



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

FIFTH SECTION

CASE OF KHAMIDOV v. RUSSIA

(Application no. 72118/01)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

02/06/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khamidov v. Russia,

The European Court of Human Rights (Fifth Section), sitting 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 deliberated in private on 16 October 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 72118/01) 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 Khanbatay Abulkhanovich Khamidov ("the applicant"), on 28 June 2001.

2. The applicant, who had been granted legal aid, was represented by Ms M. Petrosyan, a lawyer of the Memorial Human Rights Centre, Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that real estate belonging to him and his brother had been occupied and damaged by the federal police, and that he had been unable to obtain compensation in this connection. He further complained about his inability to bring the eviction claim before a court for a prolonged period of time, the delayed enforcement of the judgment in his favour, the unfairness of the proceedings for compensation and the absence of effective remedies in respect of these violations. He relied on Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

4. By a decision of 23 October 2006, the Court declared the application partly admissible.

5. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in the village of Bratskoye, Nadterechny District, Chechnya.

7. The facts of the case as submitted by the parties are summarised in section A below (paragraphs 8-54). A description of the documents submitted by the parties is contained in section B below (paragraphs 55-84).

A. The facts

1. Background to the case

8. 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. In reply to the Registry's specific query in that respect, the applicant's representative stated in a letter of 14 February 2004 that the applicant's brother did not intend to participate in the proceedings before the Court, that the applicant had participated in the domestic proceedings by himself (see below) and that in any event the applicant had furnished the Court with a general power of attorney granted to him by his brother. The document in question confirms the applicant's right to represent his brother before the Court if necessary.

9. Prior to the events described below, the applicant and his brother registered a limited liability company called Nedra (*общество с ограниченной ответственностью «Недра»*) and, together with their families (hereafter “the applicant's family”), ran a bakery business. According to the applicant, this business was their main source of income.

10. The estate (hereafter “the applicant's estate”) comprises a plot of land of 1.5 hectares transferred to the Nedra company under an indefinite lease, a house of 251.3 square metres owned by the applicant, a house of 186 square metres owned by his brother and industrial buildings and equipment, including a mill, a bakery and storage facilities with a total surface of 2,000 square metres assigned to the Nedra company.

11. In late 1996, as alleged by the Government, or in early 1998, as alleged by the applicant, he and his family left their estate as they were constantly threatened by Chechen rebel fighters, who then moved in.

12. 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 that had been built by the fighters on the plot of land

using the applicant's building materials, but the houses, industrial premises and equipment had remained intact and they restarted their business.

2. Temporary occupation of the applicant's estate

(a) Events between October 1999 and December 2000

13. 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.

14. 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.

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

16. 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.

17. By a 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 (see paragraphs 63-67 below).

23. 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.

24. 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.

25. By a 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.

26. 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

27. 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.

28. By a default 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, with reference to numerous documents submitted by the applicant. The court, having examined the evidence submitted by the applicant, found as follows:

“...Internal troops and police units from various regions of Russia involved in the counter-terrorist operation in the Chechen Republic occupied the houses and industrial premises belonging to the Khamidovs, without seeking approval of the

rightful owners and in breach of all the provisions of law in force and the Constitution of Russia. The power structures, called upon to protect the interests of civilians, have themselves turned to breaching the Constitution of Russia...

...

The well-foundedness of [the applicant's] claim can also be confirmed by the district prosecutor's letter addressed to the district military commander, which states that since 13 October 1999 the police units of the federal troops have been occupying the residential and industrial premises belonging to [the applicant] on the western outskirts of the village of Bratskoye in the Nadterechny District. The actions of the police units of the federal forces have flagrantly breached [the applicant's] housing and civil rights secured by the Constitution of Russia and by housing and civil legislation.

...

Earlier, on 25 May 2000, the military commander of the Nadterechny District issued an order obliging the defendant to preserve the Khamidovs' property and upon the expiry of a three-month period to return them their property intact.

The defendant ignored this order.”

The court concluded that the Tambov police units of the Ministry of the Interior had adversely occupied the applicant's estate and ordered their eviction, thus allowing the applicant's claim in full.

29. 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.

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

31. 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 Chechen Minister of Justice and invited him to take the necessary measures.

32. 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 relocated to the applicant's plot of land instead.

33. On 21 May 2001 the Special Envoy 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 Russian Minister of the Interior to order the enforcement of the judgment of

14 February 2001. On 18 July 2001 the Special Envoy 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.

34. On 22 May 2001 the President of the State Duma Commission for the Promotion of the Normalisation 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 that the Minister 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.

35. 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.

36. On 7 June 2001 the General Prosecutor's Office forwarded the applicant's complaint to the prosecutor's office of the Chechen Republic (*прокуратура Чеченской республики*) “for examination on the merits”.

37. 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.

38. On 18 June 2001 the prosecutor's office of the Chechen Republic 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 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.

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

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

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

42. 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.

43. 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 (see paragraphs 68-71 below). It does not appear that the actual eviction took place.

44. 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.

45. By a 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.

46. 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. The report also stated that the Tula consolidated police units had been replaced by the Kaluga consolidated police units (*сводный отряд милиции УВД Калужской области*), that trenches, check-points and barbed wire restricted access to the land, and that the applicant could not enter it even for a short time, let alone permanently reside there.

47. 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, briefly indicating the damage to the applicant's property. It was signed by the applicant, the bailiff and two attesting witnesses (see paragraph 72 below).

3. Proceedings for compensation

48. On 30 July 2001 the applicant, acting in his own name and on behalf of his brother, brought an action against the Russian Ministry of the Interior

in the Zamoskvoretskiy District Court of Moscow (*Замоскворецкий межмуниципальный суд г. Москвы* – “the District Court”). He complained that the consolidated police units of the Ministry of the Interior 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 an amount of 10,787,040 Russian roubles (RUB; approximately EUR 315,732) for pecuniary losses that he had sustained as a result of the adverse occupation of his estate and compensation in an amount of RUB 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 RUB 10,000,000 (approximately EUR 292,685) in respect of non-pecuniary damage.

49. 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 (see paragraph 23 above), together with the evaluation reports of 26 May 2000 and estimates of repair costs for his property.

50. On 23 January 2002 the District Court 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 be vacated and that by a 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, since 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 issued by 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 admit these photographs in 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."

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

52. 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 was 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.

53. 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.

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

B. Documents submitted by the parties

1. Documents submitted by the applicant

55. Among a considerable number of other documents, the applicants submitted the following.

(a) Documents relating to the title to the property

56. 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 confirm that the houses belong to the applicant and his brother respectively.

57. A temporary registration certificate of 5 September 1996 issued by a competent authority confirms the transfer of the plot of land of 1.5 hectares to the Nedra company under an indefinite lease.

58. Certified technical descriptions issued to the applicant and his brother for their respective houses and to the Nedra company in respect of the industrial premises indicate the surface area of the buildings (see paragraph 10 above) and contain a plan of the buildings showing their dimensions.

(b) Documents relating to the status of the Nedra company

59. The Charter of the Nedra company was approved by its founders on 22 March 1996 and registered with the Chechen Ministry of Justice on 3 April 1996 under number 3398. It states that the multifunctional firm Nedra is a limited liability company and a legal entity. The founders of the company are the applicant and his brother. The Charter stipulates that the founders are the company's owners and that in case of their death the right of ownership shall be transferred to their heirs. The liability of the founders for the company's debts is limited to the amount of their shares. They are empowered to appoint the director of the company.

60. Certificate no. 3398 issued by the Chechen Ministry of Justice on 3 April 1996 confirms the registration of the Nedra company on the same date. The certificate states that Nedra is a private company, indicates the company's registered address and the amount of the charter capital and states that the company's "director (founder) is Mr Dzhabrail Abulkhanovich Khamidov", the applicant's brother.

61. Certificate no. 273 of 16 August 2000 confirms that the Nedra company was re-registered on the same date. It states that Nedra is a private company, indicates the company's registered address and the amount of the charter capital and states that the company's "director (founder) is Mr Dzhabrail Abulkhanovich Khamidov".

62. Extract no. 602a of 1 December 2006 from the Unified State Register of Legal Entities provides a very detailed account regarding the Nedra company, stating, in particular, that "the founders (owners) of the company are two natural persons", namely the applicant and his brother.

(c) Documents certifying damage to the property

63. The applicants submitted four evaluation reports issued in the presence of the applicant and his brother on 26 May 2000 by a commission composed of the deputy head of the commission, Mr I., the head of the local council of Bratskoye, Mr T., a representative of the planning organisation, Mr M., and a representative of the building organisation, Mr Ib. The reports are countersigned by the military commander of the Nadterechny District, General-Major K., and the head of the administration of the Nadterechny District, Mr Z. The reports are issued in respect of the applicant's house, his brother's house, the storage facility and the industrial equipment and state that each item of the property in question has been damaged and that its restoration requires a certain amount of work as listed below.

64. The report issued in respect of the applicant's house lists the following types of work:

- Repair of the roof – 140 square metres;
- Interior plasterwork – 190 square metres;
- Double whitewashing of walls – 1,150 square metres;
- Installation of 4 doorways measuring 2.6 x 1.3 metres – 14 square metres;
- Installation of 9 doorways measuring 2.2 x 1.8 metres – 22 square metres;
- Installation of 7 window openings – 28 square metres;
- Glazing of windows – 110 square metres;
- Cementing of the floor – 250 square metres;
- Covering of the floor with linoleum – 250 square metres;
- Repair of two boilers;
- Laying of 20 mm heating pipes – 10 metres;
- Laying of 32 mm heating pipes – 50 metres;
- Laying of 50 mm heating pipes – 160 metres;
- Installation of 20 heating radiators – 48 equivalent square metres;
- Repair of the ceiling – 30 cubic metres;
- Sanitary equipment – 100 per cent;
- Electrical equipment – 100 per cent;

- Major repair of electric wiring – 400 metres;
- Covering of the floor with ceramic tiling – 48 square metres;
- Covering of the walls with ceramic tiling – 50 square metres;
- Painting of doors, windows, pipes and radiators – 280 square metres;
- Repair of the iron fence – 80 metres;
- Repair of 50 [concrete fence] blocks – 25 square metres;
- Backfilling of the dug-outs and trenches – 100 per cent;
- Removal of debris – 20 cubic metres;
- Repair of a gravel driveway – 2,400 square metres.

