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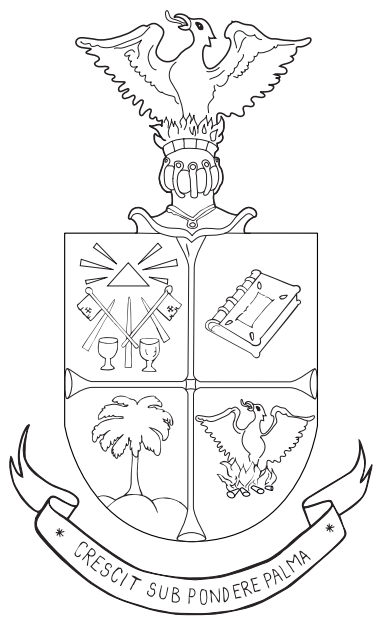

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Legal Assessment of the Slovak Administrative Court Decision on Property Restitution and Compliance with EU Law

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Abstract

This article examines a 2024 decision of a Slovak administrative court concerning the restitution of property confiscated during the socialist era, assessing its compliance with European Union law. In principle, EU law does not oblige Member States to restore properties expropriated before EU accession, nor does it set specific conditions for any such restitution.[1] However, if a Member State chooses to implement property restitution measures after joining the EU, it must respect the free movement of capital and the prohibition of nationality-based discrimination.[2] The Slovak Republic's Act No. 503/2003 on the Restitution of Agricultural Property imposed a Slovak nationality requirement for claimants, which appears to conflict with those EU principles. The case analysed here involves a claimant whose restitution application – filed after Slovakia's 2004 EU accession – was rejected in 2007 for failure to meet the nationality criterion. Subsequent to the Kühne & Heitz doctrine developed by the Court of Justice of the EU (CJEU), Slovak legislation allowed final decisions that breached EU law to be reopened without a time limit. In its 2024 ruling,

1 Szuchy, Róbert – Korom, Ágoston: European Union law requirements related to the restitution of properties: Does or under what conditions does the EU law require the payment of market-based compensation, and can that be enforced by EU law? *Opolskie Studia Administracyjno-Prawne*, 2024, 22 (2), 159–175. Szilágyi, János Ede: The changing concept of rural community and its importance in connection with the transfer of agricultural land. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2019, 53 (2), 619–630.

2 Korom, Ágoston: Evaluation of Member State provisions addressing land policy and restitution by the European Commission. *Central European Journal of Comparative Law*, 2021, 2 (2), 101–125. [hereinafter: Korom (2021a)]

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the Bratislava Administrative Court applied a stricter time limitation than the EU case-law would suggest, effectively counting the deadline from the publication date of the relevant CJEU judgment in the Official Journal rather than from the claimant's awareness of that judgment. This article evaluates whether the Slovak court's approach – aimed at safeguarding legal certainty – complies with EU law requirements, or whether it unduly impairs the effective enforcement of EU-law rights.

Keywords: property restitution, EU law requirements, legal certainty, res judicata, equal treatment, principle of effectiveness, Kühne criteria, Slovak case law

1. Introduction

European Union law generally does not require Member States to restitute property that was confiscated before the State's EU accession, nor does it prescribe specific conditions for any national restitution schemes.[3] In other words, the EU legal order imposes no duty on Member States to undo expropriations that occurred outside the temporal scope of EU law. Moreover, the design and timeframe of any restitution program are largely left to national law. However, if a Member State decides, after its EU accession, to restore expropriated properties, it must do so in a manner consistent with EU law – in particular by respecting the free movement of capital and by avoiding direct discrimination based on nationality.[4] The European Commission explicitly affirmed in a written answer to the European Parliament that post-accession restitution measures must comply with EU free movement requirements, especially the prohibition of nationality-based discrimination.[5]

Slovakia provides a compelling case study of these principles. The Slovak Act No. 503/2003 on the Restitution of Agricultural Property – which governed the return of lands confiscated during the communist period – included a nationality requirement: only individuals with Slovak citizenship were eligible to submit restitution claims. This condition was in force even during the window after Slovakia's EU accession (May 1, 2004)

3 Szuchy – Korom ibid.

4 Olajos, István: Az állampolgárság szerinti megkülönböztetés tilalma a föld-visszaszolgáltatás terén [Prohibition of nationality-based discrimination in land restitution]. *Európai Jog*, 2018, 18 (3), 25–30. (in Hungarian).; Szilágyi ibid.

