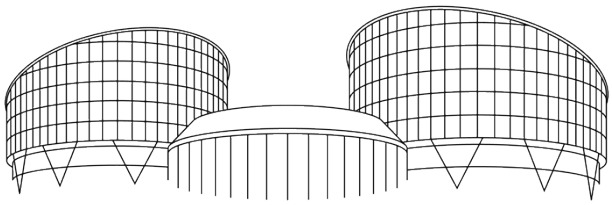

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 39768/06
Salamu DZHAMALDAYEV
against Russia

The European Court of Human Rights (First Section), sitting on 22 January 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 6 September 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Salamu Dzhamaldayev, is a Russian national who was born in 1964 and formerly resided in Chechnya, Russia. He currently lives in Mouscron, Belgium. He was represented by Mr Hinnekens, a lawyer practising in Kortrijk, Belgium.

The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

2. The parties' submissions and the relevant documents may be summarised as follows.

A. Seizure of the applicant's truck

3. At the relevant time the applicant lived in Grozny, Chechnya. On 7 March 2001 military servicemen seized the applicant's truck KRAZ-255 and took it to military unit no. 98311 in Khankala, near Grozny. The applicant alleged that they demanded money for its return. According to the applicant, when he brought the money, the servicemen took additional valuables from him and refused to give back the truck.

4. The Government pointed out that the seizure of the truck had taken place within the context of a counter-terrorist operation whose aim was the search for members of illegal armed groups and prevention of the illegal handling of oil and its products. The servicemen had seized a number of vehicles at the oil fields located on the outskirts of Grozny and delivered the vehicles to the military unit. None of the vehicles or their drivers had had the necessary documents for handling or transporting oil. As to the applicant's allegation of extortion and robbery, the Government relied on the conclusions of the criminal investigation, which had not found any proof of it (see below).

B. Investigation into the seizure of the truck

5. Upon the applicant's complaint, the relevant military prosecutor's office initiated a criminal investigation into the seizure of the truck and the robbery. The prosecutor's office summoned the applicant for interviews between March 2001 and June 2001.

6. On 29 June 2001 the assistant military prosecutor decided to close the investigation. He had found that on 7 March 2001 an intelligence patrol from military unit no. 98311 had been sent to check oil sites and ordered to search, seize and transport back to the unit any tanker trucks carrying oil. In an area where oil extraction was prohibited the servicemen had seized several trucks, including the applicant's, and transported them to the unit. The servicemen had seized the applicant's truck in connection with unlawful activities relating to oil extraction by unidentified persons. Later the trucks had been moved from the unit's premises and left on the highway. The assistant prosecutor held that the servicemen of military unit no. 98311 had acted in accordance with the relevant legislation, in particular with the Law on Suppression of Terrorism.

7. As to the alleged robbery, the assistant prosecutor questioned the eight servicemen from military unit no. 98311 who had participated in the patrol of 7 March 2001 – the chief of the intelligence service of the unit, major Kh., the chief of the intelligence company, warrant officer N.,

sergeants M. and P., and soldiers A. and B. They stated that during the operation nobody had taken any money or valuables from civilians. Two indirect witnesses, the head of the headquarters of military unit no. 98311, lieutenant colonel B., and the chief of the intelligence battalion, captain B., confirmed the above statements. The assistant prosecutor thus concluded that there was no *prima facie* case of robbery.

8. On 29 June 2001 the military prosecutor informed the applicant that the criminal proceedings had been terminated, and of his right to challenge that decision before a court. The prosecutor also informed the applicant that he was entitled to make a claim in respect of pecuniary damage.

9. In July 2001 a lawyer hired by the applicant requested additional information about the decision of 29 June 2001 from the military prosecutor. On 4 August 2001 the military prosecutor reiterated to the applicant's lawyer the information contained in his letter of 29 June 2001.

10. On 27 November 2001 the military prosecutor's' office of the North Caucasus Military Circuit remitted the criminal case concerning the unlawful seizure of the truck and other assets for further investigation, and informed the applicant accordingly.

11. On 28 November 2001 the criminal case in the part concerning the seizure of the truck and alleged robbery was closed.

12. After the communication of the case to the Russian authorities, in April 2009 the investigation of the criminal case was resumed. According to the Government, in August 2009 the case was pending with the military prosecutor of the United Group Alliance (UGA).

C. Civil proceedings for damages

13. In August 2001 the applicant sued military unit no. 98311 for damages in respect of the seized truck and lost valuables.

