

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18545/04
by Khanipat DIBIROVA
against Russia

The European Court of Human Rights (First Section), sitting on 31 May 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 9 April 2004,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Khanipat Dibirova, is a Russian national who was born in 1937 and lives in Alkhazurovo, Chechen Republic (Chechnya). She was represented before the Court by Ms L.A. Khamzayeva, a lawyer practising in Moscow. The Russian Government ("the Government") were

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represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. Attack of 16 July 2002

The facts of the attack at the applicant's house are disputed by the parties.

According to the applicant, on 16 July 2002 federal forces carried out an air strike on Alkhazurovo village. A missile hit the applicant's house at 56 Voroshilova Street, completely destroying it and causing injuries to the applicant. The applicant submitted that her grandson was also wounded.

The applicant submitted two undated notes which, according to her, had been issued by the Urus-Martan district hospital (the signatures and stamps are unreadable and the notes do not have letterheads). The note in respect of the applicant states that she had presented herself at the hospital "after the air strike of 16 July 2002" and had been diagnosed with splinter wounds to her left shoulder, body and legs.

On 17 July 2002 an expert from the State construction company and the applicant co-signed a damage certificate (*дефектный акт*). The certificate described the damage to the house situated at 56 Voroshilova Street in Alkhazurovo caused by flooding on 22-23 June 2002. It estimated the destruction of the three-room house built of sun-dried bricks with metal roofing at 80-100 %. It indicated the size of the house at 65 square metres (two premises, of 40 and 25 sq m), plus a covered part of the yard with an area of 54 square metres.

On 30 January 2003 the Urus-Martan district administration issued a note to the effect that the applicant's household was situated at 56 Voroshilova Street in Alkhazurovo. The household measured 232 sq. m, including 100 sq. m of habitable space, and had been entirely destroyed on 16 July 2002 as a result of a direct hit by an aviation bomb.

The Government submitted that no air strike had been carried out on Alkhazurovo on 16 July 2002. They conceded that an air strike had been carried out in July 2002 on a target in the vicinity of Alkhazurovo, but argued that the circumstances of the attack on the applicant's house had not been established.

On 29 April 2009 the Commander in Chief of the Ground Forces of the Ministry of Defence wrote to the Representative of the Russian Federation at the Court and informed him that there were no documents to confirm the carrying out of a special operation by the army or the deployment of aircraft on 16 July 2002 in Alkhazurovo. At the same time, the Government referred to the copy of the expert report, which had concluded that the fragments collected at the applicant's house had belonged to a 100-mm artillery shell (see below). They argued that this shell could have been launched either by the military or by illegal armed groups active in the district.

B. Investigation

On 17 July 2002 the Urus-Martan District prosecutor's office opened a criminal investigation in respect of deliberate destruction of property.

On 18 September 2002 the investigation was suspended as no suspects had been identified.

On 22 October 2002 the prosecutor's office informed the applicant that the case would be transferred to a military prosecutor, as the alleged offence had been committed by military forces.

On 24 October 2002 the prosecutor's office of the North Caucasus Military Circuit transferred the applicant's case to the military prosecutor's office of the United Group Alignment. On 18 November 2002 the latter informed the applicant that her complaint had been forwarded to the military prosecutor's office of military unit no. 20102.

On 31 January 2003 a prosecutor of the unit wrote to the applicant that on 16 July 2002 federal air forces had attacked a fighters' base situated two and a half kilometres to the south of Alkhazurovo. The attack had been carried out by military aircraft based in Yeysk [Krasnodar region]. The navigation system used by the air forces allowed a margin of error of up to two kilometres.

On 26 February 2003 the prosecutor's office of the Chechen Republic informed the applicant that on 21 February 2003 they had set aside the decision of 18 September 2002 to suspend the investigation. They further noted that they had sent the case to the Urus-Martan District prosecutor's office and had ordered it to carry out a number of investigative measures, in particular to interview the applicant, to grant her the status of victim and civil claimant, and to assess the pecuniary damage inflicted.

