



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

FIRST SECTION

CASE OF GUBIYEV v. RUSSIA

(Application no. 29309/03)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

08/03/2012

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

In the case of Gubiyev v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

George Nicolaou,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linós-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 29309/03) 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 Suleyman Semiyevich Gubiyev (“the applicant”), on 12 May 2003.

2. The applicant was represented by Mr M. Shidayev, a lawyer practising in Grozny. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that federal servicemen had destroyed his company’s property during a special operation in the Chechen Republic and that the domestic courts had refused to award him any compensation in this respect. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1.

4. On 30 April 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 23 November 2009 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The facts

6. The applicant was born in 1934 and lives in Chechen-Aul.

7. He is the sole founder, director and owner of a limited liability company called Voskhod (*Общество с ограниченной ответственностью «Восход»*, “the company”).

8. According to the applicant, at the material time the company owned a mill complex and a petrol station.

1. Destruction of property

9. In late 1999 the Russian Government launched a counter-terrorism operation in Chechnya.

10. On 18 July 2000, during a special operation in the vicinity of the village of Chechen-Aul, servicemen of military unit no. 3660 of the Russian Ministry of the Interior blew up the mill belonging to the company, with the result that it was completely destroyed and the petrol station situated nearby was damaged.

2. Applications to administrative bodies

11. In 2000-2001 the applicant complained on behalf of the company to a number of public officials, including the commander of military unit no. 3660, the head of the administration of the Chechen Republic and prosecutors at various levels, about the damage inflicted.

12. On 25 May 2001 the prosecutor’s office of military unit no. 20102 took a decision to dispense with criminal proceedings in connection with the incident of 18 July 2000. The decision stated that, on the date in question, the servicemen of military unit no. 3660 had been carrying out a special operation in the vicinity of Chechen-Aul, and that, in order to destroy a place which was supposed to be a terrorist arms and ammunition store, and which the terrorists had transformed into a base from which they had strafed a federal checkpoint, the servicemen, following their commanding officers’ order, had blown up the mill complex belonging to the company, with the result that it had been completely destroyed. The decision further stated that the actions of the commanding officers and servicemen of military unit no. 3660 had been based on section 21 of the Federal Law on Suppression of Terrorism (“the Suppression of Terrorism Act”), had been rendered absolutely necessary by unlawful actions of unidentified illegal fighters

putting the federal servicemen's lives in real danger, and had been aimed at eliminating that danger. The decision went on to note that the danger could not have been eliminated by any other means, and therefore the destruction of the company's property had not constituted a criminal offence. It thus concluded that there had been no evidence of a crime in the servicemen's actions. The decision also stated that, taking into account the aforementioned circumstances and the fact that the pecuniary damage had been inflicted on a third person who had not performed any actions that would have rendered the infliction of damage absolutely necessary, a question of compensation for that damage should be resolved by a civil procedure.

3. Court proceedings

13. In 2002 the applicant, acting on the company's behalf, issued proceedings against military unit no. 3660 before the Commercial Court of the Rostov Region. He sought compensation for losses sustained in the amount of 13,483,299 Russian roubles (RUB, approximately 335,000 euros, EUR).

14. On 2 July 2002 the court rendered its judgment. Throughout the judgment the court referred to the mill complex and petrol station as the company's property. It established the circumstances of the incident of 18 July 2000 as they had been presented by the claimant company and confirmed that the damage inflicted corresponded to the amount indicated in the court claim. In this latter respect, the court based its finding on a working estimate (see paragraph 33 below) and a letter from the State Agency for Construction, Architectural and Housing Policy, according to which the original amount should be adjusted in line with the index of prices in the first quarter of the year 2002.

15. The court further held as follows:

"... The military prosecutor's office of military unit no. 20102 carried out an inquiry into the incident. In a decision of 25 May 2001 reflecting the result of the inquiry it had been established that on 18 July 2000, pursuant to a combat order, servicemen of military unit no. 3660 were pursuing a special operation in the village of Chechen-Aul and its adjacent territory.

The materials of the case reveal that the mill belonging to the Voskhod company was a convenient position to direct fire on the outpost of Interior troops stationed nearby, and that the lives and health of the servicemen were put under constant risk as a result. Since section 21 of the Suppression of Terrorism Act permitted deliberate infliction of damage on the legally protected interests of a person, society, or the State, the commanding officers of military unit no. 3660 took a decision on the basis of which the servicemen of that unit blew up the mill complex belonging to the Voskhod company. As a result of the explosion the building was completely destroyed.

...

... In accordance with section 21 of the Suppression of Terrorism Act ..., on the basis of the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally protected interests, in the course of a counter-terrorism operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.

By virtue of Article 1067 of the Russian Civil Code, damage inflicted in a situation of absolute necessity, and notably for elimination of a danger threatening the tortfeasor or third parties, if the danger, in the circumstances, could not be eliminated by any other means, shall be compensated for by the tortfeasor.

Having regard to the circumstances in which the damage was caused, a court may impose an obligation to compensate for such damage on a third party in whose interests the tortfeasor acted, or release from such an obligation, partially or in full, both the third party and the tortfeasor.

The court, taking into account the absence of unlawfulness in the defendant's actions and the fact that those actions were performed in a situation of absolute necessity, holds that they were lawful. Such actions are socially useful as they are aimed at protecting an individual, his rights and freedoms, the interests of society and the State from impending danger.

Taking into account the circumstances in which the damage was caused and the fact that [it was inflicted on] a person who had not committed any unlawful acts but had become a victim of a series of accidental events, and having regard to the circumstances of the case, the court releases the person who caused the damage from the obligation to compensate for the losses."

16. The court thus dismissed the claimant company's claims in their entirety and ordered the company to pay a court fee in the amount of RUB 100,000 (approximately EUR 2,500).

17. On 29 August 2002 the Commercial Court of the Rostov Region, sitting as an appellate court, upheld the first-instance judgment, having in essence restated its reasoning. In its decision the court described the mill complex and petrol station as the company's property.

