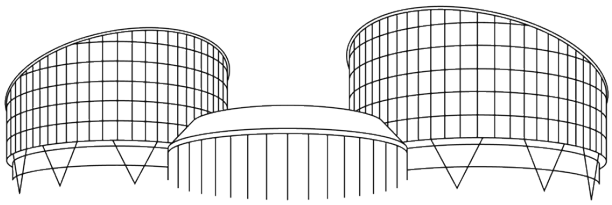

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NOZHKOV v. RUSSIA

(Application no. 9619/05)

JUDGMENT

STRASBOURG

19 February 2013

This judgment is final. It may be subject to editorial revision.

In the case of Nozhkov v. Russia,

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

Elisabeth Steiner, *President,*
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 9619/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Albert Nozhkov ("the applicant"), on 25 February 2005.

2. The applicant was represented by Ms E. Goncharova, a lawyer practising in Yekaterinburg. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 October 2007 the application was communicated to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant lives in the town of Polevskoy in the Sverdlovsk Region.

5. On 6 September 1999 the applicant lodged an action before the Polevskoy Town Court ("the Town Court") against his employer, a municipal housing company, seeking wage arrears and compensation for pecuniary and non-pecuniary damage due to delays in the payment of his wages. The case was assigned to Judge U.

6. It appears that no hearings were held until 5 June 2000. Meanwhile, the applicant amended his claims and submitted additional evidence on two occasions. He also complained to the Sverdlovsk Regional Judicial Qualifications Board about inactivity on the part of Judge U.

7. On 5 June 2000, the Town Court adjourned the proceedings in order to allow the applicant to correct certain procedural defects in his claim.

8. On 5 September 2000 the Sverdlovsk Regional Court ("the Regional Court"), following a complaint by the applicant, quashed the decision of 5 June 2000 as unlawful and remitted the case to the Town Court for examination on the merits. The first hearing was scheduled for 22 January 2001. Meanwhile, the applicant amended his claims.

9. The hearing of 22 January 2001 was adjourned because of the judge's involvement in other proceedings and the next hearing was listed for 28 March 2001.

10. The hearing of 28 March 2001 was postponed following an application by the applicant to have his claims amended.

11. The next hearing, scheduled for 15 May 2001, was adjourned at the respondent's request.

12. The following hearing, listed for 8 November 2001, was adjourned because the respondent failed to appear.

13. Three hearings fixed for between 13 November 2001 and 17 December 2001 were adjourned at the respondent's request.

14. The hearing of 17 December 2001 was cancelled owing to the judge's involvement in other proceedings.

15. The next hearing, scheduled for 19 December 2001, was adjourned until 11 March 2002 at the applicant's request, as he was going away.

16. Of four hearings scheduled for March and April 2002, one was adjourned at the respondent's request.

17. The following hearing, scheduled for 14 June 2002, was adjourned until 4 November 2002 owing to the judge's involvement in other proceedings.

18. Hearings scheduled for 4 and 5 November 2002 were cancelled because the applicant failed to appear, and on 5 November 2002 the Town Court decided to leave the applicant's action unexamined because he had failed to appear at two hearings without providing any explanation for his absence. The applicant lodged an appeal against that decision, complaining that in fact he had not been summoned to the two hearings in question.

19. On 25 March 2003 the Sverdlovsk Regional Court quashed the decision of 5 November 2002, finding that there was no evidence that the applicant had been duly summoned to the hearings of 4 and 5 November 2002. The case was returned to Judge U. for an examination on the merits. The hearing was scheduled for 24 April 2003 and was held as planned.

20. The hearing scheduled for 19 May 2003 was adjourned until 20 May 2003 following a request by the applicant to study the case file.

21. The next three hearings, scheduled for between 20 May 2003 and 18 June 2003, were adjourned because the respondent failed to appear.

22. Hearings fixed for between 30 June 2003 and 2 October 2003 were cancelled owing to the judge's involvement in other proceedings. For the

same reason, no hearings were held during the periods 21 October 2003 to 13 November 2003 and 24 December 2003 to 20 February 2004.

23. A hearing scheduled for 12 March 2004 was adjourned until 15 March 2004 at the applicant's request.

24. On 15 March 2004 the applicant amended his claims. Six further hearings were held as planned.

25. A hearing scheduled for 7 April 2004 was adjourned until 9 April 2004 at the applicant's request.

26. Three hearings fixed for between 22 April 2004 and 4 June 2004 were cancelled owing to the judge's involvement in other proceedings or because he was ill.

27. On 10 June 2004 the case was reassigned to judge G. A hearing was scheduled for 23 September 2004.

28. On 23 September 2004 the Town Court dismissed the applicant's action.

29. On 9 November 2004 the Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW

30. Federal Law No. 68-FZ of 30 April 2010, which entered into force on 4 May 2010, provides that in case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, Russian citizens are entitled to seek compensation for non-pecuniary damage. Federal Law No. 69-FZ, adopted on the same date, introduced the pertinent changes into Russian legislation.

