CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 72118/01
by Khanbatay Abulkhanovich KHAMIDOV
against Russia

The European Court of Human Rights (Fifth Section), sitting on 23 October 2006 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar,*

Having regard to the above application lodged on 28 June 2001,

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

The applicant, Mr Khanbatay Abulkhanovich Khamidov, is a Russian national, who was born in 1954 and lives in the village of Bratskoye, the Nadterechny District, Chechnya. He is represented before the Court by Ms M. Petrosyan, a lawyer from the Memorial Human Rights Centre based in Moscow. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Background to the case

The applicant is a co-owner of real estate in the village of Bratskoye. The other co-owner is the applicant's brother, Mr Dzhabrail Abulkhanovich Khamidov, who is not a party to the proceedings before the Court.

Prior to the events described below, the applicant and his brother founded a limited liability company called Nedra (*общество с ограниченной ответственностью «Недра»*) and, along with their families, comprising over twenty persons (hereinafter "the applicant's family"), ran a bakery business. According to the applicant, this business was the main source of their income.

The estate comprises a plot of land of 1.5 hectares transferred to the Nedra company on conditions of indefinite lease, a house owned by the applicant, a house owned by his brother and several industrial buildings, including a mill, a bakery and storage facilities assigned to the Nedra company. The applicant submitted documents confirming his title and that of his brother to the property in question.

According to the applicant, in January 1998 he and his family left their estate as they were constantly threatened by Chechen fighters, who then moved in.

At the beginning of September 1999 the fighters left and the applicant and his family returned to their estate. According to the applicant, they found quarters build by the fighters on the plot of land from the applicant's building materials, but the houses, industrial premises and equipment were intact and they re-commenced their business.

2. Temporary occupation of the applicant's estate

(a) Events between October 1999 and December 2000

In early October 1999 the Russian Government launched a counter-terrorist operation in the Chechen Republic. Fearing possible attacks, the applicant and his relatives left the village.

On 13 October 1999 the Tambov consolidated police units of the Ministry of the Interior (*Тамбовский сводный отряд милиции МВД РФ*, "the police units") moved onto the applicant's estate.

On 19 October 1999 the applicant and his family tried to return, but the police units denied them access to the estate.

On 4 November 1999 the applicant requested the Nadterechny Temporary Office of the Interior (*временный ОВД Надтеречного района,* "the VOVD") to vacate his houses and industrial premises.

By letter of 19 December 1999 the VOVD refused the applicant's request. The letter stated that they would only vacate the buildings after the termination of the hostilities in the region and the withdrawal of the Russian troops. As to the alleged damage to the applicant's property, the letter advised him to lodge a compensation claim with a court.

Since at the material time the courts on the territory of the Chechen Republic were inoperative, the applicant only submitted his claims in January 2001.

The applicant and his family spent the winter of 1999-2000 in a refugee tent camp in the village of Znamenskoye, Chechnya. According to him, poor living conditions in the camp resulted in the death of his nephew, who was one year and seven months old. The applicant submitted medical death certificate no. 00-172 issued in respect of his nephew on 29 December 2000. It states that the boy died of acute double bronchial pneumonia. The date and place of death are recorded as 27 December 1999, Northern refugee camp. The applicant also claimed that the health of other family members had seriously deteriorated.

On 27 January and 16 October 2000 respectively, the head of the local council of the village of Bratskoye (*глава органа местного самоуправления с. Братское*) issued three similar certificates in respect of the applicant, his brother and their company Nedra, stating that federal police units had been occupying the applicant's estate since 13 October 1999 and refused to move out.

On 25 May 2000, upon the applicant's request, the military commander of the Nadterechny District (*военный комендант Надтеречного района*) ordered the police units to ensure that no damage would be caused to the applicant's property. According to the applicant, no measures to protect his property followed.

On 26 May 2000, upon the applicant's request, a commission composed of the head of the local council of Bratskoye, representatives of planning and building organisations *(представитель проектной организации, представитель подрядной организации)* and the military commander drew up evaluation reports *(дефектные акты)* reflecting in detail the poor state of the applicant's property.