18. On 25 November 2002 the Federal Commercial Court of the North-Caucasus Circuit ("the Federal Commercial Court") dismissed the company's appeal, stating, in particular:

"According to certificates issued by the Bureau of Technical Inventory of the Ministry of Housing Maintenance and Utilities and dated 20 March and 13 June 1996 [the mill and the petrol station] are registered in the name of the Voskhod company (*зарегистрированы за ООО «Восход»*) on the basis of decisions of the Chechen-Aul local council dated 26 February 1992 and 26 December 1993 respectively. However, the claimant company has not submitted to this court documents confirming that the mill complex and petrol station were properly transferred into the company's ownership (*переданы на баланс ООО «Восход»*), or proof of any other legal grounds for the company to acquire the property title to the mill complex and petrol station. There is no documentary evidence to confirm the condition and value of [the property in question] before it was destroyed.

... The claimant company confirmed [the amount of losses] by estimates of costs for the construction of a new mill complex and petrol station.

The Voskhod company did not offer proof that it had acquired the property, or of its value at the moment of destruction, and therefore the court rightly dismissed the claimant company's action."

19. The court also upheld the reasoning of the two lower courts, stating, in particular, that the servicemen's actions had been based on the Suppression of Terrorism Act and relevant presidential decrees and had aimed at restoring constitutional order in the Chechen Republic. It also noted that there had been no evidence in the materials of the case that the servicemen had acted *ultra vires* or that their actions had been unlawful, and therefore the servicemen should be exempt from responsibility for their actions.

20. Thereafter the applicant, acting on the company's behalf, sought to have the amount of the court fee imposed on him by the first-instance court reduced. His request was dismissed.

B. Documents submitted by the parties

1. Documents relating to the status of the Voskhod company

21. Both parties submitted various documents confirming that the applicant was the sole founder, owner and director of the company.

22. A certificate issued by a tax authority confirmed that the company had been registered with that authority on 3 May 2001 and had been given an identification number as a taxpayer.

23. An extract of 1 July 2008 from the Uniform State Register of Legal Entities (*Единый государственный реестр юридических лиц*) provided various details concerning the Voskhod company. It indicated, in particular, that the company's principal business activity was the retail sale of motor fuel, and its subsidiary activity was the production of flour, flour blends and pastry preparations for baking.

2. Documents relating to the title to the property

24. By a decision of 26 February 1992 the local council of the village of Chechen-Aul ("the Chechen-Aul local council") assigned to the applicant, in his capacity as director of the Voskhod company, a plot of land measuring 300 square metres, and authorised the company to build a petrol station on that plot.

25. A certificate of 13 April 1993 issued by a competent authority attested that the construction of the petrol station had been completed and that that authority had accepted it as commissioned and fully operational.

26. In a decision of 26 December 1993 the Chechen-Aul local council, at the applicant's request, gave him permission to build a mill complex and assigned him a plot of land measuring 1,500 square metres for that purpose.

27. A certificate of 20 March 1996 issued by the Republican Bureau of Technical Inventory of the Russian Ministry of Housing Maintenance and Utilities confirmed that the mill complex had been registered as the Voskhod company's property on the basis of the decision of 26 December 1993 by the Chechen-Aul local council. A similar certificate was issued by the Republican Bureau of Technical Inventory on 13 June 1996 in respect of the petrol station.

28. Under a contract of 10 April 1999 the company agreed to purchase various equipment for the mill complex and to pay RUB 125,000 (approximately EUR 3,100).

29. A certificate of 13 December 2005 attested to the State registration of the property title to a petrol station belonging to the Voskhod company.

30. An extract of 18 July 2008 from the Uniform State Register of Rights to Immovable Property and Transactions therewith (*Единый государственный реестр прав на недвижимое имущество и сделок с ним*) confirmed that the Voskhod company was the owner of a petrol station. Another extract of the same date stated that there was no entry in the aforementioned Register in respect of any property rights of the Voskhod company to any mill complex.

3. Documents attesting to the damage to the property

31. A report of 19 July 2000 stated that on that date a commission of the Chechen-Aul local council had examined, at the applicant's request, the mill complex belonging to the Voskhod company. The commission had established that the mill, which had had a production capacity of 100 tons of flour per day and had consisted of a permanent three-floor building measuring 20 x 30 metres, had been completely destroyed. The report then gave a more detailed description of the damage inflicted. It also stated that the commission had examined the mill complex in May 2000 and had drawn up an evaluation report attesting to some damage inflicted on the building during the previous military actions. The report then certified that the complete destruction of the mill complex, established by the commission on that date, had been carried out by federal forces on 18 July 2000 during a special operation in Chechen-Aul, this being confirmed by objective evidence and witness statements to the effect that representatives of the federal forces had planted explosive devices and then set off explosions in at least eight parts of the mill building. The commission also indicated in the report that the Voskhod company should apply to specialised agencies for assessment of the damage inflicted.

32. By a certificate it issued on 5 November 2008 the Chechen-Aul local council attested that on 18 July 2000 the mill complex with equipment

belonging to the Voskhod company had been destroyed and the petrol station had been damaged.

33. A working estimate of repair costs of 15 September 2001 indicated that it was necessary to invest an overall amount of RUB 9,356,308 (approximately EUR 234,000) to restore the mill complex and petrol station.

34. A report of 11 September 2002 drawn up by a State agency of expert examinations stated that this latter authority had, at the applicant's request, carried out an expert evaluation of the aforementioned estimate of repair costs and established that they should total RUB 13,677,294 (approximately EUR 340,000), taking into account the index of prices in the third quarter of the year 2002.

4. Other documents

35. In a certificate of 20 September 2000, issued at the applicant's request, the Chechen-Aul local council confirmed that on 18 July 2000, the date on which the mill complex belonging to the Voskhod company had been blown up, the federal forces had been carrying out a special operation in Chechen-Aul to blow up oil refining facilities. The operation in question had been conducted by military unit no. 3660.

