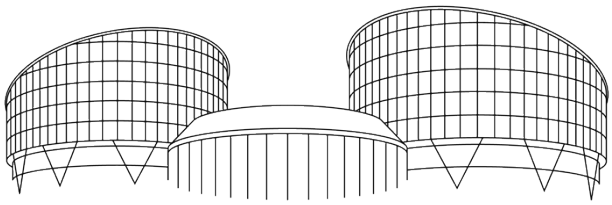

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23360/08
by Karol MIHAL
against Slovakia

The European Court of Human Rights (Third Section), sitting on 28 June 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 30 April 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Karol Mihal, is a Slovak national who was born in 1954 and lives in Malá Ida. He was represented before the Court by Ms I. Rajtáková, a lawyer practising in Košice.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant is a judicial enforcement officer (*súdny exekútor*). In this capacity, he acted on behalf of a limited-liability company, A., as a judgment creditor, with a view to enforcing five of its adjudicated claims against a limited-liability company, B., and one adjudicated claim against a limited-liability company, C. The relevant details concerning the enforcement proceedings in question are set out in the Appendix to this decision.

4. In all instances, the commencement of the enforcement proceedings was authorised by Košice I District Court (*Okresný súd*) on 23 January 1997.

5. On 2 December 2003 and 15 June 2005, respectively, companies C. and B. were struck out of the Commercial Register (*Obchodný register*) whereby they legally ceased to exist.

6. On 27 April 2006 company A. was also struck out of the Commercial Register with the same legal effect.

7. Meanwhile, on 24 and 25 April 2006, the applicant had requested that all six of the enforcement proceedings be discontinued on the ground that the defendant companies had been dissolved.

8. On 17 May 2006 the District Court acceded to the applicant's request and, by six separate decisions, discontinued the respective enforcement proceedings.

9. At the same time, the District Court ruled that the applicant was not entitled to compensation in respect of the costs that he had incurred in the context of the enforcement. This ruling was based on the ground that both the claimant and the defendant companies had been dissolved and therefore could not be ordered to pay the applicant's costs.

10. The applicant appealed to the Košice Regional Court (*Krajský súd*) arguing that, in the circumstances, his costs should be born by the State. In terms of figures, the applicant specified the enforcement costs at stake at some 90, 45, 140, 45, 45 and 45 euros (EUR) respectively.

11. In September 2007 and April and May 2008 the applicant's appeals were dismissed.

12. As to the enforcement proceedings file no. OEr 87/97, the applicant subsequently challenged the decision of the Regional Court dismissing his appeal by way of a complaint under Article 127 of the Constitution alleging a violation of his property rights and the right not to be subjected to forced labour. The complaint was rejected as being manifestly ill-founded on 5 November 2008

13. The ordinary courts and the Constitutional Court (*Ústavný súd*) relied on a variety of grounds, including the following.

The existence of enforcement proceedings depended on the existence of a claimant and a defendant. Upon their dissolution no enforcement proceedings could continue. There was thus no procedural framework for a ruling on the costs of the enforcement and, consequently, no such ruling could be made.

The non-award of costs was in compliance with the wording, object and purpose of the applicable statutory provisions, and devoid of any arbitrariness or irregularity.

There was no legal basis for the State to bear the costs of the enforcement and there was no one else to bear them in the absence of the parties.

The applicant's status as a judicial enforcement officer placed him in a privileged position as regards the power to enforce adjudicated claims. This privilege outweighed expenses such as those he had incurred in the present case(s). Moreover, he could have sought an advance on his costs from the creditor(s).

B. Relevant domestic law and practice

1. Constitution

14. Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) provides:

> "1. The Constitutional Court shall decide complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated."

15. According to the established case-law of the Constitutional Court, neither Article 127 nor any other provision of the Constitution provides a basis for individuals to challenge legislation for being incompatible with the Constitution or international instruments, including the Convention (see, for example, decision of 7 November 2007, file no. IV. ÚS 287/07).

2. Code of Civil Procedure

16. The statutory basis for enforcement of adjudicated claims is laid down in Articles 251 *et seq.* of the Code of Civil Procedure (Law no. 99/1963 Coll., as amended – "CCP").