65. The report issued in respect of the house belonging to the applicant's brother lists the following work:

- Repair of the roof – 110 square metres;
- Interior plasterwork – 60 square metres;
- Installation of 4 doorways – 9.7 square metres;
- Installation of 3 window openings – 12 square metres;
- Glazing of windows – 63 square metres;
- Cementing of the floor – 150 square metres;
- Covering of the floor with linoleum – 180 square metres;
- Major repair of electric wiring – 400 metres;
- Repair of a boiler;
- Laying of 20 mm heating pipes – 5 metres;
- Laying of 32 mm heating pipes – 40 metres;
- Laying of 50 mm heating pipes – 120 metres;
- Installation of 11 heating radiators – 26 equivalent square metres;
- Repair of the ceiling – 20 cubic metres;
- Sanitary equipment – 100 per cent;
- Electrical equipment – 100 per cent;
- Covering of the floor with ceramic tiling – 40 square metres;
- Covering of the walls with ceramic tiling – 28 square metres;
- Painting of doors, windows, pipes and batteries – 85 square metres;
- Repair of the iron fence – 100 metres;
- Repair of the gates measuring 3.5 x 5 metres;
- Repair of 62 [concrete fence] blocks – 37 square metres;
- Backfilling of the dug-outs and trenches – 100 per cent;
- Removal of debris – 20 cubic metres.

66. As regards the storage facility the report lists at the outset three types of necessary work revealing that the roof was destroyed completely. The report continues as follows:

- Replacement of 4 entrance gates – 86 square metres;
- Replacement of 2 exit gates – 34 square metres;
- Installation of 8 window openings – 24 square metres;
- Glazing of windows – 48 square metres;

- Covering of 8 windows with bars – 24 square metres;
- Cementing of the floor – 1,600 square metres;
- Installation of paving borders – 180 metres;
- Repair of the paving around the building – 240 square metres;
- Asphaltting of an area of 1,400 square metres;
- Repair of two boilers;
- Installation of 2 heating radiators;
- Repair of a gas-flow line – 200 metres;
- Major repair of electric wiring – 500 metres;
- Electrical equipment – 100 per cent;
- Installation of electric cable – 120 metres;
- Repair of 26 luminescent bulbs;
- Repair of 3 electric control units;
- Repair of 4 electric switches;
- Repair of 186 [concrete fence] blocks – 112 square metres;
- Backfilling of the dug-outs and trenches – 100 per cent;
- Removal of debris – 50 cubic metres;
- Repair of a gravel driveway – 3,600 square metres.

67. The report issued with respect to the industrial equipment states that the mill machinery and the mini-bakery had been disassembled completely.

68. The applicant submitted three bailiff's reports on the eviction of the police units dated 30 July 2001 (see paragraph 43 above). The reports were drawn up in respect of the applicant's house, his brother's house and the industrial equipment and premises, in the presence of the applicant, his brother and two attesting witnesses. They are signed by the applicant, the bailiff and the witnesses. The reports list the items of the applicant's property that were destroyed or damaged and indicate the degree of damage caused.

69. The report relating to the applicant's house provides the following details:

- The roof is damaged – 140 square metres;
- The plaster inside the building is damaged – 190 square metres;
- The ceiling is damaged – 48 square metres;
- 9 window openings are broken – 22 square metres;
- Window glass is broken – 110 square metres;
- 4 doorways measuring 2.6 x 1.3 metres have been removed – 14 square metres;
- 9 doorways measuring 2.2 x 1.1 metres have been removed – 22 square metres;
- The heating system is non-functional and has been disassembled completely – 100 per cent;
- Floor linoleum has been removed – 250 square metres;

- Floor ceramic tiles have been removed – 48 square metres;
- A bath and sanitary facilities are missing – 100 per cent;
- A fence of iron sheets is missing – 80 square metres;
- 50 [concrete fence] blocks are missing – 25 square metres;
- A drinking water well has been filled up with debris – 100 per cent;
- Electric wiring has been dismantled;
- Furniture and household belongings are missing completely – 100 per cent;
- Infrastructure inside and around the building is damaged because of trenches, dug-outs and debris;
- A driveway's hard coating is broken completely – 2,400 square metres.

70. The report drawn up in respect of the house of the applicant's brother lists damage as follows:

- The roof is damaged – 110 square metres;
- The plaster inside the building is damaged – 60 square metres;
- 7 doorways have been removed – 9.7 square metres;
- 3 window openings are broken – 12 square metres;
- Window glass is broken – 63 square metres;
- Floor linoleum has been removed – 180 square metres;
- Floor ceramic tiles have been removed – 40 square metres;
- The heating system is non-functional, a boiler and heating radiators have been removed – 100 per cent, to be restored completely;
- A bath and sanitary facilities are missing – 100 per cent;
- A fence of iron sheets is missing – 100 square metres;
- 62 [concrete fence] blocks are missing – 37 square metres;
- Iron entrance gates are missing – 17.5 square metres;
- Electric wiring has been dismantled – 100 per cent;
- Infrastructure inside and around the building is damaged (trenches, dug-outs, debris) – 100 per cent;
- Furniture and household belongings are missing completely – 100 per cent.

71. The report drawn up in respect of the industrial equipment and premises states as follows:

- Mill machinery has been disassembled;
- A four-core cable is missing – 890 metres;
- Bakery equipment is missing completely;
- The roof has been dismantled – 2,000 square metres;
- 4 entrance gates have been removed – 85 square metres;
- 2 exit gates have been removed – 34 square metres;
- 8 window openings with bars have been removed – 24 square metres;
- Window glass is missing – 48 square metres;

- 2 iron main beams are damaged – 22 metres;
- The concrete ceiling is damaged – 1,600 square metres;
- The paving around the building is broken – 240 square metres;
- An asphalt area of 1,400 square metres is broken;
- The heating system in the mill has been destroyed – 100 per cent;
- A gas-flow line has been destroyed – 200 metres;
- Electric illumination of the mill has been destroyed – 100 per cent;
- 186 [concrete] blocks are missing from the fence – 112 square metres;
- A driveway's hard coating is broken completely – 3,600 square metres;
- An area of 3,500 square metres has been alienated and re-planned and [built upon] using the materials [of the applicant and his brother].

72. The report of 14 June 2002 states that the police units were evicted from “[the applicant's] private house and the Nedra company's premises”. The state of the house is described as follows:

- The heating system has been destroyed;
- The ceiling has been dismantled;
- The electric wiring has been destroyed;
- Doors are missing completely;
- Windows are partly broken.

2. Documents submitted by the Government

73. The Government did not furnish the Court with any documents before the admissibility decision was taken. After the case was declared admissible the Government submitted a number of documents, including certificate no. 3398 of 3 April 1996 (see paragraph 60 above), a temporary registration certificate of 5 September 1996 (see paragraph 57), a decision of 4 January 2000 taken by the applicant's brother to re-register the Nedra company in accordance with the Russian legislation in force and to appoint the applicant as the company's director, an evaluation report of 26 May 2000 issued in respect of the storage facility (see paragraph 66), certificate no. 273 of 16 August 2000 (see paragraph 61), registration certificate no. 322 of 18 October 2000 (see paragraph 56) and extract no. 10123 of 17 January 2007 from the Unified State Register of Legal Entities which provides information identical to that contained in extract no. 602a (see paragraph 62).

74. The other documents submitted by the Government may be summarised as follows.

75. A certificate of 12 January 2007 issued by a housing authority of the Nadterechny District states that the residential properties of the village of Bratskoye have never been included in a register for administration by the

said housing authority and that the latter has no information as to whether the applicant and his brother have any housing.

76. A written explanation given by Mr T., the head of the local council of Bratskoye, on 12 January 2007 states that the applicant and his brother used to live in Bratskoye but no longer reside there. According to Mr T., in 1995 the applicant was assigned a plot of land of 1.5 hectares for construction purposes and the applicant built a storage facility and two houses thereon. The explanation further states that in the period from 1997 to 1999 the applicant's estate was occupied by Chechen rebel fighters who had built quarters on the applicant's land and that in late 1999 they were replaced by federal police who remained on the estate until 2001 or 2002. In Mr T.'s submission, he does not remember the exact period during which various military structures were placed on the applicant's estate, and cannot indicate the legal basis for the occupation of the estate. According to him, "after the police units left, the situation on the estate was as it is now; there were only slight defects in the rooms of the house, which we reported when drawing up documents". In his explanation Mr T. submits that he does not remember the date on which the said documents were drawn up, and that the local council of Bratskoye does not have these documents at its disposal.

77. One of three certificates issued by Mr T., the head of the local council of Bratskoye, on 12 January 2007 states that the limited liability company Nedra situated on a plot of land of 1.5 hectares on the outskirts of Bratskoye is registered in the names of the applicant and his brother, but the latter two, themselves, are not registered in the village. The remaining two certificates state that the houses of the applicant and his brother respectively are not listed in the property register of the village of Bratskoye.

78. Two certificates issued by the State enterprise "Russian Real Estate Centre" on 12 January 2007 state that "as a result of military actions within the territory of the Chechen Republic the archive of the Chechen branch of the Russian Real Estate Centre was completely destroyed (burnt)" and that "according to the archive data since 27 April 2000, as at the date of 12 January 2007, there is no housing registered for the applicant and his brother respectively".

79. The Government submitted a number of photographs taken on 12 January 2007 which represent two houses photographed from the outside and situated in close proximity to each other and a long construction with a missing roof and missing floor. Some photographs represent a partly broken fence made from concrete blocks. The Government did not make any comments regarding the photographs.

