HUNGARIAN HELSINKI COMMITTEE

Legal analysis of the implementation of the European Court of Human Rights judgment in the case of *Gazsó v. Hungary*

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In 2015, the European Court of Human Rights (hereinafter: ECtHR or Court) concluded in its pilot judgment delivered in the case of *Gazsó v. Hungary*[1] that violations of the right to a hearing within a reasonable time in civil contentious judicial proceedings constituted a systemic problem in Hungary. The ECtHR called upon the Hungarian State to introduce until October 2016 an effective domestic remedy capable of addressing the issue of excessively long court proceedings either in the form of preventive measures or a compensation scheme. In addition, the Court noted that similar structural shortcomings characterized criminal cases and administrative judicial disputes as well.

As part of the remedial measures, the Hungarian Parliament adopted Act XCIV of 2021 on the Enforcement of Pecuniary Satisfaction Relating to the Protractionedness of Civil Contentious Proceedings (hereinafter: 2021 Pecuniary Satisfaction Act). The Committee of Ministers "noted with satisfaction" the enactment of the compensation scheme, but firmly called on the authorities to guarantee its Convention-compliant application and to provide further information on its implementation in order to avoid the risk of an influx of new applications to the Court.[2]

In its decision of 30 March 2023 delivered in the case of *Szaxon v. Hungary*,[3] the ECtHR found that the newly introduced compensation scheme guaranteed in principle a genuine redress for Convention violations originating in the protractedness of contentious civil proceedings, and declared the application inadmissible for the non-exhaustion of the pecuniary satisfaction procedure as a domestic remedy. In light of the Court's decision, the Committee of Ministers decided to end its supervision in respect of contentious civil proceedings. At the same time, given that the new compensatory remedy is only applicable to contentious civil proceedings, the Committee of Ministers firmly invited Hungary "to find a solution ensuring that all kinds of civil proceedings falling under the scope of Article 6 of the [European Convention on Human Rights] are covered by a remedy for excessively lengthy proceedings, and expressed its serious concern that it received no information from the Hungarian government as regards the outstanding administrative and criminal remedies.[4] In this paper, we evaluate the new pecuniary satisfaction mechanism introduced.

1. The importance of a separate judicial remedy for excessively long court proceedings

The only significant antecedent of the newly introduced pecuniary satisfaction was the 2003 amendment to the previous Code of Civil Procedure that entitled the parties whose right to a hearing within a reasonable time was violated to a file a petition for 'just satisfaction' (*méltányos elégtétel*)[5] if the harm suffered could not be fixed by other forms of judicial remedy. This type of remedy proved to be ineffective due to the lack of a sufficiently detailed regulation guiding judicial interpretation.[6]

[1] *Gazsó v. Hungary* (no. 48322/12)
[2] CM/Del/Dec(2021)1419/H46-15
[3] *Szaxon v. Hungary* (no. 54421/21)
[4] CM/Del/Dec(2023)1468/H46-13
[5] Section 2(3) of the previous Code of Civil Procedure (Act III of 1952)
[6] Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata, *Jogtudományi Közlöny*, 2023/2., pp. 59-60.

In addition, courts also refused to interpret the right to a hearing within a reasonable time as part of the general inherent personality rights enshrined in the Civil Code, the violation of which could have been (in theory) the basis for a pecuniary compensation.[7]

Furthermore, the Constitutional Court explicitly stated in 2016 that the constitutional complaint is an ineffective remedy for violations of the right to a hearing within a reasonable time: "The Constitutional Court […] has no competence to remedy or attenuate the consequences of the protractedness of a judicial proceeding. […] The Constitutional Court cannot remedy the harm suffered by the parties […] by declaring a challenged judicial decision unconstitutional and thus quashing it."[8]

2. The evaluation of the new pecuniary satisfaction mechanism

The newly introduced pecuniary satisfaction is a *sui generis* legal remedy applicable only to cases in which the claimant's right to a hearing within a reasonable time has been violated. The claimant does not need to prove any actual harm suffered due to the protractedness or any actual fault committed by the court(s). What matters is the length of the judicial process or the procedural phase concerned, and if it lasts longer than what is considered reasonable by the law, the claimant is entitled to pecuniary satisfaction.[9] The exact amount of the pecuniary satisfaction is calculated based on the length of the judicial process (determined in calendar days) multiplied by the daily amount of pecuniary satisfaction (HUF 400 or ca. EUR 1 per day).[10]

