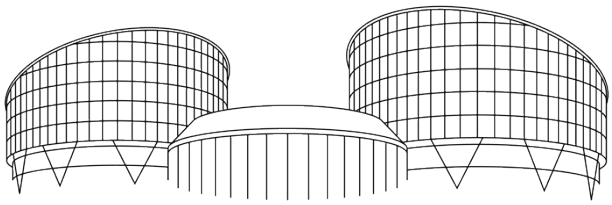

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DZUGAYEVA v. RUSSIA

(Application no. 44971/04)

JUDGMENT

STRASBOURG

12 February 2013

FINAL

12/05/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dzugayeva v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 44971/04) 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, Ms Yelena Ruslanovna Dzugayeva ("the applicant"), on 1 November 2004.

2. The applicant was represented by Ms K. Dzasokhova, a lawyer practising in Vladikavkaz. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had lost her property as a result of the authorities' failure to protect it properly.

4. On 11 March 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Vladikavkaz. She is an entrepreneur who trades in reusable glass bottles. She used a trailer parked in a yard near her house to store those bottles.

6. On 16 October 2002 a Mr B. delivered glass bottles to the applicant. The delivery documents indicate that there were 34,000 bottles in total. He

left the bottles packed in plastic bags in the yard near her house. The bags were loaded into the trailer by two people, Mr V.M. and Mr G.M.

7. On 17 October 2002 representatives of the municipality's administration and the police impounded the applicant's trailer on account of her failure to obtain a parking permit for it. The trailer was moved to an unsecured storage area for impounded property. No inventory of the trailer's contents was made. The applicant was not present during the removal. She was later informed that her property would be released to her once she had paid the towing and storage charges.

8. Subsequently, the applicant found her trailer almost empty except for some broken glass. Those in charge of the storage area indicated that the bottles could have been stolen.

9. On 21 March 2003 the applicant brought an action for damages against the Prefecture of the Severo-Zapadniy Circuit of Vladikavkaz ("the prefecture") on account of the loss of the bottles. The applicant argued that the loss of her property had resulted from the authorities' negligence.

10. On 26 February 2004 the Justice of the Peace of Court Circuit no. 27 (Severo-Zapadniy Circuit) considered the applicant's claim on the merits. The Justice of the Peace decided to hold the hearing in the absence of counsel for the prefecture, who had been duly notified of the date and time of the hearing and who chose not to attend. The Justice of the Peace allowed the claim and awarded the applicant 49,000 Russian roubles (RUB). The judgment came into force on 11 March 2004 and on 23 March 2004 the justice of the peace issued a writ of execution.

11. On 12 May 2004 the Justice of the Peace granted the prefecture leave to appeal. On 28 May 2004 the Sovetskiy District Court of Vladikavkasz upheld the decision of 12 May on appeal.

12. On 18 June 2004 the District Court quashed the judgment of 26 February 2004 and dismissed the applicant's claim, noting that (1) the applicant had failed to furnish sufficient evidence to substantiate her allegations as to the exact number of bottles stored in the trailer and (2) the prefecture's decision to seize the applicant's trailer with the bottles in it had been lawful.

13. The court noted that none of the witnesses questioned, including Mr V.M. and Mr G.M., who had loaded the bottles into the trailer, Mr G., an employee of the storage area, and Mr D., a policeman who had been present during the removal of the trailer, could specify the exact number of bottles stored in the trailer. They merely stated that the trailer had been completely packed with bottles. Besides, the court established, after measuring the volume of the trailer and that of a plastic bag containing fifty bottles, that the trailer's capacity could not exceed 555 bags, whereas the applicant claimed that there had been 680 bags in the trailer.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

14. The applicant complained that as a result of the authorities' negligence she had lost her property. She referred to Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

15. The Government claimed that the State was not responsible for actions or failures to act on the part of the Prefecture of the Vladikavkaz Severo-Zapadniy Circuit, which was not "a State authority" within the Convention meaning. In their view, the prefecture, being a municipal authority, was independent of federal and regional government. Accordingly, the applicant's complaint fell outside the scope of Article 1 of Protocol No. 1.

