points for the Slovak approach to digitalization. Findings from the legal comparison provide valuable insights into potential recommendations for legislative amendments aimed at improving the legal framework governing the Slovak Land Registry and addressing identified gaps to facilitate a smoother transition to a digital system.

5 Uzoma Ihugba, *Introduction to Legal Research Method and Legal Writing* (Malthouse Press Limited 2020).

6 *ibid.*

In the present study, the authors work with conceptual frameworks such as legal certainty and stability to inform the investigation of the transition of the Slovak Land Registry to a digital system. These frameworks provide a theoretical basis for understanding the importance of accurate and reliable property registration and the potential consequences of discrepancies and ambiguities in cadastral data. The research highlights the necessity of legal certainty in property registration and illustrates how digital systems may enhance or undermine this certainty. Legal certainty is essential to fostering confidence in property transactions and ownership claims.

Additionally, the study examines how the digitalization of the Land Registry may affect the stability of property rights, especially in the context of disputes and claims. A stable framework for property rights is crucial for economic development and social stability. Conceptual frameworks help contextualise the challenges the Slovakian Cadastre faces within a broader legal and political context, particularly in relation to EU harmonisation efforts.

The research captures the complex dynamics of the legal aspects of digitalizing the Slovak Land Registry through specified qualitative methods. This comprehensive approach enables a thorough understanding of the relationship between legal principles and practical implementation, thereby contributing valuable insights to the ongoing discourse on property law and digital transformation. Ultimately, the qualitative methodology enhances the study's capacity to inform relevant legislative stakeholders, ensuring that the transition to a digital land registry is legally sound and responsive to the needs of those it serves.

The qualitative research methodology employed in this study enables a comprehensive and in-depth analysis of the legal challenges and opportunities associated with digitalizing the Slovak Land Registry. Integrating descriptive analysis, legal comparison, and inductive reasoning, all informed by conceptual frameworks, provides a nuanced understanding of the complex issues under examination. This methodology enriches the academic discourse on property law and digitalization while providing practical insights. By addressing the multifaceted nature of the legal environment, this study aims to promote a more efficient and effective property registration system aligned with contemporary needs and expectations. Through ongoing research and engagement with stakeholders, the study strives to contribute to developing property law and digitalization efforts in Slovakia, ultimately supporting legal certainty and the protection of property rights.⁷

⁷ McConville and Chui (n 3).

3 REGISTRATION OF DATA IN THE STATE REGISTRATION SYSTEM OF REAL ESTATE - CADASTRE OF REAL ESTATE

Real estate, as an object of contractual relationships, is subject to a special regime in most European countries. From a legal perspective, it lies between public and private law, incorporating elements of both. In the Slovak Republic, the acquisition of ownership or other specified rights to real estate requires a valid legal act followed by a decision from an administrative authority.⁸

In the first phase, fulfilling the obligation-law aspect requires concluding a valid legal act. The legal act, which concerns real estate, must be in writing and contain the mandatory elements regulated by the Civil Code and the Cadastral Act.⁹ For certain properties, other requirements under specific legislation must also be met. This phase establishes a binding relationship between the entities under agreed-upon conditions.

In the second phase, a decision from the competent administrative authority is required to realise the substantive effects of the binding relationship. This is where the authorisation regime is manifested, leading to the issuance of a decision following an administrative procedure. The commencement of the administrative procedure – specifically the authorisation of the deposit – follows the principle of disposition. The contracting parties submit an application to initiate the procedure, which is governed by the provisions of the Cadastral Act or, alternatively, the Administrative Procedure Code.¹⁰

Under the Slovakian Cadastral Act,¹¹ the competent administrative authority will conduct a thorough examination of the application, assessing both the formal requirements and the substantive requirements of the legal act. In evaluating the formalities, the authority considers whether the application for registration meets the requirements, whether all required annexes¹² have been submitted, and whether the contract complies with the

8 Administrative authority refers to the District Office, specifically the Cadastral Department, with local jurisdiction determined by the location of the property.

9 Act no 40/1964 coll of the Slovak Republic 'Civil Code' (amended 2024) <<https://www.zakonypreludi.sk/zz/1964-40>> accessed 31 May 2024; Cadastral Act no 162/1995 coll (n 1).

10 Act no 71/1967 coll of the Slovak Republic 'On Administrative Proceedings (Administrative Code)' (amended 2018) <<https://www.zakonypreludi.sk/zz/1967-71>> accessed 31 May 2024.

11 Cadastral Act no 162/1995 coll (n 1) s 31 (1).

12 *ibid*, s 30 (4). "The annex to the proposal for the record shall be the contract on the basis of which the right to the real estate is to be registered in the cadastre, in two copies. a) public deed or other document confirming the right to the immovable property, if this right to the immovable property is not recorded in the title deed, b) identification of parcels, if the right to the immovable property is not recorded in the title deed, c) agreement on power of attorney, if the party to the proceedings is represented by an attorney; the signature of the attorney must be certified, if the certification of the signature is required pursuant to Section 42, Paragraph 1, of the Act on the Registration of Immovable Property. (d) the notification referred to in paragraph 3 in paper form, (e) an affidavit stating that the conditions pursuant to Section 59a of the Commercial Code have been fulfilled or an affidavit stating that these conditions do not apply to the company in question, (f) the authorization of the legal entity granted to its employee, if the party to the proceedings on the application for a record is a legal entity which authorizes its employee in writing in the course of its business to file the application for a record, (g) documents having evidentiary value for the proceedings on the application for a record..."

relevant formalities, including but not limited to a) the identification of the parties involved in the transaction; b) the signature and date of the contract; c) the accurate identification of the immovable property as required by law; and d) compliance with the prescribed form for the transaction.

The competent administrative authority also thoroughly examines whether the legal act comprises the essential elements, is executed in the prescribed form, and whether the transferor possesses the necessary authority to dispose of the real estate. It evaluates the clarity and unequivocal nature of the parties' intentions and ensures that contractual freedom or the right to dispose of the real estate is not unduly restricted. Furthermore, the authority considers whether the contract is consistent with the applicable law, whether it attempts to circumvent the law, and whether it is contrary to good morals. In making a decision regarding the registration of immovable property, the authority also considers any relevant facts and legal issues that may have a bearing on the authorisation of registration. This includes examining any potential obstacles or impediments that may affect the registration process.¹³

If all the requirements for authorising registration are met, the administrative authority will issue a decision permitting registration. This decision is final and non-appealable, provided that all parties to the proceedings have been notified. Based on the final decision, the administrative authority will register the property in the Land Register. The competent authority is required to complete the registration on the day the decision enters into force but not later than the following working day. It is important to note that registration is an administrative act that does not, by itself, have any legal effects on the registration process.¹⁴

The acquiring entity becomes the owner of the immovable property on the date the registration decision is issued rather than when the registration is made. If the submitted document contains a legal act that does not meet the requirements under examination, the administrative authority will either discontinue the procedure or reject the application. If the procedure is discontinued, a situation may arise where a validly concluded legal act does not have substantive effects (i.e., no change of ownership). This can occur if a party fails to provide a required document or remove a formal requirement within the act itself or in the application for registration.

