



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

THIRD SECTION

CASE OF MIHAL v. SLOVAKIA

(Application no. 22006/07)

JUDGMENT

STRASBOURG

5 July 2011

FINAL

05/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mihal v. Slovakia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 June 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22006/07) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Karol Mihal (“the applicant”), on 10 May 2007.

2. The applicant was represented by Ms I. Rajtáková, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that he had been denied access to a court with a view to challenging decisions by court officers in respect of the costs of enforcement proceedings that he had carried out as a judicial enforcement officer.

4. On 23 June 2010 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Malá Ida. He is a judicial enforcement officer (*súdny exekútor*).

6. In his official capacity, the applicant acted on behalf of a number of judgment creditors with a view to enforcing their claims. The relevant

details concerning the enforcement proceedings are set out in the Appendix to this judgment.

7. The commencement of the enforcement proceedings was authorised by judicial decisions.

8. The applicant or, as the case may be, the creditors themselves subsequently requested that the enforcement be discontinued as it had been established that the debtors were devoid of any assets that could serve to satisfy the enforced claims.

9. Together with those requests, the applicant submitted a breakdown of the costs he had incurred in the enforcement proceedings which he sought to have the creditors ordered to compensate.

10. Consequently, in joint decisions, the enforcement proceedings were discontinued and orders for payment of the applicant's costs were issued.

11. The decisions were taken on the authority of the district courts, as the courts at the first level of jurisdiction, acting through their senior court officers (*vyšší súdny úradník*). Under section 2 of the Court Officers Act (Law no. 549/2003 Coll., as amended), senior court officers are civil servants (*štátny zamestnanec*) and, as such, are considered to be employees of the court.

12. The written versions of the decisions stated that they were final and not subject to appeal.

13. The applicant nevertheless appealed (*odvolanie*), seeking compensation for his costs in a higher amount.

As to the admissibility of his appeals, the applicant relied on Article 142 § 2 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended), which provides for the right of appeal to a judge against decisions taken by employees of the court.

14. The applicant's appeals, subsequent appeals on points of law (*dovolanie*) as well as complaints (*sťažnosť*) under Article 127 of the Constitution were all declared inadmissible.

15. The applicant's constitutional complaints in respect of the enforcement proceedings in file nos. 19Er 90/04 and Er 533/00 were declared inadmissible on the ground that the applicant had failed to exhaust ordinary remedies by asserting his rights by way of an appeal on points of law (*dovolanie*).

16. The remaining constitutional complaints were declared manifestly ill-founded, although in respect of the enforcement proceedings in file nos. Er 641/2004 and Er 2541/2001 no appeal on points of law had been lodged.

17. The ordinary courts and the Constitutional Court (in decisions nos. III. ÚS 344/06, II. ÚS 27/07, II. ÚS 28/07 and III. ÚS 66/07) held that, pursuant to Article 202 § 2 of the Code of Civil Proceedings (Law no. 99/1963 Coll., as amended) ("the CCP"), decisions (*uznesenie*) in enforcement proceedings, which included decisions on the costs of enforcement, were not subject to appeal. This rule was in the position of

lex specialis in relation to Article 142 § 2 of the Constitution and was held to take precedence over the latter. The fact that the impugned decisions had been taken by employees of the court and not by judges was therefore found to be of no consequence.

18. In a number of unrelated but similar situations, raised before the Constitutional Court by the applicant, the Constitutional Court took contradictory views (see “Relevant domestic law and practice” below).

19. Meanwhile, the relevant provisions of the CCP were amended, in that they now specifically provide that an appeal to a judge against decisions taken by senior court officers is always available (see “Relevant domestic law and practice” below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

20. Article 127, as amended by Constitutional Law no. 90/2001 Coll. with effect from 1 January 2002, 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.”

21. Article 142 § 2 was also amended by Constitutional Law no. 90/2001 Coll., the relevant part of which entered into effect on 1 July 2001.

22. Under the amended Article 142 § 2, an act of Parliament may specify matters, within the jurisdiction of courts, which may be decided upon by employees of the court authorised to do so by a judge. Decisions taken by employees of the court, upon authorisation of a judge, are subject to a remedy which must always be determined by a judge.