In their observations of 20 January 2010 the Government referred to the statements made by the applicant given on 15 April 2003 and submitted that she had been accorded victim status on the same day. According to the Government, during the questioning the applicant stated that she had learnt from other villagers that her house had been destroyed by a bomb. No transcript of this statement or of the decision to accord victim status has been provided.

On 6 May 2003 the Forensic Science Centre of the Ministry of the Interior of Chechnya (*Экспертно-криминалистический центр МВД Чеченской Республики*) produced an expert report in respect of over 200 pieces of metal collected at the applicant's house. The report concluded that the fragments were parts of 100-mm artillery shells, fired from a gun of the same calibre.

The Government informed the Court that the investigation into the attack had been adjourned and reopened on several occasions and that the latest decision to adjourn the proceedings had been taken on 5 June 2004. They submitted that the applicant had been informed of all the relevant decisions

taken in the case but had failed to submit any complaints or requests, and had not asked for access to the file. No documents related to the investigation after 6 May 2003 had been submitted by the parties.

C. Civil proceedings

On 21 April 2003 two of the applicant's neighbours drew up a list of belongings which on 16 July 2002 had been destroyed by a missile which struck her house at 56 Voroshilova Street. The list was co-signed by the head of the local municipality.

On 28 April 2003 the applicant brought an action for damages against the Russian Government. Neither the applicant nor the Government submitted any documents related to these proceedings; however they described their progress in the following manner.

On 21 July 2003 the applicant's lawyer obtained information from the State Committee on Statistics about the average price of one square metre of residential property in the Russian Federation during 2002 and the first and second quarters of 2003.

On several occasions between 6 November 2003 and 21 April 2004 the hearings at the Basmanny District Court of Moscow were adjourned due to the applicant's failure to appear. On 29 June 2004 the court rejected the applicant's claim. The hearing took place in the applicant's absence, at her request. The applicant did not appeal against this decision. The Government stated that a copy of the decision had been sent to the applicant's representative on 8 September 2004.

The applicant stated that she had not received a copy of the said decision, and that her previous representative, Mr Khamzayev, had died on 13 June 2004. It does not appear that she had taken any steps to obtain a copy of the decision at any stage, to appeal against it or to seek reinstatements of the terms of appeal.

D. Administrative compensation obtained by the applicant

The Government submitted in their observations of 17 February 2010 that the applicant had obtained compensation for the property lost as a result of the attack. Without providing copies of any documents or indicating the dates on which these events had taken place, they submitted that the assessment carried out by the local State construction company had estimated the applicant's losses to the house and property at 337,236 Russian roubles (RUB). Under the procedure provided for by Government Decree No. 404 (see Relevant national law below), the applicant had been paid compensation of RUB 300,000 for the lost real estate and RUB 50,000 for personal belongings.

The applicant submitted a copy of the assessment report of unclear date produced by the State construction company, which calculated damages to the house and property at 56 Voroshilova Street at RUB 337,236. She did not comment on the issue of compensation apparently paid to her on the basis of this assessment.

II. RELEVANT DOMESTIC LAW

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

Section 3. Basic Concepts

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

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

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

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

Section 21. Exemption from liability for damage

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

Governmental Decree no. 404 of 4 July 2003 established the right of all permanent residents of the Chechen Republic who had lost their homes and any possessions in them after 12 December 1994 to receive compensation in the amount of RUB 300,000 for their home and RUB 50,000 for possessions.

COMPLAINTS

The applicant complained under Article 2 of the Convention that the air strike of 16 July 2002 had put her life in danger and that the investigation in that regard had not been effective. She complained about the destruction of

her house and personal belongings, referring to Article 8 of the Convention and Article 1 of Protocol No. 1.