80. The Government also submitted three undated evaluation reports drawn up in the applicant's presence by a commission comprising a technical expert, Mr I., a representative of the administration of the Nadterechny District, Mr Ib., and the head of the local council of Bratskoye,

Mr T. The reports are countersigned by the deputy head of the administration of the Nadterechny District. They do not specify in respect of which particular building they are made, but contain a hand-drawn plan of the respective building and indicate the work required to restore the property.

81. One of the reports lists work very similar to that indicated in the evaluation report of 26 May 2000 issued in respect of the applicant's house (see paragraph 64 above):

- Repair of the roof – 140 square metres;
- Interior plasterwork – 1,150 square metres;
- Double whitewashing of walls – 1,150 square metres;
- Installation of 4 doorways measuring 2.6 x 1.3 – 14 square metres;
- Installation of 9 doorways measuring 2.2 x 1.1 – 22 square metres;
- Installation of 7 window openings – 28 square metres;
- Glazing of windows – 110 square metres;
- Cementing of the floor – 250 square metres;
- Covering of the floor with linoleum – 250 square metres;
- Repair of two boilers;
- Laying of 120 mm heating pipes – 10 metres;
- Laying of 32 mm heating pipes – 50 metres;
- Laying of 50 mm heating pipes – 160 metres;
- Installation of 20 heating radiators – 48 equivalent square metres;
- Repair of the ceiling – 30 cubic metres;
- Sanitary equipment – 100 per cent;
- Electrical equipment – 100 per cent;
- Major repair of electric wiring – 400 metres;
- Covering of the floor with ceramic tiling – 48 square metres;
- Covering of the walls with ceramic tiling – 50 square metres;
- Painting of doors, windows, pipes and batteries – 280 square metres;
- Repair of the iron fence – 80 metres;
- Replacement of 50 [concrete fence] blocks – 25 square metres;
- Backfilling of the dug-outs and trenches – 100 per cent;
- Repair of a gravel driveway – 2,400 square metres.

82. Another report lists work very similar to that indicated in the evaluation report of 26 May 2000 issued in respect of the house of the applicant's brother (see paragraph 65 above), such as:

- Repair of the roof – 110 square metres;
- Interior plasterwork – 450 square metres;
- Installation of 4 doorways – 9.7 square metres;
- Installation of 3 window openings – 12 square metres;
- Glazing of windows – 63 square metres;
- Cementing of the floor – 150 square metres;

- Covering of the floor with linoleum – 180 square metres;
- Major repair of electric wiring – 300 metres;
- Repair of a boiler;
- Laying of 20 mm heating pipes – 5 metres;
- Laying of 32 mm heating pipes – 40 metres;
- Laying of 50 mm heating pipes – 120 metres;
- Installation of 11 heating radiators – 26 equivalent square metres;
- Repair of ceiling – 20 cubic metres;
- Sanitary equipment – 100 per cent;
- Electrical equipment – 100 per cent;
- Covering of the floor with ceramic tiling – 40 square metres;
- Covering of the walls with ceramic tiling – 28 square metres;
- Painting of doors, windows, pipes and batteries – 85 square metres;
- Repair of the iron fence – 100 metres;
- Repair of the gates measuring 3.5 x 5 metres – 17.5 square metres;
- Replacement of 62 [concrete fence] blocks – 37 square metres;
- Backfilling of the dug-outs and trenches – 100 per cent;
- Removal of debris – 20 cubic metres.

83. The third report lists work very similar to that indicated in the evaluation report of 26 May 2000 issued in respect of the industrial premises (see paragraph 66 above). In particular, the first three types of work indicate that the roof of the respective building has been completely destroyed. The report further states as follows:

- Installation of 4 entrance gates – 86 square metres;
- Installation of 2 exit gates – 34 square metres;
- Repair of 8 window openings – 24 square metres;
- Glazing of windows – 48 square metres;
- Covering of 8 windows with bars – 24 square metres;
- Cementing of the floor – 1,600 square metres;
- Installation of paving borders – 180 metres;
- Repair of the paving around the building – 240 square metres;
- Asphaltting of an area of 1,400 square metres;
- Repair of two boilers;
- Installation of 2 heating radiators;
- Repair of a gas-flow line – 200 metres;
- Major repair of electric wiring – 500 metres;
- Electrical equipment – 100 per cent;
- Installation of electric cable – 120 metres;
- Replacement of 26 luminescent bulbs;
- Replacement of 3 electric control units;
- Replacement of 4 electric switches;
- Repair of 186 [concrete fence] blocks – 112 square metres;

- Backfilling of the dug-outs and trenches – 100 per cent;
- Removal of debris – 50 cubic metres;
- Repair of a gravel driveway – 3,600 square metres.

84. Finally, the Government submitted written statements by eight police officers who were stationed on the applicant's estate at various times in 2000 – 2002. The statements were made in the period between 16 and 18 November 2004. Officer S. submitted that the property had been kept in the same condition in which it had been taken over; officers G. and Sh. stated that nothing had been plundered from the estate, and that the condition of the property had been assessed as being good at the time of its transfer to other police units. Five other officers submitted that they had been stationed in the quarters on the applicant's land plot, and that they had been unaware who had owned the property in question.

II. RELEVANT DOMESTIC LAW

A. Constitution of Russia

85. Article 25 of the Constitution 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.

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

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

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

B. Russian Civil Code

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

90. By virtue of Article 303, an owner, when recovering property from adverse possession, has the right to claim from a person who knows, 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.

91. 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 deprivation of possession.

92. 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 make 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.

93. 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 release from such an obligation, partially or in full, both the third party and the tortfeasor.

94. 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 expense of the federal or regional treasury.

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

95. Article 50 of the Code of Civil Procedure states that each party to proceedings must prove those circumstances to which it refers in support of its 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.

96. 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.

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

98. 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.

99. 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.

D. Federal Law on Suppression of Terrorism

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

Section 3. Basic Concepts

“For 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 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 13. Legal regime in the zone of a counter-terrorist operation

“1. In the zone of a counter-terrorist operation, the persons conducting the operation shall be entitled:

(1) if necessary, to take measures aimed at temporary restriction or prohibition of vehicle and pedestrian traffic in the streets and on the roads, to prohibit the access of transport vehicles, including those of embassies and consulates, and that of citizens to certain territories or objects, or to remove citizens from certain territories or objects and to tow away transport vehicles;

(2) to check the identity documents of private persons and officials and, where they have no identity documents, to detain them for identification;

(3) to detain persons who have committed or are committing offences or other acts in defiance of the lawful demands of persons engaged in a counter-terrorist operation, including acts of unauthorised entry or attempted entry to the zone of the counter-terrorist operation, and to convey such persons to the local bodies of the Ministry of the Interior of the Russian Federation;

(4) to enter unimpeded (penetrate) private residential or other premises or plots of land belonging to individuals, or the territory and premises of an organisation

regardless of to whom such organisation may belong ... while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may entail a real risk for human life or health;

(5) to search persons, their belongings and vehicles entering or exiting the zone of a counter-terrorist operation, including with the use of technical means;

(6) to use, for duty purposes, any means of communication, including special ones, belonging to a citizen or organisation regardless of to whom such organisation may belong;

(7) to use, for duty purposes, transport vehicles belonging to an organisation regardless of to whom such organisation may belong, except for those of embassies, consulates or other representations of foreign States and international organisations, and to use, in the event of emergency, transport vehicles belonging to citizens for the purpose of preventing a terrorist act, or pursuing and detaining persons who committed such an act, or conveying persons in urgent need of medical assistance to medical institutions, and arriving at the scene of an incident.

2. In the zone of a counter-terrorist operation, the activity of representatives of the mass-media shall be regulated by the head of the operational headquarters for a counter-terrorist operation, unless federal law provides otherwise.”

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. Federal Law on Enforcement Proceedings of 21 July 1997

101. Section 9 of the Law on Enforcement Proceedings 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.

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

F. Presidential Decree no. 1255c of 23 September 1999

103. Decree no. 1255c of the Russian President “On Measures Aimed at Increasing the Effectiveness of Counter-Terrorist Operations within the

Territory of the North-Caucasian Region of the Russian Federation” of 23 September 1999 (*указ Президента Российской Федерации от 23 сентября 1999 № 1255с «О мерах по повышению эффективности контртеррористических операций на территории Северо-Кавказского региона Российской Федерации»*)) provided that the United Group Alignment be formed in the North-Caucasian region from units and detachments of the Russian armed forces, those of the interior troops and departments of the Russian Ministry of the Interior, departments of the Russian Ministry for Emergency Situations, those of the Federal Security Service and the Federal Guard Service. The decree also empowered the commander of the United Group Alignment to take decisions that were binding for all the forces forming the United Group Alignment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

104. The applicant complained under Article 8 of the Convention that the occupation by federal police units of his estate, which represented the only housing for him and his family, between October 1999 and June 2002, had infringed his right to respect for his home and his private and family life, and had constituted a temporary *de facto* expropriation of his possessions in breach of Article 1 of Protocol No. 1 to the Convention. Under the latter head the applicant also complained about the State's failure to enforce the judgment of 14 February 2001 in a timely manner 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. Submissions by the parties*1. The applicant*

105. As regards his entitlement to the property in question, the applicant 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 land to the Nedra company under an 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 (see paragraphs 56 and 57 above). 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. As regards the Nedra company, the applicant submitted that he and his brother had been the founders of the company and remained its sole owners. In this respect he relied on the Charter of the company registered with the Chechen Ministry of Justice on 3 April 1996 and on extract no. 602a from the Unified State Register of Legal Entities of 1 December 2006 (see paragraphs 59 and 62 above).

106. The applicant insisted that the estate in its entirety, and not his house alone, should be regarded as his home, within the meaning of Article 8 of the Convention, given that in a traditional Chechen family such as his, particularly in rural areas, personal connections between various family members were tighter than in a modern nuclear family, and that in his case the tight family connections were, in addition, reinforced by the family business. He also pointed out that all the buildings in the estate were situated very close to each other and represented a single complex with a solid fence and a single entrance. 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.

107. The applicant next contended 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 not been justified. He argued that the Government's reference to "a situation of war or public emergency which threatens the life of the nation" was unconvincing as a 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.