Another commission made up of the head of the local council and several residents of Bratskoye issued a certificate stating that federal interior troops had been stationed on the applicant's estate from 13 October 1999 until 26 May 2000, and that they had damaged the applicant's houses and industrial premises, the damage having been certified by the above-mentioned evaluation reports. The undated certificate was signed and sealed by the commission members and the military commander.

In a letter of 12 September 2000 an acting prosecutor of the Nadterechny District (*исполняющий обязанности прокурора Надтеречного района*) suggested that the military commander should order the police units either

to vacate the applicant's house or enter into a lease agreement with him. The commander never responded.

By letter of 25 December 2000 an acting prosecutor of the Nadterechny District invited the applicant to apply to a court in the event of the police units' refusal to follow the above recommendation.

From November 1999 to December 2000 the applicant also lodged a large number of complaints with State bodies, including military authorities, prosecutors at various levels and other law-enforcement agencies, regional and federal administrative authorities, seeking eviction of the police units. Mostly he received formal responses by which his complaints were transmitted to other bodies, but no effective measures were taken.

(b) Eviction proceedings

In January 2001 the courts in Chechnya became operational again. The applicant, in his own name and on behalf of his brother, brought an action in which he sought the eviction of the Tambov consolidated police units from his estate.

By judgment of 14 February 2001 the Nadterechny District Court of the Chechen Republic confirmed the title of the applicant and his brother to the plot of land and the houses and industrial premises, by reference to numerous documents submitted by the applicant. It then found that the police units had adversely occupied the applicant's estate and allowed his claims.

On 24 February 2001 the judgment came into force and enforcement proceedings were commenced accordingly. A bailiff's attempts to enforce the judgment proved to have been in vain, as the police units refused to comply with the writ of execution. In his attempts to enforce the judgment the bailiff unsuccessfully sought the assistance of the head of the administration of the Nadterechny District, the military commander of the Nadterechny District and the military commander of the Chechen Republic.

The applicant's numerous complaints to local and federal administrative bodies were to no avail.

On 2 March 2001 the Supreme Court of the Chechen Republic forwarded the applicant's request to enforce the judgment in his favour to the Minister of Justice of the Chechen Republic and invited him to take the necessary measures.

According to the Government, in April 2001, within the statutory time-limit provided for in domestic law for the enforcement of a final judgment, the Tambov police units vacated the buildings on the applicant's estate, but re-located to the applicant's plot of land instead.

On 21 May 2001 the Special Representative of the Russian President for Rights and Freedoms in the Chechen Republic (*Специальный представитель Президента Российской Федерации по соблюдению прав и свобод человека в Чеченской Республике*) requested the Minister

of the Interior to order the enforcement of the judgment of 14 February 2001. On 18 July 2001 the Special Representative sent the applicant's new complaint to the Minister of the Interior and stated that he had still not received any reply to his previous query of 21 May 2001.

On 22 May 2001 the President of the State Duma Commission for the Promotion of the Normalization of the Political, Social, and Economic Situation and the Protection of Human Rights in the Chechen Republic (*Комиссия по содействию нормализации общественно-политической и социально-экономической обстановки и соблюдению прав человека в Чеченской Республике*) notified the Minister of the Interior of the unlawful occupation by the police units of the applicant's estate and their refusal to comply with the judgment in the applicant's favour and requested the Minister to take up the applicant's case, given that it had already attracted the attention of the Commissioner for Human Rights of the Council of Europe.

On 30 May 2001 the first deputy-head of the Office of the President of Russia *(Администрация Президента*, "the President's Office"*)* transmitted the applicant's complaint to the Minister of the Interior for examination.

On 7 June 2001 the General Prosecutor's Office forwarded the applicant's complaint to the prosecutor's office of the Chechen Republic "for examination on the merits".