In contrast, in cases involving the forfeiture of a movable object, the second phase involves taking possession of or handing over the object. Only upon taking possession or receiving the object does the party obtain ownership.

A contract is a bilateral or multilateral legal act that does not affect the transfer of ownership to the transferee. The contract does not convey ownership; rather, it constitutes a binding

13 Marian Ďurana, 'Proportionality of Restrictions of Ownership by Act 140/2014 on the Acquisition of Ownership of Agricultural Land and its Amendment' (2014) 13(1) *Spółeczeństwo i Edukacja: Międzynarodowe Studia Humanistyczne* 153.

14 Cadastral Act no 162/1995 coll (n 1) s 31 (3).

obligation on the transferor to transfer ownership to the transferee. In the case of the transfer of immovable property (registered in the Land Register), this principle is consistently applied. In essence, the contract itself only contains an obligation to transfer ownership, and how ownership is acquired depends on whether the property in question is movable or immovable.¹⁵ The acquisition of ownership involves a two-stage process: the contractual commitment and the actual transfer of ownership.

We believe that the formal procedural regulation governing the acquisition of ownership of immovable property in Slovakia is essential. The primary reason is to ensure legal certainty and stability of legal relationships, as outlined in Section 2 of the Cadastral Act.¹⁶ This formal regulation provides a clear and predictable framework for acquiring ownership, which is crucial for maintaining trust and stability in property transactions.

Additionally, considering the development of land law in Slovakia, this formal regulation brings a desirable order and system to ownership relations, which are not, arguably, currently truly adapted to introducing new regulations through European law. This is due to the historical development and genesis of the registration system of property rights. As a result, the acquisition of property rights has become a rigid process, as previously mentioned.

4 CHALLENGING LEGAL ASPECTS OF REAL ESTATE REGISTRATION IN THE SLOVAKIAN LAND REGISTRY (CADASTRE) UNDER NATIONAL LAW

The Cadastre of Real Estate, as a Slovakian state registration system of immovable property and rights to it, is characterised by several distinctive features. One of the typical features is the principle of publicity.¹⁷ The Cadastre of Immovable Property is kept in digital form; all data are accessible to the public. Data from the Land Register are made available to the public electronically through the Land Registry website.

However, public access to specific documents, such as contracts, succession certificates, and decisions of the courts of the Slovak Republic, is limited. This access is limited to property owners, their legal predecessors or other authorised persons. Additionally, certain professionals involved in land development activities, such as surveyors, those drawing up geometrical plans or demarcating land, or experts in surveying, cartography and cadastre,

15 Marek Števček a kol, *Občiansky zákonník: Komentár*, 1 d (§ 1-450) (CH Beck 2015) 888.

16 Cadastral Act no 162/1995 coll (n 1) s 2. Section provides that the cadastre serves multiple purposes, including the protection of rights to real estate, tax and fee purposes, valuation of real estate (especially land), protection of agricultural and forest land funds, environmental protection, protection of mineral wealth, protection of national and other cultural monuments, protected areas and natural creations, and the construction of other information systems on real estate.

17 *ibid*, s 68 (1).

may also access these documents.¹⁸ It is important to note that the publication of birth numbers and the prices of agricultural and forest land is prohibited. However, property owners may request to inspect this information from the cadastral register, or it may be provided to them upon request.

When providing the data, the state body administering the Cadastre of Real Estate is obliged to pay attention to the standards on the protection of personal data according to the Data Protection Regulation.¹⁹ In connection with the aforementioned, the Cadastre of Real Estate provides data in the form of:

- extracts or copies of descriptive information (extract or copy of the title deed, complete or partial)
- extracts from geodetic information (cadastral map)
- extract from the land register, railway register
- identification of parcels (comparison of the entry and drawing of the same property with the entry in the file of descriptive and geographic information).²⁰

Electronically provided information on real estate is provided free of charge.

Pursuant to the Czech digital Cadastre, for instance, interested parties may access selected data regarding parcels, buildings, units (residential and non-residential premises), and building rights, which are registered in the Cadastre. Additionally, information on the status of proceedings related to the registration of ownership and other rights of entitled parties to real estate in the Czech Republic is also available. Furthermore, this register contains contracts, including the purchase price of real estate, which constitutes a higher level of public disclosure than the Slovak Cadastre. Notwithstanding, access to the Czech register is freely available and does not require any prior registration.²¹

Today, the data entered in the Cadastre, which serves as the Land Register, acts as a legally binding information system primarily used to protect real estate rights. This data serves as a basis for the drafting of public deeds and other documents.

The data provided by the Cadastre are “*in principle reliable*,”²² meaning that everyone can rely on the fact that these data are accurate and can, therefore, be relied upon unless proven

18 Decree no 178/1996 coll of the Department of Geodesy, Cartography and Cadastre of the Slovak Republic ‘On the Implementation of the Act of the National Council of the Slovak Republic on Geodesy and Cartography’ <<https://www.epi.sk/zz/1996-178>> accessed 31 May 2024.

19 Regulation (EU) no 2016/679 of the European Parliament and of the Council of 27 April 2016 ‘On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)’ [2016] OJ L 119/1.

20 Civil Code no 40/1964 coll (n 9) s 131 (1 - 2).

21 Act no 256/2013 coll of the Czech Republic ‘On the Cadastre of Real Estate (Cadastral Act)’ (amended 2022) <<https://www.zakonyprolidi.cz/cs/2013-256>> accessed 31 May 2024.

22 Cadastral Act no 162/1995 coll (n 1) s 70 (1).

otherwise. If the validity of the data is disputed, it may not be used (e.g. duplicate ownership - reason for not recording the deed). Moreover, material publicity is not a universally applicable rule, as highlighted in the ruling of the Constitutional Court of the Czech Republic II. ÚS 349/03,²³ which states that the real estate cadastre does not operate on principles that ensure full confidence in its content. This lack of assured reliability undermines one of the cadastre's basic functions, which citizens expect to be fulfilled. This concern also applies to the data currently recorded in the Slovakian Cadastre of Real Estate, which can be declared invalid if proven so.