The applicant also referred to Article 2 of Protocol No. 4.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

The applicant alleged that the attack of 17 July 2002 had amounted to a breach of the right to life. She also alleged that no effective investigation of the attack had been carried out, in violation of Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Arguments of the parties

1. The Government

First, the Government argued that the applicant's complaint should be dismissed for non-exhaustion of domestic remedies. They stressed that at the time when the applicant had lodged her complaint her claim in the Basmanny district court had still been pending. The applicant had then failed to appeal against the first-instance decision.

The Government then considered that the complaint should be dismissed as manifestly ill-founded. On the one hand, they argued that there was no evidence to support the applicant's allegation that the attack had been carried out by the State authorities. In particular, they noted that the expert report of 6 May 2003 had concluded that the fragments collected at the applicant's house had belonged to an artillery shell fired from a corresponding weapon. No bomb or missile fragments were found there. The shell could have been fired by members of armed groups. They referred to the letter from the Commander in Chief of the Ground Forces of 29 April 2009, which had denied the existence of any documents indicating that there

had been an operation on the date in question in Alkhazurovo. Thus, in their view, the applicant had failed to adduce any relevant evidence to prove "beyond reasonable doubt" that the attack had been carried out by State agents. They referred, by way of comparison, to the Court's inadmissibility decisions in the cases of *Sulim Garmasovich Umarov v. Russia* ((dec.), no. 30788/02), and *Elsanova v. Russia* ((dec.), no. 57952/00). They stressed that any conclusions as to the origin of the attack were premature while the domestic investigation was still pending.

At the same time, the Government conceded that in 2002 counter-terrorist operations aimed at suppression of illegal activities and capture of members of illegal armed groups were continuing in Chechnya. In July 2002 the air force had carried out combat missions defined by the headquarters of the United Group Alliance. The missions consisted of airborne missile strikes on the illegal insurgents' base two and half kilometres to the south of Alkahzurovo. These military actions had been lawful and based on the provisions of the Suppression of Terrorism Act.

In respect of the investigation, the Government argued that it had complied with the standards set by the national legislation and by the Convention. They pointed out that the establishment of the facts had been hampered by the fact that at the time of the investigation the active phase of the counter-terrorist operation in Chechnya had not yet been completed. This had entailed serious danger to the law-enforcement authorities. They stressed that the applicant had been informed of all the procedural steps taken, but had failed to appeal against any of them. Finally, they noted that the investigation was pending and that the prosecutor's office had been following its progress.

2. The applicant

The applicant noted the authorities' denial that an air strike had taken place in Alkhazurovo on 16 July 2002. At the same time, she referred to the admission in their memorandum that planes had been employed to destroy an insurgent base located two and a half kilometres to the south of the village, and also referred to other documents and evidence mentioning an air strike as the cause of her injuries and damage to the house. As to the expert report of 7 May 2003 relied on by the Government, the applicant challenged its validity and noted that she had not been notified of the study or its conclusions in due time.

She further argued that she had submitted sufficient evidence that lethal force had been used against her by the State on 16 July 2002 and that the Government had failed to justify it. She interpreted the Government's statement that no documents had been available about the operation in question as the admission that the attack had not been planned and executed with the requisite care for the lives of the civilian population and that, in

particular, the navigation method which allowed such a margin of error was incompatible with the authorities' obligations under Article 2.

The applicant then argued that the authorities had failed to carry out an investigation into the attack, in breach of their positive obligation to subject every instance of the use of potentially lethal force to most careful scrutiny. In particular, she disputed the Government's arguments about the proportionality of the force employed, since it was not claimed that she or her household presented any danger. She claimed that assessment of all the evidence in the criminal investigation file, and not just of the documents selected by the Government, could have led to different conclusions.

B. The Court's assessment

The Government claimed non-exhaustion of domestic remedies, since the applicant had failed to appeal against the decision of the Basmanny district court of 29 June 2004. Neither party has submitted any documents related to these proceedings, therefore the Court cannot assess their relevance to the applicant's claims. As a matter of principle, in the context of claims brought under Article 2 of the Convention the Court has already found that a civil action with the sole aim of obtaining redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents cannot be regarded as an effective remedy (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). Thus, the Government's objection in this respect should, normally, be rejected. However, the Court does not find it necessary to examine the question of the relevance of the civil proceedings in the present case for the following reasons.