108. The applicant further insisted that the occupation of his estate had been in breach of national law, including the Constitution of Russia and other legal acts. The applicant stressed that none of the domestic legal instruments referred to by the Government allowed occupation of private property and housing during a counter-terrorist operation. In particular, the only limitation provided for by the Law on Suppression of Terrorism with regard to the right to respect for home and property was that enshrined in section 13 (1.4), which enabled State agents to access housing and other premises or land belonging to individuals or organisations "while suppressing a terrorist act or pursuing persons suspected of committing such an act, when a delay may entail a real risk for human life or health". The applicant pointed out that the said legal provision did not provide any grounds for the State's occupation of private property for any period of time.

109. The applicant also argued that the occupation of his estate could not be deemed necessary in a democratic society and was disproportionate. He submitted that the authorities had not made any attempts to resolve the problem of quartering their personnel in any alternative way, such as settling them in public buildings or tents, and 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 had refused to do so.

110. 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. He argued that section 21 of the Law on Suppression of Terrorism was neither precise nor foreseeable, as, in particular, it was unclear whether the wording "other legally protected interests" referred to terrorists and any other individuals

(see paragraph 100 above). The applicant further insisted that no active warfare had been conducted in the Nadterechny District, and therefore the damaging of his property had not been connected to the struggle against terrorism. He also stated that the nature of the damage inflicted on his estate, as reflected in the evaluation reports, indicated that his estate had been wrecked as a result of irresponsible treatment by the police units who had occupied it rather than as a result of any pressing need. The applicant thus argued that the damaging of his property had not pursued any legitimate aim.

111. Finally, the applicant contended that the interference in question had been grossly disproportionate, particularly in view of the refusal of the domestic courts to award him compensation in this connection. 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.

2. The Government

112. The Government submitted, with reference to the information provided by the Prosecutor General's Office, that, according to certificate no. 3398 of 3 April 1996 (see paragraph 60 above), the founder and the director of the Nedra company had been Mr Dzhabrail Khamidov, the applicant's brother, who on 4 January 2000 had appointed the applicant as the director of the company. The Government also submitted that, according to extract no. 10123 from the Unified State Register of Legal Entities dated 17 January 2007 (see paragraph 73 above), the founders of the Nedra company had been the applicant and his brother, and that the applicant was the director of the company. 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.

113. The Government further asserted 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 local council of Bratskoye. They referred in this respect to the certificates of 2007 (see paragraphs 75, 77 and 78 above). 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, and that at the moment when the units of the Ministry of the Interior had occupied the applicant's estate it had been abandoned, and therefore had not been his home within the meaning of Article 8 of the Convention.

114. The Government 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 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".

115. In the Government's view, the interference with the applicant's aforementioned rights had been lawful, as the counter-terrorist operation had been launched by virtue of presidential decree no. 1255c of 23 September 1999, and because sections 13 and 21 of the Law on Suppression of Terrorism had provided for limitations on rights and freedoms within the area of a counter-terrorist operation. The Government stated that all relevant regulations had been accessible, precise and foreseeable, since the Law on Suppression of Terrorism had been published in accordance with domestic procedure, whilst the initially secret decree of 23 September 1999 had been declassified by presidential decree no. 61 of 22 January 2001.

116. The Government also referred to the reply of the Russian 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 onto 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, that is to say, above 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 preventing crime, their presence on the applicant's estate had ensured protection of the applicant's property against marauders. In the Government's view, the interference with the applicant's rights as a result of the temporary occupation of his estate was proportionate.

117. As regards the damage inflicted on the applicant's property, the Government submitted that in 2002 the applicant and his brother had filed an action against the Ministry of the Interior seeking compensation for damage caused to their property and had adduced "evaluation reports certifying the damage caused". However, the domestic courts had rightly dismissed the applicant's claim, as the applicant had not adduced sufficient evidence that "the said damage had been caused by the units of the Ministry of the Interior". The Government also referred to the written statement of the head of the local council of Bratskoye dated 12 January 2007 to the effect that "when the police units left, the situation in the estate was as it is now; there were only slight defects in the rooms of the house, which we reported when drawing up documents".

118. The Government claimed that in any event the damage to the applicant's property was lawful, as section 21 of the Law on Suppression of Terrorism "permits the deliberate inflicting of damage on legally-protected interests, including property rights". In the Government's submission, the legal act had been duly published and therefore met the requirements of clarity, accessibility and foreseeability. They also insisted that the interference in question had pursued a legitimate aim, as the counter-terrorist operation had been launched in order to suppress criminal and terrorist activity, ensure security of individuals, and protect their rights and freedoms.

B. The Court's assessment

1. Scope of the Court's examination under Article 1 of Protocol No. 1

119. The Court notes at the outset that it had no reason to question the title of the applicant and his brother to their estate, given the documents submitted by the applicant (see paragraphs 56-58 above) and by the Government (see paragraph 73), and the fact that the domestic courts had never called into question the rights of the applicant and his brother to the property in question.

120. It further notes that the Government did not advance any arguments regarding the scope of the applicant's property rights. Nevertheless, the Court considers that it should examine this question of its own motion.

121. The Court firstly observes in this connection that since the applicant lodged the present application solely in his own name, he may rely

on Article 1 of Protocol No. 1 only in so far as his own possessions are concerned. It is clear from the facts of the case that the applicant cannot claim to be the sole owner of the entire estate, and in particular his brother's house clearly does not constitute one of his possessions.

122. As regards the land and industrial premises, they are formally assigned to the Nedra company, which, according to its Charter (see paragraph 59 above), has its own legal personality, and it is therefore appropriate, in principle, to examine the applicant's standing to lodge the application, in so far as it concerns Article 1 of Protocol No. 1, in his name rather than on behalf of the company.

123. 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*, judgment of 24 October 1995, Series A no. 330, p. 25, § 66). 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 infringement (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000; *Dyrwold v. Sweden*, no. 12259/86, Commission decision of 7 September 1990; or, more recently, *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005).

124. In the present case, in the documents submitted by the parties there is some discrepancy as to whether the Nedra company was founded by the applicant's brother alone, or jointly by the applicant and his brother. In particular, certificates nos. 3398 and 273 (see paragraphs 60, 61 and 73 above) indicate Mr Dzhabrail Khamidov, the applicant's brother, as the director and founder of the Nedra company. The Court notes, however, that these certificates contain rather scant information concerning the company and clearly do not reveal all details relating to its status. They refer to the applicant's brother as the company's director rather than indicating that he is the sole founder of the company, whilst other documents submitted by the parties, and in particular extracts nos. 602a and 10123 from the Unified State Register of Legal Entities, provide more detailed information regarding the Nedra company and state that it was founded by, and belongs to, both the applicant and his brother (see paragraphs 59, 62 and 73 above). Against this background, the Court is satisfied that the Nedra company was

founded by the applicant and his brother, who were its sole co-owners in the relevant period.

125. The Court further notes that the brothers were in effect carrying on their family business through the company and it can be said that they may therefore have a direct personal interest in the subject-matter of the present complaint. It is true that whilst there are formally two owners of the company in question, only one of them is a party to the Strasbourg proceedings. However, they are brothers, who jointly run a family business. Moreover, the applicant's brother entrusted the applicant with representation of his interests in the domestic proceedings, in which the applicant always participated both in his own name and on behalf of his brother. The Court notes in this latter respect that the domestic courts always accepted the applicant as the rightful co-owner of the estate and a due claimant and the representative of his brother. Furthermore, although the applicant's brother refused to participate in the proceedings before the Court, he clearly supports the application, given that he issued the applicant with a general power of attorney confirming the applicant's right to represent him should it be necessary (see paragraph 8). In such circumstances the applicant and his brother do not appear to have competing interests which could create difficulties, as reflected in the Court's case-law on the subject, and therefore the Court considers that the applicant can claim to be a "victim" of the alleged violations of Article 1 of Protocol No. 1 as regards the impugned measures taken in respect of the plot of land and industrial premises transferred to the Nedra company.

126. Having regard to the above, the Court thus finds that the applicant's property in the present case shall comprise his own house, the land and the industrial premises.

2. Scope of the Court's examination under Article 8 of the Convention

127. The Court firstly notes that it finds unconvincing the Government's argument that the estate cannot be regarded as the applicant's home in view of the fact that he and his family had been away from the estate for two years and had not been living on it when the police moved in, as well as because the certificates issued by various authorities in January 2007 state that the houses of the applicant and his brother are not registered as habitual premises in relevant records. The Court has no doubt that the applicant retained sufficient links with the place, given that at the relevant period it was his only housing, he had not established his home elsewhere and always demonstrated his intention to return to the estate and reside there permanently, this intention being supported by the fact that, as indicated by him, the gas and heating were in service when the police moved in, which has never been disputed by the Government. The documents relied on by the Government have no bearing on this conclusion, given that they describe

the situation as it is now rather than as it existed in the relevant period (see paragraphs 75, 77 and 78 above).

128. The Court further reiterates that whilst there may be a significant overlap between the concept of “home” and that of “property” under Article 1 of Protocol No. 1, a home may be found to exist even where the applicant has no right or interest in real property (see, *mutatis mutandis*, *Prokopovich v. Russia*, no. 58255/00, §§ 35-39, 18 November 2004). Conversely, an individual may have a property right in a particular building or land, within the meaning of Article 1 of Protocol No. 1, without having sufficient ties with it for it to constitute a home under Article 8 (see *Loizidou v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 66). In this connection the Court considers it necessary to define the scope of the applicant's home in the present case.

129. It notes firstly that the applicant owns only one of the houses on the estate while the other one is formally the property of his brother. However, having regard to the applicant's submissions that the houses were built very close together and that the applicant, his brother and their next of kin (comprising six persons) always lived as one family, which is confirmed by the circumstances of the case and the photographs submitted by the Government (see paragraph 79 above), the Court considers that the house of the applicant's brother, and not only his own house, may be regarded as the applicant's “home” within the meaning of Article 8 of the Convention.