Two courts have exclusive jurisdiction and competence to decide at first instance on requests for pecuniary satisfaction: the Debrecen Court of Appeal (*Debreceni Törvényszék*) and the Pécs Court of Appeal (*Pécsi Törvényszék*).[11] Appeals lodged against the first instance decisions are adjudicated by the Debrecen Regional Court of Appeal (*Debreceni Ítélőtábla*) and the Pécs Regional Court of Appeal (*Pécsi Ítélőtábla*), however it is not possible to challenge the second instance decision at the Supreme Court.

The pecuniary satisfaction mechanism is a non-contentious judicial process that can be initiated by the claimant against the first instance judicial forum which adjudicated their original case (as a default rule).[12] The claimant must submit their request for pecuniary compensation no later than four months after their notification of the final judicial decision delivered in their original case.[13] In a pecuniary satisfaction procedure the court decides based exclusively on the written submissions of the claimant (plaintiff) and the first instance judicial forum (defendant);[14] there is no hearing.

2.1. Calculation of the length of the proceedings

The amount of pecuniary satisfaction is calculated based on the length of the judicial proceeding determined in calendar days. The 2021 Pecuniary Satisfaction Act uses a somewhat complicated way of calculating the various lengths of time of the contentious civil proceedings. Therefore, before

[7] Boda Zoltán: Egy új kárfelelősségi jogintézmény – A polgári peres eljárás elhúzódásával kapcsolatos vagyoni elégtétel, *Állam- és Jogtudomány*, Vol. LXIII, Issue 2, p. 11.
[8] Decision no. 3024/2016. (II. 23.) of the Constitutional Court, para. 20. See also Resolutions no. 3247/2018. (VII. 11.), 3258/2020. (VII. 3.), 3365/2020. (X. 22.), 3448/2020. (XII. 9.), 3092/2021. (III. 12.).
[9] Section 7 of the 2021 Pecuniary Satisfaction Act
[10] Government Decree 372/2021. (VI. 30.)
[11] Section 10 of the 2021 Pecuniary Satisfaction Act
[12] Section 9(1) of the 2021 Pecuniary Satisfaction Act
[13] Section 11(6) of the 2021 Pecuniary Satisfaction Act
[14] Section 9(2) of the 2021 Pecuniary Satisfaction Act

commencing the detailed analysis, we find it necessary to provide some terminology for the time periods used by the law.[15]

The term 'calculated time' (*számított időtartam*)[16] refers to the entire length of the original judicial proceeding or the procedural phase from its beginning and until its end.

The 'time to be ignored' (*be nem számítható időtartam*)[17] is the period which, although it did not contribute to the progress of the judicial proceeding, cannot be taken into account when the length of the compensated period is calculated either because it elapsed unnecessarily due to a reason imputed to the claimant, or because the delay is attributable to the court, but the claimant failed to lodge a formal objection to the protractedness of the procedure regarding this particular period of time.

The 'time to be taken into account' (*figyelembe vehető időtartam*) is the result that one gets after the deduction of the 'time to be ignored' from the 'calculated time'. This is the length of time that serves as the basis of the pecuniary satisfaction request.

The 'reasonable length of time' (*észszerű időtartam*)[18] is the maximum length of the judicial procedure or procedural phase that still counts as reasonable according to the default rules set by the 2021 Pecuniary Satisfaction Act.

The time that is actually compensated is the 'time to be taken into account' if it is longer than the 'reasonable length of time'.

Calculated time – Time to be ignored = Time to be taken into account

Reasonable length of time < Time to be taken into account = Time actually compensated

Hypothetical case

Let us take a hypothetical case in which the judicial proceeding started with the submission of the petition on 1 January 2015 and terminated with the delivery of the final judgment on 30 June 2022.