36. In his explanation given on 27 June 2008 to the prosecutor's office of the Chechen Republic the applicant confirmed that he was the sole founder, owner and director of the Voskhod company. He further stated that the Chechen-Aul local council in its decision, of 26 February 1992, (see paragraph 24 above), had authorised the company to build a petrol station, that the construction had been completed on 13 April 1993, and that the petrol station had been acknowledged by a competent State authority as commissioned and fully operational (see paragraph 25 above). The applicant pointed out that the company had duly registered the property title to the petrol station with the Bureau of Technical Inventory (see paragraph 27 above), but no documents confirming the formal transfer of the title in respect of the petrol station to the company had ever been drawn up. The applicant also stated that on 26 December 1993 the Chechen-Aul local council had also authorised the company to build a mill complex (see paragraph 26 above). According to him, the construction had been completed in late 1993 [*apparently a mistake, should read 1994*] and the mill complex started functioning with a production capacity of 100 tons of flour per day. The applicant stated that he had been unable to comply with the procedure whereby a new construction should be accepted by an appropriate State authority as commissioned and fully operational, because of the beginning of military actions in the Chechen Republic at that time. He also stated that the company had registered the property title to the mill complex with the Bureau of Technical Inventory (see paragraph 27 above), but no documents confirming the formal transfer of the title to the mill

complex to the company had ever been drawn up. The applicant further claimed, with reference to the contract of 10 April 1999 (see paragraph 28 above), that the company had purchased various equipment for the mill. He went on to state that from late 1999, when the second counter-terrorism operation in the Chechen Republic started, until late 2001, military unit no. 3660 had been stationed on the Voskhod company site, including in the mill complex, and that servicemen of that unit had disassembled the equipment. After military unit no. 3660 had been transferred to another location, the servicemen of that unit had blown up the mill complex building. According to the applicant, prior to the events in question no survey of the petrol station and mill complex had been done. The applicant further referred to an estimate of 15 September 2001 (see paragraph 33 above) and stated that at present the amount necessary to restore the petrol station and mill complex was considerably higher than that indicated in the estimate.

37. In a certificate of 5 November 2008 the Chechen-Aul local council confirmed that for several months, from early 2000 until July 2000, federal servicemen had been stationed within the territory and on the Voskhod company site, of which the applicant was the founder and director.

II. RELEVANT DOMESTIC LAW

A. Constitution

38. The Russian Constitution provides as follows:

Article 35

“1. The right of private property shall be protected by law.

...

3. No one may be deprived of property otherwise than by a court decision. Expropriation of property for State needs may only be carried out subject to preliminary and equivalent compensation.”

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, or for ensuring the defence of the country and security of the State.”

B. Civil Code of 1994

39. Article 131 of the Russian Civil Code states that the title to and other proprietary interests in immovable property, limitations of those rights, their creation, transfer and termination shall be subject to State registration in a single State register by the relevant authorities. The State registration procedure was established in the Federal Law On Registration of Property Rights to Immovable Property and Transactions with such Property (“the State Registration Act”).

40. Article 1064 provides that damage caused to the property of an individual or of a legal entity shall be compensated for in full by the person who inflicted such damage. The latter may be released from the obligation to pay compensation if he or she can prove that the damage was not inflicted through his or her own fault; however, the law may provide for compensation in respect of damage even in the absence of fault by the person who caused it. Damage inflicted by lawful actions shall be compensated for in cases established by law.

41. By virtue of Article 1067, damage inflicted in a situation of absolute necessity, and notably for elimination of a danger threatening the tortfeasor or third parties, if the danger, in the circumstances, could not be eliminated by any other means, shall be compensated for by the tortfeasor. Having regard to the circumstances in which the damage was caused, a court may impose an obligation to compensate for such damage on a third party in whose interests the tortfeasor acted, or may release from such an obligation, partially or in full, both the third party and the tortfeasor.

42. Article 1069 stipulates that a State agency or a State official will be liable towards a citizen for damage caused by their unlawful actions or failure to act. Compensation for such damage will be awarded at the cost of the federal or regional treasury.

C. Code of Commercial Procedure

43. Article 25 of the Russian Code of Commercial Procedure establishes that actions must be brought in the courts at the location of the defendant.

D. Suppression of Terrorism Act

44. The Federal Law on Suppression of Terrorism of 25 July 1998 (*Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом»*, “the Suppression of Terrorism Act”), as in force at the relevant time¹, provided as follows:

¹ The Suppression of Terrorism Act was abolished in 2006.

Section 3. Basic Concepts

“For the purposes of the present Federal Law the following basic concepts shall be applied:

... ‘suppression of terrorism’ shall refer to activities aimed at the prevention, detection, suppression and minimisation of the consequences of terrorist activities;

‘counter-terrorist operation’ shall refer to special activities aimed at the prevention of terrorist acts, ensuring the security of individuals, neutralising terrorists and minimising the consequences of terrorist acts;

‘zone of a counter-terrorist operation’ shall refer to an individual terrain or water surface, means of transport, building, structure or premises with adjacent territory where a counter-terrorist operation is conducted;...”

Section 21. Exemption from liability for damage

“On the basis of the legislation and within the limits established by it, damage may be caused to the life, health and property of terrorists, as well as to other legally protected interests, in the course of a counter-terrorist operation. However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation.”

E. State Registration Act

45. The Federal Law On Registration of Property Rights to Immovable Property and Transactions with such Property (*Федеральный закон от 21 июля 1997 г. № 122-ФЗ «О государственной регистрации прав на недвижимое имущество и сделок с ним*, “the State Registration Act”) in its sections 2 and 4 provides that the title to and other proprietary interests in immovable property shall be subject to State registration, and that the latter shall be the only proof of the existence of a right of property.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

46. The applicant complained about the destruction of his company’s property and refusal of compensation in this regard. He referred to Article 1 of Protocol No. 1 of the Convention, 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

1. *Compliance with the six-month rule*

47. The Government argued that the present application had been lodged outside the six-month time-limit established in Article 35 § 1 of the Convention. In their opinion, the six-month period should run from 18 July 2000, the date on which the property in question had been blown up, that is the date of the alleged violation of the applicant’s property rights.

48. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002).