B. Code of Civil Procedure

23. Article 202 defines which judgments and decisions are not subject to appeal.

24. Under Article 202 § 2, unless the Enforcement Code (Law no. 233/1995 Coll., as amended) provides otherwise, an appeal is not admissible against decisions taken in enforcement proceedings under the Enforcement Code.

25. With effect from 1 July 2007, the relevant provisions of the CCP were amended by Law no. 273/2007 Coll. Since then the amended rule (section 374 (4)) has specifically provided that an appeal to a judge against decisions taken by senior court officers is always available.

26. The explanatory memorandum (*dôvodová správa*) of the amending Law no. 273/2007 Coll. refers to Article 142 § 2 of the Constitution and acknowledges that, under that provision, an appeal had been available against such decisions even previously.

27. Under Article 228 § 1 (d), civil proceedings can be reopened where the Court has found a violation of the requesting party's Convention rights and where serious consequences of the violation have not been adequately redressed by the award of just satisfaction. However, in principle, only those proceedings can be reopened which have been concluded by means of a judgment (*rozsudok*).

C. Constitutional Court Act

28. The Constitutional Court Act (Law no. 38/1993 Coll., as amended) governs the organisation of the Constitutional Court, the procedure before it and the status of its judges.

29. Section 53(1) and (2) lays down the rule of exhaustion of ordinary remedies. It provides that a complaint to the Constitutional Court is admissible only where the applicant has used effective remedies provided for by the law to protect his or her fundamental rights. The requirement does not apply if the applicant shows that he or she has not exhausted such remedies on grounds worthy of special consideration.

D. Practice of the Constitutional Court

30. In cases nos. I. ÚS 191/06, III. ÚS 348/06, IV. ÚS 209/07 and IV. ÚS 200/07, the applicant raised before the Constitutional Court the same issue as in the present application.

31. The complaint in file no. I. ÚS 191/06 was directed against a District Court, a senior court officer of which had determined the applicant's costs. The complaint was declared admissible on 14 June 2006 and ended with a judgment (*nález*) of 18 October 2007, in which the Constitutional Court

found no violation of the applicant's rights under Article 6 § 1 of the Convention. The finding was based on the fact that the applicant's submissions had eventually been examined by a judge upon the applicant's appeal.

32. The complaints in file nos. III. ÚS 348/06, IV. ÚS 209/07 and IV. ÚS 200/07 were directed against the Supreme Court which had declared the applicant's appeals on points of law inadmissible. They resulted in judgments of 17 January 2008 and 6 and 26 March 2008, in which the Constitutional Court found a violation of the applicant's rights under Article 6 § 1 of the Convention, quashed the impugned decisions, remitted the cases to the ordinary courts for a new determination and expressed a binding legal view that is summarised in the subsequent paragraph.

33. In the judgments mentioned above in cases nos. I. ÚS 191/06, III. ÚS 348/06, IV. ÚS 209/07 and IV. ÚS 200/07 the Constitutional Court upheld its established case-law to the effect that, to the extent possible, legislation is always to be interpreted and applied in conformity with the Constitution. Senior court officers do not provide the guarantees of judicial independence under Article 6 § 1 of the Convention. Their decisions can therefore never be final and must always be reviewable by a judge. Interpreting the relevant legislative rules at variance with the wording, object and purpose of Article 142 § 2 of the Constitution is out of the question.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that he had been denied the right to appeal against the decisions taken by the senior court officers. He relied on Articles 6 § 1 and 13 of the Convention.

35. The Court considers that the case falls to be examined under Article 6 § 1 of the Convention, which in the circumstances of the present case is a *lex specialis* in relation to Article 13 of the Convention, and the relevant part of which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

36. While admitting that the case was not manifestly ill-founded, the Government raised an objection under Article 35 § 1 of the Convention of

non-exhaustion of domestic remedies in respect of enforcement proceedings file nos. Er 533/00 and 19 Er 90/04.