One means of mitigating the potential conflict between public law principles and private law relationships in the context of real estate is to restrict the drafting of legal instruments to qualified individuals, thereby ensuring that such instruments are legally compliant. This goal has been partially achieved through procedural safeguards, such as requiring that contracts establishing rights to acquire real estate be primarily drafted by lawyers or as notarial deeds.²⁴

In the case of notarial deeds, the relevant administrative authority in cadastre proceedings proceeds in a streamlined manner, scrutinising only the conformity of the legal instrument with the existing cadastre records rather than examining its content. Responsibility for the content lies with the individual who drafted the deed, typically a notary or attorney. This approach has led to a reduced timeframe for administrative decision-making.

Notwithstanding, it is crucial to note that not all the current cadastre data are comprehensive in scope for establishing real property ownership, as required under today's legal standards. The root causes of the current state of partial legal disarray can be traced back to the historical development of immovable property rights without a central registry. During that period, legal transactions were not uniformly recorded and registered, thereby creating a lack of transparency and certainty in the ownership of such properties. In many cases, evidence of changes in ownership was not adequately preserved, resulting in situations where the actual occupant or user of the property may not be the same individual listed as the registered owner in the original records. Regrettably, these discrepancies have persisted to date and have contributed to the current state of legal uncertainty.

The antecedent records of the Cadastre today were originally maintained in the form of written land books, which continue to be utilised for notarial purposes and possess enduring documentary significance. Over time, this system transitioned into the modern cadastre format, with all information recorded in written form on title deeds. The contemporary challenge of Slovakian land law lies in reconciling the fact that, despite the full digitisation of available data, these data are often preserved in the original format of historical land books. Before 1950, the format of these books required only the recording

23 Case no II.ÚS 349/03 (Constitutional Court of the Czech Republic, 26 February 2004) <<https://nalus.usoud.cz/Search/GetText.aspx?sz=2-349-03>> accessed 31 May 2024.

24 Cadastral Act no 162/1995 coll (n 1) s 31 (2), in force as from 1 September 2018.

of the owner's name and surname, with additional information such as nicknames or spouses' names frequently being used for identification purposes. Consequently, due to the lack of data prior to 1950, particularly in rural areas of Slovakia, the Land Register still lacks identifiers that would allow for clear and precise identification of property owners or testators.²⁵

During the communist period from 1948 to 1989, the state assumed control over property ownership, rendering private ownership legally insignificant. Consequently, the registration of immovable property held by private individuals was not accurately or transparently recorded, and the nationalisation of assets led to a lack of centralised records.²⁶

Today, public law intervention in the acquisition of ownership of immovable property is evident, requiring registration for a private-law transaction to take legal effect. Should the relevant administrative authority refuse registration, the transfer of property rights would not be deemed to have occurred. Public authority involvement arises when an administrative authority intervenes in the private law relationship involving the transfer of ownership of immovable property by authorising the registration of the right. It is noteworthy that this legislation has been in effect since 1 January 1993.

Before the late 1950s, the principle of intabulation governed the acquisition of ownership of immovable property, whereby title was established through registration in the land book. However, the Civil Code of 1950 repealed this principle and introduced a consensual approach whereby ownership was acquired through the execution of a contract. However, this regime was short-lived; Act No. 65/1951 Coll.,²⁷ effective 1 July 1951, introduced a further requirement for the transfer of ownership, namely the consent of the then-District National Committee. The Civil Code of 1964 subsequently introduced the registration principle, which remained in effect until 31 December 1992. Under this regime, a contract for the transfer of immovable property was subject to registration by a State notary. It was only upon registration that the right of ownership was acquired.

25 Jozef Bujňák, 'Vývoj a evidovania vlastníckeho práva k nehnuteľnostiam na území Slovenska do 1.4.1964' (*Progres CAD Engineering, s.r.o., s a*) <<https://www.pce.sk/clanky/vlprnehn.htm>> accessed 31 May 2024; Róbert Jakubáč, 'O Uhorských pozemkových knihách a ich spravovaní' (2022) 52(2) *Právohistorické štúdie* 151, doi:10.14712/2464689X.2022.25; Peter Gabrik, 'Pozemkové úpravy a neznámi vlastníci pozemkov na Slovensku' (2021) 1-2 *Bulletin slovenskej advokácie* 12; Maroš Pavlovič and Matúš Michalovič, 'Challenges and Perspectives of the Legislative Solution to the Problem of the Plots of Land of Unidentified Owners in the Slovak Republic – Defining the Public Interest' in Natalia Kryvinska, Michal Greguš and Solomiia Fedushko (eds), *Developments in Information and Knowledge Management Systems for Business Application*, vol 6 (Springer Cham 2023) 541, doi:10.1007/978-3-031-27506-7_20.

26 Jozef Vanek, 'Usporiadanie pozemkového vlastníctva v Slovenskej republike' v Peter Repán (ed), *Dištančné vzdelávanie pre projektantov pozemkových úprav: Učebné texty*, 1 d (STU Bratislava 2002) 7.

27 Act no 65/1951 Coll of the Czech Republic 'On Transfers of Real Estate and Leases of Agricultural and Forest Land' (canceled 1 April 1964) <<https://www.zakonyprolidi.cz/cs/1951-65>> accessed 31 May 2024. Temporary version of the regulation effective from 29.08.1951 to 31.03.1964.

Many records from historical land registries have been lost, destroyed, or remain archived in foreign state repositories. This has led, in certain cases, to challenges in reliably establishing land ownership. Consequently, the Slovak legislator enacted Act No. 229/1991 Coll., governing ownership relations to land and other agricultural property, thereby introducing the legal concept of *presumed ownership*. An individual could be deemed a presumed owner if they asserted entitlement in restitution proceedings but were unable to credibly substantiate their ownership rights. This concept was subsequently replaced by the designation of an *unidentified owner*.

An unidentified owner is an individual whose land is not accurately recorded in the Land Registry. Such individuals may have unknown addresses, with only their name and surname or, in some instances, no ownership information at all appearing in the registry. In these cases, the registry labels the property under an unknown owner. Currently, such properties fall under the administration of the Slovak Land Fund and cannot be encumbered or transferred to another person.²⁸

Implementing an electronic land registry, in line with the principle of material publicity (whereby land registry data are publicly accessible), plays a significant role in recording properties on behalf of unidentified owners or owners whose location is unknown. Historical data continue to be digitised; however, these records are often insufficient. The issue regarding property in the Slovak Republic results from the historical circumstances previously discussed.