Calculated time

In this case the calculated time is 2736 days (2 January 2015 – 30 June 2022).[19]

Time to be ignored

Let us suppose that the claimant failed to pay for the fee of the appointed expert until 1 September 2016 despite the order of the court, and this obligation was fulfilled only on 1 November 2016, therefore the court obtained the expert opinion with a two-month-long delay.[20] Let us also assume that after the arrival of the claimant's request for review on 1 January 2021 the Supreme Court set the date of the first hearing only on 31 March 2021 despite its obligation to act within 30 days, and even though the claimant noticed the delay of the Supreme Court, they failed to lodge a formal objection.[21]

[15] This is the terminology used by the legal literature on the issue, and not the terminology applied by the law itself, however, it makes the system more comprehensible.
[16] Sections 2-5 of the 2021 Pecuniary Satisfaction Act
[17] Section 15(3)-(4) of the 2021 Pecuniary Satisfaction Act
[18] Section 6 of the 2021 Pecuniary Satisfaction Act
[19] The day of the beginning of the judicial process is not included, so the first day to be calculated is 2 January 2015.
[20] Cf. Judgment of the Debrecen Regional Court of Appeal no. Pkf. 20.345/2022/2, para 17.
[21] Cf. Judgment of the Debrecen Regional Court of Appeal no. Pkf. 20.083/2023/2, para. 60.

Time to be taken into account

From the calculated time (2736 days) we need to deduct the 60 days that were wasted due to the claimant's late fulfilment of their obligation to pay for the fee of the appointed expert (2 September 2016 – 1 November 2016).[22] We also need to deduct the 44 days that elapsed unnecessarily between the date when the claimant could have been reasonably expected to notice the unlawful inaction of the Supreme Court and thus to lodge an objection (15 February 2021) and the date when the Supreme Court eventually took the necessary procedural step and set the date of the first hearing (31 March 2021).[23] The time to be taken into account is therefore: 2736 – 60 – 44 = 2632.

The reasonable length of time

According to Section 6(1) of the 2021 Pecuniary Satisfaction Act the maximum length of an entire judicial procedure that is still considered to be reasonable is 60 months as a default rule.

Time actually compensated

In our hypothetical case the judicial process lasted for more than 86 months which is longer than the reasonable length of the procedure determined by the law, so the claimant is entitled to a compensation for 2632 days.

Amount to be payed

According to Section 1(2) of Government Decree 372/2021. (VI. 30.) the amount of pecuniary satisfaction is HUF 400 (ca. EUR 1) per day. So, in our hypothetical case the exact amount of the pecuniary satisfaction is 2632 x HUF 400 = HUF 1,052,800 (ca. EUR 2,630).

Calculated time (2736 days)	
	Time to be ignored (60+44=104 days)
Time to be taken into account (2736-60-44 = 2632)	
Reasonable length of time (60 months)	
Time actually compensated (2632 days)	

[22] Cf. Judgment of the Debrecen Regional Court of Appeal no. Pkf. 20.345/2022/2, para 17.

[23] Cf. Judgment of the Debrecen Regional Court of Appeal no. Pkf. 20.083/2023/2, para. 60. In that case the Debrecen Regional Court of Appeal concluded that 15 days was enough for the claimant to realize that the Supreme Court failed to fulfil its procedural duty and thus to submit an objection.

Criteria of reasonableness

In the *Szaxon v. Hungary* decision the ECtHR noted:

> As can be seen from section 6 of the 2021 Act [quoted by Court], in assessing the reasonableness of the length of proceedings the national authorities are in essence required to look at the criteria established by the Court's case-law – namely, the complexity of the case, the applicant's conduct and that of the relevant authorities, and the importance of what is at stake for the applicant in the dispute…

This observation of the Court needs to be specified. Section 6 of the 2021 Act determines as a default rule the maximum lengths of the judicial procedures and procedural phases that are regarded as reasonable.[24] These durations do not seem to be line with the case law of the ECtHR. As it transpires from a 2018 study of the European Commission for the Efficiency of Justice (hereinafter: CEPEJ),[25] the total duration of up to two years per level of jurisdiction in ordinary (non-complex) cases has generally been regarded as reasonable. When proceedings lasted more than two years, the Court examines the case with stricter scrutiny to determine whether there are any objective reasons to substantiate the greater length, such as the complexity of the case, and whether the national authorities have shown due diligence in the process. In complex cases, the Court may accept longer times, but pays special attention to periods of inactivity which are clearly excessive. The longer time accepted is however rarely more than five years and almost never more than eight years of total duration. In the so-called priority cases in which a particular issue is at stake, the court may depart from the general approach, and find a violation even if the case lasted less than two years by level of jurisdiction.