To that end, the Government pointed out that in the decisions of 24 May 2007 the Constitutional Court declared two of the applicant's constitutional complaints inadmissible on the ground that he had failed to exhaust ordinary remedies in that he had failed to assert his rights by way of an appeal on points of law.

The Government argued that, in respect of enforcement proceedings file nos. Er 533/00 and 19 Er 90/04, the applicant could and should have lodged an appeal on points of law prior to resorting to the Constitutional Court as he had done prior to his other constitutional complaints in file nos. III. ÚS 348/06, IV. ÚS 209/07 and IV. ÚS 200/07. They emphasised that, in those three cases, the Constitutional Court had granted the applicant a remedy that had brought about a solution to his situation (see paragraphs 29 and 31 above).

37. In reply, the applicant challenged the Government's non-exhaustion objection arguing, firstly, that in another earlier case the Constitutional Court had declared a complaint directed against a District Court admissible (see paragraph 30 above) and, secondly, that the other Constitutional Court judgments referred to by the Government post-dated the decisions of the Constitutional Court contested in the present case and that they therefore should not be taken into account.

38. The Court observes that the individual cases obtaining in the present application revealed a systemic problem at the time and that the applicant was tackling that problem in a number of proceedings before the ordinary courts as well as the Constitutional Court.

39. In so far as the remedy under Article 127 of the Constitution is concerned, the Court observes that it is subject to a rule of exhaustion of ordinary remedies under section 53 of the Constitutional Court Act (see paragraph 28 above).

40. In that respect, the Court also observes that, at the relevant time, there appeared to have been a significant degree of incoherence and uncertainty as to the ordinary remedies that had to be exhausted before a complaint under Article 127 of the Constitution could be lodged.

41. In particular, the Court notes that in case no. I. ÚS 191/06 a complaint under Article 127 of the Constitution against a District Court was declared admissible by the Constitutional Court on 14 June 2006 and subsequently examined on the merits. Similarly, in the inadmissibility decisions of 11 and 31 May 2007 that are being contested in the present case the Constitutional Court examined the applicant's complaints on the merits while in none of these cases had an appeal on points of law been lodged.

42. Furthermore, the Court observes that in those cases contested in the present application where the applicant resorted to the remedy advanced by the Government, in its decisions of 10 November 2006 and 11 May 2007

the Constitutional Court found the applicant's complaints manifestly ill-founded.

43. Lastly, the Court observes that the Constitutional Court's decisions underlying the Government's non-exhaustion plea were given on 24 May and 18 June 2007, respectively, whereas the Constitutional Court's judgments upholding the effectiveness of the remedy in question were only given on 17 January 2008 and 6 and 26 March 2008.

44. In sum, the Court concludes that in view of the inconsistency of the Constitutional Court's case-law concerning exhaustion of ordinary remedies in a situation such as that of the applicant at the relevant time and the overall unpredictability of the outcome of the constitutional remedy (see *Beian v. Romania (no. 1)*, no. 30658/05, §§ 36-40, ECHR 2007-XIII (extracts)), the Government's objection of non-exhaustion of domestic remedies has to be dismissed.

45. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

46. As to the substance, the Government acknowledged that there had been divergent case-law of the Constitutional Court on the point. It was due to it that the applicant had been unable to secure redress from the Constitutional Court and it was the reason why the relevant legislation had been changed.

47. The applicant reiterated his complaint.

48. The Court reiterates that the right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, embodies the "right to a court", one aspect of which is the right of access, that is, the right to institute proceedings before courts in civil matters (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 43, ECHR 2001-VIII; and *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X).

Thus everyone has the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see, among many others, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 50, ECHR 1999-I).

49. However, the right of access to court is not absolute and may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court (see *Waite and Kennedy*, cited above, § 59). It must be satisfied

that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 50, *Reports of Judgments and Decisions* 1996-IV).

Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among many others, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93 and *Prince Hans-Adam II of Liechtenstein*, cited above, § 44).

50. In the present case the applicant, being a judicial enforcement officer, raised claims for compensation of the costs he had incurred in connection with carrying out enforcement proceedings. The Court observes that these claims were pecuniary in nature and accepts that they amounted to “civil rights” in terms of Article 6 § 1 of the Convention.