130. On the other hand, the Court is not convinced that the land and the industrial buildings can constitute the applicant's home.

131. It is true that, as the Court has pointed out on several occasions, the notion of “home” can be interpreted widely and can, according to its case-law, apply to business premises. In particular, it has found, building on its dynamic interpretation of the Convention, that a company's right to respect for its registered office, branches or other business premises could fall within the scope of Article 8 of the Convention (see *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, p. 34, § 30; *Chappell v. the United Kingdom*, judgment of 30 March 1989, Series A no. 152-A, pp. 12-13, § 26, and p. 26, § 63; and *Société Colas Est and Others v. France*, no. 37971/97, § 41, ECHR 2002-III). On the other hand, the Court has also held that some limits must be set to this broad interpretation of the “home” and dynamic interpretation of Article 8, to avoid flying in the face of common sense and completely subverting the intentions of the authors of the Convention, and has found, for example, that a farm specialising in pig production and housing several hundred pigs can scarcely be described as a “home”, or even as business premises (see *Leveau and Fillon v. France* (dec.), nos. 63512/00 and 63513/00, 6 September 2005). Similarly, in the present case the Court does not consider that the mill, bakery and storage facility, which appear to have been used entirely for industrial purposes, would constitute the applicant's

home. In so far as the land is concerned, the Court observes that in its *Loizidou* judgment it held that the notion of “home” did not extend to land on which the applicant planned to build a house for residential purposes. In the instant case, it observes that, on the one hand, the applicant's dwelling was situated on the land in question, but, on the other, from the documents in the Court's possession it transpires that the plot of land had been assigned for business activity rather than for merely residential purposes, and that a number of industrial buildings had been erected thereon. Bearing in mind the above conclusion concerning industrial constructions, the Court considers that the land cannot be regarded as the applicant's “home” either.

132. The Court concludes that the applicant's home in the present case comprises his house and that of his brother.

3. Existence of interference with the applicant's rights

133. The Court notes at the outset that, according to the applicant, the interference with his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 occurred as a result of the unauthorised temporary occupation of his estate by State agents, including the lengthy non-enforcement of the court's eviction order of 14 February 2001, and the damage inflicted on the estate.

134. It is common ground between the parties that the applicant's rights were interfered with in so far as the occupation and non-enforcement were concerned. As regards the consequential damage, the parties do not appear to dispute that it was actually caused to the property, given that they both submitted a number of documents confirming the existence of damage (see paragraphs 63-72 and 80-83 above). The Government, however, appear to have contested that the damage had been caused by State agents, largely relying on the findings of fact made by the domestic courts in 2002 and stating that the applicant had failed to prove that the damage had been caused “by the units of the Ministry of the Interior”.

135. The Court observes that the domestic courts did not establish that the damage to the applicant's property was imputable to the Ministry of the Interior, and therefore a question as to State responsibility for the impugned actions may, in principle, arise. It reiterates that, being sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, the Court nevertheless is not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002).

136. In assessing the materials submitted in the present case, the Court observes that the applicant furnished it with numerous documents, such as local authorities' certificates and evaluation reports and bailiffs' reports, capable of laying the arguable basis for his claims that his estate had indeed been damaged and that such damage had been caused by State agents. The

Government, for their part, submitted written statements made in November 2004 by police officers who had occupied the applicant's estate at various times during the relevant period and had claimed that they had left it intact, and a statement of the head of the local council of Bratskoye made in January 2007 to the effect that there had been some minor defects in the applicant's house after the police had finally vacated it. The Court is sceptical about these statements, as the Government did not corroborate them with any official documents pertaining to the period under consideration, such as certificates or reports attesting to the state of the applicant's property at the moment when the police units moved in, or replaced each other, or when they left the estate, which could confirm that the property had remained undamaged, as alleged by the officers. The Court notes in this respect that in a situation, where the State takes an individual's property for a certain period of time, such as in the present case, it is for the State to take appropriate steps to certify the state and condition of that property prior to, and to account for it after, the occupation.

137. The Government did not present any other evidence to refute the applicant's allegations, apart from citing the decisions of the domestic courts taken in 2002 in the applicant's case. The Court, however, is not persuaded that the domestic courts, in the 2002 proceedings, made reliable factual findings because their conclusions appear inconsistent, fraught with contradiction and irreconcilable with the actual events, and in particular with the judgment of the Nadterechny District Court of 14 February 2001.

138. Having regard to the documentary evidence in its possession, arguments advanced by the parties and the particular circumstances of the case, the Court finds that it has sufficient grounds to consider it established that, contrary to the findings of fact made by the domestic courts, the damage to the applicant's estate was caused by the consolidated police units of the Ministry of the Interior, which were stationed on the estate at the relevant period, and that there has therefore been interference with the applicant's rights under Article 8 and Article 1 of Protocol No. 1 on that account.

4. Compliance with the principle of lawfulness

139. As established above, there have been two types of interference with the applicant's rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1. The Court will first have to ascertain whether each type of interference met the requirements of lawfulness.

(a) Temporary occupation of the estate

140. The Court observes that two consecutive periods during which the applicant's estate was occupied by the police could be distinguished for the purpose of examining the question of the lawfulness of the interference at issue. The first period commenced on 13 October 1999, when the police

units entered the applicant's estate and stayed there, and ended on 23 February 2001. The second period began on 24 February 2001, when a court judgment ordering the eviction became final and enforcement proceedings were commenced, and ended on 14 June 2002, the date on which the judgment was enforced.

(i) Period between 13 October 1999 and 23 February 2001

141. The Court notes that, despite its specific request, the Government did not submit any document, such as an order, instruction or regulation, specifically authorising the police units to be stationed on the applicant's estate, or provide any details regarding such a document, if there was one. Moreover, the courts in the domestic proceedings never referred to any such document either. In these circumstances, the Court has strong doubts that such a legal instrument was ever issued either prior to, or during, the period under consideration. It also notes that the Government, which alleged that there had been a certain general authorisation for the federal troops to occupy any vacant residential and non-residential premises in Chechnya at the beginning of the counter-terrorist operation, failed to submit any document confirming this argument either.

142. The Government relied on sections 13 and 21 of the Law on Suppression of Terrorism and the presidential decree of 23 September 1999 as the basis for the interference in question. As regards section 13 of the Law on Suppression of Terrorism, the Court accepts the applicant's argument that the said provision provided grounds for State agents' access to private housing or other premises during the immediate pursuit of a suspect rather than authorising occupation of such housing or premises even for a short time. In the Court's view, this legal provision clearly could not be regarded as the basis for the interference at issue.

143. The Court further notes that section 21 of the Law on Suppression of Terrorism released State agents participating in a counter-terrorist operation from any liability for damage caused to, *inter alia*, "other legally protected interests", and that the presidential decree of 23 September 1999 empowered the commander of the United Group Alignment to take decisions which were binding for all the forces forming the United Group Alignment. While vesting wide powers in State agents within the zone of the counter-terrorist operation, the legal provisions in question, however, did 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. The Court considers that the said legal provisions, formulated in vague and general terms, cannot serve as a sufficient legal basis for such a drastic interference as occupation for a prolonged period of time of an individual's housing and property. It also takes into account the fact that the Nadterechny District Court in its judgment of 14 February 2001

clearly held that the continuing occupation of the applicant's estate had been in breach of the national law.

144. The Court thus concludes, in view of the above considerations and in the absence of an individualised decision or order indicating the grounds and conditions for the occupation of the applicant's estate and which could have been appealed against in a court, that the interference with the applicant's rights was not “lawful”, within the meaning of Article 8 of the Convention and Article 1 of Protocol No. 1.

(ii) Period between 24 February 2001 and 14 June 2002

145. The Court notes that from 24 February 2001 until 14 June 2002 the police units occupied the applicant's estate when the court judgment of 14 February 2001, which found the occupation unlawful and ordered their eviction, was in force. The interference at issue was therefore manifestly in breach of the Russian law and incompatible with the applicant's right to respect for his home secured by Article 8 and his right to peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, §§ 61-62, ECHR 1999-II).

(iii) Conclusion

146. In the light of the foregoing, the Court finds that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 as a result of the temporary occupation of the applicant's estate by the consolidated police units.

(b) Damage inflicted on the estate

147. The Court observes that the Government referred to the presidential decree of 23 September 1999 and section 21 of the Law on Suppression of Terrorism as the basis for the interference at issue. They did not submit any individualised decision, order, instruction or regulations, authorising the police units to inflict any type of damage on the applicant's estate, or provide any details regarding such a document. The courts in the domestic proceedings did not rely on any such documents either. In the absence of such a document and in view of the above finding as regards the Government's reference to the aforementioned legal provisions, the Court considers that the inflicting of damage on the applicant's estate had no basis in domestic law, given, in particular, that it was clearly in breach of the military commander's order of 25 May 2000 to preserve the applicant's property from destruction. It thus concludes that the interference in question was not “lawful”, within the meaning of Article 8 and Article 1 of Protocol No. 1.

148. Accordingly, there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on that account.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

149. The applicant complained under Article 6 of the Convention about a denial of access to a court on account of the 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 his legal arguments and the evidence adduced by him, as well as to address his claims regarding compensation for the occupation of his estate and non-pecuniary damage. 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 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 alleged denial of access to a court

1. Submissions by the parties

150. The applicant maintained that he had been unable to file an eviction claim in 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 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.

151. 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 a 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.

2. *The Court's assessment*

152. The Court notes at the outset that the applicant's eviction claim was undoubtedly a "civil" one within the meaning of Article 6 § 1 of the Convention, and had a basis in national law.

153. It further rejects the Government's argument to the effect that the applicant was free to file his eviction claim in any region of Russia, given that Article 119 of the Code of Civil Procedure then in force (see paragraph 99 above) established the rule of exclusive jurisdiction for disputes determining rights over immovable property, the category to which the applicant's case pertained. It is thus clear that under the domestic law the applicant was only allowed to file his eviction claim in the place where his real estate was located, namely in Chechnya. The Court also accepts the applicant's argument 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 none of the proceedings invoked by the Government concerned disputes similar to that of the applicant.