17. Until 31 August 2005, if a judgment debtor failed to comply with his or her adjudicated obligation, the creditor had two essentially equipollent options of seeking enforcement, by a court under the CCP and by a judicial enforcement officer under the Judicial Enforcement Code.

18. With effect from 1 September 2005 Article 251 and other related provisions of the CCP were amended by Law no. 341/2005 Coll. in that, apart from some exceptions that are not relevant to the present case, enforcement of adjudicated claims is to take place under the Judicial Enforcement Code.

3. Judicial Enforcement Code

19. The status of judicial enforcement officers and the procedures for enforcement by judicial enforcement officers are governed by the Judicial Enforcement Code (Law no. 233/1995 Coll., as amended).

20. Under Article 10 § 1, in order to be appointed a judicial enforcement officer, an individual has to have (a) unrestricted legal capacity to act, (b) obtained a law degree, (c) a faultless criminal record, (d) completed at least three years of enforcement training, (e) passed a professional exam.

21. Judicial enforcement officers are appointed by the Minister of Justice ("the Minister") (Article 11 § 1) upon their own request and further to recommendation of the Slovak Chamber of Judicial Enforcement Officers (*Slovenská komora exekútorov* – "the Chamber") (Article 11 § 2).

22. Under Article 13, upon appointment, a judicial enforcement officer makes the following solemn declaration in front of the Minister:

> "I promise on my conscience and civic honour that I shall follow the Constitution of the Slovak Republic and other Acts of Parliament, as well as other generally binding statues and I shall apply them as a judicial enforcement officer according to my best knowledge and conscience, in carrying out enforcements I shall proceed independently, impartially and fairly and I shall respect confidentiality in respect of all facts that I learn in connection with carrying out activities under the Judicial Enforcement Code".

23. Under Article 57 § 1 (g), the enforcement court is to discontinue enforcement proceedings if it has declared the enforcement improper (*neprípustná*) on other grounds for which it cannot be carried out.

24. In respect of enforcement carried out under the Code, the judicial enforcement officer is entitled to remuneration, reimbursement of costs and compensation for lost time. Should the judicial enforcement officer be liable to pay value-added tax, the compensation should be increased by the amount of that tax (Article 196).

25. The expenses mentioned in Article 196 are to be born by the debtor (Article 197 § 1). The judicial enforcement office can, however, request the creditor to make an appropriate advance payment for remuneration and costs (Article 197 § 2). As a general rule, should the creditor fail to make the advance payment within the time-limit specified by the enforcement officer, on the latter's request the enforcement court may discontinue the proceedings (Article 31 § 1).

26. If the creditor causes discontinuation of the enforcement, the court can order him or her to cover the necessary costs of the enforcement (Article 203 § 1). Should the enforcement be discontinued on the ground that the debtor does not have sufficient property to cover the costs of the enforcement, such costs are to be born by the creditor (Article 203 § 2).

27. Articles 219 *et seq.* govern the disciplinary liability of judicial enforcement officers.

This liability pertains to disciplinary offences (*disciplinárne previnenie*) and serious disciplinary offences (*závažné disciplinárne previnenie*).

28. The former consists of culpable breach of duties in the course of carrying out judicial enforcement officer's activities, breach of the solemn declaration, acting in a way which compromises the dignity of the officer's role and carrying on an activity that is incompatible with the role of a judicial enforcement officer despite a previous request not to do so (Article 220 § 1).

29. An action envisaged in Article 220 § 2 becomes a serious disciplinary offence if its harmfulness is increased on account of the nature of the breached duty, the manner in which it has been breached, the degree of culpability, repetition of the breach or other aggravating circumstances.

30. Pursuant to Article 221, disciplinary offences are punishable by reprimand (paragraph 1 (a)), written reprimand (paragraphs 1 (b) and 2 (a), a fine of up to EUR 3,310 (paragraphs 1 (c) and 2 (b)) and stripping of office (paragraph 2 (c)).

COMPLAINTS

31. The applicant complained that in the absence of any compensation for the costs he had incurred, the enforcement he had carried out amounted to forced or compulsory labour contrary to Article 4 of the Convention.