5 Korom (2021a) ibid.

through the end of 2004, when claims under the law could still be filed. In theory, under EU law, such a nationality-based eligibility rule is problematic because it constitutes direct discrimination on grounds of nationality in the context of capital movements, since real property restitution involves the re-acquisition of land rights, which can fall under the free movement of capital. Indeed, the free movement of capital as guaranteed by the EU treaties prohibits Member States from barring non-nationals from acquiring real property absent a valid justification, and the principle of equal treatment forbids outright exclusion of non-citizens.[6]

The specific case under review involves a claimant who, relying on rights derived from EU law (particularly the ban on nationality discrimination for EU citizens), nonetheless filed a restitution application under the 2003 Slovak law after Slovakia's EU accession. The claimant, a citizen of another EU Member State, applied in late 2004 for restitution of agricultural land that had been confiscated in the socialist era. The Slovak authorities and courts, however, consistently rejected the claim on the basis of the nationality requirement. Notably, the District Land Office denied the claim for lack of Slovak citizenship, a decision upheld by the Regional Court, and ultimately by the Supreme Court of the Slovak Republic in 2007. In its final 2007 judgment, the Slovak Supreme Court effectively disregarded the claimant's EU-law arguments, asserting that the matter fell outside the scope of EU law. The Supreme Court cited Article 295 of the EC Treaty (now Article 345 TFEU), which it interpreted as leaving rules on property ownership entirely to Member State law, and it noted that Article 12 EC (now Article 18 TFEU) prohibits nationality discrimination only within the material scope of the EU treaties. On that reasoning, the court concluded that EU law did not apply to the restitution of property confiscated before accession, and therefore it did not consider it necessary to refer any question to the CJEU for a preliminary ruling on the issue. The 2007 judgment thus gave primacy to national law and the principle of res judicata, finalising the denial of restitution without addressing the substantive EU-law objection.[7]

6 Olajos ibid.; Szilágyi ibid.

7 Varga, Zoltán: Az uniós jog elsőbbsége és a jogerő elve [Primacy of EU law vs. the principle of res judicata]. *Európai Jog*, 2018, 18 (4), 9–15. (in Hungarian)

2. Finality vs. Effectiveness: Reconciling Legal Certainty with EU Law Compliance

This outcome – foreclosing the claim in reliance on national law despite a potential EU law violation – highlights a tension between legal certainty (respect for final court decisions) and the effective protection of EU-law rights. Generally, once a decision has become final under national procedural rules, EU law does not demand that it be reopened, even if it was contrary to EU law, in order to protect the stability of legal relations.[8] In similar cases, the CJEU has recognised that the principle of legal certainty may justify limiting the availability of remedies against final decisions, even when those decisions are incorrect under EU law. Accordingly, the prevailing case law has held that EU law "does not require that administrative or judicial decisions which have become definitive […] be reopened" solely to rectify an outcome contrary to EU law. In practical terms, the EU principle of effectiveness does not go so far as to oblige Member States to undo every final decision tainted by an EU-law error, provided that the national system afforded a proper opportunity to raise EU law issues during the original proceedings.

