

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

THIRD SECTION

DECISION

Application no. 17458/10
Nadežda DEMENTJEVA
against Latvia

The European Court of Human Rights (Third Section), sitting on 13 March 2012 as a Committee composed of:

Alvina Gyulumyan, *President,*
Ineta Ziemele,
Mihai Poalelungi, *judges*,

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 March 2010,

Having regard to the comments submitted by the Latvian Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Nadežda Dementjeva, is a Latvian national who was born in 1952 and lives in Rīga. The Latvian Government ("the Government") are represented by their Agent, Mrs I. Reine.

The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 10 September 1997 criminal proceedings were initiated against the applicant as a suspect of having committed fraud. The applicant was questioned as a witness in this respect.

4. On 30 April 1998 the Office of the Prosecutor decided to bring charges against the applicant. After having obtained information that the applicant has fled to Australia and applied for an asylum there, in June 1998 the Rīga Central District Court ordered the applicant's detention. On the same day the applicant's search was launched.

5. On 12 April 2001 the applicant was arrested at the Rīga airport and got acquainted with the charges brought against her. She was detained on remand until 8 September 2003 when the preventive measure was changed to police surveillance.

6. Meanwhile, in October and December 2001 the Office of the Prosecutor requested the authorities of Ukraine and Australia to provide judicial assistance in the applicant's criminal case.

7. On 12 March 2002 the criminal case was referred to the Rīga Regional Court. The criminal proceedings involved twenty-one victims and ten witnesses. In April 2003, aiming to reduce the case-load of the Rīga Regional Court the applicant's criminal case was among those transferred to another court, however it was later sent back and the Rīga Regional Court scheduled the first hearing for August 2003.

8. In August 2003 two hearings were postponed - one at the applicant's request and the other due to the failure of the witnesses to appear at the hearing.

9. On 8 September 2003 prosecutor asked the court to refer the criminal case back to the Office of the Prosecutor in order to modify the criminal charges brought against the applicant to more severe ones.

10. On 26 February 2004 the additional charges were brought against the applicant and the criminal case was remitted to the trial.

11. From 16 March 2005 until 8 July 2009 fifteen hearings were scheduled before the lower and the appellate courts with an average interval of three months. Thirteen times the hearings were postponed on the request of the applicant or her defence counsel out of which on eight occasions the applicant requested to postpone the hearing due to her health condition and on further five occasions the delays were caused due to the illness or other reason of absence of the applicant's defence counsel.

12. In August 2005, after having received the first request to postpone the hearing due to the applicant's hospitalisation, the lower court obtained confirmation from the applicant's physician that her in-patient medical treatment would not exceed ten days. In March 2007 the lower court and in December 2008 the appellate court stayed the criminal proceedings for five and six months respectively in order to carry out a forensic medical examination with regard to the applicant's health condition. According to the results of the examination the applicant was fit to participate at the hearing.

13. In October 2007, with respect to various requests to postpone the hearings due to the health condition of the applicant's defence counsel, the

appellate court asked the counsel to confirm whether she would be able to defend the applicant during the next hearing scheduled for November 2007. At the same time the appellate court ordered to grant the applicant's appearance under constraint; however, this order was not executed in that the applicant's whereabouts could not be located. During the hearing of November 2007 the defence counsel demanded further postponement due to the applicant's health.

14. On 11 December 2007 the applicant was convicted by a decision of the Rīga Regional Court and sentenced to five years' imprisonment. The applicant appealed and the first appellate hearing was scheduled for 28 May 2008.

15. In July 2009, after various postponements of the hearings (see paragraph 11, above), the Criminal Chamber of the Supreme Court stayed the appeal without examination due to the absence of the applicant and her counsel. The court concluded that the applicant had lost her interest to pursue the appeal.

16. In August 2009 the Criminal Chamber of the Supreme Court refused to accept the applicant's and her counsel's appeals on points of law as they had been submitted out of time. On 23 September 2009 the Senate of the Supreme Court upheld the decision.

COMPLAINTS

17. The applicant complained under Article 6 § 1 of the Convention of the excessive length of criminal proceedings.

18. She further brought complaints under Articles 3, 6, 8 and 14 of the Convention and Protocol No. 12 to the Convention concerning the criminal proceedings brought against her.

THE LAW

A. Complaint concerning the length of criminal proceedings

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

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

20. The period to be taken into consideration with respect to criminal proceedings began on 12 April 2001 and ended on 23 September 2009. It thus lasted eight years and five months for three levels of jurisdiction.

21. The Government considered that the criminal case was complex and the delays were mainly caused by the conduct of the applicant and her representative. The Government emphasized that according to the Court's case-law, in particular *Lavents v. Latvia*, no. 58442/00, the delays caused by the medical treatment and hospitalisation of the applicants are to be considered as *force majeure* and as such could not be attributable to the authorities. Therefore the applicant's complaint should be dismissed as manifestly ill-founded.

22. The applicant commented that since 2005 her health condition had deteriorated preventing her from attending the proceedings.

23. The Court reiterates that the reasonableness of the length of the 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

24. Even assuming that the criminal case was of some complexity in view of the number of victims and witnesses involved as well as the need for cooperation from the authorities of third State, the criminal case was referred to the court without excessive delays (see paragraphs 5 and 7, above). It is true that the lower court returned the criminal case back to the Office of the Prosecutor in order to carry out further investigation, therefore causing a delay of about eighteen months which was undisputedly attributable to the authorities (*Bragadireanu v. Romania*, no. 22088/04, § 120, 6 December 2007). The impact of this delay on the average length of the criminal proceedings must be assessed, however, in the light of the other circumstances of the case.

25. The Court observes that there were fifteen hearings scheduled at average intervals of three months before the lower and the appellate courts (see paragraph 11, above). The Court notes that on numerous occasions throughout the proceedings the applicant and her counsel requested postponements of hearings relying on their poor health condition. Even assuming that, disregarding the conclusions of the medical examinations ordered by the courts (see paragraph 12, above), the applicant was at certain periods unfit to participate at the hearings, there is no evidence that during a period of over three years she had attempted to follow the proceedings at least with an assistance of her defence counsel (to the contrary see *Zawadzki v. Poland*, no. 34158/96, § 78, 20 December 2001 and *Lavents v. Latvia*, no. 58442/00, § 101, 28 November 2002). It is noteworthy that throughout the proceedings only one request to postpone the hearing concerned a procedural demand by which the applicant exercised her defence rights, for

which she could not be blamed (see, amongst others see, *Svetlana Orlova v. Russia*, no. 4487/04, § 46, 30 July 2009).

26. The Court further observes that the national courts can not be held responsible for failing to discipline the parties to attend the hearings (to the contrary see *Tugarinov v. Russia*, no. 20455/04, § 43, 29 April 2010). In addition to the aforementioned medical examinations ordered by the lower and the appellate courts, the latter had also ordered the applicant's attendance under constraint (see paragraph 13, above) and had taken measures in order to secure the appearance of the defence counsel (ibid.).

27. Making an overall assessment of the complexity of the case, the conduct of all the concerned as well as the total length of the proceedings, the Court considers that in the particular circumstances of this case the proceedings could not be considered as excessively long.

28. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Other complaints

29. The applicant alleged violations under Articles 3, 6, 8 and 14 of the Convention and Protocol No. 12 to the Convention.

30. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President