49. In the present case, the Court observes that after the incident of 18 July 2000 the applicant, on the company’s behalf, issued proceedings before commercial courts in which he complained about the damage to the company’s property and sought compensation in that respect. Even assuming that this remedy proved to be ineffective, which the Government seem to have suggested by arguing that the six-month period should be calculated from the date of the alleged violation of the applicant’s property rights, it is clear that the applicant could not become aware of the ineffectiveness of the remedy in question until the final decision in his case was taken. The Court observes that such a decision was taken by the Federal Commercial Court of the North Caucasus Circuit on 25 November 2002, whereas the present application was lodged on 12 May 2003, that is within six months of that decision.

50. In such circumstances, the Court cannot reach the conclusion that the applicant failed to comply with the time-limit established in Article 35 § 1 of the Convention. Accordingly, the Government's objection in this regard should be dismissed.

2. *Compatibility ratione personae*

51. The Government further disputed the applicant's victim status as regards his complaint under Article 1 of Protocol No. 1. They argued with reference to the certificates of 20 March and 13 June 1996 (see paragraph 27 above) that the mill complex and petrol station had been registered in the company's name rather than in that of the applicant, whereas under the Court's case-law only the person directly affected by the act or omission at issue may claim to be a "victim" of the alleged violation within the meaning of Article 34 of the Convention. In this latter respect they relied on the case of *Nosov v. Russia* (no. 30877/02, decision of 20 October 2005).

52. The applicant made no particular comments in this respect.

53. The Court reiterates that where the acts or omissions complained of affect a company, the application should be brought by that company. Disregarding a company's legal personality as regards the question of being a "victim" will be justified only in exceptional circumstances (see *Capital Bank AD v. Bulgaria* (dec.), no. 49429/99, 9 September 2004; *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004; *G.J. v. Luxembourg*, no. 21156/93, § 23, 26 October 2000; and *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A). On the other hand, the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the impugned measures taken in respect of his company are concerned, because in the case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringement of Convention rights or to the most appropriate way of reacting to such an infringement (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000; *Dyrwold v. Sweden*, no. 12259/86, Commission decision of 7 September 1990; *Nosov*, cited above, or *Khamidov v. Russia*, no. 72118/01, § 123, ECHR 2007-XII (extracts)).

54. In the present case, it is not in dispute between the parties that the applicant was the sole founder, owner and director of the company in question. It is therefore clear that there is no risk of any competing interests and/or differences of opinion which could create difficulties as reflected in the Court's relevant case-law. In such circumstances, the Court finds that the applicant can claim to be a "victim" of the violation of Article 1 of Protocol No. 1 alleged by him, and that the Government's objection in that regard should be dismissed.

3. *Existence of possessions*

55. The Government acknowledged that the company was the owner of the petrol station, but disputed the company's property title as regards the mill complex. In this latter respect, they referred to Article 131 of the Russian Civil Code and sections 2 and 4 of the State Registration Act (see paragraphs 39 and 45 above), stating that the only proof of the existence of any property rights in respect of immovable property was their State registration. In this respect, they argued that there was no entry in the Uniform State Register of Rights to Immovable Property and Transactions therewith confirming the property title of the Voskhod company to the mill complex (see paragraph 30 above), and that there was no information as to whether any taxes had been paid from that immovable property. The Government also pointed out that in its decision of 25 November 2002 the Federal Commercial Court had referred to the mill complex as "an object under construction", as the complex had not been accepted by a competent authority as commissioned and fully operational. In this respect they also relied on the applicant's explanation of 27 June 2008, in which he confirmed that as fact (see paragraph 36 above). The Government further pointed out that in its decision of 25 November 2002 the Federal Commercial Court had also noted that there was no evidence that the petrol station and mill complex had been formally transferred into the company's ownership. The Government thus insisted that the Voskhod company had had no property title to the mill complex, and that therefore the applicant's claim in this part had not been substantiated. On the other hand, the Government remained silent as to who, in their opinion, was the rightful owner of the mill complex.

56. The applicant made no particular comments in this respect.

57. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is independent of the formal classifications in domestic law: the issue that needs to be examined is whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicant title to a substantive interest protected by that provision (see, among most recent authorities, *Saghinadze and Others v. Georgia*, no. 18768/05, § 103, 27 May 2010).

58. In the present case, the Government advanced, in essence, two arguments concerning the mill complex. They argued, firstly, that its construction had remained uncompleted, as the company had not complied with the procedure whereby a newly constructed industrial item of immovable property should be accepted by a State authority as commissioned and operational, and, secondly, that the company had had no property title to the mill complex, having failed to register it as was required by the relevant national law.

59. As regards the Government's first argument, having observed the adduced documents, the Court has no doubt that the construction of the mill complex was complete and the complex operational. In particular, the report of the Chechen-Aul local council of 19 July 2000 indicated that, prior to its destruction, the mill had had a production capacity of 100 tons of flour per day, and described the mill complex as a permanent three-floor building measuring 20 x 30 metres (see paragraph 31 above). Also, the extract of 1 July 2008 from the Uniform State Register of Legal Entities revealed that one of the business activities of the Voskhod company was the production of flour, flour blends and pastry preparations for baking (see paragraph 23 above). The Court further considers that the historical context in which the relevant events of the case took place is also of a direct relevance. Indeed, it is clear from the applicant's explanation of 27 June 2008 that the completion of the construction of the mill complex coincided with the outbreak of hostilities in the Chechen Republic in late 1994 (see paragraph 36 above). The Court does not find unreliable the applicant's assertion that in such circumstances he had been unable to comply with the formal procedure invoked by the Government.

60. Against this background, the Court is unable to accept the Government's argument that the construction of the mill had not been finished, and finds it established that at the material time the mill complex had been a completed and operational item of immovable property.

61. As to the property title to the mill complex, the applicant did not deny that he had not complied with the State registration procedure in respect of that title, provided for in national law. The Court, however, is not convinced that the mere fact that the property rights to the mill complex were not duly registered under domestic law should enable it to conclude, as suggested by the Government, that the mill complex could not be regarded as the company's property, within the meaning of Article 1 of Protocol No. 1.