The Court has to examine whether the situation at hand at all falls within the ambit of Article 2. It reiterates that Article 2 protects the right to life in situations where potentially lethal force is employed, notwithstanding the fact that as a result of subsequent medical interventions the applicant's life has been saved (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 174, 24 February 2005; and *Goncharuk v. Russia*, no. 58643/00, § 74, 4 October 2007). Nevertheless, the Court's case-law has established that it is only in exceptional circumstances that physical ill-treatment which did not result in death may disclose a violation of Article 2. The degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case actions resulting in an injury short of death were such as to bring the matter within the scope of the safeguard afforded by Article 2 (see *Denis Vasilyev v. Russia*, no. 32704/04, § 94, 17 December 2009, with further references). In many cases where a person has been assaulted or ill-

treated his or her complaints will rather fall to be examined under Article 3 of the Convention. In this connection, the Court reiterates that to fall within the scope of Article 3 the alleged ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Saadi v. Italy* [GC], no. 37201/06, § 134, ECHR 2008-...).

Turning to the circumstances of the present case, the Court notes that the Government disputes that the applicant's house has been destroyed by an aviation bomb. As to the applicant, who was represented by a lawyer, she has supplied very little information as to the exact circumstances of the attack, as well as to the nature and seriousness of her injuries. The Court notes that the only medical document provided by the applicant raises doubts as to its authenticity, given that it contains no date, no indication of the body which had issued it, no name of the person who had signed it, no letterhead and the stamp is unreadable. It provides no assessment of the seriousness of the injuries sustained, nor does it indicate whether they had required any treatment or entailed any consequences for the applicant's health. No documents from the domestic criminal or civil proceedings addressing the issue of injuries have been submitted either. Other documents reviewed by the Court make no reference to the injuries: for example, the note issued by the head of the local administration on 30 January 2003 refers only to the damage caused to the applicant's household. Finally, the Court has not been provided with copies of any complaints by the applicant to the national authorities on this issue.

However, independently of the question of injuries, it is still possible that the degree and nature of the lethal force employed could place her in a situation of mortal danger (compare with *Isayeva and Others v. Russia*, cited above, § 195). Turning to the present case, the Court finds that the circumstances in which the applicant has allegedly become a victim of the use of potentially lethal force are unclear. The applicant did not submit any corresponding evidence, such as witness statements, including her own, describing how the attack had occurred and which could have justified her assertion about the applicability of Article 2 to the events in question. She did not provide any copies of her complaints to the domestic authorities or any other documents which would have testified about her situation during the attack.

In these circumstances, the Court is unable to support the conclusion that the situation complained of falls within the ambit of Article 2. For the same reasons, it is unable to conclude that the situation gives rise to a separate issue under Article 3.

As to the criminal investigation which opened on 17 July 2002, it appears from the documents provided by the parties that it was opened only in

relation to the damage caused to the applicant's property. No evidence has been made available to the Court that the applicant had disagreed with the designation of the crime by the investigation authorities or that in the domestic proceedings she had raised the issue of her injuries or relied on any proof in this respect. In such circumstances, the Court is unable to conclude that the applicant had ever brought the issue of the attempt on her life to the attention of the domestic authorities, either in substance or expressly. In the circumstances of the present case the Court finds that this has a bearing not so much on the question of exhaustion of domestic remedies as on the well-foundedness of the applicant's complaints.

In view of the above, the Court finds that the applicant's complaint under Article 2 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

The applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 that her home and property had been destroyed by the Russian armed forces. Those 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. Arguments of the parties

1. The Government

The Government first argued that the applicant had failed to exhaust domestic remedies, in view of her failure to appeal against the court decision of 29 June 2004.