16. The applicant considered that her complaint was not inadmissible on any ground.

17. The Court observes that it has previously established that, despite certain limits as regards the powers of municipal bodies, their powers cannot be characterised as anything other than "public". Accordingly, municipal bodies are "a public authority" within the Convention meaning, and the Court is competent *ratione personae* to examine their actions (see, *mutatis mutandis*, *Saliyev v. Russia*, no. 35016/03, §§ 69-70, 21 October 2010). Having regard to the material submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

18. Accordingly, the Court rejects the Government's objection as to the applicability of Article 1 of Protocol No. 1 in the present case, and 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

1. Submissions by the parties

19. The Government considered that the applicant had failed to substantiate her allegations concerning damage incurred as a result of the impounding of her property by the local authorities, and that her related claims for damages had been rightfully dismissed by domestic courts.

20. The applicant maintained her complaint. She considered that the prefecture was responsible for the damage to and loss of her property.

2. The Court's assessment

(a) Whether there was a "possession"

21. The Court reiterates that Article 1 of Protocol No. 1 protects "possessions", which can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. It does not, however, guarantee the right to acquire property. Where there is a dispute as to whether an applicant has a property interest which is eligible for protection under Article 1 of Protocol No. 1, the Court is required to determine the legal position of the applicant (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 61, ECHR 2007-III).

22. In the present case, the Court observes, and it is not disputed by the Government, that the applicant was the recognised owner of the glass bottles which were impounded by the municipal authorities. They therefore constituted the applicant's possession within the meaning of Article 1 of Protocol No. 1.

(b) Compliance with Article 1 of Protocol No. 1

23. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest (see, among other authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

24. The Court considers that the particular circumstances of the case prevent it from falling into any of the categories covered by the second sentence of the first paragraph or by the second paragraph of Article 1 of

Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

25. The Court further observes that, in the instant case, the issue under examination is not any action on the part of the State, but its failure to act. It considers therefore that it should examine the case in the light of the general rule in the first sentence of the first paragraph, which lays down the right to the peaceful enjoyment of possessions.

26. In this connection, the Court reiterates that genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII).

27. On the facts, the Court observes that the applicant's trailer containing the glass bottles was impounded by the local authorities because she had no parking permit for it. In its opinion, when the authorities seized the applicant's property, they also took on a duty of care in respect of it. The Government are, in such circumstances, required to attempt to rebut the applicant's allegation that the local authorities negligently allowed her property to be damaged and/or lost. The Court further observes that neither the prefecture in the course of the domestic proceedings nor the Government in the proceedings before the Court proffered any explanation or denial of negligence on the part of the local authorities. The Court finds, accordingly, that the local authorities failed to properly protect the applicant's property from damage and/or loss.

28. The Court also notes that no compensation was awarded to the applicant for damage and/or loss of property resulting from the authorities' inaction. Whereas it was not in dispute that the impounded trailer was filled with the bottles belonging to the applicant, the domestic judicial authorities dismissed the applicant's claim because she had not specified and substantiated her estimate of the exact number of glass bottles which were in the trailer. The Court cannot, however, support that position. While it is true that the actual value of the damaged and/or lost property belonging to the applicant was not established in the course of the civil proceedings instituted by her, this issue would only be relevant to an evaluation of her losses, potentially for the purposes of Article 41 of the Convention (see, *mutatis mutandis*, *Gladysheva v. Russia*, no. 7097/10, § 81, 6 December 2011).

29. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to comply with their positive obligation enshrined in Article 1 of Protocol No. 1. There has accordingly been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. Lastly, the Court has examined the other complaints submitted by the applicant under Articles 3, 13, 14 of the Convention and Article 1 of Protocol No. 1. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. 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 123,350 euros (EUR) in respect of pecuniary and non-pecuniary damage.

33. The Government considered the applicant's claims unsubstantiated.

34. Regard being had to what was at stake for the applicant and to all the circumstances of the case, the Court awards her EUR 3,000, plus any tax that may be chargeable, to cover both pecuniary and non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed EUR 6,350 for legal, postal, transportation and translation costs and expenses incurred before the Court. She submitted two receipts confirming the despatch of her correspondence to the Court for the total amount of 214.40 Russian roubles (RUB).

36. The Government considered that the applicant had failed to demonstrate that the costs and expenses she claimed were necessary or reasonably incurred. They pointed out that the applicant had provided only copies of two postal invoices for RUB 82.

37. According to the Court's case-law, an applicant is entitled to 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. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to

award the sum of EUR 850, plus any tax that may be chargeable to the applicant, in respect of the proceedings before it.

C. Default interest

38. 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 applicant's right to peaceful enjoyment of her possessions admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 850 (eight hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 12 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President