154. The Court observes that from October 1999 until January 2001 the courts in Chechnya were inoperative, which is not in dispute between the parties. Accordingly, during the said period the applicant was deprived of any opportunity to file a court claim for eviction of the federal police from his estate, which clearly constituted a limitation on his right of access to a court.

155. The Court reiterates that where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation did not impair the very essence of the right and where it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57, or, more recently, *Kreuz v. Poland*, no. 28249/95, § 55, ECHR 2001-VI).

156. In the present case, the Court acknowledges that the Russian authorities might have experienced certain difficulties in ensuring the proper functioning of the judicial system in Chechnya between October 1999 and January 2001 in view of the military action in the region. Nevertheless, in the Court's view, the Russian authorities could have been expected to take at least certain steps to resolve the problem by, for instance, specifically authorising the filing of a claim, such as that of the applicant, in a court in another region of Russia. The Government, however, did not advance any arguments to indicate efforts on their part, or any reasons to justify their failure, to take such measures. Having regard to the fact that the applicant was completely barred from any opportunity to obtain judicial protection of his rights, and notably to seek eviction of the police from his property and only housing for a period for over a year, and in the absence of any justification for this on the Government's part, the Court finds that the limitation imposed on the applicant's right of access to a court impaired the very essence of his right and was clearly disproportionate.

157. Accordingly, there has been a violation of Article 6 § 1 of the Convention in this connection.

B. The delayed enforcement of the judgment in the applicant's favour

1. Submissions by the parties

158. The applicant 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.

159. The Government asserted that the Tambov consolidated police units had vacated the premises on 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".

2. *The Court's assessment*

160. According to the Court's established practice, a delay in the execution of a judgment may, in principle, be justified in particular circumstances, but it may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 74, ECHR 1999-V).

161. The Court observes that the judgment of 14 February 2001 which was not appealed against, and therefore became final ten days after its delivery, was not complied with until 14 June 2002. The Government presented a number of contradictory arguments on the issue, but nevertheless admitted that the judgment in question had remained unenforced for a prolonged period of time. In their view, this delay had been justified in a situation where a counter-terrorist operation was underway. The Court cannot accept the Government's general reference to the counter-terrorist operation in the Chechen Republic as a sufficient reason to justify the lengthy non-enforcement of the judgment in the applicant's favour. The Court notes that this judgment had been given when the judicial system in Chechnya had started functioning again and it had been for the national authorities to organise it in such a way that each of the requirements of Article 6 § 1 of the Convention could be met, including the obligation to enforce final judgments within a reasonable time. The Court observes that the Government advanced no argument capable of persuading it that they were in any way objectively precluded from complying speedily with the judgment in question, or that they attempted to find any satisfactory solution which would have mitigated the detrimental effects of the non-enforcement on the applicant and his family, such as entry into a lease agreement with him or the like.

162. In such circumstances, the Court finds that, by failing for over 15 months to comply with the enforceable judgment in the applicant's favour, the domestic authorities defaulted in their obligation to secure the applicant's right to a court. Accordingly, there has been a violation of Article 6 § 1 of the Convention on that account.

C. The alleged shortcomings in the proceedings for compensation

1. Submissions by the parties

163. The applicant argued that he had had no fair hearing within the meaning of Article 6 § 1 in the 2002 proceedings. 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. The applicant also maintained that his claims regarding compensation for the occupation of his estate and non-pecuniary damage had been left without examination.

164. The Government mainly relied on the decisions taken by the domestic courts in the 2002 proceedings and stated that in two instances they had examined the applicant's claims and had rightly found it unproven that the damage to the applicant's property had been caused "through the fault of the units of 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 opinions 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 concerning compensation for property damage had thus been respected.

2. The Court's assessment

165. The Court notes at the outset that the applicant's claims for compensation were undoubtedly "civil" within the meaning of Article 6 § 1 of the Convention, and had a basis in national law.

166. The materials in the Court's possession reveal that the applicant's action encompassed three separate claims for compensation, and notably he sought damages for the adverse occupation of his estate as well as compensation for the resulting damage and an award in respect of non-pecuniary damage. Domestic courts in two instances dismissed the applicant's claims in their entirety, with reference to their inability to establish that the applicant's premises had been adversely occupied and damaged by the federal authorities. The Court observes that the applicant complained about two aspects of the proceedings in question, and namely the domestic courts' alleged failure to examine his claims for compensation for the adverse occupation of his estate and for compensation in respect of non-pecuniary damage, and their arbitrary findings as regards his claims for compensation for damage caused to the estate. It will proceed to examine separately each of the issues raised by the applicant.

(a) The alleged failure to examine the applicant's claims

167. The Court reiterates that the right of access to a court guaranteed by Article 6 § 1 of the Convention does not consist only of a right to institute proceedings, but also of a right to obtain a “determination” of the dispute, or, in other words, to have the claims examined, by a court (see, *mutatis mutandis*, *Multiplex v. Croatia*, no. 58112/00, § 45, 10 July 2003).

168. Having regard to the judgment of 23 January 2002 and the appeal decision of 8 April 2002, the Court observes that they dealt only with the applicant's compensation claim in respect of the property damage and gave at least some explanation for dismissing it. There is nothing in the said court decisions to indicate that the courts separately addressed the applicant's claim for compensation for the adverse occupation of his estate or his claim for compensation in respect of non-pecuniary damage. In particular, the first-instance judgment remained totally silent as regards non-pecuniary damage, whilst the only sentence which may be understood as relating to the occupation is the conclusion that “the plaintiffs' arguments that the Ministry of the Interior had adversely occupied their property had proved groundless” (see paragraph 50 above). The judgment, however, gives no explanation as to how the first-instance court reached that conclusion and never mentions elsewhere the applicant's claim relating to the occupation. The appellate instance, in its turn, endorsed the first-instance court's findings in summary fashion. It is therefore clear that the applicant's claims regarding compensation for the occupation and non-pecuniary damage remained without examination. Against this background, the Court considers that the applicant was denied access to a court and notes the absence of any explanation in this respect on the Government's part.

169. Accordingly, there has been a violation of Article 6 § 1 of the Convention on that account.

(b) The allegedly arbitrary findings of fact

170. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair as required by Article 6 § 1 (see, *mutatis mutandis*, *Van Kück v. Germany*, no. 35968/97, §§ 46-47, ECHR 2003-VII).

171. The Court observes that in support of his claim for compensation for the damage caused to his estate the applicant submitted numerous items of evidence, including documents confirming his title to the estate and others confirming the adverse occupation of the estate by the federal police, namely a copy of the judgment of 14 February 2001 and copies of replies from various public bodies acknowledging the occupation, as well as those confirming the existence of damage, namely the evaluation reports of 26 May 2000, the extent of that damage, namely estimates for repair costs and documents certifying the value of the industrial facilities, and the fact that it had been caused by the police, namely a certificate issued by the head of local administration of Bratskoye 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, which damage had been certified by the evaluation reports (see paragraph 49 above).

172. The Court further observes that the defendant never challenged or rebutted the admitted evidence or expressed any doubt as to the accuracy of the applicant's allegations. The evidence adduced by the applicant was admitted by the first-instance court except for the last document which was excluded from the body of evidence under the pretext that it was undated and that it did not confirm that the real amount of the damage corresponded to that indicated by the applicant. The Court finds that decision surprising, given that the document in question had been duly signed and sealed by the head of the Bratskoye council and the military commander of the Nadterechny District, that its authenticity was never called into question, that it clearly indicated the period during which the federal troops had been living on and damaging the applicant's estate (13 October 1999 – 26 May 2000) and that it made a direct reference to evaluation reports certifying that damage, those reports having been dated 26 May 2000. However, the Court leaves this question open, since it is for the domestic courts to decide on the admissibility of evidence.

173. On the other hand, whilst acknowledging the domestic judicial authorities' prerogative to assess the evidence and decide what is relevant and admissible, the Court reiterates that Article 6 § 1 places the “tribunal” under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see *Van de Hurk v. the Netherlands*,

judgment of 19 April 1994, Series A no. 288, p. 19, § 59). In this connection, the Court cannot find it acceptable that, whilst stating that it could not be ascertained from the aforementioned certificate that the real amount of the damage corresponded to that indicated by the applicant, the first-instance court remained totally silent as regards the evaluation reports of 26 May 2000, which were directly relied upon and enclosed with the certificate and which described in detail the damage caused. The court did not indicate whether these reports should also be declared inadmissible, and, if so, on what grounds; it simply failed to address this item of evidence adduced by the applicant.

174. The Court further notes that the judgment of 14 February 2001 established that the consolidated police units of the Ministry of the Interior had unlawfully occupied the applicant's estate and that they had not complied with the district military commander's order of 25 May 2000 to preserve the applicant's estate from destruction. This latter finding, in the Court's view, cannot but imply that the consolidated police units had inflicted damage on the estate. It does not appear that the domestic courts, in the proceedings at issue, as such called into question the findings made in the judgment of 14 February 2001, or any other evidence on this matter, or ever disputed the fact that the applicant's estate had indeed been wrecked. Nevertheless, the domestic courts surprisingly considered it unproven that the applicant's estate had been occupied by the Ministry of the Interior and that it was the defendant Ministry which had damaged the applicant's property. The Court is perplexed by this conclusion and cannot see how it could be reconciled with the abundant evidence to the contrary, and, first of all, with the findings made in the judgment of 14 February 2001, or the replies from public officials. In the Court's view, the unreasonableness of this conclusion is so striking and palpable on the face of it that the decisions of the domestic courts in the 2002 proceedings can be regarded as grossly arbitrary, and by reaching that conclusion in the circumstances of the case the domestic courts in fact set an extreme and unattainable standard of proof for the applicant so that his claim could not, in any event, have had even the slightest prospect of success.

175. Having regard to the above considerations the Court concludes that the applicant had no fair hearing as regards his claim for compensation for the damage inflicted on his estate, and that therefore there has been a violation of Article 6 § 1 in this connection.