By letter of 13 June 2001 the first deputy commander of the United Group Alignment in the Northern Caucasus *(первый заместитель командующего ОГВ(с) в СКР,* "the deputy commander"*)* informed the Nadterechny District Court that the judgment in the applicant's favour had been executed and the defendant units had left the applicant's estate. In reply, on 26 June 2001 a bailiff reported that the judgment remained unenforced. He stated that he had visited the applicant's estate and found out that even though the Tambov consolidated police units had left, the Tula consolidated police units (*Тульский сводный отряд милиции*) had moved into the applicant's property.

On 18 June 2001 the prosecutor's office of the Chechen Republic (*прокуратура Чеченской республики*) invited the Chief Bailiff of Russia *(главный судебный пристав РФ)* to provide information as to what measures had been taken to enforce the judgment in the applicant's favour and whether the question of administrative or criminal liability for the evasion from enforcement by the personnel of the consolidated police units had ever been raised. It is unclear whether any answer was given to this query.

On 26 June 2001 the Chief Bailiff informed the President's Office that the term for the examination of the applicant's complaint regarding the prolonged non-enforcement had been extended for 30 days.

On 27 June 2001 the Ministry of the Interior informed the President's Office that the judgment of 14 February 2001 had been enforced.

By letter of 30 June 2001 the prosecutor's office of the Republic of Chechnya, with reference to the letter of the deputy commander of 13 June 2001, notified the applicant that the judgment had been executed.

According to the Government, on 4 July 2001 the bailiff imposed a fine equal to 200 times the minimum monthly salary on the police units for their refusal to comply with the court judgment. The fine, however, could not be recovered because of delays in the payment of wages to military personnel in Chechnya. The Government also submitted that on 14 July 2001 the Tambov police units had left the territory of the applicant's estate, and the bailiff had closed the enforcement proceedings and returned the writ of execution to the Nadterechny District Court on 17 July 2001, but thereafter the Tula police units had occupied the applicant's estate.

On 30 July 2001, in the course of the eviction proceedings, the bailiff drew up three reports on the eviction of the police units from the applicant's houses and industrial premises. The reports listed items of the applicant's property that had been destroyed or damaged and were signed by the applicant, the bailiff and two attesting witnesses. It does not appear that the actual eviction took place.

In a letter of 10 August 2001 a Deputy Chief Bailiff of Russia informed the applicant of the developments in his case, stating that the execution of the judgment depended in fact on the Ministry of the Interior rather than on the efforts of a bailiff.

By letter of 13 August 2001 the President's Office transmitted the applicant's new complaint to the Ministry of Justice. It also referred to the Chief Bailiff's letter of 26 June 2001 and stated that even though 30 days had already passed, no information had been submitted on the developments in the enforcement proceedings.

On 26 February 2002 the bailiff reported that on an unspecified date the police had vacated the houses, but remained in quarters they had built on the applicant's land and continued using the applicant's resources for their needs. It also stated that trenches and check-points restricted access to the land, and that the applicant could not enter it even for a short time, let alone permanently reside there.

On 14 June 2002 the bailiff closed the enforcement proceedings, as the police units had finally left the applicant's estate. The bailiff drew up a report on the eviction, indicating in detail the damage to the applicant's property. It was signed by the applicant, the bailiff and two attesting witnesses.

3. Proceedings for compensation

In 2001 the applicant, acting in his own name and on behalf of his brother, brought an action against the Ministry of the Interior in the

Nadterechny District Court. He complained that the consolidated police units had occupied and wrecked his estate and had been refusing to comply with the judgment of 14 February 2001. He sought recovery of possession of his movables and real property as well as compensation in the amount of 10,787,040 Russian roubles ("RUR", approximately EUR 315,732) for pecuniary losses that he had sustained as a result of the adverse occupation of his estate and compensation in the amount of RUR 5,241,175 (approximately EUR 153,418) for the damage caused thereto. The applicant also stated that as a result of the unauthorised occupation of his estate he and his family had had to live in a refugee camp in appalling conditions which had resulted in the death of his nephew and he claimed compensation of RUR 10,000,000 (approximately EUR 292,685) in respect of non-pecuniary damage.