51. The Court further observes that the applicant’s claims were determined by senior court officers and accepts the Constitutional Court’s conclusion that such officers did not provide the guarantees of judicial independence under Article 6 § 1 of the Convention (see paragraph 32 above).

52. Moreover, the Court observes that Article 142 § 2 of the Constitution guarantees, in all situations, a right of appeal to a judge against any decision taken by a senior court officer (see paragraph 21 above) and that, according to the explanatory memorandum to Law no. 273/2007 Coll., amending the relevant provisions of the CCP, irrespective of any statutory provisions, such right had been available against decisions taken by senior court officers even previously (see paragraph 25 above).

53. Finally, the Court observes that the existence of the right of appeal to a judge against any decision by a senior court officer was also confirmed by the Constitutional Court (see paragraph 32 above). This position may also be considered to have been confirmed by the lawmaker by way of providing for such an appeal in express terms in the amending Law no. 273/2007 Coll.

54. Against this background, the Court observes with concern the domestic courts’ pronouncements, made by the ordinary courts and the Constitutional Court in the present case, to the effect that the provisions of a statute excluding a right of appeal against decisions taken by senior court officers in enforcement proceedings took precedence over a constitutional norm to the contrary (see paragraph 17 above).

55. In any event, in the instant case, the applicant’s right to appeal to a judge against decisions taken by senior court officers was denied, without reference to any specific aim or considerations of proportionality.

56. The foregoing considerations, including the admissions by the Government (see paragraphs 36 and 46 above), are sufficient to enable the

Court to conclude that, in the present case, the applicant's right of access to court has been denied without an acceptable justification.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

58. The applicant claimed 233.93 euros (EUR) in respect of pecuniary damage. He submitted that this amount represented the difference between the costs that had been awarded to him and those that he had been seeking. He also claimed EUR 13,000 in respect of non-pecuniary damage.

59. The Government contested these claims.

60. The Court does not discern any causal link between the violation found (see paragraph 56 above) and the pecuniary damage alleged. In particular, it cannot speculate about the outcome of the proceedings had they been in conformity with Article 6 § 1. It therefore rejects this claim.

61. On the other hand, the Court accepts that the applicant sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 4,000 under that head, plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant also claimed EUR 2,618 for the legal costs incurred before the Constitutional Court and before the Court.

63. The Government submitted that only costs and expenses which have been actually and necessarily incurred and are reasonable as to quantum should be reimbursed. They pointed out that the applicant's claim was not supported by any evidence.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

In the present case, the applicant has failed to provide any supporting documents substantiating his claim under this head. The Court accordingly rejects the applicant's claim for costs and expenses.

C. Default interest

65. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariálana Tsirli
Deputy Registrar

Josep Casadevall
President

Appendix
Application no. 22006/07

Complaint introduced	Enforcement authorised	Enforcement discontinued	Constitutional Court decided
10 May 2007	25 October 2002 Košice II District Court File no. 38 Er 1944/02	3 March 2005	3 November 2006 served 10 November 2006 File no. III. ÚS 344/06
8 November 2007	26 May 2004 Žilina District Court File no. 18 Er 641/2004	15 February 2005	29 March 2007 served 11 May 2007 File no. II. ÚS 27/07
8 November 2007	13 March 1996 Košice II District Court File no. Er 102/96-35	21 January 2005	29 March 2007 served 11 May 2007 File no. II. ÚS 28/07
27 November 2007	13 November 2001 Bratislava I District Court File no. Er 2541/2001	25 April 2005	3 April 2007 served 31 May 2007 File no. III. ÚS 66/07
18 December 2007	3 May 2004 Poprad District Court File no. 19 Er 90/04	17 March 2005	24 May 2007 served 18 June 2007 File no. I. ÚS 61/07
23 January 2008	6 March 2000 Košice I District Court File no. Er 533/00	19 April 2004	24 May 2007 served 23 July 2007 File no. I. ÚS 71/07