Second, they denied State responsibility for the destruction of the applicant's property, referring to the absence of the domestic investigation conclusions. They drew the Court's particular attention to the findings of the expert report of 6 May 2003 and other evidence (see their arguments above in respect of Article 2).

At the same time, they argued that any alleged interference with the applicant's rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1 had been lawful, as the counter-terrorist operations in the territory of the Chechen Republic, in the context of which the strike of 16 July 2002 had been performed, had been carried out on the basis of the Suppression of Terrorism Act of 25 July 1998 and other relevant acts (see their arguments above in relation to Article 2).

Finally, they noted that the damage to the applicant's house and property had been compensated in full. They alleged that the receipt by the applicant of the sum in question had been attested by her signature and had been in line with the evaluation performed by the State construction company. They did not submit any documents in this respect or indicate the date when the compensation had been paid.

2. The applicant

The applicant argued that in the absence of the outcome from the criminal investigation, her chances of obtaining redress through civil proceedings were nil. She therefore disputed the effectiveness of the civil remedies in principle. The applicant did not make any comments about the administrative compensation allegedly paid to her. At the same times she argued that the amount of her actual losses had been higher than the figures reached by the State construction company. She made her own calculations, relying on the average price of one square metre of housing in the fourth quarter of 2003, allegedly obtained by her from the State Committee on Statistics and on the evaluation of the size of her household made by the village administration on 30 January 2003.

In relation to the perpetrators of the acts, the applicant referred to her arguments made under Article 2.

B. The Court's assessment

First, the Court should address the Government's objection of non-exhaustion. It reiterates the general principle, in accordance with which when an individual formulates an arguable claim in respect of destruction of property, torture or killing involving the responsibility of the State, the notion of an "effective remedy", in the sense of Article 13 of the Convention, entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access by the complainant to the investigative procedure (see *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports of Judgments and Decisions* 1997-VIII, and *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports* 1996-VI). Otherwise, if an action based on the State's strict liability were to be considered a legal action that had to be exhausted in respect of complaints under Articles 2 and 8 of the Convention or Article 1 of Protocol No. 1 thereof, the State's obligation to pursue those guilty of such serious breaches might thereby disappear (see *Çaçan v. Turkey* (dec.), no. 33646/96, 28 March 2000).

However, the Court also observes that where more than one potentially effective remedy is available the applicant is only required to have used one of them (see *Moreira Barbosa v. Portugal* (dec.) no. 65681/01, ECHR 2004-V (extracts), and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, ECHR 2005-XII).

Thus, in the context of the conflict in Chechnya where the applicants had not sought a criminal investigation into the destruction of property but had applied directly to the civil courts, the Court would expect the completion of such proceedings rather than taking a stance on the basis of the applicants' submissions, since the national courts would be best placed to determine the extent and amount of the losses and to decide on the question of compensation (see *Umayeva v. Russia* (dec.), no. 1200/03, 11 December 2007). Where the domestic courts in the course of civil proceedings have not found it established that the applicant's property had been destroyed by the State and the applicant himself had not provided any additional evidence to convince the Court that such evaluation of the domestic authorities had been arbitrary or unreasonable, the Court relied on the appropriate conclusions and found the claims unsubstantiated (see *Umarov v. Russia* (dec.), no. 30788/02, 18 May 2006).

Turning to the present case, the Court notes that the applicant had sought compensation through civil proceedings, which remained unfinished. However, as noted above, both parties had failed to submit any documents in relation to this set of judicial action. The Court is therefore unable to appraise its relevance to the applicant's claim of the alleged violations of her rights. Normally, an applicant's failure to submit documents directly

relevant to the complaints brought under the Convention results in the Court's finding that the application is manifestly ill-founded as unsubstantiated.