The applicant filed numerous documents in support of his claims, including those confirming his and his brother's title to the houses, industrial buildings and the plot of land, two registration certificates in respect of the Nedra company, his applications to various State bodies and respective replies, a copy of the judgment of 14 February 2001 and the bailiff's reports on the police units' failure to comply with that judgment as well as the certificate issued by the commission made up of the head of the local council of Bratskoye and local residents, together with the evaluation reports of 26 May 2000 and estimates of repair costs for his property.

On 15 June 2001 the Nadterechny District Court refused to examine the applicant's action with reference to the territorial limits on its jurisdiction and invited the applicant to submit his claims in the defendant's area, that is to say to a court in Moscow. The applicant did not appeal against this decision.

On 30 July 2001 the applicant lodged the same action in the Zamoskvoretskiy District Court of Moscow (*Замоскворецкий межмуниципальный суд г. Москвы,* "the District Court").

On 23 January 2002 the District Court, sitting in a single judge formation, delivered its judgment. At the trial the defendant ministry did not contest, as such, the accuracy of the applicant's submissions or the evidence he had presented, but denied its responsibility for the consolidated police units stating that they had formed part of the federal troops within the territory of Chechnya and had been under the command of the military authorities of the United Group Alignment. The court made no comment in respect of those submissions by the defendant ministry. It examined the material before it and established that the applicant owned the property in question, that the local council had certified on 16 October 2000 the unauthorised occupation of that property by federal police units, that the applicant had requested the authorities to ensure his estate was vacated and that by judgment of 14 February 2001 the Nadterechny District Court had

ordered the eviction of the Tambov consolidated police units from the applicant's premises. The court further found as follows:

> "The plaintiffs have filed a certificate issued by [the commission composed of] the head of the local council and residents of Bratskoye. The certificate states that the federal military were located on the plaintiffs' estate from 13 October 1999 until 26 May 2000 and that they caused damage to the plaintiffs' property.
>
> The plaintiffs have produced evaluation reports and estimates of repair costs to corroborate their arguments concerning the property damage. The plaintiffs have also adduced a calculation of lost profit ...
>
> Having assessed the evidence in its entirety, the court sees no reason to allow the plaintiffs' claims, as the houses and industrial premises have already been vacated, as the [first] plaintiff has confirmed during the hearing. Besides, another judgment in force ordered the police units' eviction, and enforcement proceedings were commenced.
>
> The court cannot award repair costs and compensation for property damage either, since the plaintiffs have failed to present sufficient proof that their houses and the industrial premises were damaged through the fault of the Ministry of the Interior.
>
> The only evidence the plaintiffs have produced to corroborate their claims is the certificate of the head of the local council of Bratskoye, which states that the federal interior troops caused the property damage. However, the court cannot consider this document as evidence, since the date of its issue is missing. Besides, there is nothing in this document to suggest that the real amount of the damage corresponds to that indicated by the plaintiffs.
>
> ...
>
> The plaintiffs have adduced photographs of their houses and industrial premises. The court cannot consider these photographs as evidence, since there is no indication that they represent the plaintiffs' houses and industrial premises.
>
> In view of the fact that during the trial the plaintiffs' arguments that it was the Ministry of the Interior which adversely occupied their property have proved groundless, the court finds the Khamidovs' claims unfounded."

The court rejected the applicant's claims accordingly, without separately addressing his claims regarding compensation for the adverse occupation of his estate and that in respect of non-pecuniary damage.

The applicant appealed against the above-mentioned judgment. He pointed out, among other things, that the District Court's finding to the effect that "during the trial the plaintiffs' arguments that the Ministry of the Interior unlawfully occupied their property had proved groundless" was arbitrary and contravened Article 55 of the Code of Civil Procedure which stated that the facts established by a court judgment that had entered into force should not have to be proved again during examination of other civil disputes between the same parties. The applicant also claimed that the District Court had been arbitrary in that it had rejected the certificate drawn up by the commission consisting of the head of the local council and residents of Bratskoye by merely referring to the fact that this certificate had been undated, even though the said document directly referred to the

evaluation reports of 26 May 2000 that had been enclosed with it and submitted to the first-instance court.