It must also be pointed out that in other contexts, the Hungarian authorities also have a different assessment of what constitutes a reasonable length in judicial proceedings. For instance, the annual statistical analysis of the National Office for the Judiciary regards as "unreasonably long" the following time periods:

- First instance: over 2 years;
- Second instance at a regional court: over 1 year;
- Second instance at an appellate court: 6 months.[26]

It is obvious that the 2021 Act is significantly more lenient vis-à-vis the courts, when it comes to the definition of reasonable length.

[24] See the translation of Section 6 in para. 9 of the *Szaxon v. Hungary* decision.
[25] Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights(CEPEJ(2018)26), available at: https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b; See also: *Reasonable Time of Proceedings. Compilation of Case-Law of the European Court of Human Rights* (Council of Europe, 2021), available at: https://rm.coe.int/echr-reasonable-time-of-proceedings-compilation-of-case-law-of-the-eur/native/1680a20c21.
[26] See for instance: https://birosag.hu/sites/default/files/2021-10/ugyforgalmi_elemzes_2021_i_felev.pdf, p. 170.

Reasonable lengths of judicial procedures and procedural phases according to Section 6 of the 2021 Pecuniary Satisfaction Act			
Section 6			
General cases	(1) Entire judicial process		60 months
	(2) Procedural phases		
		first instance procedure	30 months
		first instance procedure initiated after non-contentious order for payment procedure	36 months
		second instance procedure	18 months
		review procedure	12 months
Special cases	(3) Entire judicial process in cases concerning • the legal status of a person • child support • the correction of information appeared in the media • labour law		36 months
	(4) Procedural phases in cases specified in para. (3)		
		first instance procedure	18 months
		first instance procedure initiated after non-contentious order for payment procedure	24 months
		second instance procedure	12 months
		review procedure	6 months

Nevertheless, one could argue that the Hungarian legislator itself took into account "the complexity of the case" and "the importance of what is at stake for the applicant in the dispute" when it drafted Section 6. However, as it is emphasized by practicing judges[27] in a recent article, Hungarian courts, as opposed to the ECtHR, do not have, by default, the competence to determine what counts as a reasonable time on a case by case basis; they have to accept the length of time set by the legislator as a default rule.[28] Under Section 6(5) of the 2021 Pecuniary Satisfaction Act, Hungarian courts do have the right to deviate from the default rule and determine a shorter or longer length of time to be regarded as reasonable in the context of a specific case "based on the evaluation of all the circumstances",[29] but the criteria for reasonableness are not specified in the law. In addition, this

[27] Both authors are judges at the Pécs Regional Court of Appeal and the Debrecen Regional Court of Appeal deciding pecuniary compensation procedures.
[28] Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata, *Jogtudományi Közlöny*, 2023/2.
[29] Section 6(5) of the 2021 Pecuniary Satisfaction Act

permissive rule does not change the fact that in case of an ongoing judicial proceeding a claim for pecuniary satisfaction can only be submitted if the contested judicial procedure or procedural phase already exceeded the default reasonable length of time set by the legislator (regardless of whether the court eventually deviates from the default rule or not).[30]

One of the criteria mentioned in the *Szaxon v. Hungary* decision (namely 'the applicant's conduct and that of the relevant authorities') figures in Section 15(5) which allows the evaluation of the extent to which the actions and inactions of the claimant and the court contributed to the excess of the reasonable length of time. However, this provision regulates the determination of the 'time to be ignored' and not the reasonableness of the length of proceedings.

In sum, the ECtHR's positive opinion regarding the national authorities' competence to assess the reasonableness of the length of proceedings based on the same criteria as used by the Court seems to be inconsistent with the black letter law.

Calculation of the 'time to be ignored'

As it was mentioned before, whether the claimant is entitled to a pecuniary satisfaction, and if so, how much exactly, depends on the length of the 'time to be taken into account' that is calculated by deducting the 'time to be ignored' from the 'calculated time' (i.e. the time of the entire process or procedural phase).

