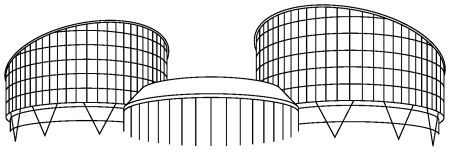

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KIRJAŅENKO v. LATVIA

(Application no. 39701/11)

JUDGMENT

STRASBOURG

19 July 2018

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

In the case of Kirjaņenko v. Latvia,

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

Erik Møse, *President,*
Síofra O'Leary,
Lətif Hüseynov, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 39701/11) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a permanently resident non-citizen of the Republic of Latvia, Ms Larisa Kirjaņenko ("the applicant"), on 17 June 2011.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

3. On 2 April 2014 the complaint concerning the length of the proceedings was communicated to the Government and the remainder of the application was declared inadmissible.

4. Written observations were received from the Government and just satisfaction claim was received from the applicant.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Riga.

6. On 17 October 2000 the Medical Commission for the Assessment of Health and Fitness for Work (*Veselības un darbspēju ekspertīzes ārstu komisija*) granted the applicant a disability status of category 3 (the least severe level of disability) on the grounds of a visual impairment.

7. On 16 October 2001 following an examination the Medical Commission for the Assessment of Health and Fitness for Work declined the applicant's request to prolong her disability status.

8. On 9 November 2001 this decision was upheld by the State Medical Commission for the Assessment of Health and Fitness for Work *(Veselības un darbspēju ekspertīzes ārstu valsts komisija*, hereinafter - the

Commission) and on 5 December 2001 by an extended composition of that Commission.

9. The applicant challenged the decision of the Commission before a court. On 22 April 2002 the Riga City Zemgale District Court declined the claim. The applicant appealed.

10. On 30 July 2004 the Regional Administrative Court annulled the decision of 5 December 2001 due to lack of reasoning and ordered the Commission to carry out a new examination. On 30 November 2004 this judgment was upheld by the Administrative Cases Division of the Supreme Court.

11. On 11 January 2005, following a new examination by an extended composition, the Commission again refused to grant the applicant the status of a disabled person.

12. On 9 January 2006 the applicant brought a claim to the Administrative District Court challenging the Commission's decision and requesting to be granted the status of a disabled person from 16 October 2001.

13. On 29 September 2006 the Administrative District Court declined the applicant's claim. This judgment was upheld by the Regional Administrative Court.

14. The Administrative Cases Division of the Supreme Court two times quashed the judgments of the Regional Administrative Court for its failure to follow the interpretation of the domestic law given by the Supreme Court.

15. On 24 November 2010 the Regional Administrative Court declined the applicant's claim, and on 14 March 2011 the Administrative Cases Division of the Supreme Court refused to institute cassation proceedings.

II. RELEVANT DOMESTIC LAW

16. Article 92 of the Constitution of Latvia provides that everyone has a right to adequate compensation in the event of an unlawful interference with his or her rights.

THE LAW

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

17. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

18. The Government contested that argument.

A. Admissibility

19. The Government argued that the applicant had failed to exhaust domestic remedies, as she could have lodged a claim with the courts of general jurisdiction on the basis of Article 92 of the Constitution seeking compensation for the alleged violation of her right to trial within a reasonable time. As an example, the Government submitted a judgment of 11 April 2013 of the Riga Regional Court concerning the length of criminal proceedings. In that case the plaintiff was awarded 500 Latvian lati (LVL) (approximately 711 euros (EUR)), as following six years of trial the first-instance court had not yet delivered a judgment. The Government provided no information as to whether this judgment had taken effect.

20. The applicant did not respond to the Government's objections in this regard.

21. In the case of *Veiss v. Latvia* (no. 15152/12, § 71, 28 January 2014) the Court dismissed a similar argument on the grounds that the Government had failed to submit relevant case-law examples establishing the effectiveness of this remedy under Article 92 for the particular type of claim. The Court notes that the case-law example provided by the Government in the present case was adopted on 11 April 2013 - almost two years after the final judgment in the present case had taken effect. Hence, it cannot be invoked to conclude that the existence of this particular domestic remedy had been sufficiently certain not only in theory but also in practice at the time the applicant's proceedings were concluded (compare *mutatis mutandis Melnītis v. Latvia*, no. 30779/05, §§ 50-53, 28 February 2012). Therefore, the Court rejects the Government's objection without further assessing the effectiveness of the domestic remedy invoked.

22. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Court reiterates that in civil matters the reasonable time may begin to run, in some circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute (see *Golder v. the United Kingdom*, 21 February 1975, § 32, Series A no. 18). In this case the Court considers that the period to be taken into consideration began on 9 November 2001, as the application to the Commission was a prerequisite for bringing the proceedings to the court (see *mutatis mutandis König v. Germany*, 28 June 1978, § 98, Series A

no. 27, and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 65-66, ECHR 2007-II). It ended on 14 March 2011, when the Supreme Court adopted its final decision. All of the proceedings before the domestic courts were interdependent since they concerned the applicant's right to disability status for the time-period from 16 October 2001, entitling her to certain social privileges and a disability pension (compare *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 74, 9 November 2004).

24. The proceedings thus lasted more than nine years for two rounds of proceedings, in three levels of jurisdiction each, including two remittals of the appeal court judgments.

25. 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, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. As to what was at stake for the applicant, the Court observes that the case concerned the disability status that gives right to certain social privileges and a disability pension. Accordingly, what was at stake for the applicant called for a reasonably expeditious decision on her claims.

27. It is true that certain delays in the proceedings were attributable to the applicant, notably the period from 11 January 2005 to 9 January 2006, in relation to which the applicant has not indicated any reasons for failing to appeal against the Commission's decision of 11 January 2005 earlier.

28. However, notwithstanding the lack of explanation in relation to that period, the Court notes that it has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, *Veiss*, cited above and *Ļutova v. Latvia* [Committee], no. 37105/09, 9 November 2017).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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.

30. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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."

A. Damage

32. The applicant claimed EUR 4,015.50 in respect of pecuniary damage and left at the Court's discretion the amount of non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,700 under that head.

B. Costs and expenses

35. The applicant also claimed EUR 1,400 for the costs and expenses incurred before the domestic courts without adding any receipts.

36. The Government contested these claims.

37. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred. Furthermore, they are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 115, ECHR 2009).

38. Consequently, the Court rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

39. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the length of proceedings admissible;

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 2,700 (two thousand seven hundred euros), plus any tax that may be chargeable, in respect of 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 19 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Erik Møse
Registrar	President