

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

SECOND SECTION

CASE OF GIRDAUSKIENĖ v. LITHUANIA

(Application no. 54171/21)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 27 May 2025

STRASBOURG

12 November 2024

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



In the case of Girdauskienė v. Lithuania,

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

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 54171/21) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 October 2021 by a Lithuanian national, Ms Stanislava Girdauskienė ("the applicant"), who was born in 1949, lives in Kaunas and was represented by Mr R. Lignugaris, a lawyer practising in Kaunas;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė;

the parties' observations;

the withdrawal of Mr G. Sagatys, the judge elected in respect of Lithuania, from sitting in the case (Rule 28 § 3 of the Rules of Court);

Having deliberated in private on 15 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the reimbursement of civil litigation costs.

2. The applicant owns a flat in a residential building. In March 2019 the board of the owners' association for her building drew up a list of common areas of that building, which included all the hallways. In April 2019 the general assembly, which is the highest management body of the owners' association, approved that list.

3. The applicant, represented by a lawyer, instituted civil proceedings against the owners' association and the four members of its board who had drawn up the above-mentioned list. She submitted that the fourth-floor hallway was the joint property of the residents of that floor, including herself; its inclusion in the list of common areas had therefore violated her property rights. She asked the courts to declare invalid the relevant part of the list drawn up by the board and annul the relevant part of the general assembly's decision.

4. The defendants disputed the applicant's claim. They submitted that the fourth-floor hallway was the only means by which residents could access the building's attic; it followed that all residents needed to be able to use it. They also submitted that the individual board members could not be held liable under the law for the impugned decisions.

5. Company D., which owned the attic, participated in the proceedings as a third party and also disputed the claim.

6. It appears from the case material that on 2 August 2019 the Kaunas District Court asked the applicant and her lawyer to comment on whether the individual board members were the proper defendants in the proceedings and that, during a preparatory hearing held on 11 September 2019, it suggested that the part of the claim concerning the board members might need to be revised. However, the applicant did not revise her claim.

7. On 30 December 2019 the Kaunas District Court dismissed the claim. It held that the general assembly's decision had not affected the rights or interests of the applicant.

8. The court further noted that the list drawn up by the board had taken legal effect only after being approved by the general assembly. Accordingly, the individual board members were not the proper defendants. This issue had been raised during the preparatory stage of the proceedings but the applicant had chosen not to revise the claim (see paragraph 6 above).

9. The applicant was ordered to reimburse the litigation costs incurred by the owners' association, the four board members and company D., and the costs incurred by the State for the delivery of procedural documents.

10. She lodged an appeal against the above-mentioned decision. On 12 May 2020 the Kaunas Regional Court dismissed her appeal.

11. The applicant lodged an appeal on points of law. On 28 April 2021 the Supreme Court granted it in part. It annulled the relevant part of the general assembly's decision, finding that that decision had breached the applicant's property rights.

12. However, the Supreme Court endorsed the conclusion of the lower courts that the list drawn up by the board had taken legal effect only after being approved by the general assembly. Although the applicant had argued that the board members had overstepped their remit, the Supreme Court dismissed that argument. It held that although the general assembly's decision had been unlawful, it did not follow that the board had not been entitled to draw up the list and submit it to the general assembly.

13. With regard to the reimbursement of litigation costs, the Supreme Court noted that the costs claimed by all the parties were within the recommended range for legal service fees, as approved by the Minister of Justice. It further noted that since only one of the applicant's two claims against the owners' association had been granted, she was entitled to the reimbursement of 50% of her litigation costs and that she had to reimburse 50% of the costs incurred by the defendants and the third party. As a result, the applicant was entitled to reimbursement of 950 euros (EUR), whereas she herself was required to pay EUR 1,481 to the owners' association, EUR 528 to the third party, and EUR 109 to the State for the delivery of procedural documents. Lastly, since her claims against the individual board members

had been dismissed in their entirety, she was ordered to reimburse their litigation costs in full – EUR 797 in total.

14. The applicant complained under Article 6 § 1 of the Convention that, although the Supreme Court had found the relevant part of the general assembly's decision to be unlawful, she had been ordered to pay the defendants more than the amount she had been reimbursed. She also complained under Article 13 of the Convention that she had not had any possibility of challenging the way in which the litigation costs had been distributed by the Supreme Court.

THE COURT'S ASSESSMENT

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

15. The Court notes that the applicant's complaint under Article 6 § 1 of the Convention concerning the distribution of civil litigation costs is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

16. The general principles on the right of access to a court were summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018, and the cases cited therein).

17. The Government acknowledged that the distribution of the litigation costs in the present case had resulted in a restriction on the applicant's right of access to a court. In line with its case-law (see *Stankov v. Bulgaria*, no. 68490/01, § 54, 12 July 2007, and *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013), the Court sees no reason to find otherwise.

18. The Government submitted, and the applicant did not dispute, that the aim of distributing litigation costs among the parties was to prevent the bringing of unfounded claims and thus ensure a proper administration of justice. The Court is satisfied that that aim was legitimate (see *Klauz*, cited above, § 84). Accordingly, it remains to be assessed whether the restriction on the applicant's right of access to a court was proportionate to the aim pursued.