31. Section 6.2 of Federal Law No. 68-FZ provides that everyone who has a pending application before the European Court of Human Rights concerning a complaint of the type described in that Law has six months to bring the complaint before the domestic courts.

THE LAW

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

32. The applicant complained that the length of the proceedings in his case had breached the "reasonable time" requirement of Article 6 § 1 of the Convention, the relevant part of 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 ..."

A. Admissibility

33. The Court notes that the application 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

34. The Government submitted that the length of proceedings in the present case complied with the "reasonable time" requirement of Article 6. They noted that the applicant had contributed to the delay in the proceedings by requesting an adjournment of the proceedings, by amending his claims and by failing to appear at hearings.

35. The applicant maintained his complaint.

36. The Court observes that the proceedings in the applicant's case commenced on 6 September 1999 and ended on 9 November 2004. Their length thus amounted to five years and two months, during which period the domestic courts examined the claims at two levels of jurisdiction.

37. 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, 13 July 1983, § 24, Series A no. 66, and *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

38. The Court notes, firstly, that the issues decided by the courts do not appear to have been particularly complex.

39. In so far as the applicant's conduct is concerned, the Court accepts that he delayed the proceedings to some extent by requesting adjournments. As to the applicant's lodging of additional claims and applications, it has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). Accordingly, the delays attributable to the applicant amounted to some six months, which appears insignificant in relation to the overall length of the proceedings.

40. Turning to the conduct of the authorities, the Court observes that they were responsible for the majority of the delays in the proceedings. Firstly, no explanation was provided with respect to the following periods

of inactivity on the part of the District Court: between 6 September 1999, when the applicant lodged his action, and 5 June 2000, when the proceedings were adjourned; between 5 September 2000, when the Regional Court remitted the case to the Town Court, and 22 January 2001, the date on which the first hearing was scheduled. There is nothing in the facts of the case or in the Government's observations which would justify such lengthy periods of inactivity, which amounted to thirdteen months.

41. Secondly, the Court observes that on 5 December 2002 it was decided to leave the applicant's action unexamined owing to his failure to appear at the hearings of 4 and 5 November 2002. However, it appears that the Regional Court resumed the proceedings on 25 March 2003, after establishing that there was no evidence that the applicant had been duly summoned to those hearings by the District Court. Accordingly, the Court considers that the period of delay between 4 November 2002 and 25 March 2003, caused by a failure to notify the applicant of the hearing dates, was also attributable to the national authorities.

42. Lastly, it is clear that numerous hearings were postponed, leaving wide gaps in the proceedings, on account of the judge's other commitments: between January and March in 2001; between June and November in 2002; between June and October in 2003; and between April and June in 2004. These postponements caused further delays of some thirteen months. In this connection, the Court reiterates that it is the States' duty to organise their judicial systems in such a way that their courts can meet the requirements of Article 6 § 1 (see *Muti v. Italy*, 23 March 1994, § 15, Series A no. 281-C).

43. As regards what was at stake for the applicant, the Court notes that the proceedings against his employer concerned the recovery of wage arrears. It should be reiterated in this context that special diligence is required in cases relating to labour disputes in view of the possible consequences which the excessive length of proceedings may have. Such issues should be dealt with speedily (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

44. Regard being had to the substantial delays attributed to the authorities and to what was at stake for the applicant in the case, the Court finds that there was a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

45. The applicant complained under Article 13 that he did not have an effective remedy in respect of the length of the proceedings in his case. The relevant provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

46. The Court takes cognisance of the existence of a new remedy introduced by Federal Laws No. 68-FZ and No. 69-FZ in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...). These statutes, which entered into force on 4 May 2010, set up a new remedy enabling those concerned to seek compensation for damage sustained as a result of unreasonably lengthy proceedings or the delayed enforcement of court judgments (see paragraph 30 above).

47. The Court observes that in the present case the parties' observations in respect of Article 13 were received at the Court before 4 May 2010 and did not contain any references to the new legislative development. However, it accepts that since 4 May 2010 the applicant has had a right to use the new remedy (see paragraph 31 above).

48. The Court notes that in the pilot judgment cited above it stated that it would be unfair to request applicants whose cases had already been pending for many years in the domestic system and who had come to seek relief at the Court to bring their claims again before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decided to examine the present application on its merits and has found a violation of the substantive provision of the Convention.

49. Having regard to these special circumstances, the Court does not find it necessary to examine separately the applicant's complaint under Article 13 of the Convention (see *Utyuzhnikova v. Russia*, no. 25957/03, § 52, 7 October 2010).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government did not make any comments on the claims.

53. Referring to its established case-law, the Court accepts that the applicant suffered some distress and frustration on account of the unreasonable length of the proceedings. Deciding on an equitable basis, the Court awards the applicant EUR 2,600.

B. Costs and expenses

54. The applicant did not make a claim in respect of costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

55. 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 of the Convention;

3. *Holds* that there is no need for a separate examination of the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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.

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Elizabeth Steiner
Deputy Registrar	President