On 8 April 2002 the Moscow City Court dismissed the applicant's appeal. It restated, in essence, the reasoning of the first-instance judgment and confirmed that all the findings had been correct.

The applicant's subsequent requests for supervisory review were to no avail.

B. Relevant domestic law

1. Constitution of Russia

Article 25 provides that housing shall be inviolable and that no one shall have the right to enter housing against the will of those living there, except in the cases established by a federal law or pursuant to a court decision.

Article 35 § 1 states that the right of private property shall be protected by law.

Article 40 § 1 provides that no one may be arbitrarily deprived of his or her home.

Under Article 55 § 3 the rights and freedoms set forth in the Constitution may only be limited by the federal law to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.

2. Russian Civil Code

Article 301 provides that an owner has the right to recover his property from adverse possession.

By virtue of Article 303, an owner, when recovering property from adverse possession, has the right to claim from a person who has, or should have, known that his possession is adverse (the possessor in bad faith) the return or reimbursement of all profits which that person has, or should have, received during the entire period of the possession.

Article 304 states that an owner is entitled to seek the elimination of all violations of his property rights even if such violations do not involve the deprivation of possession.

3. Code of Civil Procedure of 1964, as in force at the relevant time

Article 50 states that each party to the proceedings must prove those circumstances to which that party refers in support of his or her submissions. A court decides what circumstances are relevant for the case and which party must prove them and proposes those circumstances for discussion even if some of them have not been referred to by any of the parties. Evidence is submitted by the parties and other persons involved in

the proceedings. A court may propose that the parties or other persons involved in the proceedings submit additional evidence. If it is complicated for the parties or other persons involved in the proceedings to submit additional evidence, the court, on their request, assists them in obtaining that evidence.

Article 55 provides that the facts established by a court judgment that has entered into force will not have to be proved again during examination of other civil disputes between the same parties.

Article 117 establishes, as a general rule, that actions must be brought in the court of the defendant's place of residence.

Article 118 stipulates the plaintiff's right to bring a claim of compensation for damage to his or her property in the court of his or her choosing – either that of the defendant's place of residence or that of the place where the damage has been caused.

Under Article 119 actions concerning the determination of rights over immovable property may only be brought in the court of the place where such property is situated.

4. Federal Law on Enforcement Proceedings of 21 July 1997

Section 9 of this Act provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

Under section 13 the enforcement proceedings should be completed within two months following receipt of the writ of enforcement by the bailiff.

COMPLAINTS

1. The applicant complained under Article 8 of the Convention that the occupation of his estate, which represented the only housing for him and his family, by federal police units between October 1999 and June 2002 had infringed his right to respect for his home and his private and family life.

2. The applicant complained under Article 1 of Protocol No. 1 to the Convention about a temporary *de facto* expropriation of his possessions by the federal police. Under this head the applicant further alleged that the length of the enforcement proceedings in respect of the judgment of 14 February 2001 had been excessive. Finally, he submitted that the mere eviction of the police units from his estate had not remedied the interference with his property rights and that even though the police had severely

damaged his property he had been unable to obtain any compensation in this respect.

3. The applicant complained under Article 6 of the Convention that:

(a) he had had no access to a court for a period of 15 months between October 1999 and January 2001, as the functioning of the courts in Chechnya had been suspended owing to the counter-terrorist operation;

(b) the enforcement of the judgment of 14 February 2001 had taken almost 16 months, which had been unreasonably long;

(c) the decision of the Nadterechny District Court of 15 June 2001 had been based on an incorrect interpretation of domestic law in that the court had had jurisdiction to examine his claims but refused to do so; in this respect the applicant further submitted that bringing proceedings in the Moscow courts rather than in the courts in Chechnya had placed him at a substantial disadvantage *vis-à-vis* the Ministry of the Interior, as he had been unable to secure the attendance of any witnesses from his village;

(d) in the proceedings concerning his claim of damages against the Ministry of the Interior in 2002, the domestic courts had ignored his claims in respect of compensation for the occupation of his estate and non-pecuniary damage, disregarded evidence submitted by him and his legal arguments, made arbitrary findings contradictory to the facts of the case and therefore, in the applicant's view, had breached the principle of equality of arms.

