

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

FIRST SECTION

CASE OF JANOČKOVÁ v. SLOVAKIA

(Application no. 40124/21)

JUDGMENT

STRASBOURG

9 February 2023

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



In the case of Janočková v. Slovakia,

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

Gilberto Felici*, President*,
Alena Poláčková,
Raffaele Sabato*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 January 2023,

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 3 August 2021.

2. The applicant, a Slovak national, was represented by Mr P. Konvičný, a lawyer practising in Košice.

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.

6. On 13 March 2017 the applicant's former partner and father of their child (born in 2014) lodged a request to have the child entrusted to his sole custody, which the first-instance court granted by means of an interim measure dated 13 September 2017 (proceedings no. 38P/60/2017).

7. By a judgment of 4 July 2019, the first-instance court granted the father sole custody of the child and regulated the applicant's contact rights.

8. On 6 May 2020, following the appeals of both parties, the appellate court quashed the decision of the first-instance court and remitted the case for new proceedings, stressing that the focus should be put on the improvement of the applicant's relationship with her son.

9. In the course of the proceedings, the first-instance court issued several interim measures regulating the applicant's contact rights with her son.

10. On 16 February 2021 the Constitutional Court dismissed the applicant's constitutional complaint, challenging mainly the overall length of the proceedings. It did not consider them excessively long, having regard to the factual and legal complexity of the case, the need to carry out a new expert examination on account of the criminal conduct of the initial expert and the fact that the first-instance court had had to deal with numerous requests for

interim measures from both parents, aimed at regulating even the most trivial questions of the child's life (III. ÚS 144/2021).

11. On 6 May 2021 another chamber of the Constitutional Court found that the right of the applicant's son (represented in the proceedings by the applicant) to a trial within a reasonable time had been violated, awarded him 1,000 euros (EUR) as just satisfaction, ordered the first-instance court to act without a further delay and dismissed the rest of his complaint as manifestly ill-founded (II. ÚS 55/2021).

12. The proceedings are still pending before the domestic courts.

THE LAW

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

13. 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.

14. The Government relied extensively on the conclusions of the Constitutional Court, stressing in particular that the subject matter of the proceedings was extremely complex and that the overall length was attributable to both parties, who had lodged numerous requests for interim measures and whose mutual animosity negatively influenced the relationship with their son, making the proceedings even more complex. They pointed to the Constitutional Court's judgment regarding the same proceedings in the case of the applicant's son (see paragraph 11 above) and argued that the applicant could lodge a fresh constitutional complaint should the delays persist. Relying on the Court's decision in *Jesenský and Jesenská v. Slovakia* ((dec.), no. 1876/07, 14 December 2010) they objected that the applicant had failed to exhaust all domestic remedies for the period running since the Constitutional Court's judgment of 16 February 2021.

15. The applicant contended that the domestic courts had failed to handle the proceedings efficiently and there was nothing to justify the overall length of the proceedings, all the more so since this had had an irrevocable impact on her relationship with her son whom she had allegedly not seen since 2 September 2018.

16. As to the Government's objection of non-exhaustion of domestic remedies (see paragraph 14 above), the Court notes that repeated recourse to the domestic remedy is not required where the effects produced by the decision of the competent authority do not satisfy the criteria applied by the Court. Such is the case, for example, where the domestic authority, unlike the Court, concluded that the length of the proceedings at issue was not excessive (see *Sukobljević v. Croatia*, no. 5129/03, § 45, 2 November 2006).

17. In the present case, the Court considers that at the time when the Slovak Constitutional Court dealt with the applicant's constitutional

complaint, the overall length of the proceedings was already excessive and failed to meet the "reasonable time" requirement, in particular given what was at stake for the applicant. However, the Constitutional Court dismissed the applicant's complaint, although only three months later - when examining the constitutional complaint lodged by the applicant on behalf of her son – a different chamber of the Constitutional Court found a violation. In such a situation, the Court is of the view that the applicant could not be required to lodge yet another constitutional complaint; the Government's objection must therefore be rejected.

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 has already found a violation of Article 6 of the Convention given the excessive length of the proceedings.

20. The proceedings at hand have been pending before two levels of jurisdiction since 13 March 2017 to date (see paragraph 12 above), which has not been in dispute between the parties.

21. The Court accepts that the present case has been of a certain complexity due to the subject matter, multiple requests for interim measures by the parties and the necessity to repeat the expert examination. Nevertheless, the importance of what is at stake for the applicant in the litigation has to be taken into particular account. It is essential that custody cases be dealt with speedily (see, for example, *Volesk*ý *v. the Czech Republic*, no. 63627/00*,* § 102, 29 June 2004). The Court reiterates that such cases require urgent handling as the passage of time can have irremediable consequences for relations between children and parents who do not live with them, all the more so in cases of very small children, as in the instant case, when the disruption of contact can lead to gradual alienation between the parent and the child (see, *mutatis mutandis, Volesk*ý*,* cited above, § 106).

22. Therefore, 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, and bearing in mind that special diligence was required in view of the importance of the subject matter of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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."

25. 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 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Gilberto Felici 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 pecuniary and non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
40124/21 03/08/2021	**Beáta JANOČKOVÁ** 1978	Peter Konvičný Košice	13/03/2017	pending	More than 5 years and 8 months and 20 days 2 levels of jurisdiction	Constitutional Court III. ÚS 144/2021 0	4,200	250

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