14. In August 2001 the Grozny District Court of the Chechen Republic ("the District Court") requested the military prosecutor's office to provide certain material from the criminal case file. On 17 September 2001 the District Court also invited military unit no. 98311 to send a representative to the upcoming court hearings. According to the applicant, the military unit's representatives did not appear, and the District Court refused to examine the action in their absence.

15. The Government stated that in October 2001 the District Court's records had been destroyed as a result of a terrorist act. The earliest records available therefore dated from November 2001 and contained no information about the applicant's civil case and no letters from the applicant or his representatives. Military unit no. 98311 also had no information about the allegedly pending civil proceedings.

16. On an unspecified date after January 2003, the applicant left Russia and moved to Belgium, where he sought refugee status.

COMPLAINTS

17. Under Article 6 of the Convention, the applicant complained that the civil proceedings had been excessively long.

18. Under Article 1 of Protocol No. 1 and Article 13 of the Convention, the applicant argued that his property rights had been breached and that he had no effective remedies in this regard.

19. In his submissions of June 2009, the applicant complained, in addition, about a number of other events involving himself and his relatives in the period between 1999 and 2006. He did not rely on any Articles of the Convention in this connection.

THE LAW

A. Alleged violations of Article 1 of Protocol No. 1 and Article 13 of the Convention

20. The applicant complained about the loss of property. In particular, he pointed to the fact that his truck and valuables had been seized by the military servicemen in March 2001. He further complained that he had no effective remedies in respect of that complaint. The applicant invoked Article 1 of Protocol No. 1 and Article 13 of the Convention which read as follows:

Article 1 of Protocol No. 1

> "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."

Article 13

> "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."

21. The Government considered that the complaint should be dismissed for failure to comply with the six-month time-limit.

22. The applicant reiterated that until September 2006 the ineffectiveness of the criminal investigation had not been apparent to him. He argued that he had lodged a complaint with the military prosecutor's office after the events in question and had expected those proceedings to produce a result.

23. The Court has already found in previous cases of allegations by residents of Chechnya concerning the destruction of their property that the potentially effective domestic remedy in such circumstances was an adequate criminal investigation (see *Khamzayev and Others v. Russia*, no. 1503/02, § 154, 3 May 2011).

24. However, the Court also observes that where more than one potentially effective remedy is available, the applicant is only required to have used one of them (see *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII (extracts), and *Dibirova v. Russia* (dec.), no. 18545/04, 31 May 2011).

25. In the present case the applicant first sought the institution of criminal proceedings against the perpetrators of the crime, and then attempted to lodge a civil suit. Both sets of proceedings were unsuccessful, and the applicant did not pursue them after 2001. His complaint to the Court was lodged in September 2006; the Government questions the compatibility of this complaint with the six-month time-limit.

26. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it serves also to protect the authorities and others concerned from being in a position of uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002). If no remedies are available, or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). However, special considerations may apply in exceptional cases, for example, where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective; it is then appropriate to take as the start of the six-month period the date when he first became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

27. The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors such as the diligence and interest displayed by the applicant, as well as the adequacy of the investigation in question (see *Narin v. Turkey*, no. 18907/02, § 43, 15 December 2009). The Court reiterates in this connection that where there has been an action allegedly in contravention of Articles 2 or 3 of the Convention, the victim is expected to

take steps to keep track of the investigation's progress or lack thereof, and to lodge his or her application with due expedition once he or she is or should have become aware of the lack of any effective criminal investigation (see *Nasirkhaeva v. Russia* (dec.), no. 1721/07, 31 May 2011, and *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011). The same requirements are applicable to complaints of unlawful interference with property rights brought under Article 1 of Protocol No. 1 (see *Abuyeva and Others v. Russia*, no. 27065/05, § 225, 2 December 2010).

28. In so far as criminal remedies are concerned, the Court notes that on 29 June, and then on 28 November 2001, the competent prosecutors ruled not to open criminal proceedings into the applicant's complaint about the allegedly unlawful seizure of his property. The applicant failed to appeal against these decisions to a court, although he had been informed of the possibility to do so and had been represented by a lawyer since July 2001. The Court reiterates here that although a court itself has no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appears to be a substantial safeguard against the arbitrary exercise of powers by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003; *Medvedev v. Russia* (dec.), no. 26428/03, 1 June 2006, and *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006). Therefore, in the ordinary course of events such an appeal might be regarded as an effective remedy where the prosecution decided not to investigate a claim. Failure to bring such proceedings in due time would normally result in dismissal of the complaint for non-exhaustion (see *Nasipova and Khamzatova v. Russia* (dec.), no. 32382/05, 2 September 2010).

