

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

FIFTH SECTION

CASE OF ĻUTOVA v. LATVIA

(Application no. 37105/09)

JUDGMENT

STRASBOURG

9 November 2017

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



In the case of Ļutova v. Latvia,

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

André Potocki*, President*,
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 17 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 37105/09) 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 Latvian national, Ms Tatjana Seļezņova ("the applicant"), on 26 June 2009. On an unknown date the applicant changed her surname to Ļutova.

2. The applicant was represented by Mr S. Seļezņovs. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1964 and lives in Riga.

5. On 24 November 2005 a residential building maintenance services provider, Kurzemes Namu Apsaimniekotājs, a limited liability company ("the plaintiff"), brought a claim against the applicant for recovery of a debt for their services in the amount of 320 Latvian lati (LVL – approximately 455 euros (EUR)). The next day civil proceedings were instituted in that connection. The applicant disagreed; she argued that she did not owe any money to the plaintiff – they had not concluded an agreement for maintenance services and she was free to choose another service provider. In those proceedings the applicant was represented by Mr S. Seļezņovs, who was not a lawyer.

6. On 30 December 2005 a judge of the Riga City Kurzeme District Court (*Rīgas pilsētas Kurzemes rajona tiesa* – hereinafter "the City Court") scheduled the first hearing to take place on 21 April 2006. During this hearing the applicant's representative requested additional time to examine the relevant legal norms and to obtain the relevant documents from the plaintiff. The City Court postponed the hearing to allow both parties to "prepare documents". The next hearing was scheduled for 9 August 2006.

7. On 9 August 2006 the plaintiff applied to have the hearing postponed because the applicant's debt for services had in the meantime increased and the plaintiff had not yet settled the courts fees for the increased claim. The application was granted and the next hearing was scheduled for 17 October 2006.

8. On 17 October 2006 the plaintiff increased the amount of the claim and submitted the relevant documents. The applicant's representative applied to have the hearing postponed so as to examine those documents. The application was granted and the next hearing was scheduled for 31 January 2007.

9. On 31 January 2007 the plaintiff increased the amount of the claim to LVL 426 (approximately EUR 606) and submitted more documents. The applicant's representative submitted written observations and some documents showing some debts that had been paid. The City Court admitted them to the case file and scheduled the next hearing for 23 March 2007.

10. On 23 March 2007 the plaintiff increased the amount of the claim and submitted more documents. The applicant's representative requested that more detailed information be provided in this connection. The City Court ordered the plaintiff to provide observations by 13 August 2007 and scheduled the next hearing for 12 September 2007.

11. On 11 September 2007 the City Court informed both parties that another judge was taking over the case; the next hearing was scheduled for 17 October 2007.

12. On 17 October 2007 both parties pleaded their case. The City Court ordered the plaintiff to provide more detailed information and scheduled the next hearing for 13 November 2007.

13. On 13 November 2007 the applicant's representative applied to have the hearing postponed as he had only received the relevant documents on the previous day. The application was granted and the next hearing was scheduled for 14 February 2008.

14. On 14 February 2008 the applicant's representative pleaded the case. He argued that the service charges which the applicant had been asked to settle had been unclear. The plaintiff did not have all the relevant documents at hand and thus requested time to submit additional information. The City Court ordered the plaintiff to submit the specific documents and scheduled the next hearing for 17 April 2008.

15. On 17 April 2008 the plaintiff submitted the relevant documents and the applicant's representative applied to have the hearing postponed to examine them. His application was granted and the next hearing was scheduled for 4 June 2008.

16. The parties continued to plead their case in the hearing of 4 June 2008. The City Court imposed a monetary fine on the applicant's representative for disobeying a judge's order. Following an application by the plaintiff the hearing was postponed because the applicant's debt for services had in the meantime increased; they had not prepared the documents for the increased amount of the debt. The plaintiff was ordered to submit the relevant documents by an unknown date in September 2008 and the next hearing was scheduled for 28 October 2008.