Sections 15(3) and 15(4) provide that those time periods shall be ignored which did not contribute to the progress of the judicial proceeding and could have been avoided but they elapsed unnecessarily either due to a reason imputed to the claimant or, if the delay was attributable to the court, because the claimant failed to try to remedy that delay by submitting a formal objection to the unnecessary protraction caused by the court, even though they would have been entitled to do so. Section 15(5) allows the evaluation of the extent to which the actions and inactions of the claimant and the court contributed to the excess of the reasonable length of time.

Practicing judges deciding on requests for pecuniary satisfaction note that due to the lack of a sufficiently precise regulation, the judicial application of these provisions raised many significant questions, such as what counts as a reason imputable to the court, whether the court's responsibility for the inaction is relevant, and whether Section 15(5) allows the consideration of factors other than those regulated in paras (3) and (4). They also point out that the early decisions delivered in the pecuniary satisfaction procedures were not free from contradictions.[31]

Particularly significant were the questions of interpretation related to the claimant's failure to take action against the delays imputable to the court. As practicing judges themselves note, the objection to the protractedness of the procedure was an almost unknown legal remedy that was largely ignored by the practitioners before the introduction of the pecuniary satisfaction.[32] Courts were not even obliged to inform the parties about this legal remedy. In addition, the ECtHR had already ruled in previous cases that the procedural objection referred to in Section 15(4) of the 2021 Act (and regulated in the civil procedure code) is ineffective for the purposes of accelerating court proceedings.[33]

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[30] Section 11(3) of the 2021 Pecuniary Satisfaction Act

[31] Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata, *Jogtudományi Közlöny*, 2023/2., pp. 62-64., Kiss Boglárka: *Az eljárások elhúzódása miatti vagyoni elégtétel – az első gyakorlati tapasztalatok*, arsboni.hu, 27 June 2023.

[32] Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata, *Jogtudományi Közlöny*, 2023/2., pp. 64-65.

[33] *Bartha v. Hungary* (no. 33486/07, 25 March 2014), and *Barna v. Hungary (no. 2)* (no. 35364/09, 25 March 2014)

Therefore, the imposition of an obligation on the parties to use a largely unknown and ineffective judicial remedy raised serious concerns, especially because the requirement of submitting an objection (for delays attributable to the courts to be taken into account when calculating the time eligible for compensation) also applies to judicial proceedings that started before the entry into force of the 2021 Act (since the Act is to be applied to ongoing cases as well, and there is no exemption with regard to the application of the requirement of filing an objection with respect to those cases).

The ECtHR noted in the *Szaxon v. Hungary* decision that "[i]n the light of the relevant domestic case-law, the Court is satisfied that the impugned provision, whose application reflects the Court's case-law, does not render ineffective *a priori* the remedy provided by the 2021 Act."[34] It is true that so far the Hungarian courts have given a rather permissive interpretation to Section 15(4) favourable to the claimants. According to the case law as it stands now, the party to the case is required to submit an objection only if the court's unlawful inaction is obvious and the objection can reasonably be expected to remedy the protractedness.[35]

However, this lenient judicial interpretation does not change the fact that the legislator retroactively imposed an obligation on the parties which is not a simple procedural duty but a precondition for their successful claim for pecuniary satisfaction regarding certain periods of the judicial process. It can be argued that even though the Hungarian courts' efforts to interpret Section 15(4) in a claimant-friendly way is laudable, the application of this provision to cases that started before the entry force of the 2021 Act violates the prohibition of the retroactive application of the law.[36]

In addition, if the ECtHR already acknowledged (even in the *Szaxon v. Hungary* case) that a procedural objection as regulated by the code of civil procedure is ineffective for the purposes of accelerating court proceedings,[37] then the imposition of an obligation on the parties to apply this legal remedy as a precondition for claiming compensation later appears unjustified. Practicing judges also note that Section 15(4) poses significant challenges of interpretation.[38] Therefore, it seems necessary to either re-regulate the procedural objection to increase its effectiveness or to erase it from Section 15(4) of the 2021 Act as a precondition for requesting satisfaction for delays.