At first glance, the Slovak Supreme Court's 2007 ruling fits within that doctrine by treating the matter as closed. However, the story did not end there. In the years following the CJEU's seminal judgment in *Kühne & Heitz* and subsequent related cases, Slovak law itself evolved to create a possibility for 'extraordinary' review of final decisions that are incompatible with EU law. Notably, the Slovak legislator amended the administrative procedure rules to permit reopening of final administrative court decisions that violate EU law, with *no temporal limitation*, subject to certain conditions. This extraordinary remedy (analogous to a petition for retrial or reopening) was established in order to give individuals a second chance to enforce EU rights where they had lost a case that became final if later EU developments showed that outcome to be wrongful (Korom, 2021b).[9] By introducing this mechanism, Slovakia essentially transposed the Kühne & Heitz criteria into its national law, signalling that finality would yield under specific circumstances to the correct application of EU law.

8 VARGA loc. cit.

9 KOROM, Ágoston: *Ingatlanok restitúciójával kapcsolatosan segítségül hívható-e az uniós jog? [Can EU law be invoked to assist in property restitution?].* In: MISKOLCZI-BODNÁR, Péter - HOMICSKÓ, Árpád Olivér - SZUCHY, Róbert (eds.): Studia in honorem Gyöngyi Harsányi 65. Budapest: Károli Gáspár University, 2021, 129–139. (in Hungarian). [hereinafter: KOROM (2021b)]

In 2022, the original claimants seized upon this new legal avenue. They filed a reopening request invoking the Slovak procedural provision (Section 472 of the Code of Administrative Procedure) that implements the EU-law-based ground for retrial. They argued that the 2007 Supreme Court decision upholding the rejection of their claim was manifestly contrary to EU law – in particular, to the EU prohibition of nationality discrimination and the free movement of capital, given that their application was submitted after accession and involved a cross-border element (a non-Slovak EU citizen claiming land in Slovakia). They contended that, from May 2004 onward, their case fell within the temporal and material scope of EU law: the temporal scope because the claim was lodged after accession (December 2004), and the material scope because restrictions on acquisition of real property must be assessed under the free movement of capital when a cross-border element exists (the claimant being a foreign national). They also pointed to the European Commission's position that in cases within the *ratione temporis* scope of EU law, a Member State cannot impose direct nationality-based discrimination in restitution matters. Furthermore, the claimants cited relevant CJEU judgments – including *Festersen* and *Commission v. Hungary* – issued after 2007, which clarified the incompatibility of certain nationality-based land restrictions with EU law. In their view, these developments constituted a 'new' ground for reopening the case, as the Slovak courts in 2007 did not consider (and perhaps were not fully aware of) the EU law requirements that should have been applied.

The Bratislava Administrative Court (as the competent court to hear the retrial request in 2024) had to determine whether the conditions for reopening under national law – which mirrored the Kühne & Heitz conditions – were satisfied. Importantly, under Section 472 of the Slovak administrative judicial procedure code, a final administrative court decision may be reopened if it is "contrary to a decision of the Court of Justice of the EU, the Council or the Commission that is binding on the parties to the proceedings". Although the wording refers to a decision binding on the parties, the court in this case interpreted the provision broadly: it acknowledged that it is sufficient if the CJEU, in a different case, has interpreted the same point of EU law differently than the national court did in the original proceedings. In other words, a CJEU judgment establishing the correct interpretation of an EU law provision can trigger retrial even if that CJEU judgment arose in unrelated proceedings, as long as it concerns the *same legal issue*. This aligns with the spirit of the Kühne

doctrine, which does not require the CJEU ruling to come from the same litigants or facts – only that national law grants a reopening power and that EU law was misapplied in the final decision.