32. The applicant also complained that the absence of any compensation in respect of the enforcement that he had carried out in the given circumstances, which was due to provisions of statute, was contrary to his rights under Article 1 of Protocol No. 1.

33. The applicant lastly complained under Article 13 of the Convention that he had no effective remedy at his disposal in respect of the other

complaints, in particular in so far as they directly concerned the effects of the relevant legislation on him.

THE LAW

A. Exhaustion of domestic remedies

34. The Government argued that, in respect of the enforcement proceedings file nos. OEr 86/97, OEr 88/97, OEr 89/97, OEr 90/97 and OEr 100/97, the applicant had failed to comply with the requirement of Article 35 § 1 of the Convention to exhaust all domestic remedies in that he had failed to assert his rights before the Constitutional Court by way of a complaint under Article 127 of the Constitution.

35. In reply, the applicant disagreed and pointed out that the essence of the case went to the non-existence of a legal framework for compensating his costs, which had been acknowledged by the ordinary courts and also by the Constitutional Court. This lack of legislation could not be contested before the Constitutional Court.

36. The Court observes that, under Article 127 of the Constitution, the Constitutional Court has jurisdiction to deal with individual complaints alleging a violation of the complainants' fundamental rights or freedoms by decisions, measures and other actions or by a failure to act, provided that the matter does not fall within the jurisdiction of a different court. This jurisdiction, however, does not comprise the power, upon an individual complaint, to review compliance of statute with the Constitution and international instruments (see paragraphs 14 and 15 above).

37. The Court also observes that the thrust of the present case is the absence of a legislative framework for compensating the applicant's costs, which was acknowledged at the domestic level (see paragraph 13 above).

38. In so far as the Government's objection has been substantiated, the Court has found no indication as to how the lack of a legal basis for compensating the applicant's costs could be overlooked and how he could consequently receive redress by resorting to a complaint under Article 127 of the Constitution. The Government's objection accordingly has to be dismissed.

B. Article 4 of the Convention

39. The applicant complained that he had been subjected to forced or compulsory labour, contrary to Article 4 of the Convention, the relevant part of which provides as follows:

"...

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

40. The Government relied on the Court's judgment in the case of *Van der Mussele v. Belgium* (23 November 1983, Series A no. 70) and the decision of the Constitutional Court of 5 November 2008. They emphasised that there was no legal basis for the State to bear the applicant's costs and maintained that the applicant had incurred those costs at his own risk. Any such risk was reduced by, and appropriate in view of, the applicant's privileged position as a judicial enforcement officer and his right to claim an advance on his costs from the creditor under Article 197 § 2 of the Enforcement Code (see paragraph 25 above). In conclusion, according to the Government, there had been no forced or compulsory labour and the complaint was incompatible *ratione materiae* with the provisions of the Convention.

41. In reply, the applicant disagreed and reiterated that, in his case, there had been forced and compulsory labour in the Convention sense. To that end, the applicant emphasised that he had not been entitled to reject or choose the creditors whose claims he had been enforcing. While accepting that he had voluntarily taken up office as a judicial enforcement officer, he had done so in reliance on Article 196 of the Enforcement Code, which guaranteed him compensation (see paragraph 24 above).

42. The Court reiterates that paragraph 2 of Article 4, which prohibits "forced or compulsory labour", enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 (see *Zarb Adami v. Malta*, no. 17209/02, § 43, ECHR 2006-VIII).

43. When deciding whether the service required of the applicant falls within the definition of "forced or compulsory labour", the Court will have regard to all the circumstances of the case in the light of the underlying objectives of Article 4. The Court reiterates that paragraph 3 of Article 4 forms a whole with paragraph 2 and indicates what the term "forced or compulsory labour" shall not include. This being so, paragraph 3 serves as

an aid to the interpretation of paragraph 2. The four subparagraphs of paragraph 3, notwithstanding their diversity, are grounded on the governing ideas of the general interest, social solidarity and what is normal in the ordinary course of affairs (see *Van der Mussele*, cited above, 38; *Karlheinz Schmidt v. Germany*, 18 July 1994, § 22, Series A no. 291-B; and *Zarb Adami*, cited above, § 44). The final sub-paragraph, namely, sub-paragraph (d), which excludes "any work or service which forms part of normal civil obligations" from the scope of forced or compulsory labour, is of special significance in the context of the present case (compare also *Van der Mussele*, cited above, § 38).