29. Assuming that the applicant considered the available domestic remedies in the area of criminal justice to be ineffective, he should have applied to the Court within six months of the latest known domestic decision (see *Manukyan v. Georgia* (dec.), no. 53073/07, 9 October 2012). The applicant's complaint to the Court was lodged in September 2006, that is, almost five years after the ruling of 28 November 2001. The applicant has not submitted any valid reasons justifying such an exceptionally long delay and, therefore, the Court concludes that the applicant's complaint raising issues under Article 1 of Protocol No. 1 and Article 13 should be dismissed for failure to comply with the six-month time-limit.

30. Lastly, the Court observes that the investigation was resumed in 2009 in the wake of the applicant's complaint to the Court. However, no new information was obtained at that stage which could have warranted the interruption of the initial six-month period (see, *a contrario*, *Brecknell v. the United Kingdom*, no. 32457/04, §§ 70-71, 27 November 2007; *Gasyak and Others v. Turkey*, no. 27872/03, §§ 60 and 63, 13 October 2009; and *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., §§ 53-54, 1 June 2010). It appears that this development, occurring after a lull of more

than seven years, was a mere formality, did not produce any noticeable developments in the investigation, and therefore cannot be regarded as an effective domestic remedy for the purposes of the calculation of the six-month limit (see *Finozhenok* (dec.), and *Nasirkhayeva* (dec.), cited above).

31. In view of the foregoing, the Court considers that the applicant failed to act with due diligence and expedition. His complaint concerning the allegedly unlawful seizure of his property and the lack of an effective remedy in that regard is inadmissible for failure to comply with the six-month rule.

B. Alleged violation of Article 6 of the Convention

32. The applicant complained about the failure of the District Court to consider his civil claim within a reasonable time. He relied in this respect on Article 6 of the Convention which in its relevant part 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 ..."

33. The Government pointed out that even though the applicant had applied to the District Court in August 2001, in October 2001 the archives of the District Court had been destroyed; the applicant had not sought to recover the lost file and had not contacted the District Court after September 2001. Thus, in November 2001 the archives of the District Court did not contain any correspondence with the applicant or any other information about his civil case. Furthermore, the applicant had failed to complain to any other agency, such as a higher-ranking court, or to bring a civil claim in respect of the inaction of the District Court, after that time. The Government pointed to a number of domestic legal provisions which could have served as basis for such complaints.

34. The applicant, in his turn, disputed that any available remedies, apart from lodging a civil claim with a court, had been available to him. The fact that by 2006 his claim had still not been examined showed that that procedure was ineffective. He could not be expected to reintroduce the same complaint twice, years after the event had taken place. He also stressed that he had left Russia in 2003, and thus was prevented from pursuing the proceedings in the usual manner.

35. The Court notes in this regard that given the developments in the civil case within the first two months after the claim was made, the applicant could reasonably have been expected to make further submissions, as appropriate, and enquire about the progress of the proceedings. Furthermore, it is incumbent on the interested party to display appropriate diligence in the defence of his interests and to take the necessary steps to apprise himself of developments in the proceedings (see, among other

authorities, *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001; *Yevgeniy Blokhin v. Russia* (dec.), no. 11175/02, 4 January 2007; *Aleksandr Shevchenko v. Ukraine*, no. 8371/02, § 27, 26 April 2007; and *Uruçi v. Albania* (dec.), no. 6491/06, 24 January 2012).

36. The Court notes that after September 2001, and prior to lodging his complaint with the Court in September 2006, the applicant did not take any steps to contact the District Court, enquire about the state of proceedings, or lodge a complaint about their excessive length with any authority. The applicant referred to the fact that he had eventually left Russia; however, the mere fact that at sometime in 2003 he left Chechnya is not sufficient to explain the absence of communication with the District Court after September 2001.

37. On the other hand, the Court takes into account the exceptional circumstances which came about in October 2001, to which the Government referred. There is no indication that prior to October 2001 there were any undue delays which could be attributed to the State. Nor does it appear that the applicant took any steps to resume his claim after that time.

38. In such circumstances, the Court concludes that the applicant has failed to pursue his civil case with due diligence. His complaint of excessive length of proceedings is, therefore, manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Other alleged violations of the Convention

39. In his observations submitted in June 2009 the applicant also complained about other losses of property which had occurred in 1996 and 2001, and about other incidents affecting him and his relatives in 1999, 2001, 2002 and 2006.

40. However, 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 finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

41. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President