

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

FIRST SECTION

CASE OF BARDÚNOVÁ v. SLOVAKIA

(Application no. 10219/22)

JUDGMENT

STRASBOURG

25 April 2024

This judgment is final but it may be subject to editorial revision.



In the case of Bardúnová v. Slovakia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 4 April 2024,

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

PROCEDURE

1. The case originated in an application against Slovakia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 February 2022.

2. The applicant, a Slovak national, was represented by Mr O. Urban, then by Ms M. Lichnerová, lawyers practising in Bratislava.

3. The Slovak Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the excessive length of civil proceedings concerning a consumer dispute. Her action of 12 June 2017 was dismissed by the Bratislava II District Court on 9 November 2018, following which the applicant filed an appeal and the file was transmitted to the Bratislava Regional Court on 13 December 2018 (no. 14 Co/302/2018).

6. The applicant's first constitutional complaint challenging the length of the appellate proceedings was dismissed on 19 January 2021 (no. IV. ÚS 380/2020). Following her second constitutional complaint, directed again against the conduct of the Regional Court, the Constitutional Court issued a judgment (no. III. ÚS 620/2021), on 27 January 2022, in which it found a violation of the applicant's right to a hearing within a reasonable time and ordered the Regional Court to proceed without unnecessary delay and to reimburse the applicant's legal costs. However, it made no award for non-pecuniary damage, considering that, regard being had to the nature of the proceedings, the specific circumstances of the case and the situation caused by the Covid-19 pandemic, the finding of a violation represented sufficient satisfaction for the applicant.

7. On 6 April 2022 the Regional Court quashed the first-instance judgment and sent the case back to the District Court.

8. On 2 June 2022 the Constitutional Court dismissed as manifestly ill-founded a third constitutional complaint lodged by the applicant on 26 May 2022, in which she complained about the delays before the District Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

9. The applicant complained that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement. She relied on Article 6 § 1 of the Convention.

10. The Government raised a preliminary objection of abuse of the right of individual application because in the constitutional complaint of 26 May 2022 (see paragraph 8 above) the applicant's representative had submitted to the Constitutional Court false information stating that the applicant and the Slovak Government had reached a friendly settlement in the proceedings before the Court.

11. The Court reiterates the importance of the principle that friendly settlement negotiations are confidential and that communications made by the parties within the context of such negotiations are not to be relied upon in contentious proceedings. Moreover, it cannot be excluded that a breach of the principle could, in certain circumstances, justify the conclusion that an application is inadmissible on grounds of abuse of the right of petition (see *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005).

12. The Court does not ignore or downplay the unacceptable conduct of the applicant's lawyer referred to by the Government. It observes, however, that it was precisely such conduct, among others the fact of providing misleading information in domestic judicial proceedings about the outcome of related proceedings before the Court, that led the President of the Court to exclude, on 11 April 2023, that lawyer from representing or assisting a party - including the applicant in the present proceedings - before the Court under Rule 44D §§ 1 and 2 of the Rules of Court. In these particular circumstances, the Court sees no need to sanction the applicant herself by rejecting the present application for being abusive, all the more so as this false information provided by her lawyer to the Constitutional Court did not have any impact on the latter's decision of 2 June 2022.

13. The Government further contented that the applicant could no longer claim to be a "victim" of the alleged violation since the Constitutional Court had acknowledged the violation in its judgment of 27 January 2022 and that judgment had had an acceleratory effect, the Regional Court having ruled on the case on 6 April 2022. They also referred to the Constitutional Court's findings in respect of its refusal to award any compensation for non-pecuniary damage.

14. The Court notes that, although the Constitutional Court found a violation of the applicant's right to a hearing without unjustified delay, it awarded no financial compensation in respect of non-pecuniary damage, stating that the finding of a violation was sufficient redress.

15. It remains to be assessed whether the above redress can be considered appropriate and sufficient under the circumstances of the present case (see, for example, *Jensen v. Denmark* (dec.), no. 48470/99, 20 March 2003). In that connection the Court reiterates that there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage unless duly justified otherwise (see *Šedý v. Slovakia*, no. 72237/01, § 89, 19 December 2006).

16. The Court observes in this respect that the appellate proceedings before the Regional Court, which are the subject of the present application, commenced on 13 December 2018 and ended on 6 April 2022 (see paragraphs 5 and 7 above). It thus took the appellate court three years and almost four months to quash the first-instance court judgment, without the proceedings having been prolonged by the applicant (see, *a contrario*, *Šedý*, cited above, §§ 90-92). The Court also observes that, with regard to the nature of the dispute, relating to consumer protection, the proceedings were of significant importance to the applicant and that the reasons put forward by the Constitutional Court to justify the absence of a financial award appear rather general and vague.

17. In view of the above, the Court considers that the redress obtained by the applicant at the domestic level cannot be considered sufficient in the light of its case-law. Therefore, the applicant can still claim to be a "victim" of a breach of the "reasonable time" requirement.

18. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

19. In the leading case of *Obluk v. Slovakia* (no. 69484/01, 20 September 2006), the Court already found a violation of Article 6 of the Convention in relation to the length of judicial proceedings.

20. Having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the overall length of the proceedings at the national level. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

21. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. Regard being had to the documents in its possession and to its case-law (see, in particular, *Obluk,* cited above), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of civil proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 25 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Péter Paczolay President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (excessive length of civil proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Domestic court File number Domestic award (in euros)	Amount awarded for non-pecuniary damage per applicant (in euros) [1]	Amount awarded for costs and expenses per application (in euros)[2]
10219/22 17/02/2022	**Zuzana BARDÚNOVÁ** 1967	Lichnerová Monika Bratislava	13/12/2018	06/04/2022	3 years and 3 months and 25 days 1 level of jurisdiction	Constitutional Court: III. ÚS 620/2021 0	2,000	250

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.