62. In this connection, the Court observes that by a decision of 26 December 1993 the Chechen-Aul local council assigned a plot of land to the Voskhod company for the purpose of building a mill complex (see paragraph 26 above). It has also established above that the mill was then built and put into operation. There is no evidence in the case file, and it has never been alleged by the Government, that any individual or legal person other than the Voskhod company constructed and operated the mill complex, or that the company's exclusive possession of the mill complex was ever disputed at the domestic level at the material time. The Government, while contesting the company's property title on formal grounds, did not indicate any owner of the property in question other than the Voskhod company.

63. It is also clear that the company maintained its possession of the mill complex in good faith, using it openly from the moment when it was built in

late 1994 until the moment when it was destroyed by the federal forces on 18 July 2000, that is for over five years. Moreover, the company took certain steps to have its property title duly registered, and specifically obtained a certificate to that effect from a State agency, the Republican Bureau of Technical Inventory (see paragraph 27 above). The Court also takes note of the certificates issued by the Chechen-Aul local council in which the latter authority consistently referred to the mill complex as the Voskhod company's property (see paragraphs 31, 32, 35 and 37 above). Moreover, it is clear that the prosecutor's office of military unit no. 20102, and the domestic courts at the first two levels of jurisdiction never called into doubt the company's title to the property in question, and consistently referred to the mill complex and petrol station as those belonging to the Voskhod company (see paragraphs 12, 14 and 17 above).

64. In such circumstances, the Court is satisfied that the applicant, being the sole owner of the Voskhod company, had a substantive interest protected by Article 1 of Protocol No. 1 with regard to both the mill complex and petrol station, and finds that these both properties constituted his "possessions", within the meaning of this Convention provision.

4. Conclusion

65. In the light of the foregoing, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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

66. The applicant argued that the destruction of his company's property and refusal of compensation in this respect had been incompatible with the requirements of Article 1 of Protocol No. 1. He contended, in particular, that the presence of illegal fighters on the premises of the mill complex, and consequently the fact that they had posed a danger to the lives of federal servicemen or civilians, had not been proven either by the defendant military unit in the domestic court proceedings, or by the Government in the proceedings before the Court. The applicant alleged that, in reality, illegal armed groups had been located at a distance of around ten kilometres from his company's property, whereas servicemen of military unit no. 3660 had been stationed in the mill complex itself for several months before it had been destroyed. In this latter respect the applicant relied on a certificate of the Chechen-Aul local council (see paragraph 37 above). According to him, in such circumstances it would have been impossible for illegal fighters to

use the mill complex for their criminal activities and in particular to fire on federal servicemen. He argued therefore that the actions of the federal servicemen who had blown up the mill complex had not pursued any legitimate aim and had been arbitrary and disproportionate.

67. The applicant also stated that he had corroborated his company's claim for compensation in the domestic proceedings with all the evidence he could have obtained in a situation when military action had been under way in the Chechen Republic.

68. The Government acknowledged that the mill complex referred to by the applicant had been destroyed and the petrol station damaged by an explosion carried out by the servicemen of military unit no. 3660 on 18 July 2000. They argued, however, the alleged interference had been justified in the circumstances of the present case and compatible with the requirements of Article 1 of Protocol No. 1.

69. They pointed out that at the material time a large-scale counter-terrorist operation, involving various federal forces, had been under way in the Chechen Republic. This operation had become necessary in view of the situation in the Chechen Republic at the relevant period and was aimed at preventing public disorder, crimes and terrorist attacks, protecting the interests of Russian citizens in the region, and ensuring national security and the fulfilment of Russia's international obligations in the fight against terrorism. In this latter respect the Government quoted a United Nations declaration on combating terrorism, to the effect that States were urged to ensure that their territories were not used for the organisation of terrorist acts. According to the Government, "the use of military power always has as its consequence certain violations of and limitations on individuals' rights".

70. The Government further contended the federal servicemen's actions in the present case had been based on section 21 of the Suppression of Terrorism Act (see paragraph 44 above). The Government stated that they had taken into account the Court's relevant findings made in paragraphs 143-44 of the *Khamidov* case (no. 72118/01, 15 November 2007) to the effect that the aforementioned legal provision cannot, in itself, serve as a sufficient legal basis for an interference with an individual's property rights, and that an individualised decision or order indicating the grounds and conditions for such an interference which could be appealed against in court should be in place for the interference to be "lawful" within the meaning of Article 1 of Protocol No. 1. In this respect the Government argued that it was extremely difficult clearly to define in law the scope, and the manner of exercise, of the powers vested in State agents acting within the zone of the counter-terrorism operation, because of the specific nature of such an operation and the specific nature of the warfare. They also explained the broad wording of section 21 of the Suppression of Terrorism Act by the need to respond quickly to changing circumstances within the

zone of a counter-terrorism operation and to take instant decisions to save human lives. The Government furthermore argued, with reference to the findings of the domestic investigation, that the servicemen had blown up the mill complex in compliance with their commanding officers' order which, in their view, constituted a proper legal basis for the alleged interference.

71. According to the Government, the impugned measure had been in the public interest. They disputed as absurd the applicant's assertion that at the relevant period the mill complex had been occupied by federal servicemen, and therefore it had been impossible for illegal fighters to penetrate there and to deliver aimed fire at the federal forces. According to the Government, the presence of federal servicemen within a certain territory had not excluded the possibility of combat encounters taking place between them and illegal fighters. The Government insisted with reference to the relevant findings in the decision of the prosecutor's office of military unit no. 20102 dated 25 May 2001 (see paragraph 12 above), that in 2000, in the period when illegal armed formations had been showing violent armed resistance, illegal fighters had on numerous occasions used the mill complex in question to fire on federal servicemen of military unit 3660 stationed nearby and also others travelling on the road. Therefore the commanding officers of military unit no. 3660 had taken a decision to blow up the mill complex, such actions having been absolutely necessary in order to eliminate danger emanating from illegal fighters and to protect human lives. In the Government's submission, that danger could not have been eliminated by any other means. They insisted that "the commanding officers of military unit no. 3660 would have never taken a decision to explode the mill complex of their own motion if this had not been in the public interest".