However, any citizen can now check the register to ascertain whether a property belonging to a deceased legal predecessor is recorded and, thus, if there is a need to resolve ownership. Currently, this resolution process is managed by the individual claiming ownership rights. In our view, this procedure is relatively complex for citizens and inefficient for the state from the perspective of a practical and systematic resolution of properties with unidentified owners.²⁹

The resolution of such unregulated and unidentified ownership could be advantageous from a procedural economic standpoint, particularly for notaries. It would also benefit municipalities, especially in terms of collecting property taxes on lands situated within their boundaries. A potential solution could be facilitated by municipalities establishing a special register, based on the general digitalization of the Land Registry, to record properties located within their jurisdiction separately for unknown owners or owners whose whereabouts are unknown.

If unidentified or incomplete records could be specified from the digital land registry, a systematic approach—using cadastral maps in cooperation with notaries, civil society,

28 Juraj Kolesár a kol, *Československé pozemkové právo* (Obzor 1980).

29 See: Jarmila Lazíková, 'Land Fragmentation and Land Abandonment in Central and Eastern European Countries' (Vybrané otázky agrárneho práva Európskej Únie, II: Medzinárodnej vedeckej konferencii, Slovenská poľnohospodárska univerzita, 2006) 69.

neighbourly relations, and grassroots social networks—could allow for more efficient identification of historical records. In this manner, municipalities could take the initiative *ex proprio motu* to contact owners as legal successors, progressively formalising legal relations to these lands. It would naturally be necessary to address the participation (both in terms of personnel and finances) of municipalities in resolving this issue.

Municipalities in the Slovak Republic perform a self-governing function as well as functions within the framework of delegated state administration.³⁰ “Delegated state administration” refers to the process by which the state has transferred certain functions to municipalities (and regional self-governing authorities).³¹ Municipalities (and self-governing regions) fulfil their responsibilities using their budgets. For delegated state administration tasks, they are allocated state budget funds as specified by a separate law.³² This decentralised competency could, on the one hand, provide municipalities with financial support from the state and, on the other, allow them to systematise additional revenue from property taxes currently lost due to the outlined issues. As certain expenses are reimbursed to municipalities, identifying unknown property owners could be designated as a subsidiary role for municipalities.

In the case of parcels that are still recorded in land books, this process will logically be more complicated; however, their number is by no means high. Subsequently, the publication of such a report could also be electronic. In addition to publishing this report in the form of a public notice, which would also be available on the municipality’s notice board, the report could be mandatorily published on the websites of the relevant municipalities whose territory will form the area of the particular proceedings. In this case, however, we cannot yet speak of electronicization, only of electronic publication. True electronicization, however, could be implemented through one of the electronic portals of the Land Registry.³³

Today, however, material publicity conflicts with the provision of personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data

30 Martin Píry, *Úvod do stavebného práva: Vybrané problémy územného plánovania a konania* (Stredoeurópsky inštitút správnych a ekologických štúdií 2017).

31 Act no 416/2001 coll of the Slovak Republic ‘On the Transfer of Certain Competencies from State Administration Authorities to Municipalities and Higher Territorial Units’ (amended 2016) <<https://www.zakonypreludi.sk/zz/2001-416>> accessed 31 May 2024. Under this Act, municipalities are tasked with responsibilities across various domains, including the management of public roads, general internal administration (such as registry office duties), social assistance, spatial planning, building code enforcement, functions of the building authority, nature conservation, education, regional development, and other designated areas.

32 Act no 303/1995 coll of the Slovak Republic ‘On Budgetary Rule’ (amended 2004) <https://www.onlinezakony.sk/?uniqueid=OhwOuzC33qd2W4_6TwF4qI1V18c9u2J_GhNd4X4r7lqVdaLTRYHmJQ> accessed 31 May 2024.

33 Ľudovít Máčaj a Maroš Pavlovič, ‘Význam Elektronizácie Katastra Nehnuteľností pri Identifikácii Vlastníkov Pozemkov s Nezisteným Vlastníkom’ (Mílniky práva v stredoeurópskom priestore 2022: Vedeckej konferencii, Univerzita Komenského v Bratislave, Právnická fakulta, 24 jún 2022) 65.

and on the free movement of such data (GDPR). Access to published data, except for personal identification numbers (name, surname, and permanent address), could potentially be restricted to registered users who commit to respecting the provisions of the GDPR in this specific matter and will not further disclose the data.

How important is it to keep public and private documents in physical form during the digitisation of property records in the Land Registry? While no new entries are being added, these existing paper registers remain valuable sources of information for resolving land ownership disputes and restitution proceedings.

The Land Registry, known as the Cadastre, is gradually moving to a digital format, which includes the digitisation of technical data, ownership information, and documents submitted for registration by various entities. This transformation occurs at two levels: the first involves digitising paper records, such as original maps, title deeds, and other registered documents, which are progressively converted into electronic form. The second level introduces the option for electronic proceedings related to creating, altering, or terminating ownership or other registered rights to property, thus simplifying the process for submitting applications for registration or modification of ownership and property rights directly in digital form.

The choice between digital and paper form submissions is still available to participants, with a financial incentive for those who opt for electronic submissions – the basic fee is reduced by 50% compared to standard paper submissions. Applicants can also file a so-called intended application exclusively in electronic form via the Land Registry portal. If the intended application for registration is filed electronically, the fee is further decreased by an additional €15.

Such submissions are deemed efficient, as the Land Registry already possesses the requisite data directly integrated into the decision-making process. By submitting the owner and property details in digital format, the application streamlines the preparation of the decision by the competent authority, as this information can be incorporated directly, reducing time and enhancing overall efficiency.

However, a drawback exists in the potential for errors when completing the information, as any flawed application will be returned, necessitating the payment of the fee once more. Despite land registry staff converting data into digital format, all information is still transcribed and maintained in paper form. While this situation may be characterised as an endeavour towards efficiency and cost-effectiveness, it perpetuates the formal and bureaucratic administration elements characteristic of Central and Eastern Europe.³⁴ The objective is to mitigate potential defects that could compromise the legal certainty principle.