17. On 28 October 2008 the City Court held the last hearing in the case; it refused a fresh application by the plaintiff to postpone the hearing once again. On 6 November 2008 the City Court dismissed the plaintiff's claim against the applicant as unsubstantiated – the plaintiff had not proved that the expenses had actually been incurred and that they had duly reflected the services provided. On 27 November 2008 the plaintiff appealed against the judgment. On 28 November 2008 a judge of the City Court gave the plaintiff additional time to comply with the procedural requirements for lodging an appeal. On 2 December 2008 the plaintiff rectified those deficiencies. On 3 December 2008 the appeal was admitted and sent to the Riga Regional Court (*Rīgas apgabaltiesa* – hereinafter "the Regional Court").

18. The first hearing before the Regional Court was held on 13 September 2010. The plaintiff increased the amount of the claim because the applicant's debt for services had in the meantime increased to LVL 3,173 (approximately EUR 4,515) and submitted the relevant documents. The applicant's representative disagreed with the increase of the claim. The Regional Court admitted those documents to the case file and scheduled the next hearing for 8 December 2010.

19. On 8 December 2010 the Regional Court held the last hearing in the case. The plaintiff did not attend, nor did it inform the court of any reasons for its absence. The Regional Court decided to proceed with the case. On 22 December 2010 the Riga Regional Court partly allowed the plaintiff's claim and ordered the applicant to settle the debt in the total amount of LVL 2,854 (approximately EUR 4,059). Although the parties had not concluded an agreement for maintenance services, the applicant was obliged to pay for those services in accordance with domestic law. She could contest bills provided by the plaintiff, however she had failed to do so. The applicant had selectively paid some bills, but not all of them. The Regional Court refused the plaintiff's claim to receive contractual penalty (*līgumsods*) for late payment but awarded default interest of 6%. On 18 January 2011 the applicant lodged an appeal on points of law. On 3 February 2012 the Senate

of the Supreme Court (*Augstākās tiesas Senāts*) remitted it to the Regional Court as the applicant had not paid the security deposit for lodging it. Those deficiencies were rectified.

20. On 3 April 2012 the Senate of the Supreme Court, following a preparatory meeting, refused to institute proceedings on points of law.

II. RELEVANT DOMESTIC LAW

21. The relevant provisions in relation to civil proceedings (Article 92 of the Constitution and section 1635 of the Civil Law) have been cited in *Zikovs v. Latvia* (dec.) (no. 17689/14, §§ 14 and 17, 30 June 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Admissibility

22. The Government raised two objections. Firstly, they argued that the applicant had not suffered significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. Secondly, they argued that she had not exhausted domestic remedies as she had not given the national authorities a possibility to review her complaint and remedy the situation in that connection. In particular, the Government argued that the applicant could have lodged a claim with the courts of general jurisdiction on the basis of Article 92 of the Constitution and section 1635 of the Civil Law to obtain compensation for the breach of the reasonable time requirement.

23. Concerning the Government's first objection, the Court points out that the purpose of the "significant disadvantage" admissibility criterion is to enable more rapid disposal of unmeritorious cases and thus to allow it to concentrate on its central mission of providing legal protection of the rights guaranteed by the Convention and its Protocols (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 54, ECHR 2012 (extracts)). The main element of the criterion set out in Article 35 § 3 (b) of the Convention is whether the applicant has suffered any significant disadvantage, the assessment of which may be based on criteria such as the financial impact of the matter at issue or the importance of the case for the applicant (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010).

24. In the present case, the Court notes that while the initial amount of the applicant's debt was some LVL 320 (approximately EUR 455), during the course of the civil proceedings it was increased to LVL 3,173

(approximately EUR 4,515) and, eventually, the applicant was ordered to pay the plaintiff LVL 2,854 (approximately EUR 4,059). Moreover, the case concerned a matter of principle for the applicant, that is, whether she could be required to pay for the maintenance services in the absence of an agreement with the plaintiff. Accordingly, there are no grounds for concluding that the applicant has suffered no significant disadvantage. The Court therefore rejects the Government's objection.