72. The Government also insisted that the interference at issue had not been disproportionate to the aim pursued. They argued that the domestic authorities' decision to dispense with criminal proceedings had not prevented the applicant from lodging on his company's behalf with domestic commercial courts a claim for compensation for the damaged property, and he had availed himself of this opportunity. In the Government's view, the fact that the applicant's company had been unsuccessful in those proceedings did not upset the "fair balance" requirement of Article 1 of Protocol No. 1. To that end, the Government argued that the domestic courts had established that the damage to the company's property had been inflicted in a situation of absolute necessity and considered that, in accordance with section 21 of the Suppression of Terrorism Act and other relevant provisions of national law, the federal servicemen who had inflicted that damage were exempt from liability for that damage. In this respect, the Government argued that the compatibility of section 21 of the Suppression of Terrorism Act with the provisions of the Russian Constitution had never been challenged before the Russian

Constitutional Court, and therefore the domestic commercial courts had been justified in applying it in the Voskhod company's case.

73. They also pointed to the findings of the Federal Commercial Court to the effect that the claimant company had failed to prove that property title to the damaged property had been duly transferred to it, and to submit any convincing evidence as to the actual value of the property in question before its destruction. In particular, the Government pointed out that the Chechen-Aul local council report of 19 July 2000 (see paragraph 31 above) had attested to the fact of the destruction but had indicated that the evaluation of that damage should be carried out by "specialised agencies". However, the applicant had never sought such an evaluation, and had based his court claim on calculations of the amount necessary for construction of a new mill complex. According to the Government, such a claim had not been justified, as it could not be excluded that the mill complex and the petrol stations had already been damaged by illegal fighters before they had been blown up by representatives of the federal forces.

74. Overall, the Government argued that the domestic courts' refusal to award the applicant's company any compensation for the destroyed property had been based on national law, and therefore had not placed a disproportionate burden on the applicant within the meaning of Article 1 of Protocol No. 1.

2. The Court's assessment

75. The Court observes that the Government acknowledged that on 18 July 2000 the federal servicemen had blown up the mill complex and the petrol station, which were, as has been established in paragraph 64 above, the applicant's "possessions". There was therefore an interference within the meaning of Article 1 of Protocol No. 1, and the Court considers that the situation complained of should be examined in the light of the general rule contained in Article 1 of Protocol No. 1.

76. It further reiterates that, in order to be compatible with the general rule of Article 1 of Protocol No. 1, an interference must be lawful, in the public interest, and proportionate to the aim pursued (see *Saghinadze and Others*, cited above, § 110).

77. As to the lawfulness of the interference in question, the Government referred to section 21 of the Suppression of Terrorism Act and an order of the commanding officers' of military unit no. 3660 to blow up the mill complex as the basis for the alleged interference.

78. The Court reiterates, as it has already noted in cases concerning the conflict in the Chechen Republic, that section 21 of the Suppression of Terrorism Act, which releases State agents participating in a counter-terrorist operation from any liability for damage caused to, *inter alia*, "other legally protected interests", while vesting wide powers in State agents within the zone of a counter-terrorism operation, does not define with

sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness (see *Khamidov*, cited above, § 143). The Court is unable to accept the Government's argument to the effect that it was difficult to define clearly the scope and manner of the exercise of powers of State agents participating in a counter-terrorism operation, and that the broad wording of section 21 was necessary to allow State agents to adapt themselves quickly to changing circumstances and to take instant decisions in the course of such an operation. In this respect, the Court reiterates that in matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). While it is true that it is impossible to attain absolute precision in framing laws, and that State agents should be allowed certain freedom of actions in specific circumstances of the combat against terrorism, the Court further reiterates, as it has previously held, that the provisions of the Suppression of Terrorism Act are not to be construed so as to create an exemption for any kind of limitations of personal rights for an indefinite period of time and without setting clear boundaries for the security forces' actions (see, *mutatis mutandis*, *Imakayeva v. Russia*, no. 7615/02, § 188, ECHR 2006-XIII (extracts)).

79. The Court thus considers that this Act, formulated in vague and general terms, cannot serve as a sufficient legal basis for such a drastic interference as the destruction of an individual's property. It reiterates in this respect that no state of emergency or martial law has been declared in the Chechen Republic at the relevant time; no federal law has been enacted to restrict the rights of the population of the area, and no derogation under Article 15 of the Convention has been made. The operation in question therefore has to be examined against a normal legal background (see *Isayeva v. Russia*, no. 57950/00, §§ 133 and 191, 24 February 2005).

80. The Government argued that there had been an authorisation in the present case, specifically the order by the commanding officers of military unit no. 3660 to blow up the mill complex. The Court notes that the Government did not provide any details regarding this order. Moreover, it does not appear that in the proceedings for compensation for pecuniary losses which the applicant's company brought subsequently, the domestic courts examined the order in question. In fact, the domestic courts based their findings on the conclusions of the decision of 25 May 2001 to dispense with criminal proceedings, and they limited their assessment to finding that the decision to blow up the mill complex had been taken in the context of the counter-terrorism operation aimed at restoring constitutional order in the

Chechen Republic and had therefore been justified, that there was no evidence of unlawfulness in the servicemen's actions as they had participated in the counter-terrorism operation on the basis of relevant presidential decrees, and that under section 21 of the Suppression of Terrorism Act they should be exempt from responsibility for their actions.

81. The Court is therefore unable to assess the contents of the order in question with a view to establishing whether the commanding officers of military unit no. 3660 acted within their remit, and whether the order they were given provided grounds and conditions for the destruction of the Voskhod company's property. In such circumstances, the Court cannot accept the Government's argument that this order constituted a sufficient legal basis for the destruction of the mill complex.

82. The Court furthermore notes that, while arguing that the order in question had authorised the federal servicemen concerned to destroy the mill complex, the Government remained silent as to whether this order also gave those servicemen any power to inflict damage on the petrol station. In fact, it appears, and there is no evidence to the contrary, that no such decisions were ever taken with regard to this latter property, and that it was simply damage collateral to the explosion by which the mill complex was destroyed on 18 July 2000.