3. Subjective Time Limits and the Presumption of Legal Knowledge in the EU Law Context

Another critical condition is the time limit for seeking retrial. Under Section 475 of the code, a petition for reopening must be filed within three months from the day the petitioner became aware of the reason for retrial (i.e. within three months of learning about the new EU legal development). This is a *subjective* deadline, measured by the petitioner's actual knowledge. The law does not allow any extension or excuse for missing this three-month window. In the case at hand, the claimants filed their reopening request in June 2022, asserting that they only became aware of the relevant CJEU case law (and thus of the potential EU-law basis to challenge the 2007 decision) when they consulted with a legal representative shortly before filing the request. They argued that this consultation was the first point at which they learned that the 2007 rejection might have violated EU law and that the EU case law (like *Kühne & Heitz*, *Festersen*, etc.) provided grounds to revisit it.

The Administrative Court's Decision (2024) focused heavily on whether the reopening request was filed in time. The court emphasised that under Slovak law, the admissibility of the retrial petition hinged on compliance with the three-month subjective deadline. Crucially, the court interpreted the notion of the petitioner's knowledge in a restrictive manner. It invoked a 2011 decision of the Slovak Constitutional Court, which held that, by virtue of the Act on the Collection of Laws and the Official Journal of the EU, there is an "irrebuttable presumption" that everyone is aware of EU legal acts (including CJEU judgments) once they are officially published. In the court's view, this meant that the claimants should be deemed to have known of the CJEU's relevant jurisprudence from the date those judgments were published in the Official Journal, not from the date they happened to consult a lawyer. The court reasoned that accepting the claimants' argument – i.e. measuring the three-month period from the point of their actual subjective awareness in 2022 – would effectively allow the reopening deadline to be extended indefinitely, depending solely on when a party happens to discover the legal basis for retrial. Such an

interpretation, the court warned, would undermine the principle of legal certainty by potentially reopening cases without any final cut-off.

Applying this logic, the Bratislava court identified a specific date by which the claimants *could* or *should* have known about the CJEU decisions that undercut the 2007 judgment. It noted that Act No. 416/2004 (which presumably implemented EU law publication rules) would have allowed the claimants, at the latest by 29 June 2019, to become aware of the pertinent EU judgments. The court did not detail why it chose that exact date, but it likely corresponds to the publication or widespread availability of certain EU case law (perhaps the *Festersen* judgment or another relevant ruling was published by then, or it could be tied to when Slovakia's law changed). In any event, treating late June 2019 as the point of constructive knowledge, the court concluded that the petition submitted in June 2022 was far outside the three-month window. Because Slovak law provides no possibility to waive or extend this deadline, the court held that the reopening request was time-barred and thus inadmissible.

In summary, the Bratislava Administrative Court denied the retrial request without entering into the merits, on the grounds that it was not filed within three months of when the claimants ought to have known of the EU-law basis for retrial. By doing so, the court effectively shielded the 2007 final judgment from further scrutiny, prioritising the finality of that judgment and a strict view of the limitations period.

The court's approach undeniably serves the interest of legal certainty by preventing an open-ended revival of old cases. However, it raises the question whether this approach is consistent with EU law obligations, especially the principle of effectiveness of EU rights. The remainder of this article examines the court's decision against the backdrop of the *Kühne & Heitz* doctrine and subsequent CJEU case law, and evaluates whether the Slovak court struck an appropriate balance between legal certainty and the effective enforcement of EU law.

4. EU Law Framework and Analysis: The Kühne & Heitz Doctrine

The CJEU's judgment in *Kühne & Heitz* (Case C-453/00) established a framework under which a national authority may be obliged, by EU law, to reconsider a final administrative decision that violates EU law. The *Kühne & Heitz* criteria, as later consolidated by case law, impose four main conditions for such an obligation: (1) the administrative body (or court)

has the legal power under national law to reopen or retract the decision; (2) the decision in question has become final after exhausting domestic remedies; (3) the outcome of the case was based on a misinterpretation of EU law, as subsequently clarified by the CJEU (and notably, no preliminary ruling was sought in the original case); and (4) the affected party applied for reconsideration promptly after learning of the CJEU's clarification of the law. When all these conditions are satisfied, EU law (in particular, the principles of cooperation and effectiveness) *requires* the national authority or court to reopen the case to correct the EU law error, notwithstanding national rules on finality.[10]