4. Lastly, with reference to the above deficiencies in the domestic proceedings, the applicant complained under Article 13 that the domestic remedies had proved to be ineffective in his case.

THE LAW

1. The applicant complained that the occupation by the consolidated police units of the Ministry of the Interior of his premises had infringed his right to respect for his home and his private and family life under Article 8 of the Convention, and had constituted *de facto* temporary expropriation of his possessions in breach of Article 1 of Protocol No. 1. Under the latter head the applicant also complained about the lengthy failure to enforce the judgment of 14 February 2001 and the refusal of the domestic courts to award him compensation for the damage caused to his property by the federal forces. The respective provisions, in so far as relevant, read as follows:

Article 8

"Everyone has the right to respect for his private and family life, his home ...

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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."

(a) The Government

The Government asserted in the first place that the documents confirming the allotment of the plot of land to the applicant were missing from the records of the local council of the village of Bratskoye, that the title to the houses which the applicant and his brother had built on that plot had not been properly registered, and that those houses were not listed as residential premises, according to the records of the Bratskoye local council.

The Government also submitted that between 1997 and 1999 the applicant and his family had been absent from their premises, which at that time had been occupied by Chechen fighters who had built quarters on the applicant's land. They also referred to a statement of a representative of the Bratskoye local council to the effect that the Nedra company had been operating for no more than a month and had not paid taxes to the local budget.

The Government further admitted that there had been interference with the applicant's rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1, as a result of a temporary occupation of his premises by the consolidated police units, but argued that it had been justified in the circumstances of the case and fully complied with "the general principles of international law", given that at the material time a counter-terrorist operation had been underway in Chechnya. This operation had been launched by virtue of a presidential decree of 13 September 1999 and had been necessary in order to ensure the fulfilment of Russia's international obligations in the fight against terrorism. In this connection the Government quoted the United Nations and Council of Europe documents on combating terrorism, to the effect that States were urged to ensure that their territories were not used for the organisation of terrorist acts and that States could derogate from their obligations undertaken in accordance with international treaties on protection of human rights "when the fight against terrorism took

place in a situation of war or public emergency which threatens the life of the nation".

The Government also referred to the reply of the Ministry of the Interior stating that at the beginning of the counter-terrorist operation in Chechnya in October 1999 the federal troops had encountered difficulties in quartering their personnel, and therefore had been authorised, in case of pressing need, to occupy vacant residential or non-residential premises. The Government argued, firstly, that at the time when the Tambov consolidated police units had moved into the applicant's estate it had been left abandoned, and, secondly, that they had been unable to obtain prior approval from the local council as the latter had not been functioning at the time. The Government also submitted that the actions of the federal forces during the counter-terrorist operation on the territory of the Chechen Republic had been aimed at preventing disorder, crime and terrorist attacks, i.e., first of all, at protecting the interests of the residents of Chechnya, including the applicant and his family members and that given that the Tambov police units had been entrusted with the task of protecting public order and fighting against crime, their presence on the applicant's estate had ensured protection of the applicant's property against marauders.

Finally, the Government contended that the domestic courts had rightly dismissed the applicant's claim of compensation for property damage in the 2002 proceedings, as the applicant had failed to prove that the said damage had been caused by the units of the Ministry of the Interior.

(b) The applicant

The applicant disputed the Government's submission and maintained his complaints. He pointed out that his ownership and that of his brother in respect of the houses and industrial premises as well as his right to use the plot of land were confirmed by a number of documents that he had submitted to the Court, including a registration certificate of 5 September 1996 confirming the transfer of the plot of land to the Nedra company on terms of indefinite lease, and registration certificates nos. 322 and 323 issued on 18 October 2000 by a competent local authority in respect of the applicant's house and that of his brother. He also stated that he had presented those documents to the domestic courts, which had never called into question their authenticity or his title to the property.