34 Lazíková (n 29).

A distinct category is the title deed, which is accessible and published electronically on the Land Registry portal. The digitalization process is being gradually implemented, enabling the generation of all amendments related to ownership and property. Both the digital and paper versions of the title deed should document the complete genesis/history of the property. This is crucial for establishing ownership lineage and identifying any encumbrances or rights associated with the property. The written title deed continues to serve as an archival document. The importance of retaining the written version lies in the ability to cross-verify the digital information with the data transferred from paper to digital format. Nevertheless, we maintain the role of preserving a historical record, underscoring the necessity of safeguarding this documentation in view of the historical evolution of land law in the Slovak Republic, as such data has been historically maintained in physical form.

5 CHALLENGING LEGAL ASPECTS OF REAL ESTATE REGISTRATION IN THE SLOVAKIAN LAND REGISTRY (CADASTRE) UNDER EUROPEAN UNION LAW

The European Union's legal system is a unique and independent entity that aims to standardise the laws of its member states and, in some cases, supersedes national laws. What began as a community of six states with common rules for trade in coal and steel has evolved into a community of 27 states with uniform rules governing a wide range of legal relationships. While it is beyond the scope of the present article to name these harmonisation efforts, it highlights an interesting challenge related to the harmonisation initiative in the area of private law relations.

One notable area of harmonisation is cross-border succession, which is closely tied to the acquisition of property rights in individual member states. Previously, cross-border succession in Slovakia was governed by the Private International Law and Procedure Act,³⁵ with similar national legislation in other EU countries. As a result, each country had its own set of rules for notaries, attorneys, and other individuals involved in the matter of cross-border succession processes, leading to varying approaches and regulations.

However, the adoption of the European Succession Regulation EU650/2012,³⁶ otherwise known as Brussels IV (the Regulation), came into effect on 17 August 2015 and applies to all EU member states except Denmark and Ireland, which opted out. As stated, prior to this, the acceptance and recognition of foreign decisions in the Slovak Republic –

35 Act no 97/1963 coll of the Slovak Republic 'Act on International Private and Procedural Law' (amended 2023) <<https://www.zakonypreludi.sk/zz/1963-97>> accessed 31 May 2024.

36 Regulation (EU) no 650/2012 of the European Parliament and of the Council of 4 July 2012 'On Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Acceptance and Enforcement of Authentic Instruments in Matters of Succession and on the Creation of a European Certificate of Succession' [2012] OJ L 201/107.

including in matters of succession – were regulated by Act No. 97/1963 Coll. on Private International Law and Procedure.³⁷ For immovable property located in the territory of the Slovak Republic, the jurisdiction to decide on succession proceedings was conferred exclusively on the authorities of the Slovak Republic, who were well-versed in the peculiarities of the Slovakian Cadastre.

Implementing the Regulation has created disparities between the various national laws of the EU member states, which are at odds with the Regulation's objectives. Some EU countries have already confronted this challenge.³⁸ It is important to note that the diverse approaches adopted by certain EU countries to address this issue do not offer a uniform solution. Nevertheless, these solutions can serve as a useful precedent for the development of further centralised measures to resolve this issue.³⁹

For instance, in cases where succession proceedings took place in the Czech Republic but the testator's real estate was located in the territory of the Slovak Republic, jurisdiction previously lay with the Slovak Republic. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, and the recognition and enforcement of decisions, and the acceptance and enforcement of authentic instruments in matters of succession – along with the creation of a European Certificate of Succession (the Succession Regulation) – aimed to simplify the succession process where the testator owned property in different EU Member States. At present, such cases are handled and adjudicated entirely by a single judicial authority, in this case, the Czech one. For an EU citizen to be able to claim ownership of immovable property in a succession case, the inheritance must be officially recorded in the relevant register (the Cadastre).⁴⁰

The problematic factors in the context of the digitalized and strictly formal Slovak Cadastre of Real Estate, as presented in the previous part of the study in this context, are quite numerous. Among the most crucial practical ones for a notary of another EU Member state is the unavailability of Slovak Land Registry information in a language other than Slovak. By comparison, after simple research on the French Cadastre's website, a Slovak notary would not be confronted with a similar problem when dealing with the registration of inherited real estate. The French Cadastre offers the availability of the requested information not only in English but also in Spanish. However, similar language unavailability is

37 Elena Júdová, 'Výklad nariadenia č. 650/2012 o dedičských veciach v judikatúre Súdneho dvora EÚ' v Miroslav Slašťan a Michael Siman (eds), *Aktuálne otázky európskeho medzinárodného práva súkromného* (Justičná akadémia Slovenskej Republiky, Slovenská asociácia európskeho práva 2018) 81.

38 For more details see: Ľuboslav Sisák, 'Európske osvedčenie o dedičstve a prepis vlastníctva k zdedenej nehnuteľnosti' (2021) 10 *Právnik* 854.

39 Elena Júdová and Lucia Gandžalová, 'Application of EU Private International Law in Slovakia' in Csongor István Nagy (ed), *Cross-border Litigation in Central Europe: EU Private International Law before National Courts* (Kluwer Law International 2022) 447.

40 Miriam Imrich Breznoščáková, *Cezhraničné dedenie: Nariadenie EÚ č 650/2012 o cezhraničných dedičstvách* (Wolters Kluwer 2015) 88.

experienced in the Czech Republic, Hungary and Poland. When Slovak documents are required for administrative relations to use abroad, an official translation (approved by a certified authority) is necessary and obligatory, even though the original documents are publicly and digitally available in the Slovak language within the digital Cadastre and such authentication is not necessary for any further legal relations under domestic law. Notably, no comparable formalism due to translations is requested in Western European countries.

Furthermore, in succession proceedings conducted by a European notary, the primary responsibilities are identifying heirs (legal, testamentary) and assets or debts contained in the succession. If the subject of the succession is the real estate specified in a decision of a judicial authority - a resolution, such a resolution must be recorded into the Cadastre under Slovak legislation. A specific law, the Cadastral Act, regulates the exact procedure of the administrative authority (typically an official at the Cadastre office) to register such resolutions (deeds) on succession.

The administrative authority carefully reviews the submitted resolution for clerical or numerical errors, other obvious inaccuracies, and compliance with the requirements set out by the Cadastral Act. If any discrepancies are found, the resolution is returned for correction. The Regulation did not account for the unique requirements of various national legislation, including Slovakia's detailed procedure. To illustrate the challenges European law poses for registering real estate in the Slovak Cadastre, we present a range of formal mandatory requirements that must be satisfied. In particular, if the subject of the resolution on inheritance is land, it must have the following particulars:

- the cadastral territory in which it is located,
- the 'C' register ('precisely measured land with binding acreage) or 'E' register ('land where the acreage is not measured') in which it is registered,
- the plot numbers,
- the area of the land,
- the type of land,
- the extent of the co-ownership share.