In the Slovak scenario, condition (1) was clearly met: Slovak law expressly permitted the reopening of final decisions that conflict with EU law, as discussed. Condition (2) was also satisfied: the 2007 Supreme Court judgment was a final decision by the highest court, with no further appeal possible. Regarding condition (3), it appears evident that the 2007 judgment was based on an erroneous understanding of EU law – it assumed EU law was entirely inapplicable, whereas in reality EU law did apply (given the timing and nature of the claim) and should have precluded the nationality requirement. The Supreme Court in 2007 did not seek a preliminary ruling, and its interpretation is now known to conflict with later CJEU guidance (for example, the ECJ has since made clear that even pre-accession confiscations can trigger EU law constraints if the restitution scheme operates post-accession and entails nationality discrimination). Thus, the third condition of a "manifest error in EU law" is fulfilled.

The crux of the matter lies in condition (4) – the promptness of the application once the claimant became aware of the EU law development. Here, EU law expects a subjective assessment: the individual must act diligently and request reopening as soon as reasonably possible after discovering the divergence between the prior decision and the CJEU's case law.[11] The *Kühne & Heitz* line of cases implies that an undue delay by the claimant could relieve the national authorities of any duty to reopen. However, it does not set a rigid deadline; it leaves the determination of timeliness to a case-by-case judgment, often guided by national procedural time frames (if any exist) but tempered by the principle of effectiveness.

In our case, the claimants did petition for retrial, albeit many years after the 2007 decision, but they maintained that they did so promptly after

10 KOROM (2021b) ibid.; VARGA ibid.

11 KOROM (2021b) ibid.

gaining the requisite knowledge. The Slovak court's strict attribution of knowledge as of 2019 (based on the Official Journal publication presumption) effectively transformed the subjective deadline into an objective one. It treated mid-2019 as a fixed cut-off by which any 'reasonable person' in the claimants' position should have known of the relevant CJEU judgments, thereby rendering the 2022 request too late by about three years. This reasoning is open to debate. On one hand, allowing litigants to claim ignorance indefinitely would indeed undermine the finality of judgments–legal certainty demands that there be some end to litigation.[12] On the other hand, the very purpose of the Kühne mechanism is to offer redress for those who could not secure their EU rights initially, often because the legal clarification arrived only later. Imposing an inflexible presumption of knowledge from Official Journal publication may be seen as an unduly formalistic approach that defeats the remedial aim of the EU doctrine.[13] Most individuals (especially lay claimants) do not monitor the Official Journal of the EU for CJEU rulings, and they typically rely on legal counsel to inform them of new legal opportunities.

Significantly, EU law does not explicitly endorse the notion that Official Journal publication alone triggers a duty on individuals to act – that is a creation of Slovak national jurisprudence. EU law's concern is whether the national procedure, in practice, makes it "excessively difficult" for individuals to exercise rights conferred by EU law (the principle of effectiveness). By cutting off the claimants' access to the retrial mechanism via an irrebuttable presumption of knowledge, the Slovak court arguably jeopardised the effectiveness of the claimants' EU-law rights. The claimants did act within three months of consulting a lawyer, which could be viewed as meeting the spirit of promptness required by *Kühne & Heitz*. The court's stance that they should have acted by 2019 because a hypothetical diligent person would have known the law by then is a strict standard that not even all legal professionals might meet, let alone ordinary citizens.