The applicant further argued that although he and his family had been absent from the estate at the time of its occupation by the police units, it had not been abandoned, as public utilities had remained in service, the mill had been operational and grain had been stored in the storage facility. He also contested the Government's argument that the police units had been unable to obtain prior authorisation to move onto the applicant's estate in the absence of the local council in the village of Bratskoye. The applicant submitted that the latter had been properly functioning, and that, moreover,

at the end of September 1999 the administration of the Nadterechny District had been formed and its then head had held office until 9 December 1999.

The applicant next contested the Government's argument that the interference with his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 as a result of the temporary occupation of his estate by the consolidated police units had been justified. He argued that their reference to "a situation of war or public emergency which threatens the life of the nation" was unconvincing as the state of emergency had never been declared either nationwide or within the area of the counter-terrorist operation and that in any event the Russian authorities had never availed themselves of their right under Article 15 of the Convention to derogate from their obligations under the Convention.

The applicant further stated that the occupation of his estate had been in breach of national law, including the Constitution of Russia and other legal acts, and could not be deemed necessary in a democratic society. The applicant further argued that even assuming that there had been a pressing need for the federal forces to move onto his estate, the authorities could have rented his property, or paid him compensation for the temporary occupation, but refused to do so.

The applicant also maintained that the police units had not only occupied his estate but had also damaged it and that this interference with his Convention rights had not been justified either, particularly in view of the refusal of the domestic courts to award him compensation in this respect. The applicant contested the findings of the domestic courts and the Government's submissions on the matter, stating that he had adduced numerous documents in support of his claims whilst neither the defendant ministry in the domestic court proceedings, nor the Government in their submissions before this Court, had submitted any evidence in rebuttal or to the effect that his estate had already been damaged when the police units moved in, or that it had been returned to him intact, or that the damage had been caused by a third party.

(c) The Court's assessment

The Court considers, in the light of the parties' submissions, that these complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. The Court therefore concludes that this part of the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained under Article 6 of the Convention about a denial of access to a court on account of a suspension in the functioning of the courts in Chechnya from October 1999 until January 2001, the

unreasonable length of the enforcement proceedings in respect of the judgment of 14 February 2001 and the unfairness of the proceedings in 2002 in view of the arbitrary findings made in his case by the domestic courts, together with their failure properly to examine the evidence adduced by him and his legal arguments or to address his claims regarding compensation for the occupation of his estate and non-pecuniary damage. In connection with the above complaints the applicant also referred to Article 13 of the Convention, alleging the absence of effective domestic remedies. The respective Articles in their relevant parts read as follows:

Article 6

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law..."

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."

(a) The Government

The Government conceded that the courts in the Chechen Republic had only resumed work on 3 January 2001, and that prior to that date the applicant could not effectively have had recourse to such remedy on the territory of Chechnya. They argued, however, that the applicant had not been deprived of access to a court between October 1999 and January 2001, as during this period it had been open to residents of the Chechen Republic to apply to courts in other regions of Russia adjacent to Chechnya, or directly to the Supreme Court of Russia. In support of this argument the Government referred to the case of *Isayeva, Yusupova and Bazayeva v. Russia* (nos. 57947/00, 57948/00 and 57949/00, judgment of 24 February 2005) and that of *Khashiyev and Akayeva v. Russia* (nos. 57942/00 and 57945/00, judgment of 24 February 2005) in which the courts in the Republic of Ingushetia, by decisions of 20 December 1999 and 7 February 2000 respectively, had granted the applicants' requests to certify the death of their relative, and in a judgment of 26 February 2003, as upheld on 4 April 2003, had awarded one of the applicants damages in connection with the death of his relatives.