2.2. Amount of pecuniary satisfaction

The daily amount of pecuniary satisfaction is HUF 400 (ca. EUR 1) per day.[39] According to the *Szaxon v. Hungary* decision the mere fact that the compensation awarded to applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy ineffective.[40] The Court also emphasized that the assessment of the amount of pecuniary compensation should be carried out by taking into consideration the traditions of the legal system and the standard of living in the country concerned.[41]

Unfortunately, there is no available impact assessment or explanatory memorandum that would indicate the factors on the basis of which the amount of the pecuniary satisfaction was determined by the legislator. In addition, the *Szaxon v. Hungary* decision simply concludes that "[h]aving regard to

[34] *Szaxon v. Hungary*, para. 24.
[35] Judgment of the Debrecen Regional Court of Appeal no. Pkf. 20.345/2022/2.
[36] Springer Petra: Magyarország első, érdemi határozattal lezárult polgári peres eljárás elhúzódása miatti vagyoni elégtétel érvényesítésére irányuló eljárásának tapasztalatai, *Polgári Jog*, 2023/5-6, para. 41, 45-46.
[37] *Szaxon v. Hungary*, para. 24.
[38] Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata, *Jogtudományi Közlöny*, 2023/2., pp. 65-66.
[39] Section 1(2) of Government Decree 372/2021. (VI. 30.)
[40] *Szaxon v. Hungary,* para. 35.
[41] Ibid.

economic realities, the Court is satisfied that an award of about EUR 1 per day for the protracted period is acceptable within the Hungarian context."[42] It is regrettable that the ECtHR turned a blind eye on the Hungarian Government's failure to justify the amount of pecuniary satisfaction which is one of the key elements of the remedy's effectiveness. This deferential attitude of the Court seems to contradict its emerging case law which requires the national authorities, including the legislator, to ground their decisions on rational bases.[43]

Let us use two figures to put the daily amount of pecuniary satisfaction that a claimant would get for one year of protractedness (365x400= HUF 146.000 or ca. EUR 365) in context. Firstly, in civil proceedings the minimum fee of legal representation is either 5% of the pecuniary claim or HUF 6000 (ca. EUR 15) per hour.[44] Let us assume that the amount of the pecuniary claim is HUF 10,000,000 (ca. EUR 25,000) and thus the fee of legal representation is HUF 500.000 (ca. EUR 1,250). In that case the sum of the pecuniary satisfaction for one year would cover approximately 30% of the fee of legal representation. Or, regardless of the amount of pecuniary claim in the civil procedure, EUR 365 would cover only 24 hours of legal representation. Secondly, according to the most recent statistical data,[45] the average income in Hungary is net HUF 384,300 (ca. EUR 960) per month or net HUF 4,611,600 HUF (EUR ca. 11,530) per year. This means that the sum of the pecuniary satisfaction for one year of protractedness is 3% of the average yearly net income. Therefore, the daily amount of pecuniary satisfaction is arguably insufficient.

365 EUR sum of pecuniary satisfaction for one year of protractedness	=	30% of the fee of legal representation or 24 hours of legal representation 3% of the average yearly net income

2.3. Scope of the law

As it was mentioned previously, one of the most important deficiencies of the 2021 Act is that it only provides pecuniary satisfaction for excessively long civil contentious proceedings, but no similar compensation is envisaged for administrative and criminal proceedings, and non-contentious proceedings.

In addition, the applicant in the *Szaxon v. Hungary* case pointed out that no award by way of just satisfaction could be made in respect of the protractedness of proceedings before the Constitutional Court. The ECtHR concluded in its judgement that "the exclusion of a claimant pursuing a constitutional complaint from the compensation scheme provided by the 2021 Act does not render the remedy ineffective."[46] This conclusion seems to contradict the Court's previous case law.

[42] *Szaxon v. Hungary*, para. 36.
[43] J. H. Gerards and Eva Brems, eds., *Procedural Review in European Fundamental Rights Cases*, (Cambridge [UK]: Cambridge University Press, 2017); Robert Spano, "The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law," *Human Rights Law Review* 18, no. 3 (September 1, 2018): 473–94; Patricia Popelier, "Procedural Rationality Review after Animal Defenders International: A Constructively Critical Approach," *European Constitutional Law Review* 15, no. 2 (June 2019): 272–93.
[44] Decree of the Minister of Justice 32/2003. (VIII. 22.) IM on the Fee of Legal Representation in Contentious Judicial Proceedings
[45] Information bulletin of the Hungarian Central Statistical Office, 24 May 2023, available at: https://www.ksh.hu/gyorstajekoztatok/ker/ker2303.html
[46] *Szaxon v. Hungary*, para. 37.