83. In the light of the foregoing, the Court finds that the interference with the applicant's property rights was not "lawful", within the meaning of Article 1 of Protocol No. 1. In view of this finding, it is unnecessary to examine whether the interference in question pursued a legitimate aim and was proportionate to that aim.

84. The Court thus finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the destruction of the mill complex and the damage inflicted on the petrol station belonging to the applicant's company.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. The applicant also complained that at the material time the courts were not functioning in the Chechen Republic, and therefore the company had to bring court proceedings in a neighbouring region. It was thus placed at a substantial disadvantage *vis-à-vis* the other party, as the company had difficulty in securing the attendance of witnesses and obtaining necessary materials, and because its representative incurred additional travel expenses. He relied 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 fair ... hearing ... by [a] ... tribunal ..."

86. The Government argued that the applicant could not claim to be a “victim” of the alleged violation of Article 6, within the meaning of Article 34 of the Convention, as it was the Voskhod company, and not the applicant in his personal capacity, who had been a claimant in the proceedings before the commercial courts. In this respect they referred to the cases of *F. Santos Lda. and Fachadas v. Portugal* ((dec.), no. 49020/99, 19 September 2000), and *Pires da Silva and Pereira v. Portugal* (no. 19157/91, Commission decision of 5 July 1993), stating that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, despite the fact that she or he was a shareholder and/or executive director of a company which was a party to the proceedings.

87. The Government further averred that the question of the proper functioning of the courts in the Chechen Republic was immaterial in the circumstances of the present case as, in any event, under relevant legislation then in force commercial disputes were solely to be brought at the location of a defendant (see paragraph 43 above). As military unit no. 3660 had had its legal address in the Rostov Region, the applicant’s company had had no other choice than to lodge its claim against that unit with a commercial court situated in the Rostov Region. The Government pointed out that this rule on commercial courts’ jurisdiction had been and was being applied consistently to all participants in proceedings before commercial courts. The Government further insisted that the principles of equality of arms and adversarial proceedings had not been violated by the fact that the case had been examined by courts in the Rostov Region – an area situated close to the Chechen Republic – as both parties had equal procedural rights, and were able to present their arguments.

88. The Court does not consider it necessary to address all the arguments advanced by the Government, as, even assuming that the applicant can claim to be a “victim” of the violation alleged, within the meaning of Article 34 of the Convention, his complaint is inadmissible for the following reasons. The Court observes that Article 25 of the Russian Code of Commercial Procedure establishes the rule of exclusive jurisdiction for disputes involving legal persons, such as the one in the present case. It is thus clear that, as rightly pointed out by the Government, the applicant’s company had no other choice than to bring its claim in a commercial court at the location of the defendant, that is in the Rostov Region. The Court has no reasons to doubt the Government’s argument that this rule was applied consistently to all participants of commercial proceedings. Therefore the applicant’s argument concerning the inactivity of the courts in the Chechen Republic at the material time is irrelevant. The Court further notes that the fact that the applicant’s company was required to bring its claim in a court at the defendant’s location does not, in itself raise an issue under Article 6 of the Convention, as this latter provision does not prevent the State from

setting formal requirements in respect of claims submitted to national courts, and, in particular, from establishing certain rules of territorial jurisdiction. In the present case, the Court has no evidence which would enable it to conclude that the very essence of the applicant's company's right of access to court was impaired, or that the company was indeed placed at a substantial disadvantage as compared to the defendant.

89. The Court thus finds that the complaint under Article 6 is manifestly ill-founded and should be dismissed in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

90. Lastly, in his observations on the admissibility and merits of the present case the applicant also cited Articles 13 and 14 of the Convention and Article 2 of Protocol No. 4, without further explanation. In this respect, the Court notes that there is no evidence in its possession to disclose any appearance of a violation of any of the aforementioned Articles. It therefore rejects the applicant's complaints as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

1. *Pecuniary damage*

92. The applicant's claims in respect of pecuniary losses sustained as a result of the actual damage inflicted on his company's property related to compensation for the damage inflicted on the mill complex and petrol station and compensation for the loss of income from his business in the Voskhod company.

93. As regards the damage caused to the property, the applicant stated that his actual losses amounted to 13,483,299 Russian roubles (RUB, approximately 335,000 euros, EUR), as was confirmed in a letter from the State Committee for Construction, Architectural and Housing Policy referred to in the judgment of 2 July 2002 given by the Commercial Court of the Rostov Region (see paragraph 14 above). According to the applicant, this amount should be increased to RUB 17,770,988 (approximately EUR 440,000) to take into account the average inflation of 31.8 % for the

period between 5 May 1998, the date on which the Convention entered into force in respect of Russia, and August 2008.

94. The applicant further claimed compensation for loss of income from operating the mill complex and petrol station in the amount of RUB 552,000 (approximately EUR 14,000) per year for the period from 5 May 1998 until August 2008.

95. The Government contested the applicant's claim under this head as excessive and unfounded. They argued that no award should be made to the applicant in respect of the damaged property, given that the domestic courts had rejected his company's claim to that end, and in particular that the Federal Commercial Court had stated that the company had failed to prove the actual value of the property at the moment of its destruction. The Government further disputed the inflation rate of 31.8 % cited by the applicant, stating that this was not substantiated by any documents and was in conflict with official information concerning the inflation rate available on the official site of the State Agency of Statistics. The Government also disputed as unreliable the method of calculation applied by the applicant to estimate the amount of his lost income. They further pointed out that he was not justified when claiming damages for the period from 5 May 1998, given that he had lodged his application on 12 May 2003.

96. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicants and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). It has found a violation of Article 1 of Protocol No. 1 on account of the destruction of the property belonging to the applicant's company by representatives of the federal forces on 18 July 2000. The Court has no doubt that there is a direct link between this violation and the pecuniary losses alleged by the applicant.