From the perspective of EU law, one could argue that once Slovakia chose to allow unlimited retrial for EU-law breaches, it had to ensure that the conditions for exercising that remedy were not unduly restrictive.[14] The national court's job was to apply those conditions in light of EU objectives. While preventing abuse or indefinite delay is legitimate,

12 Varga ibid.

13 Korom (2021a) ibid.

14 Korom (2021b) ibid.

the blanket presumption used in this case may have closed the door too firmly. Indeed, had the Slovak court followed the CJEU's approach, it would have likely started the clock when the claimants actually learned of the EU case law (in 2022) unless there was evidence of malicious delay or negligence on their part. No such evidence was suggested; to the contrary, the claimants had been unaware of the legal possibility earlier. Therefore, under a faithful application of Kühne criteria, the reopening request would be considered timely and the court would then proceed to examine the substance of the claim in light of EU law.

If the Bratislava Administrative Court had reached the merits, it almost certainly would have found the 2007 decision incompatible with EU law. By 2024, it was well-established that nationality requirements in post-accession restitution schemes violate EU law unless objectively justified – and no compelling justification was present here (the measure was a blanket exclusion of non-Slovaks). The court, however, never addressed this directly because of its procedural dismissal. In doing so, it effectively shielded a substantively EU-law-breaking outcome behind a procedural barrier.

5. Conclusion

The Slovak court's 2024 decision reflects an understandable judicial impulse to safeguard legal certainty by not reopening a long-finalised case on a potentially boundless timeline. From a purely national perspective, the court sought to prevent the retrial mechanism from resulting in an endless threat to final judgments – a concern grounded in the principle of res judicata and efficient administration of justice. The court highlighted a real risk: if litigants can simply claim much later that they only recently learned of new case law, final decisions could lose stability. In professional terms, one can sympathise with the court's instinct to impose some cut-off and maintain that the restitution process cannot be rehashed indefinitely (indeed, the court explicitly noted the unsustainability of perpetually extending the reopening deadline).

However, our analysis indicates that the solution chosen by the court – unilaterally converting the subjective deadline into an effectively objective one – did not conform to the EU-law criteria established in *Kühne & Heitz* and its progeny. The EU-law framework requires a careful balance between legal certainty and the effective protection of EU rights, a balance that the CJEU has calibrated by allowing reopening only in narrowly defined

circumstances (all of which were present in this case) and expecting prompt action by claimants (which, arguably, was present once actual knowledge was obtained). By denying the retrial solely on the basis of a presumed knowledge date, the Slovak court gave predominance to legal certainty at the expense of EU-law effectiveness, in a manner that overshot what EU law itself would demand.[15] In effect, the court's approach thwarted the very remedy that Slovak law had put in place to correct EU-law violations in final decisions.

It bears emphasis that nothing in EU law prevented the Slovak legislature from narrowing or eliminating such an open-ended retrial possibility if it wished to do so. If the indefinite nature of the remedy was deemed problematic, the law could have been drafted with an absolute cut-off date or a shorter objective deadline. But given that the law, as written, allowed this extraordinary remedy without a temporal limit, the task of the court was to apply it in line with EU-law principles. By introducing a rigid presumption not found in the text, the court essentially curtailed the remedy beyond what EU law or national law explicitly required.

In conclusion, the Bratislava Administrative Court's decision did not meet the conditions set by the EU legal order in several respects. While motivated by a valid concern for finality, the decision is difficult to reconcile with the *Kühne & Heitz* doctrine and the principle of effectiveness of EU law. The claimants had met all the substantive criteria for reopening under EU law (and under Slovak law, interpreted in light of EU law), yet were denied relief due to an arguably excessive procedural hurdle. The outcome illustrates a judicial resistance to fully embracing the implications of EU supremacy in the context of final judgments. It serves as a reminder that, once a Member State provides a legal pathway to remedy an EU-law breach, that pathway must be kept genuinely accessible in practice. In this case, the national court's restrictive interpretation undermined the *ex post* enforcement of EU rights. The decision thereby stands in questionable compliance with EU law – a point that could itself invite scrutiny, either from the European Commission or via a future reference to the CJEU, to ensure that individuals like the claimant are not left without an effective remedy for breaches of EU law even when those breaches are embedded in long-standing final decisions.

15 Varga ibid.