44. Turning to the specific circumstances of the present case, the Court observes that there has been no dispute between the parties about whether the applicant's enforcement activities amounted to "labour" for the purposes of Article 4 § 2 of the Convention. The Court accepts that they did. It remains to be ascertained whether the labour was "forced" or "compulsory".

45. In answering that question, the Court will take into account whether any work was exacted from the applicant under the menace of any penalty, whether the work was performed against the will of the applicant and whether the applicant had offered himself for that work voluntarily (see *Van der Mussele v. Belgium*, cited above, § 34).

46. The Court observes that it is the applicant's function, as a judicial enforcement officer, to carry out enforcement as authorised by a court (see paragraph 22 above). Should he fail to discharge this duty in a culpable manner, he may incur disciplinary liability (see paragraphs 28 and 29 above).

47. The Court is prepared to accept that the potential consequences of a refusal on the part of the applicant to carry out enforcement of the adjudicated claims of company A. against companies B. and C. could constitute a "menace of a penalty" (see *Van der Mussele*, cited above, § 35).

48. It must next be determined whether the applicant "offered himself voluntarily" for the work in question. For that matter, the Court observes that, upon completing other formal requirements, in order to become a judicial enforcement officer, the applicant had to pass a professional exam, following which he was appointed by the Minister at the recommendation of the Chamber (see paragraphs 20 and 21 above). This presupposes knowledge of the applicable rules and regulations, including those that were applied in the present case in respect of his costs. At the same time, the Court observes that such rules and regulations have been encompassed in generally binding and publically accessible statue, the Judicial Enforcement Code, and that they remained unchanged throughout the relevant period.

49. The Court notes that there does not appear to be any written individual rule addressing the applicant's specific situation, which accordingly had to be addressed by means of judicial interpretation of the existing rules. It accepts that, from the applicant's point of view, such

interpretation of the general rules may have contained some degree of uncertainty as to its concrete outcome. The Court is, however, of the view that, as a legal professional, the applicant can be expected to have known and accepted the rules voluntarily.

50. Nevertheless, such prior acceptance does not in itself warrant a conclusion that the application of the existing legal framework did not, in the present case, amount to forced or compulsory labour for the purposes of Article 4 § 2 of the Convention. Account must necessarily also be taken of other facts (see *Van der Mussele*, cited above, § 36).

51. In that respect, the Court has to ascertain whether the carrying out of the enforcement in the present case without being entitled to reimbursement of his costs did not impose a burden on the applicant that was excessive and disproportionate to the advantages attached to his status as a judicial enforcement officer (see *Van der Mussele*, cited above, § 37).

52. As to the burden imposed on the applicant, the Court observes that, in the present case, in six individual instances, the applicant was not compensated for his costs (see paragraph 10 above).

Nevertheless, the Court considers that, rather than the absolute or relative value of the applicant's outstanding claims, the essence of the applicant's burden rested upon the attendant professional risk of not being paid for his services.

53. As regards the advantages that the applicant enjoyed on account of his status as a judicial enforcement officer, the Court observes that as from 1 September 2005 enforcement of adjudicated claims in Slovakia essentially falls within the powers of judicial enforcement officers under the Judicial Enforcement Code. Until that date adjudicated claims could equally be enforced by a court under the CCP (see paragraph 17 above).

This arrangement implies a privilege on the part of the applicant and other judicial enforcement officers of having the exclusive power to enforce adjudicated claims in return for remuneration, reimbursement of costs and compensation for lost time (see paragraph 24 above).

54. The Court also observes that under the applicable statutory framework it was open to the applicant to request an advance on his costs from company A. and to seek discontinuation of the enforcement proceedings if the advance payment has not been made (see paragraph 25 above).

