

SVK-2013-1-001

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 04-07-2012 / e) PL. ÚS 111/11 / f) Execution immunity of the State / g) *Zbierka nálezov a uznesení Ústavného súdu* 1/2012 / h) .

Keywords of the Systematic Thesaurus:

[03.16](#) General Principles - **Proportionality**.

[03.17](#) General Principles - **Weighing of interests**.

[05.03.13.01.02](#) Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - Scope - **Civil proceedings**.

[05.03.13.02](#) Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - **Effective remedy**.

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

Keywords of the alphabetical index:

[Bailiff](#) / [Property, claim](#) / [Judgment](#), enforcement, law / [Protection, judicial, effective](#).

Headnotes:

The public interest in preserving certain property of the State for certain unique and public purposes cannot be disputed. It will, however, be constitutionally unacceptable if its statutory construction poses such a restriction on the right of individuals and entities entering into legal relationships with the State that they cannot exercise their rights properly and they become illusory.

Summary:

I. At issue in this case were provisions of Slovak law which provided almost full immunity to state (Government) property and funds against any form of distraint (seizure of property in order to obtain payment of rent or other money owed).

In 2006, three individuals obtained a payment order against the state (Government). The government, represented by the Ministry of Justice, refused to comply fully with the payment order and an amount of some € 30 remained outstanding. The individuals applied to an official distrainer to enforce payment of the order against the state. However, the distrainer found that there was no property which could be seized from the State. Under the Law on Administration of State Property, state property (real estate, movables, claims and other proprietary rights) could not be made subject to distraint. A provision in the Law on Budgeting Procedures prohibited any seizure of funds provided from the state budget and the Law on State Treasury prohibited any distraint of accounts maintained by the State Treasury.

Upon the application of the three individuals, the ordinary court, which supervised the distraint, decided to stay the enforcement proceedings and asked the Constitutional Court for review of the provisions mentioned above, relying on two arguments. Firstly, the granting of immunity to the State to such an extent renders the claims of the State's creditors effectively unenforceable, as they cannot get satisfaction, in the event the state refuses to settle their

claim. Monetary claims enjoy protection in principle as «property» under the European Convention of Human Rights. The challenged provisions therefore constitute a violation of the right to property under both the Constitution and the Convention. Discrimination also exists against creditors who have claims against the State, compared to creditors of other non-privileged debtors. Secondly, the granting of immunity to the State renders forced enforcement impossible, yet the Constitutional Court has repeatedly held that forced enforcement of judgments is an essential part of the right to court protection/access to court under the Constitution and the Convention.

II. The Constitutional Court in principle granted the application in full and declared the provisions mentioned above to be unconstitutional.

After a comparative introduction, showing that such extensive immunity of the State against any forced enforcement is rather uncommon in Central Europe and had been similarly uncommon in Slovak legislative history, the Constitutional Court turned to the examination of the two main argument lines invoked by the applying court.

The Constitutional Court agreed that claims, («legitimate expectations»), which are effective and unconditional, enjoy protection as property under both the Constitution and the Convention. In order to be eligible for forced enforcement under Slovak law, the claim must be confirmed by a court judgment or similar public instrument. It is then indisputably effective and unconditional. Subsequently, the Constitutional Court found that the immunity of the State from forced enforcement interferes with the right of creditors with enforceable claims against the State to have their claims enforced; it interferes with the right to get effective satisfaction. Such interference is, however, in the public interest, since State property and funds are to be used for general welfare and public interest purposes.

The Constitutional Court went on to scrutinise whether such interference can be justified under the test of proportionality. It noted that the objective is the protection of property designated to serve the public interest and found the challenged provisions to be a suitable means to achieve this objective. The restriction is, in the Court's view, necessary for achieving the objective, as no other instrument is capable of effectively securing the protection of property which is designated to serve public interest, in ongoing enforcement proceedings.

The Constitutional Court then proceeded to the test of proportionality in the strict sense, considering and weighing empirical, systematic, contextual and value arguments. As to empirical arguments, the Court noted that the immunity, as provided for under the challenged provisions, was not originally intended by the legislator but had evolved as a result of unplanned legislative development. Immunity was not initially extended to government bank accounts. This was changed by the Act on State Treasury but the explanatory notes to the bill in question provided no reasoning for such change. Other State property such as securities, agricultural land and property used for state-owned businesses, is not subject to the immunity. However, other provisions exist which exclude the possibility of distraining against it in order to satisfy claims against the State. Practical experience (complaints handled by the Constitutional Courts) has shown that situations have indeed arisen where the creditor of a claim against the State has not been able to get it satisfied.

In terms of systematic argument, the Court invoked the acceptance of state immunities in international practice. A clear tendency exists towards restricting state immunities in respect of property, as documented by the European Convention on State Immunities (1976) and the

UN Convention of Jurisdictional Immunities of States and their Property, although it was accepted by the European Court of Human Rights case-law. On the other hand, the Court emphasised the social function of ownership and responsibility of the owner, and in this respect, it stipulated that state legislation should provide for a sufficient balance between the conflicting interests of various owners, including the State itself. The State needs to exercise caution, when it grants itself, as the owner, any advantage compared to other (private) property owners. The tendency towards restricting State immunities in international law requires even more rigorous scrutiny of any such immunity in domestic law, where the State is not in an equal position with the citizens.

The contextual argument is connected with the above arguments. The Court reiterated the negative economic and fiscal repercussions of non-satisfaction of enforceable claims by the state itself.

The accepted hierarchy of social values makes it impossible to accept total immunity of all state property. In particular, the principle that a creditor is entitled to have his or her claim satisfied is superior. It is the state's task to provide effective means of protection.

In conclusion, the Constitutional Court accepted the need for certain immunity necessary in order to protect the state's vital functions but emphasised that such immunity needs to be proportionate. In the light of the arguments outlined above, it concluded that the challenged provisions of the Act on Administration of State Property and the Act on State Treasury provide highly disproportionate immunity to the state against forced enforcement, rendering claims against the State effectively unenforceable. The provisions therefore violate the right to protection of property under both the Constitution and the European Convention of Human Rights. Consequently, they were also considered discriminatory under the Constitution.

On the basis of the same arguments, the Constitutional Court concluded that the challenged provisions on state immunity have resulted in the lack of a procedural pathway for creditors to have their claims against the State enforced. As the existence of such a pathway is a necessary procedural safeguard emanating from the right to court protection/access to court and an inseparable part of that right, the Constitutional Court found that the provisions violated those rights, which are guaranteed under the Constitution, along with [Article 6 ECHR](#).

Supplementary information:

To reflect the Constitutional Court's decision, the legislator enacted an amendment to the Enforcement Procedure Code (Law no. 230/2012 Coll.). Once again, considerable immunities were granted to state property (real estate, securities, incomes of state budget, money on account, certain receivables, funds designated to cover the budget deficit). The enforcement officer can select any item from among other property, but must notify the competent state body, which may then ask the court to grant individual immunity to that item of property.

It is debatable whether the new legislation has properly reflected the objections raised by the Constitutional Court.