25. As concerns the Government's second objection, the Court has already dismissed a similar argument in *Veiss v. Latvia* (no. 15152/12, § 71, 28 January 2014). In the present case, the Government did not submit comparable examples of cases in which the domestic courts had admitted and examined claims concerning length of proceedings, and awarded compensation for the breach of the reasonable time requirement in civil cases. The Court therefore rejects the Government's objection in this regard.

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

B. Merits

27. The Government conceded that the case had not been complex. They stated that the conduct of the applicant had contributed to the length of proceedings. Six out of twelve hearings had been adjourned at the applicant's request causing a delay of about one year and eight months. That the applicant's representative had not been a qualified lawyer had also been a factor contributing to the length of the civil proceedings. The first-instance court had instituted proceedings speedily and could not be held responsible for the delays that had occurred. While the first appellate hearing had been scheduled only after one year and nine months, the remaining hearings had been scheduled speedily.

28. 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 (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Veiss*, cited above, § 77).

29. The Court notes that the proceedings began on 24 November 2005 when the plaintiff lodged its claim with the first-instance court. The final decision in the proceedings was taken by the Senate of the Supreme Court on 3 April 2012. The civil proceedings therefore lasted for six years and more than four months at three levels of jurisdiction.

30. The Court considers that the case was not complex as it concerned a rather small amount of debt for maintenance services in a residential building.

31. The Court notes that the case was pending before the first-instance court for two years and more than eleven months and that twelve hearings were held with regular intervals in that period. Four hearings were postponed at the applicant's request (see paragraphs 6, 8, 13 and 15 above) resulting in a delay of almost one year; four hearings were postponed at the request of the plaintiff (see paragraphs 7, 12, 14, 16 above) resulting in a delay of ten months; two hearings were postponed as a result of further information provided or requested by either of the parties (see paragraphs 9-10 above) resulting in a delay of seven months and eleven days. Lastly, a few minor delays resulting in a delay of more than one month were solely attributable to the first-instance court in view of changes in the court's composition and the time needed to prepare a judgment (see paragraphs 11 and 17 above).

32. While the Court can agree with the Government that the applicant's conduct at least partially contributed to the length of the proceedings before the first-instance court, the same does not hold true for further proceedings before the higher courts.

33. The first-instance court decided the case as speedily as it could, given the conduct of both parties. It even imposed a monetary fine on the applicant's representative (see paragraph 16 above). However, there were long periods of inactivity attributable only to the higher courts. Firstly, the case was pending for more than one year and nine months before the appellate court, during which period no hearings were held (see paragraphs 17-18 above). Although both parties were responsible for a further delay of less than three months (see paragraph 18 above), the fact remains that there was a very long period of inactivity for which only the domestic authorities should bear responsibility. Secondly, the case was pending for more than one year before the Supreme Court only to be sent back to the appellate court as the applicant had not complied with procedural requirements for lodging an appeal on points of law (see paragraph 19 above).

34. In the light of the above, taking into account in particular the long periods of inactivity before the higher courts and that the case was not complex, the Court concludes that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 42,403.20 pounds sterling (GBP) in respect of loss of income of her representative, 20,000 euros (EUR) in respect of pecuniary and EUR 30,000 in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 750 in this connection.

B. Costs and expenses

39. The applicant also claimed EUR 400.97 for costs and expenses incurred before the domestic courts. In support she submitted two receipts of payments made by Mr S. Seļeznovs in respect of the security deposit for review of the case by the Supreme Court (EUR 287.14) and an extract from her salary slip indicating that certain sums had been recovered from her.

40. The Government contested this claim.

41. 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 and are reasonable as to quantum. Furthermore, costs and expenses 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).

42. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

43. 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 application 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 750 (seven hundred and fifty 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 9 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	André Potocki
Acting Deputy Registrar	President