Additionally, if the subject of the succession order is a building, it shall be demarcated by:

- the cadastral territory in which it is located,
- the registration number of the building,
- the land on which the building is situated (register marked as 'C' or 'E' and the parcel number of the land),
- the extent of the co-ownership share.⁴¹

⁴¹ Cadastral Act no 162/1995 coll (n 1) s 42.

If the subject of succession provided by the resolution of succession is a flat or non-residential premises, the obligation to specify it is defined in another separate act.⁴²

As far as formalities are concerned, if the property is the subject of a succession, the resolution on the succession must also hold details of the acquirer - the heir. The heir shall be identified by first name, surname, family name, date of birth, birth number, and place of residence. If any of these details are missing, the administrative authority responsible for recording the resolution in the Cadastre will not record the deed and will return it to the notary for completion.⁴³

Currently, numerous situations still exist where property ownership is solely identified by the owner's first and last name, lacking any other distinctive information. In such cases, the legitimacy of ownership must be deduced from the property itself and historical land register entries, especially those predating 1950.⁴⁴ Even in contemporary times, these records remain the sole source of information concerning the property rights of deceased individuals, especially when the property is registered solely under their name.

When it comes to asserting rights from foreign decisions in matters of succession, particularly involving real estate situated in Slovakia, grappling with legislative formalities can be a formidable challenge, and in some cases, it might even prove insurmountable.⁴⁵ The introduction of the Regulation has created a conflict between the diverse legal systems of various EU countries and the overarching objectives outlined in the Regulation. Most of the EU countries have already had to deal with this issue. However, it should be noted that the individual ways in which EU countries have coped with the problem do not provide a one-size-fits-all solution. It is the fragmentation and heterogeneity of national land registers that make it often difficult to acquire property rights.

42 Act no 182/1993 coll of the Slovak Republic 'On the Ownership of Flats and Non-Residential Premises' (amended 2024) <<https://www.zakonypreludi.sk/zz/1993-182>> accessed 31 May 2024.

43 Cadastral Act no 162/1995 coll (n 1) s 42 (2).

44 See: Morten Hartvigsen, *Land Reform in Central and Eastern Europe after 1989 and its Outcome in form of Farm Structures and Land Fragmentation* (FAO Land Tenure Working Paper 24, Orbicon 2013); Rudolf Lazur, 'Slovakia Case Study: Land Consolidation in Slovakia' (Land Consolidation and Territorial Organization: FAO Regional workshop, Prague, 6-10 March 2005) <https://www.fao.org/fileadmin/user_upload/reu/europe/documents/LANDNET/2005/Slovakia.pdf> accessed 31 May 2024; Peter Dale and Richard Baldwin, 'Lessons Learnt from Emerging Land Markets in Central and Eastern Europe' (Quo Vadis - International Conference: FIG Working Week 2000, 21-26 May, Prague) 4 <<https://www.fig.net/resources/proceedings/2000/prague-final-papers/baldwin-dale.htm>> accessed 31 May 2024; Johan FM Swinnen and Liesbet Vranken, 'The Development of Rural Land Markets in Transition Countries' (FAO Regional Workshop on the Development of Land Markets and Related Institutions in Countries of Central and Eastern Europe: Experiences, Approaches, Lessons Learned, Nitra, Slovak Republic, 6-7 May 2005) <<https://typeset.io/papers/the-development-of-rural-land-markets-in-transition-2j8ceidwvj>> accessed 31 May 2024.

45 Elena Júdová, 'Current Issues of Deciding Cross-Border Succession Matters in the Slovak Republic' in Naděžda Rozehnalová (ed), *Universal, Regional, National: Ways of the Development of Private International Law in the 21st Century* (Masaryk UP 2019) 179.

The above examples illustrate the excessive formalism of real estate registration in Slovakia. Similar can be seen in other EU Member States such as the Czech Republic,⁴⁶ Poland,⁴⁷ Hungary⁴⁸ and Lithuania.⁴⁹ This formality reflects a legislative intent, especially in post-communist countries like Slovakia, to establish a systematic registration of real estate – a goal seen as crucial for clarifying property rights after years of communism and inconsistent ownership records.

This meticulous approach contrasts with the formalism of Central and Eastern European states like France and Germany, where succession rights and property registration are managed with fewer formalities.⁵⁰ Recently, the Court of Justice of the European Union (ECJ) issued a ruling that sheds light on the registration of changes in property ownership in Lithuania.⁵¹ The ECJ held that the Lithuanian real estate register may refuse to register changes in property ownership if the property is not specifically identified in the certificate of succession. The ECJ's decision concerns a dispute between the German probate courts and the Lithuanian real estate register. The German probate courts sought to register changes in property ownership in Lithuania, but the Lithuanian real estate register refused to do so, citing the absence of specific identification of the property in the certificate of succession. The ECJ held that Lithuania has the authority to determine the requisite information for registration, taking into account the specificities of its national cadastre law. In particular, the ECJ emphasised that Lithuania has the right to determine what information is necessary for registration concerning pecuniaries of the national cadastral law.

The ECJ's decision underscores the critical need to ensure that property ownership is accurately registered and reflected in national records. In this case, the ECJ's holding requires German probate courts to verify whether the asset in question was owned by the deceased and falls within the scope of succession. However, the ECJ did not provide guidance on how German probate courts may implement this requirement without access to the Lithuanian Land Register and knowledge of Lithuanian real estate law.

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- 46 Magdalena Pfeiffer, 'Legal Certainty and Predictability in International Succession Law' (2016) 12(3) *Journal of Private International Law* 566, doi:10.1080/17441048.2016.1261848.
 - 47 Mariusz Załucki, 'Impact of the EU Succession Regulation on Statutory Inheritance' (2018) 23 *Comparative Law Review* 223, doi:10.12775/CLR.2017.010.
 - 48 Tibor Szócs, 'The European Succession Regulation from the Perspective of the First Three Years of Its Application' (2019) 1 *ELTE Law Journal* 45.
 - 49 Agne Limante, 'The EE Decision Sheds Light on Notaries Acting as "Courts" and on a Few Other Notions Within the Context of the Succession Regulation' (2021) 6(1) *European Papers: A Journal on Law and Integration* 45.
 - 50 Reinhard Zimmermann, 'Intestate Succession in Germany' in Kenneth Reid, Marius de Waal and Reinhard Zimmermann (eds), *Comparative Succession Law: Intestate Succession*, vol 2 (OUP 2015) 181, doi:10.1093/acprof:oso/9780198747123.003.0008.
 - 51 *RJR v Registrų centras VĮ* Case C-354/21 (Court of Justice of the European Union, 9 March 2023) [2023] CJEU C-354/21 <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62021CJ0354>> accessed 31 May 2024.