In the *Mendrei*[47] and the *Szalontay*[48] cases the ECtHR already qualified the Hungarian constitutional complaint as an effective remedy that must be exhausted by the applicants. It follows from these decisions that the adjudication of the constitutional complaint is part of the judicial proceeding to which Article 6 of the Convention applies. What is more, according to the ECtHR's well-established case law in reasonable-time-of-proceedings cases litigated under Article 6, the length of the constitutional review procedure is to be taken into account for calculating the relevant period where the result of the constitutional review is capable of affecting the outcome of the dispute before the ordinary courts.[49]

In light of these considerations the exclusion of the constitutional review procedure from the scope of the 2021 Pecuniary Satisfaction Act seems unreasonable and very difficult to explain.

2.4. Pending cases

In the *Szaxon v. Hungary* case, the ECtHR concluded that the pecuniary satisfaction mechanism introduced in 2021 is an effective domestic remedy that should have been exhausted by the applicant and thus his application was found inadmissible. The Court based its evaluation partly on the Committee of Ministers' decision and partly on the relevant Hungarian case law, in particular judgments nos. Pkf.II.20.345/2022/2. and Pkf.II.20.404/2022/2. delivered by the Debrecen Regional Court of Appeal. With this move the Court explicitly deviated from the general rule that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application in question was lodged on the ground that the case concerned the implementation of a pilot judgment.[50] While this is not unprecedented in the Court's jurisprudence, due to the specific circumstances of the present case elaborated upon below (e.g. the lack of clear domestic jurisprudence in the very short time period when the applicant of the *Szaxon* case should have availed himself of the new remedy in the Court's opinion, and the fact that by the time the Court decided the case, the deadline for using the domestic remedy had long expired) this deviation does not seem reasonable and equitable.

The Hungarian case-law cited by the Court certainly clarified many important issues regarding the application of the 2021 Pecuniary Satisfaction Act. However, the judgments referred to were delivered in October and December 2022 respectively, that is almost a year after the entry into force of the 2021 Act and more than a year after the submission of the applicant's request to the Court in October 2021. What is more, in light of the analyses authored by Hungarian theoreticians and practicing lawyers, including judges specialized in pecuniary satisfaction cases,[51] significant questions of interpretation have remained unanswered.

What is even more important is that as a result of the ECtHR's decision, the applicant in *the Szaxon v. Hungary* case lost any chance to get compensation for the protractedness of his divorce procedure that lasted for circa 12 years. As his case was pending before the ECtHR at the time of the entry into force of the 2021 Act, he had a four-month-long absolute deadline to submit a claim for pecuniary

[47] *Mendrei v. Hungary* (no. 54927/15)
[48] *Szalontay v. Hungary* (no. 71327/13)
[49] *Ruiz-Mateos v. Spain* (no. 12952/87), para. 35; *Deumeland v. the Federal Republic of Germany* (no. 9384/81), para. 77; *Poiss v. Austria* (merits) (no. 9816/82), para. 52; *Wiesinger v. Austria* (no. 11796/85), para. 52.
[50] *Szaxon v. Hungary*, para. 44.
[51] Boda Zoltán: Egy új kárfelelősségi jogintézmény – A polgári peres eljárás elhúzódásával kapcsolatos vagyoni elégtétel, *Állam- és Jogtudomány*, Vol. LXIII, Issue 2; Kiss Boglárka: *Az eljárások elhúzódása miatti vagyoni elégtétel – az első gyakorlati tapasztalatok*, arsboni.hu, 27 June 2023; Springer Petra: Magyarország első, érdemi határozattal lezárult polgári peres eljárás elhúzódása miatti vagyoni elégtétel érvényesítésére irányuló eljárásának tapasztalatai, *Polgári Jog*, 2023/5-6; Kovács Ildikó – Pribula László: Az eljárások elhúzódása miatti vagyoni elégtétel gyakorlata*, Jogtudományi Közlöny*, 2023/2.

satisfaction. This deadline expired on 30 April 2022, almost a year before the delivery of the *Szaxon v. Hungary* decision, and half a year before those domestic judgments that the Court referred to in order to substantiate its stance that the evolving jurisprudence seems to be Convention-compliant.