In so far as the applicant complained about the untimely enforcement of the judgment of 14 February 2001, the Government asserted that the Tambov consolidated police units had vacated the premises of the applicant's estate in April 2001, and therefore they had formally complied with the judgment in the applicant's favour within the statutory time-limit of two months. The Government admitted, however, that after April 2001 the applicant had still not had access to his property, and that after the Tambov

police units had left in July 2001, the applicant's estate had been occupied by the Tula consolidated police units. In this latter respect, the Government argued that there had been no grounds for the eviction of the Tula police units, as the judgment of 14 February 2001 had only ordered the eviction of the Tambov police units, and the applicant had never brought a separate court claim against the Tula police units. The Government then conceded that the judgment in the applicant's favour had been enforced after some delay, but argued that the counter-terrorist operation on the territory of Chechnya had been the reason for this delay, and that the occupation of the applicant's estate by the federal military had been "a temporary measure relating to fulfilment of their tasks to secure legal order and public safety".

As regards the applicant's complaints relating to the civil proceedings in 2002, the Government mainly relied on the respective decisions by the domestic courts and stated that in two instances they had examined the applicant's claims and rightly found it unproven that the damage to the applicant's property had been caused "through the fault of the units by the Ministry of the Interior". According to the Government, the applicant's claim in respect of non-pecuniary damage could not have been allowed as the courts had not found the defendant to be at fault in causing harm to the applicant. With reference to the opinion of the Supreme Court of Russia and the Ministry of Justice, the Government contended that the domestic courts' findings had been justified in the circumstances of the case and that the applicant's right to a fair hearing in the proceedings for compensation of property damage had thus been respected.

(b) The applicant

The applicant contested the Government's arguments.

He maintained that he had been denied access to a court between October 1999 and January 2001. He pointed out that the Government had not referred to any legal act that could have enabled the residents of Chechnya to apply during the said period to courts located in other regions of Russia. He further contended that, under Article 119 of the Code of Civil Procedure, disputes determining rights over immovable property were solely to be brought before the courts of the place where such property was located, and therefore that he had been unable to file his claim in any other region of Russia. He also submitted that the Government's reference to the decisions of 20 December 1999, 7 February 2000 and 26 February 2003 given by the courts in Ingushetia was irrelevant, as the first two sets of proceedings had concerned the certification of the death of the applicants' relatives rather than property disputes, and that under domestic procedural law different rules on jurisdiction had been applicable in those cases, while the third set of proceedings fell outside the relevant period.

The applicant next maintained that the judgment in his favour had remained unenforced for 15 months and 20 days and that the Government

had advanced no plausible explanation to justify such a considerable delay. In the applicant's view, even assuming that it had been necessary for the federal police units to be quartered on his estate for the "fulfilment of their tasks to secure legal order and public safety", they could have entered into a lease agreement with him, or, in case of pressing need, apply for a suspension of the enforcement of the judgment of 14 February 2001, but had availed themselves of neither of those options.

The applicant further contested the Government's submissions regarding the 2002 proceedings. He argued that he had had no fair hearing within the meaning of Article 6 § 1. The applicant stated that the fact that the police units of the Ministry of the Interior had adversely occupied his estate had already been established by the judgment of 14 February 2001, and that he had submitted evidence in support of his assertion that the damage to his property had been caused by the Ministry of the Interior. Furthermore, the defendant had not produced any evidence to the effect that his estate had already been wrecked when the police units moved in, or that it had been returned to him undamaged, or that the damage had been inflicted by a third party. Nevertheless, the domestic courts had disregarded the evidence submitted by the applicant, made perverse findings in favour of the defendant ministry and reached conclusions that had been arbitrary and contradictory to the facts of his case.

(c) The Court's assessment

The Court considers, in the light of the parties' submissions, that these complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that this part of the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant also relied on Article 6 § 1 of the Convention, complaining about the decision of 15 June 2001 by which the Nadterechny District Court had declined to examine his claims for compensation on the merits. The Court notes that it is not competent to examine this complaint, since the applicant did not appeal against that first-instance decision to a higher court, and therefore failed to exhaust the domestic remedies available to him.

It follows that this part of the application must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention as well as the applicant's complaints under Articles 6 and 13 of the Convention concerning his inability to file a claim in courts on the territory of Chechnya between October 1999 and January 2001, the delay in the enforcement of the judgment of 14 February 2001 and the defects in the proceedings in 2002;

Declares inadmissible the remainder of the application.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President