D. The alleged lack of effective remedies

176. The Court observes that the applicant's complaints under Article 13 are essentially the same as those under Article 6 § 1. Thus, having regard to its above findings (see paragraphs 157, 162, 169 and 175), the Court does

not consider it necessary to examine the complaints under Article 13, as in the instant case they are subsumed by those under Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

177. 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*

(a) **The applicant**

178. The applicant claimed a total amount of 21,775,000 Russian roubles (RUB; approximately EUR 625,000) in compensation for pecuniary losses sustained by him as a result of the unlawful occupation of his estate by the State authorities, and the damage caused thereto.

179. As regards the occupation, the applicant estimated that it had lasted 33 months and sought compensation in an amount equal to the rent for the premises and land which he could have received had the authorities rented the estate.

180. In so far as the estimated amount of the rent for the premises was concerned, the applicant stated that he had been denied the information on the applicable rent rates in the Nadterechny District of the Chechen Republic and requested the Court to apply by analogy the rates applicable in a neighbouring region. In this respect he adduced a certificate issued by the Property Management Committee of the Mozdok District of the Republic of North Ossetia-Alania (*Комитет по управлению имуществом Моздокского района Республики Северная Осетия-Алания*), which stated that as of 1 January 2005 the applicable rate for the rent of one square metre of non-residential premises in the said Republic was equal to RUB 800 (approximately EUR 23) per year. The certificate represented a detailed calculation of rent in respect of the applicant's premises based on the official technical descriptions of the houses of the applicant and his brother and that of the industrial premises of the Nedra company, as submitted by the applicant. The applicant thus claimed a total amount of RUB 5,118,000 (approximately EUR 147,000) under this head.

181. As to the estimated amount of the rent for the plot of land, the applicant submitted a certificate issued by the Chechen Department of

Federal Real Estate Agency (*Управление Федерального агентства кадастра объектов недвижимости по Чеченской Республике*) dated 16 September 2005, which stated that the applicable rate for the rent of one square metre of land was equal to RUB 61.5 (approximately EUR 1.7) per year. The applicant indicated that the total area of the plot of land was 18,000 square metres, out of which 15,000 square metres were assigned to the Nedra company and 3,000 were attached to his house and that of his brother. He thus claimed RUB 3,044,000 (approximately EUR 88,000) under this head.

182. The applicant's claims in respect of pecuniary losses sustained as a result of the damage inflicted on the estate related to compensation for the damage caused to the immovable property, and namely the houses, the industrial buildings and the land, as well as to compensation for the lost equipment and movable property.

183. As regards the immovable property, the applicant relied on the evaluation reports of 26 May 2000, 30 July 2001 and 14 June 2002 submitted by him (see paragraphs 63-72 above) reflecting the nature and extent of the damage caused. He also furnished the Court with estimates of repair costs, which he had previously submitted to the domestic courts (see paragraph 49 above). The estimates were drawn up in 2001 in respect of the applicant's house, that of his brother and the industrial premises of the Nedra company and were based on the evaluation reports of 2000 and 2001. They represented detailed calculations of costs for repair work in the prices of the year 2001, which totalled RUB 682,580 (approximately EUR 19,600) with regard to the applicant's house, RUB 312,560 (approximately EUR 9,000) with regard to the house of the applicant's brother and RUB 1,508,710 (approximately EUR 43,500) with regard to the industrial premises. The applicant also submitted a document issued by the Federal Agency for Construction, Housing Maintenance and Utilities (*Федеральное агентство по строительству и жилищно-коммунальному хозяйству*) on 12 October 2006. The document provided information on a certain coefficient applicable to estimated costs of construction and assembly work in various regions of Russia in the fourth quarter of 2006, as compared to the costs in the year 2001, and indicated that the coefficient applicable in Chechnya should be 4.28. Relying on this latter document, the applicant thus argued that the amounts of the repair costs indicated in the estimates of 2001 should be multiplied by 4.28 and claimed compensation of RUB 2,917,442 (approximately EUR 84,000) in respect of his house, RUB 1,337,757 (approximately EUR 38,500) in respect of his brother's house and RUB 6,357,278 (approximately EUR 183,000) in respect of the industrial premises.

184. In respect of the lost equipment the applicant sought a total amount of RUB 2,737,325 (approximately EUR 79,000), which included RUB 1,707,965 for the mill equipment and RUB 1,029,360 for the bakery

equipment. The applicant corroborated his claim with two invoices issued on 29 November 2000 to the Nedra company in respect of the mill and bakery sets of equipment respectively. The invoices stated that the amounts indicated by the applicant were due for payment, but gave no indication that they had actually been paid.

185. As regards the movable property, the applicant sought RUB 200,000 (approximately EUR 5,700) for his household belongings and RUB 180,000 (approximately EUR 5,200) for his brother's movables. He did not submit any documents in support of this claim.

186. The applicant also claimed the reimbursement of RUB 219,000 (approximately EUR 6,300) which he had paid in the period from 31 March 2000 until 31 March 2006, while renting housing when he was denied access to his own estate, and in the period thereafter in view of the fact that the estate had been wrecked and was uninhabitable. In support of his claims, the applicant submitted two lease contracts that he had entered into with private persons. The contracts stated that they were valid from 31 March 2000 until 31 December 2002 and from 1 January 2003 until 31 December 2004 respectively and were automatically renewable unless one of the parties terminated them by informing the other party in writing. According to the contracts, the applicant was under an obligation to pay rent in an amount of RUB 3,000 (approximately EUR 86) per month. The applicant also adduced two documents attesting to the transfer of possession of the premises under the aforementioned contracts and a document confirming that under the contract of 1 January 2003 he had paid RUB 120,000 (approximately EUR 3,457) which represented the full amount of rent for the period between 1 January 2003 and 30 April 2006.

187. The applicant further sought compensation for the loss of earnings from his business in the Nedra company for the period from October 1999 until January 2007, when he had filed his claims for just satisfaction. The applicant insisted that this business had been the main source of income for him and his family and that he had been unable to restart it in any event after October 1999, as during the occupation he had been denied an opportunity to transfer the mill and bakery equipment so as to install it at some other place, whereas after the police had left the equipment had been completely disassembled and had gone missing and he could not afford to purchase a new set. The applicant stated that the documents pertaining to his business activities had been lost during the occupation and based his calculation on prices from the year 1995, reflected in a working plan of technical and economic performance (*техничко-экономические показатели: рабочий проект*) issued in the Rostov Region. This document submitted by the applicant represented detailed calculations of estimated profits from the operation of a mill with technical characteristics analogous to those of the one that had been operated by the applicant. Relying on the document, and taking into account the redenomination of

1998, the applicant estimated that the annual profit from operating his mill could have been equal to RUB 1,050,250 (approximately EUR 30,000), or to RUB 87,500 (approximately EUR 2,500) per month. The applicant thus claimed the total sum of RUB 2,709,000 (approximately EUR 77,700).

(b) The Government

188. The Government disputed the applicant's claims under this head as highly excessive. They pointed out that Mr Dzhabrail Khamidov was not an applicant in the present case, and therefore should not be awarded any damage.

189. The Government again contested the title of the applicant and his brother to the property in question, stating that the houses had been built in breach of the domestic procedure, had not been properly registered and were not listed as their residential premises. They also argued that the applicant's estate had been abandoned by the time the police units had moved in, and therefore "the fact that the applicant and his family had left their property [could] not be imputed to the Ministry of the Interior of the Russian Federation". The Government further argued that the applicant's claims were unfounded, as, according to domestic court decisions taken in 2002, "there was insufficient evidence that any damage presumably inflicted on the applicant's property could be imputed to the Ministry of the Interior of the Russian Federation".

190. The Government made no submissions concerning the authenticity of the documents adduced by the applicant in support of his claims of pecuniary damage, or with regard to the rates on which the applicant had based his calculations, or the methods of calculation applied by him.

(c) The Court's assessment

191. The Court refers at the outset to its above finding that the property owned exclusively by the applicant's brother, and namely the latter's house, cannot constitute the applicant's possessions (see paragraph 121 above). The applicant's brother not being a party to the Strasbourg proceedings, the Court will not grant any claims made with regard to his property. The Court further notes that it has accepted above that the land and the industrial premises assigned to the Nedra company may be regarded as part of the applicant's possessions, since the applicant was one of only two founders and owners of the said company, and the other co-owner did not object to the applicant's bringing proceedings before the Court. On the other hand, the fact that there are two co-owners of the property in question makes it clear that the applicant, on his own, cannot claim the whole amount of compensation as regards the occupation of, and the damage caused to, the land and the industrial premises. In the absence of any indication to the contrary, the Court finds that the brothers own the company in equal shares,

and will award the applicant 50% of the amount which, following the Court's assessment, is found to constitute full compensation in this respect.

192. The Court has found above that the temporary occupation by the federal police units of the applicant's estate constituted unlawful interference with his rights under Article 8 of the Convention and Article 1 of Protocol No. 1. The applicant is therefore justified in seeking compensation for this interference. The Court further accepts, in the absence of any objections on the Government's part, that the compensation in this respect should be awarded in the amount of the rent which the applicant would have received if his premises and the land transferred to his company under an indefinite lease had been rented by the federal authorities during the period of the occupation. The Court also notes in this connection that the Government did not contest the rates applied by the applicant, or suggest any alternative rates, for calculation of the amount sought, nor did they dispute the authenticity of the documents which he had submitted to corroborate his claims. Accordingly, taking into account the rates indicated by the applicant, its conclusion in paragraph 191 above, the fact that the occupation lasted from 13 October 1999 until 14 June 2002, i.e. for 32 months, the fact that, according to the documents in its possession (see paragraphs 10 and 58 above), the total surface area of the plot of land was 1.5 hectares, that of the applicant's house was 251.3 square metres and that of the industrial premises was 2,000 square metres, the Court awards the applicant EUR 112,000 under this head.