97. It further observes that, in so far as the actual damage to property is concerned, the Government disputed the amount indicated by the applicant, stating that he was referring in fact to the costs of construction of a new mill, whereas, as was noted by the Federal Commercial Court, he had not provided proof of the actual value of the property at the time of its destruction. In this respect, the Court notes first of all that in a situation where, the applicant was not apprised of the federal forces' order to blow up the mill complex prior to the execution of that order, it is hardly conceivable that the applicant could have taken any measures to attest to the condition of his property before it was destroyed. The Court also takes into account the report of the Chechen-Aul local council dated 19 July 2000 (see paragraph 31 above), in so far as it stated that although some damage inflicted on the mill complex had been established in May 2000, the full and complete destruction of it had been carried out by representatives of the federal forces on 18 July 2000.

98. It further observes that, in order to substantiate his claim in so far as it concerned the damage inflicted on the property, the applicant submitted a working estimate of 15 September 2001 (see paragraph 33 above) and an expert report dated 11 September 2002 as a valuation of that estimate, where the initial amount of costs was adjusted to take into account the index of prices in the third quarter of the year 2002 (see paragraph 34 above). The Court notes that both these documents referred to costs of repair works necessary to restore the mill complex and petrol station rather than to new build. It further observes that the first-instance commercial court in the domestic proceedings agreed with the sum indicated in the working estimate of 15 September 2001 as the amount of pecuniary damage suffered by the Voskhod company, and also does not seem to have disputed that that amount should be index-linked in line with inflation (see paragraph 14 above). In such circumstances, the Court is satisfied that the aforementioned two documents submitted by the applicant, their authenticity or amounts indicated therein having not been contested by the Government, reflected the amount of actual pecuniary damage sustained by him, adjusted in line with the index of prices in the third quarter of the year 2002. It thus finds that the amount of compensation of pecuniary damage should be equal to the amount indicated in the report of 11 September 2002, that is to EUR 340,000, even though it differs from the amount indicated by the applicant in his claim for compensation brought before the domestic courts (see paragraph 13 above).

99. On the other hand, the Court is not convinced by the applicant's argument that the original amount of the pecuniary damage should be adjusted by 31.8 % to take into account inflation in the period between 5 May 1998 and August 2008. In this respect, it notes that the applicant's property was destroyed on 18 July 2000, and finds that therefore the applicant's claim for pecuniary damage prior to that date is unjustified. Moreover, the applicant had failed to adduce any reliable information confirming his relevant calculations concerning the inflation rate. The Court therefore rejects this part of his claim.

100. Lastly, as regards the applicant's claim for compensation for the loss of earnings from his business, the Court notes that the applicant did not adduce any documents, such as, for example, his tax returns, which could have provided confirmation that his business was at all profitable, and the amount of that profit. It recognises the practical difficulties for the applicant to obtain documents relevant to the activities of his company. However, in the absence of any reliable documents confirming that the applicant's business had made him a profit, the Court considers that any award regarding his lost earnings would be speculative. It therefore rejects this part of the applicant's claim (see, in a similar context, *Khamidov*, cited above, § 197).

101. Having regard to the foregoing considerations, the Court awards the applicant EUR 340,000 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

2. Non-pecuniary damage

102. The applicant also sought compensation for non-pecuniary damage in the amount of RUB 10,000,000 (approximately EUR 250,000) in respect of the psychological distress he endured as a result of a violation of his property rights.

103. The Government disputed this claim as greatly excessive. In their view, a finding of a violation would constitute adequate just satisfaction of the violation alleged by the applicant.

104. The Court observes that it has found a violation of Article 1 of Protocol No. 1 on account of the damage inflicted on the property of the Voskhod company, of which the applicant was the sole owner. The applicant must have suffered distress as a result of these circumstances; however, the amount claimed by the applicant appears excessive. Having regard to these considerations, the Court considers it reasonable to award the applicant, on an equitable basis, EUR 6,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

105. The applicant claimed RUB 317,440 (approximately EUR 7,900) for the costs and expenses incurred before the domestic courts, of which amount RUB 100,000 (approximately EUR 2,500) was the sum of a court fee which he had had to pay in the proceedings before the Commercial Court of the Rostov Region (see paragraphs 16 and 20 above), and RUB 217,440 (approximately EUR 5,400) were the expenses in connection with representation of his case in the domestic proceedings. The applicant also sought RUB 28,830,428 (approximately EUR 715,000) for the costs and expenses incurred before the Court.

106. The Government disputed the applicant's claim as excessive and unsubstantiated. They argued, in particular, that the applicant had had to pay RUB 100,000 in the domestic court proceedings, because an obligation to pay a court fee was a statutory requirement to be complied with by all plaintiffs who brought their claims to national courts. Therefore, in the Government's view, this part of the applicant's claim should not be granted. They further argued that the applicant failed to submit any documentary evidence to corroborate his claim in its remaining part.

107. According to the Court's case-law, an applicant is entitled to the 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, the Court observes that the parties agreed

that the applicant had to pay a court fee of RUB 100,000 (approximately EUR 2,500) in the domestic proceedings which he instituted in an attempt to have his property rights restored. In such circumstances, the Court considers that the amount in question should be attributed to expenses incurred in the domestic proceedings and that it should be awarded to the applicant in full. It further rejects the remaining part of the applicant's claim in respect of costs and expenses allegedly incurred in the domestic proceedings as the applicant failed to corroborate it with any documentary evidence or to substantiate it in any other way.

108. The Court further observes that, in so far as the Strasbourg proceedings were concerned, the applicant issued a power of attorney for Mr Shidayev, who then represented him throughout these proceedings. The Court is therefore satisfied that this part of the applicant's claim was substantiated. However, the amount claimed appears excessive. In such circumstances, the Court considers it reasonable to award the applicant the sum of EUR 2,000 to cover costs in the proceedings before the Court.

109. Accordingly, the Court awards the applicant the overall amount of EUR 4,500 under this head, plus any tax that may be chargeable to him on this amount.

C. Default interest

110. The Court considers it appropriate that the default interest 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 under Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 340,000 (three hundred and forty thousand euros) in respect of pecuniary damage;

- (ii) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
- (iii) EUR 4,500 (four thousand five hundred euros) in respect of costs and expenses;
- (iv) any tax, including value-added tax, that may be chargeable to the applicant on the above amounts;
- (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 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President