The ECJ's decision has significant implications for international inheritance and succession proceedings. It highlights the need for cooperation between national courts and registries, as well as the importance of ensuring that property ownership is accurately registered and reflected in national records.

6 CHALLENGES IN PRACTICE: NOTARIAL DECISION-MAKING AND PROPERTY REGISTRATION IN SLOVAKIA

In the Slovak Republic, succession proceedings, which constitute a means for heirs to acquire ownership rights from the deceased, are overseen by a notary with the power to make binding decisions that carry the same legal weight as those issued by a court. However, for the specific succession matter, the notary must first be designated as a court commissioner. These notarial proceedings are conducted in private, and unlike court rulings, decisions made by notaries are not published. In succession matters, the focus is on reaching an agreement among the heirs, and the notary's primary role is to facilitate this consensus. Consequently, the confidentiality of the heirs is maintained to the fullest extent possible. This emphasis on privacy contributes to the limited availability of succession decisions, which would underline the article's thesis, with only a few court decisions currently accessible.⁵²

The issue concerning the registration of real property rights, recognised by a decision of a foreign Member State, within the Slovak Republic was addressed by the Supreme Court of the Slovak Republic decision No 2CdoGp/1/2021 in 2022.⁵³ The case involved a deceased person who had a habitual residence in the Czech Republic and owned immovable property in the territory of the Slovak Republic. The heirs submitted a petition to the Slovak authorities to adjudicate the inheritance of the deceased's property located in Slovakia. The petition was based on the necessity of obtaining a decision from a Slovak authority (a notary) containing all the requisite particulars for registration in the Land Registry. The notary halted the proceedings due to a lack of jurisdiction. In Resolution No. II. ÚS 537/2021 of 11 November 2021, the Constitutional Court of the Slovak Republic eventually provided its view on a similar matter, affirming that the general jurisdiction to adjudicate the inheritance matter lies with the Czech Republic, irrespective of the location of the deceased's immovable property within a Member State. Regarding the further exercise of the heirs' rights, the Constitutional Court of the Slovak Republic opined that the EU Regulation left it entirely within the competence of the Member States' authorities that maintain the register of rights to determine the legal conditions for recording rights to movable or immovable

52 Elena Júdová, 'Decisions on the European Succession Regulation in Slovakia' (2023/2024) 25 *Yearbook of Private International Law* 217.

53 Case no 2CdoGp/1/2021 (Supreme Court of the Slovak Republic, 30 March 2022) <<https://www.epi.sk/rozhodnutie-sudu/prislusnost-sudu-v-konani-o-dedicstve-s-cudzim-prvkom.htm>> accessed 31 May 2024.

property. The EU Regulation mandates the introduction of a certificate enabling any heir or person entitled as mentioned in the certificate to prove their status and rights in another Member State, primarily regarding the allocation of specific property to the heir named in the certificate. According to Article 69(1) of the EU Regulation, the certificate has effect in all Member States without the need for any special procedure.⁵⁴

In practice, resolving these issues often necessitates direct action within the registries where immovable property is recorded (the Cadastral Register). The central government authority in this sector issued an opinion stating that the requirements for registration in the Cadastral Register remain in force according to the legal provisions in the Member State, i.e., the registration of rights in the Cadastral Register in Slovakia continues to be governed by the Cadastral Act.⁵⁵

In its ruling on 19 February 2019, the Supreme Administrative Court of the Slovak Republic held that the Slovak Land Registry would refuse to register real property rights if the submitted documents did not contain the necessary information for the accurate identification of the immovable property.⁵⁶ This case involved an heir's complaint concerning the Cadastral Department of the District Office's decision to deny the registration of the heir's ownership rights to immovable property in Slovakia. This denial occurred despite the heir presenting a European Certificate of Succession (ECS) issued by a court in Germany. The primary reason for the refusal was that the ECS lacked essential identifying information about the immovable property, as required by Slovak legal standards for registering ownership in the Land Register.

Seeking to resolve the matter, the heir requested that the German court amend the ECS to include the necessary property details. However, the German court declined this request, citing adherence to the principle of universal succession as outlined by Germany's highest courts. Both the Regional Court, which the heir approached through an administrative action against the District Office and the Supreme Court, where the heir filed a cassation complaint against the Regional Court's ruling, rejected the heir's claims.

The courts primarily concentrated on procedural matters, with the Regional Court acknowledging the heir's predicament regarding their inherited rights and suggesting potential solutions: if the German court continued to refuse to add the necessary property details in the ECS, the heir could amend their ECS application to include these details and

54 Case no II.ÚS 537/2021 (Constitutional Court of Slovak Republic, 11 November 2021) <https://www.ustavnysud.sk/docDownload/846fe628-d2cb-4821-8089-549d64c0e8c0/%C4%8D.%20106%20-%20II.%20%C3%9AS%20537_2021.pdf> accessed 31 May 2024.

55 'Katastrálny bulletin (Bulletin of the Cadastre) no 1/2018, Response to Question no 13' (Úrad geodézie, kartografie a katastra SR, 2018) <https://www.skgeodesy.sk/files/sk/slovensky/ugkk/rezortne-periodika/kb_1_2018.pdf> accessed 31 May 2024.

56 Case no 8Sžk/25/2021 (Supreme Administrative Court of the Slovak Republic, 19 February 2019) <https://www.slov-lex.sk/vseobecne-sudy-sr/-/ecli/ECLI-SK-NSSSR2021-5020200108_1> accessed 31 May 2024.

resubmit it to the Slovak District Office. Alternatively, the heir could present the final decision from the succession proceedings, along with an official translation, as supporting documentation for the ECS.

In its final opinion, the Supreme Administrative Court stated that, in line with Article 63 of Regulation (EU) No. 650/2012 on Succession, heirs may establish their rights through a European Certificate of Succession issued in another Member State. However, they must also follow the specific registration procedures for immovable property as prescribed by the national laws of the Member State where the property is located. The Court further noted that the Regulation does not cover the registration of rights in immovable property or the relevant registration requirements, as outlined in Article 1(2)(l). The District Office rightfully refused to register ownership based solely on the ECS, as it did not fulfil the complete data requirements stipulated by Slovak law. Both the Regional Court and the Supreme Court did not find the actions of the District Office to be legally improper. As can be seen from the decision of the Supreme Administrative Court of the Slovak Republic of 19 February 2019, the Slovak Land Registry will not record rights *in rem* to immovable property located in the territory of the Slovak Republic if the document submitted does not contain the required data precisely identifying the immovable property.