19. The part of the applicant's claim concerning the four board members was rejected at three levels of jurisdiction, as the courts found that the list of common areas had taken legal effect only after being approved by the general assembly. Doubts as to whether the individual board members were the proper defendants were raised at an early stage of the proceedings (see paragraph 6 above); however, the applicant, who was represented by a lawyer, chose not to revise her claim in that part. In the light of the reasoning of the domestic courts on this issue, the Court accepts that the applicant's claim against the individual members of the board was completely unsuccessful and that the lack of prospects of success must have been

predictable for her. Accordingly, given that the litigation costs incurred by those defendants cannot be considered excessive (see paragraph 13 above), the fact that the applicant was ordered to reimburse those costs in full did not amount to a disproportionate restriction of her right of access to a court (see, *mutatis mutandis*, *Derbuc and Others v. Croatia* (dec.), nos. 53977/14 and 41902/15, §§ 33-37, 15 March 2022).

20. However, the same conclusion cannot be reached with regard to the distribution of the remaining litigation costs. The Court notes that the applicant successfully proved that by approving a list of common areas which included her property, the owners' association had breached her property rights. Whilst the Supreme Court annulled the relevant part of the decision taken by the association's general assembly, but not the relevant part of the list drawn up by the association's board, it did so not because the list in question was unrelated to the applicant's property rights, but because the court considered it to be an interim document with no independent legal effect (see paragraphs 11 and 12 above).

21. The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among many other authorities, *Cudak v. Lithuania* [GC], no. 15869/02, § 58, ECHR 2010). While it is not the role of the Court to determine how litigation costs should be distributed in any given case, it considers that the right of access to a court would not be practical and effective if those costs were distributed mechanically, by considering only the extent to which an applicant "quantitively succeeded" with his or her claim and disregarding the fact that he or she "qualitatively" succeeded with the grounds of the claim (compare *Čolić v. Croatia*, no. 49083/18, § 58, 18 November 2021).

22. The Government referred in their observations to Article 93 § 4 of the Code of Civil Procedure, which grants the courts distributing litigation costs the possibility to depart from the quantitative rule, taking account of the parties' procedural conduct and the reasons for which the costs were incurred. They also provided examples of domestic case-law showing the application of that provision in practice. Accordingly, the domestic law provided the courts with sufficient flexibility when deciding how to distribute litigation costs between the parties. However, there is no indication that the Supreme Court made its decision in any other way than mechanically – it did not provide any reasons relating to the applicant's procedural conduct, the costs incurred by the owners' association as a result of her claim concerning the impugned list, or any other relevant considerations. In this connection, the Court reiterates that Article 6 § 1 of the Convention also obliges the courts to give reasons for their decisions (see *Dragan Kovačević v. Croatia*, no. 49281/15, § 83, 12 May 2022).

23. In particular, what the Court finds to be disproportionate in the present case is the fact that, despite having proved that the owners' association had breached her property rights, the applicant was ultimately ordered to pay that

association, the third party and the State an amount which was more than double the amount that she herself was reimbursed by them (approximately EUR 2,118 and EUR 950, respectively – see paragraph 13 above).

24. The Court therefore finds that the distribution of the litigation costs by the Supreme Court resulted in a restriction which impaired the very essence of the applicant's right of access to a court.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. As for the applicant's complaint under Article 13 of the Convention that she had not had an effective remedy to challenge the distribution of costs by the Supreme Court, the litigation costs were distributed by that court in a decision which was final and not amenable to any further appeal. However, Article 13 of the Convention does not, as such, guarantee a right of appeal or a right to a second level of jurisdiction, and the mere fact that the judgment of the highest judicial body is not subject to further judicial review does not infringe in itself the said provision (see *Patricolo and Others v. Italy*, nos. 37943/17 and 2 others, § 106, 23 May 2024, and the case-law cited therein).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 3,787 euros (EUR) in respect of pecuniary damage, comprising the amount of her litigation costs that had not been reimbursed (EUR 950) and the amount which she had been ordered to pay to the owners' association, the board members, the third party, and the State (EUR 2,837). She also claimed EUR 5,000 in respect of non-pecuniary damage, for the stress and anxiety caused by the litigation at issue.

29. The Government submitted that part of the applicant's claim had been dismissed by the domestic courts; even if a violation were to be found, it would therefore be unreasonable to award her the entire amount of her litigation costs. They further submitted that her claim in respect of non-pecuniary damage was excessive.

30. The Court finds that the violation of Article 6 § 1 of the Convention established in the present case warrants making an award in respect of pecuniary and non-pecuniary damage. Having regard to its case-law (see *Klauz*, cited above, § 117, and the cases cited therein), the Court considers it reasonable to award the applicant a total of EUR 8,500 in respect of both heads of damage, plus any tax that may be chargeable on that amount.

31. The applicant did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

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, EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary and 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 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President