This decision does not seem reasonable and equitable, especially in light of the cases cited by the Court itself, in which the applications were found inadmissible for the non-exhaustion of domestic remedy, but the applicants still had some time to avail themselves of the newly introduced domestic after the delivery of the ECtHR's inadmissibility decision.[52]

3. Conclusion

Hungarian courts do not have the competence to determine the reasonableness of the length of proceedings based on the three criteria elaborated in the Court's case law; they have to accept the length of time set by the legislator as a starting point. One can argue that the Hungarian legislator itself took into account "the complexity of the case" and "the importance of what is at stake for the applicant in the dispute" when it determined the maximum lengths that are regarded as reasonable, but the durations set by the law do not seem to be line with the case law of the ECtHR. Hungarian courts can deviate from the default rule and determine a shorter (or longer) length of time that counts as reasonable in a specific case, but the criteria of reasonableness are not specified in the law. The "applicant's conduct and that of the relevant authorities" can only be considered by the courts when they calculate the period that can be taken into account, but it must not be confused with the evaluation of the reasonableness of the duration.

The rules on the calculation of the time that serve as the basis of the pecuniary satisfactions are far from clear. Particularly significant are the questions of interpretation related to the parties' obligation to submit an objection (under the code of civil procedure) to the protractedness of the procedure, otherwise certain judicial delays cannot be taken into consideration. Despite the Hungarian courts' efforts to interpret this procedural objection is a claimant-friendly way, this obligation still raises concerns regarding the retroactive application of the law because the objection was a largely unused legal remedy before the introduction of the pecuniary satisfaction. In addition, the objection is ineffective (and is regarded as such even by the Court itself) for the purposes of accelerating court proceedings, so the imposition of an obligation on the parties to avail themselves of this legal remedy appears unjustified. Therefore, it seems necessary to either re-regulate the procedural objection to increase its effectiveness or to erase it from the 2021 Act as a precondition for receiving compensation for protracted procedures.

[52] In the *Brusco v. Italy* case the applicant had six months to avail himself of the newly introduced domestic legal remedy after the entry into force of the law, i.e. 18 April 2001. The ECtHR found his application inadmissible on 6 September 2001, so he still had more than a month to lodge a request for compensation with the domestic authorities before the expiry of the deadline, i.e. 18 October 2001. *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; In the *Taron v. Germany* decision, the application was found inadmissible on 29 May 2012 for the non-exhaustion of domestic remedies, so the applicant still had a couple of days to initiate a proceeding at the national authorities before the expiry of the objective deadline, i.e. 3 June 2012. *Taron v. Germany* (dec.), no. 53126/07, 29 May 2012; The ECtHR's inadmissibility decision in the case of *Hodžić v. Slovenia* delivered on 4 April 2017 explicitly mentioned that under the newly enacted domestic legislation "the applicant ha[d] until 31 December 2017 to lodge a request for verification. Should he do so and ultimately be unsuccessful, it would be open to him to lodge a fresh application with the Court within a period of six months after the exhaustion of all effective domestic remedies". *Hodžić v. Slovenia* (dec.), no. 3461/08, § 21, 4 April 2017; In the *Łatak v. Poland* case the ECtHR found the application inadmissible (partly) because the 3-year limitation period within which the applicant was entitled to seek a domestic remedy had not yet expired at the time of the delivery of the Court's decision. *Łatak v. Poland*, no. 52070/08, 12 October 2010; In the *Stella and Others v. Italy* case the applicant was entitled to activate the domestic remedy within six months after the entry into force of the new law, i.e. until 28 December 2014, and the delivery of the ECtHR's inadmissibility decision took place on 16 September 2014. *Stella and Others v. Italy* (dec.), no. 49169/09, 16 September 2014.

The daily amount of pecuniary satisfaction is arguably insufficient even in the context of the Hungarian "economic realities".

The exclusion of the constitutional review procedure from the scope of the 2021 Pecuniary Satisfaction Act seems unreasonable in the light of the ECtHR's case-law.

As a result of the *Szaxon v. Hungary* decision, those applicants who submitted their applications to the Court before the coming into force of the 2021 Pecuniary Satisfaction Act, but did not submit a domestic claim for pecuniary satisfaction until 30 April 2022 lost their chance to get compensation for the protractedness of their judicial proceedings.