193. The Court further observes that it has also found a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on account of the damage inflicted on the applicant's estate, the existence and extent of which was confirmed by the evaluation reports submitted by the parties. It further notes that the applicant substantiated his claim with detailed estimates of the repair costs based on the said evaluation reports. Having regard to the documents submitted by the applicant and the fact that the Government did not dispute their authenticity, or the amounts indicated therein, which, in the Court's view, do not appear unreasonable, the Court accepts that the said amounts can serve as the basis for calculating the award in respect of the damage caused to the estate. On the other hand, the Court is not convinced that the sums indicated in the estimates submitted by the applicant should be multiplied by 4.28, as alleged by him. It is true that this coefficient was mentioned in the document of the Federal Agency for Construction, Housing Maintenance and Utilities dated 12 October 2006 (see paragraph 183 above) as the one applicable to the estimated costs of repair work in Chechnya in 2006 as compared to those in 2001. However, there is nothing in the document in question to suggest that the said coefficient reflects the inflation rate in Chechnya for the period 2001-2006, rather than providing some technical information in the field of construction work, or at least that it should be applied in a manner proposed by the

applicant. The said document does not suggest any methods of calculation involving a coefficient that could be applied for index-linking of the financial losses incurred by the applicant. The Court has strong doubts, in any event, that the inflation rate in Chechnya in the period 2001-2006 reached, or even exceeded, 400 per cent, as alleged by the applicant. Accordingly, in the absence of any reliable information concerning inflation rates in Chechnya, the Court considers it appropriate to award the nominal value of the repair costs indicated in the estimates submitted by the applicant. This being so, and in view of its conclusion in paragraph 191 above, the Court awards the applicant EUR 41,000 under this head.

194. As regards the lost industrial equipment, the applicant submitted two invoices for the mill and bakery equipment respectively, attesting the amounts indicated by him. The Court notes, however, that the police units had moved into the applicant's estate in October 1999 and the first evaluation reports, which confirmed, among other things, that the industrial equipment, and namely that of the mill and bakery, had been severely damaged, were dated May 2000, whereas the invoices submitted by the applicant were dated November 2000. The applicant provided no explanation for this discrepancy. The Court also notes that it has never been alleged, and appears highly unlikely, that the applicant had purchased, and installed on the estate, another set of the industrial equipment, which had subsequently also been wrecked, given in particular the applicant's submissions, confirmed by the facts of the case, that he had been denied any access to the estate throughout the whole period of the occupation. It is therefore clear that in no circumstances can the documents submitted by the applicant relate to the equipment damaged by the police. In the absence of any other documents which would be relevant to the equipment installed on the applicant's estate prior to the occupation, and which in particular would confirm its value, the Court makes no award under this head.

195. In so far as the applicant claimed compensation for his lost movables, the Court notes that the applicant did not substantiate this claim with any documents confirming the existence of these possessions and their value, or even provide a summary description of them. In such circumstances, it makes no award under this head.

196. As regards the applicant's claim for reimbursement of the rent he paid while renting housing from 31 March 2000 until 30 March 2006, the Court firstly notes that the Government did not dispute the authenticity of the documents submitted by the applicant, or the duration of the period referred to by him. The Court is of the opinion that, in so far as the applicant's claim relates to the period between 31 March 2000 and 14 June 2002, when his estate was occupied by the police, it is covered by the award of compensation for the occupation of his estate in the amount of the rent he could have received if the premises had been rented. Indeed, on the assumption that the applicant had let the estate to the authorities under a

lease agreement and had received the awarded amount in rent, this would not have absolved him of an obligation to rent some other housing to live, for which he could have paid using the rent for his estate. In such circumstances the Court rejects the applicant's claim for this period, as holding otherwise would amount to awarding the applicant double damages for the same violation of his rights. On the other hand, the Court considers that the present claim has a direct causal link with the violation of the applicant's right as a result of the damage inflicted on his estate. Having regard to the extent of the damage caused to the estate, it accepts the applicant's argument that it was uninhabitable after the police units had left and considers it appropriate to make an award for the period following the police withdrawal during which the applicant was unable to live in his property due to its poor state and had to pay for alternative accommodation. The Court also notes that the monthly rent paid by the applicant, namely RUB 3,000 (approximately EUR 86), does not appear unreasonable. It therefore awards the applicant the rent he paid from 14 June 2002 until 31 March 2006 in the amount of EUR 4,000.

197. Lastly, the Court observes that the applicant submitted a document indicating an estimated profit from operating a mill similar to the one which the Nedra company had owned, in order to corroborate his claim for compensation for the loss of earnings from his business. The Court notes, however, that even assuming that the rates and data on which the calculations were based in this document could apply in Chechnya, the said document only gives an estimation of future profit from operation of a mill rather than providing concrete financial information regarding the applicant's actual income. The Court notes that the applicant did not adduce any other documents, such as, for example, his tax returns, capable of confirming that his business was at all profitable, and the amount of that profit. The Court notes in this connection that in their observations the Government referred to a statement of a certain official from the village of Bratskoye to the effect that the Nedra company had been operating for a month and had not paid taxes to a local budget. It does not overlook the fact that the Government did not indicate the name of the official or submit his written statement, and recognises the practical difficulties for the applicant to obtain documents relevant to the activities of the Nedra company. However, in the absence of any reliable documents confirming that the applicant's business had brought him profit, the Court considers that any award regarding his lost earnings would be speculative. It therefore rejects this part of the applicant's claim.

198. Having regard to the above considerations, the Court awards the applicant a total amount of EUR 157,000 in respect of pecuniary damage, plus any tax that may be chargeable on this amount.

2. Non-pecuniary damage

199. The applicant, in his own name and on behalf of his family members, claimed EUR 65,000 in respect of non-pecuniary damage for the psychological suffering, anguish and distress they endured as a result of the numerous violations of their rights by the domestic authorities. He pointed out, in particular, that being denied access to their only housing, he and his family, including minor children, had had to spend the winter of 1999-2000 in a refugee camp in poor conditions where his nephew, aged one year and seven months, had died of pneumonia, and the health of other family members, in particular his wife, had deteriorated.

200. The Government argued that the applicant's family members were not involved in the proceedings before the Court and that no award should therefore be made to them. They also considered the applicant's claims to be excessive and submitted that should the Court find a violation of the applicant's rights, a token amount would suffice.

201. The Court observes that it has found a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 on two accounts, and notably as a result of the unlawful occupation of, and the damage inflicted on, the applicant's estate. It has also found a violation of Article 6 § 1 of the Convention on four accounts: because of the denial of access to a court between October 1999 and January 2001, the delayed enforcement of a judgment in the applicant's favour and various shortcomings in the proceedings of 2002. The applicant must have suffered anguish and distress as a result of all these circumstances, which cannot be compensated for by a mere finding of a violation. Having regard to these considerations, the Court awards the applicant, on an equitable basis, EUR 15,000 for non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

202. The applicant claimed RUB 57,594 (approximately EUR 1,600) for the costs and expenses he had incurred at the domestic level in connection with his case and in the proceedings before the Court. Those included travel expenses for his trips to Moscow, where the applicant had visited administrative authorities and participated in court proceedings as well as fees for the legal advice the applicant had sought during the examination of his case. The applicant submitted certificates from the Moscow official bodies attesting to his presence, travel documents for the total amount of RUB 51,721.5, certificates from a bar association for the total sum of RUB 3,150 and confirmation of postal expenses in the amount of RUB 2,722.5. The applicant also sought EUR 2,500 in respect of costs and expenses relating to his legal representation in the proceedings before the Court. In the applicant's post-admissibility observations, his representative

indicated that she had spent 50 hours on preparing and representing the applicant's case and that the applicable rate was EUR 50 per hour.

203. The Government contested the applicant's claims as excessive. They referred to the Court's case-law to the effect that costs and expenses should be awarded only in so far as they were actually incurred, were necessary and were reasonable as to their amount. The Government also insisted that the applicant's claim for reimbursement of the fees of his lawyer who had represented him before the Court should be disregarded, as it was not supported by any documents.

204. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

205. The Court observes firstly that the applicant submitted supporting documents for the total amount of RUB 57,594. It further notes that the facts of the case make it clear that the applicant was actively involved in pursuing his case, and in particular on several occasions he travelled to Moscow to visit various administrative authorities and to participate in court proceedings there. The amounts of the travel expenses and the legal fees do not appear unreasonable or excessive. The Court therefore considers that the applicant's claim in this part should be granted in full.

206. As regards the applicant's legal representation in the Strasbourg proceedings, the Court observes that in May 2002 the applicant gave authority to Mr M. Petrosyan to represent his interests in the proceedings before the European Court of Human Rights and that the said lawyer acted as the applicant's representative throughout the procedure. The Court further notes that the present case has raised complex factual and legal issues and required extensive research. Having regard to these considerations and the rate indicated by the applicant's lawyer, the Court is satisfied that this rate is reasonable, and considers that this part of the applicant's claim should be granted in full.

207. In the light of the foregoing, the Court awards the applicant EUR 4,100 under this head, less EUR 715 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable on this amount.

C. Default interest

208. 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. *Holds* that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 as a result of the temporary occupation of the applicant's estate by the consolidated police units of the Russian Ministry of the Interior;
2. *Holds* that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 as a result of the damage inflicted on the applicant's estate by the consolidated police units of the Russian Ministry of the Interior;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the denial to the applicant of access to a court between October 1999 and January 2001;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the prolonged non-enforcement of the judgment of 14 February 2001 in the applicant's favour;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the domestic courts' failure, in the 2002 proceedings, to examine the applicant's claims in respect of compensation for occupation of property and for non-pecuniary damage;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the arbitrary findings of the domestic courts as regards the applicant's claim in respect of compensation for the damage inflicted on his estate;
7. *Holds* that it is not necessary to examine the complaints made under Article 13 of the Convention.
8. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 157,000 (one hundred and fifty-seven thousand euros) in respect of pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 3,385 (three thousand three hundred and eighty-five euros) in respect of costs and expenses;

- (iv) any tax, including value-added tax, that may be chargeable 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;

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

Done in English, and notified in writing on 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President