Such a request would appear nothing but reasonable in view of the fact that companies C. and B. were struck out of the Commercial Register on 2 December 2003 and 15 June 2005 respectively (see paragraph 5 above), of which the applicant ought to have known, as well as of the fact that, in the circumstances, any enforcement against these companies was practically and legally no longer possible.

55. In sum, to the extent the application has been substantiated, the burden imposed on the applicant has not been shown to be excessive, disproportionate or otherwise unacceptable.

It follows that the burden did not amount to compulsory or forced labour for the purposes of Article 4 § 2 of the Convention and that the relevant part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Article 1 of Protocol No. 1

56. The applicant also complained that the absence of any compensation in respect of the enforcement that he had carried out was incompatible with his rights under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

57. The Government submitted that the applicant had not enjoyed any "possession" within the meaning of Article 1 of Protocol No. 1 attracting protection of that Article and that, consequently, the complaint was incompatible *ratione materiae* with the provisions of the Convention.

58. The applicant, in reply, maintained that in discharge of his official duties he was using his own tools and means which he considered to be "possessions" in terms of Article 1 of Protocol No. 1. He argued that he had had a "legitimate expectation" to have the use of his possession compensated under Article 196 of the Enforcement Code. However, he had been denied such compensation, without a legal basis, and without any public interest being served.

59. The Court reiterates that it has examined a similar situation in the *Van der Mussele* judgment (cited above, § 49), in which it held that:

> "In many cases, a duty prescribed by law involves a certain outlay for the person bound to perform it. To regard the imposition of such a duty as constituting in itself an interference with possessions for the purposes of Article 1 of Protocol No. 1 (P1-1) would be giving the Article a far-reaching interpretation going beyond its object and purpose.
>
> The Court sees no valid cause to think otherwise in the instant case.
>
> The expenses in question were incurred by Mr. Van der Mussele in acting for his pro Deo clients. Although in no wise derisory (the epithet bestowed on them by the Government), these expenses were relatively small and resulted from the obligation to perform work compatible with Article 4 (art. 4) of the Convention.

Article 1 of Protocol No. 1 (P1-1) [...] is thus not applicable in this connection."

60. The Court has found no reasons for reaching a different conclusion in the present case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

D. Article 13 of the Convention

61. Lastly, the applicant complained that he had no effective remedy at his disposal in respect of the other complaints, contrary to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

62. The Government submitted, first of all, that Article 13 was inapplicable to the applicant's complaints, made under Articles 4 of the Convention and 1 of Protocol No. 1, because those provisions likewise did not apply. In any event, according to the Government, the applicant did have a remedy compatible with the Article 13 requirements, in particular a complaint under Article 127 of the Constitution.

63. In reply, the applicant disagreed and reiterated his complaint.

64. The Court reiterates that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

65. In the present case the Court has found above that the applicant's complaints under Articles 4 of the Convention and 1 of the Protocol were inadmissible as being manifestly ill-founded and incompatible *ratione materiae* with the provisions of the Convention (see paragraphs 55 and 60 above). For similar reasons, the applicant did not have an "arguable claim" and Article 13 is therefore inapplicable to his case.

The remainder of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President

Appendix
Application no. 23360/08

No.	Complaint introduced	File no. of the enforcement proceedings	Defendant	Last decision (date, body, file no.)
1.	30 April 2008	OEr 89/97	Company A.	12 September 2007 (served 30 October 2007) Košice Regional Court 5CoE 98/07
2.	30 April 2008	OEr 90/97	Company A.	20 September 2007 (served 30 October 2007) Košice Regional Court 5CoE 99/07
3.	7 May 2008	OEr 100/97	Company B.	25 September 2007 (served 8 November 2007) Košice Regional Court 6CoE 111/07
4.	7 May 2008	OEr 86/97	Company A.	25 September 2007 (served 8 November 2007) Košice Regional Court 6CoE 112/07
5.	7 January 2009	OEr 88/97	Company A.	29 April 2008 (served 7 July 2008) Košice Regional Court 2CoE 179/2007
6.	16 June 2009	OEr 87/97	Company A.	5 November 2008 (served 16 December 2008) Constitutional Court I. ÚS 377/08