7 CONCLUDING REMARKS

The acquisition of ownership rights to real estate in the Slovak Republic is a complex process that involves consideration of various legal aspects. Since 1996, the system has been transformed into a publicly accessible and regularly updated digitalized state registration system. However, the complex development of land law in Slovakia and the challenges posed by the integration of European law into the Slovak legal system have resulted in various challenges. The most pressing issues arise from discrepancies between the registered, legal, and actual status of parcels of land and insufficient identification data for the real estate, which today are entirely inadequate for further disposal of the property. This lack of clarity and precision has significant implications for the legal certainty of private property rights. Furthermore, the poor quality and credibility of cadastral data are evident, as more than half of the Slovakian territory still relies on maps created over a century ago using non-numerical methods.

Properties inherited from the socialist era remain insufficiently identified and situated on disputed land, including roads, thereby perpetuating uncertainty and hindering the exercise of property rights. The limited scope for arranging land tenure arrangements renders it significantly more challenging to implement measures integral to European policies, such as the green recovery of the economy.

The Slovak national legislation's emphasis on formalism is considered beneficial as it promotes a rigorous focus on precision and reliability, thereby facilitating unification and

much-needed order. However, every formalism is perceived in some way as an additional obstacle. To overcome this challenge, measures have been implemented to expedite procedures and simplify them for the public.

The second referred sub-group of challenges in acquiring ownership rights to real estate in Slovakia arises from recent developments in European Union law. This has been exemplified by the application of decisions by judicial authorities from other EU Member States since the introduction of the Succession Regulation in 2017. Overcoming language barriers set by the Slovak Cadastre is a common challenge. Additionally, stringent formalism may be bureaucratic or coercive when considered in a broader European context.

Given the challenges that the current cadastral law poses, the Office of Geodesy, Cartography and Cadastre, responsible for this branch of the legal relationship, has proposed a comprehensive amendment to the Cadastral Act to address inconsistencies and lack of clarity.⁵⁷ The proposed changes aim to rectify legislative and technical shortcomings, update the classification of land, regulate electronic submissions, clarify decision-making processes, simplify application processes, remove administrative fees for registration notifications, amend conditions for registering property in the Land Register, introduce new regulations for registering municipal boundaries, and adjust time limits for retaining records.

The proposal also seeks to address concerns about the misuse of personal data related to individuals with rights to registered immovable property by introducing mandatory registration for access to cadastral data via cadastral portals, i.e. lowering the public accessibility standards of the Cadastre. Unlike the Czech Republic, where substantial cadastral information is publicly accessible, Slovakia's proposed amendment to the Cadastral Act would limit such access. The rationale behind this restriction is to prevent data misuse, ensure compliance with data protection legislation, and safeguard personal data. However, this aspect of the amendment has raised concerns. Restricting public access to cadastral information may not be consistent with the right of free access to information and may substantially complicate access to information on property ownership rights.⁵⁸

57 Draft Act PI/2024/44 'Amending Act of the National Council of the Slovak Republic no 162/1995 coll On the Cadastre of Immovable Property and on the Registration of Ownership and other Rights to Immovable Property (Cadastral Act) as amended' <<https://www.slov-lex.sk/elegislativa/legislativne-procesy/SK/PI/2024/44>> accessed 31 May 2024.

58 *Preliminary Information* (pursuant to Section 9 of Act no 400/2015 coll of the Slovak Republic 'On the Drafting of Legislation and on the Collection of Laws of the Slovak Republic and on the Amendment and Supplementation of Certain Acts' <<https://www.zakonypreludi.sk/zz/2015-400>> accessed 31 May 2024).

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПРАВОВІ ТА ПРАКТИЧНІ НАСЛІДКИ ОЦИФРУВАННЯ СЛОВАЦЬКОГО КАДАСТРУ: ВИКЛИКИ ТА МОЖЛИВОСТІ

Андреа Баранцова та Любіца Сакторова*

АНОТАЦІЯ

Вступ. Набуття права власності на нерухомість у Словаччині є складним питанням, тут часто можна зіткнутися з перешкодами. Офіційні процедури, які регулюють цей процес, можуть бути суворими, що призводить до проблем під час передачі права власності. У цій статті критично оцінюються виклики та потенційні переваги переходу словацького кадастру на діджиталізовану систему.

Автори також досліджують межі свободи договору та втручання держави у процес набуття прав власності, а також нещодавні виклики, з якими зіткнулася оцифрована система відповідно до словацького та європейського законодавства. У дослідженні було проаналізовано теоретичні засади, якими керуються словацькі адміністративні органи під час прийняття рішень у кадастрових справах, було звернено увагу на важливу роль формальних правових процедур у забезпеченні правової визначеності та стабільності. Крім того, у дослідженні наголошено на необхідності точної фіксації змін прав власності в цифровій системі реєстрації нерухомості для підтримки цілісності та прозорості записів прав власності.

Методи. Основою дослідження є якісна методологія, зокрема застосовуються такі методи, як історичний опис та аналіз, поглиблений аналіз документів, індуктивний метод, порівняльний аналіз, а також використовуються тематичні дослідження, що базуються на теорії права, адміністративному праві та праві власності. Для обґрунтування експертизи можуть бути вжиті такі концептуальні засади, як правова визначеність і стабільність. Методологія може містити не збір емпіричних даних чи статистичний аналіз, а скоріше критичний аналіз чинної правової бази та теоретичних перспектив.

Результати та висновки. Набуття права власності на нерухоме майно в Словаччині є складним процесом, якому перешкоджають розбіжності між зареєстрованим і фактичним статусами власності, застарілі карти та неточності в межах земельних ділянок. Відсутність ясності та точності суттєво впливає на правову визначеність і права приватної власності. У відповідь Управління геодезії, картографії та кадастру запропонувало комплексні зміни до Закону про кадастр, спрямовані на оновлення класифікації земельних ділянок, регулювання електронного подання та спрощення процесів подання заяв. Проте запропонована поправка може обмежити доступ громадськості до інформації, яка міститься в Кадастрі, що негативно вплине на реалізацію права власності та права на вільний доступ до інформації.

Ключові слова: земельне право Словаччини, кадастрові процедури, набуття права власності в Словацькій Республіці, проблеми, пов'язані з Положенням про правонаступництво.