However, the Court notes that unlike the decisions of *Umarov* and *Umayeva,* both cited above*,* the applicant in the present case had also sought the instigation of criminal proceedings and attempted to obtain the identification and prosecution of the perpetrators by the prosecutor's office. She claimed that this avenue had been ineffective and relied on its unfinished nature to assert that the domestic remedies had been exhausted and had turned out ineffective.

The Court reiterates that a criminal investigation is the remedy which could potentially be considered effective in respect of unlawful destruction of property by the State. It further notes that in some cases where the domestic investigation had become ineffective it could still conclude that there has been a violation of the Convention provisions guaranteeing the protection of the right to home and the right to property by directly relying on the evidence submitted by the parties. Thus, in the context of the conflict in Turkey the Court had found that the applicants' property had been destroyed by the State as claimed by the applicants, even in the absence of final conclusions from the criminal investigation at the national level (see *Bilgin v. Turkey*, no. 23819/94, §§ 96 and 108, 16 November 2000). Equally, where the Government did not dispute the fact of interference with the applicant's protected interests but argued that it had been lawful, the Court could make its own assessment independently of the conclusions of the criminal proceedings (see *Isayeva and Others*, cited above, § 232).

However, the Court notes that in the present case the Government denied that the interference into the applicant's rights had been a result of the State's actions. The criminal investigation was inconclusive and appears to have been dormant since 2004. Turning to the applicant's arguments, the Court finds that she submitted hardly any uncontroversial and relevant evidence in relation to the origin of the destruction of the house and possessions. As noted above, there are no witness statements, including from the applicant, about the circumstances in which the house was destroyed. The applicant failed to submit any of her applications to the domestic authorities, which the Court finds has a direct bearing on the substantiation of her claim. There is little independent evidence to support her version of the events.

It is true that in January 2003 the village administration issued a note referring to the destruction of the applicant's house by an air strike and that in April 2003 two neighbours signed a list of her belongings destroyed on 16 July 2002 as a result of the bombing. At the same time, the act of the State construction agency of 17 July 2002 submitted by the applicant and co-signed by her indicated flooding in June 2002 as the cause of the damage to her house. The Government submitted a copy of the expert report of May

2003, according to which the fragments collected at the applicant's house had constituted parts of an artillery shell fired from a corresponding weapon which, in their view, ran contrary to the contention that the house had been hit by an air strike. There are no attempts to explain these discrepancies, and in this case the Court is unable to find that the applicant has sufficiently articulated her claim of State interference with her rights.

Furthermore, it does not appear that the applicant has intervened in the proceedings which were commenced by the district prosecutor's office or that she had otherwise pursued her case after 2002 or, at the latest, after April 2003 when she had been accorded the status of victim. Thus, it does not appear that the applicant had challenged the validity of the expert report of 6 May 2003, as she did before this Court, despite having a procedural right to do so. The applicant has offered no explanation for her failure to participate in these proceedings.

Finally, it is to be noted that the applicant has not submitted any comments on the Government's assertion that she had received a no-fault compensation payment under the Government Decree no. 404 of 4 July 2003. Instead, she presented her own evaluation of damages, referring to the figures allegedly drawn from the information note of the State Committee on Statistics of April 2003. Even assuming that this information note could be used to estimate damages in an individual case, the Court notes that it contains no information about the prices of housing in the fourth quarter of 2003 and thus no figure on which the applicant relies. The Court further notes the difference in the size of the household indicated in the State construction company act and the note of the local administration for which, again, no explanation has been provided. The applicant did not present any other evidence to support her calculations. The only document referring to the damages allegedly caused to the applicant's property is thus the report with unclear date which estimated the cost of repair works at RUB 337,236. Since the applicant did not deny that the compensation of RUB 350,000 had been paid to her, the Court is inclined to accept that whatever the origin of the damage, by now the applicant had benefited from the procedure established by the Decree and thus, it appears, had her losses covered in full.

The Court regrets that the facts of the present case, where the parties disagree over fairly serious allegations, remain not entirely clarified. However, the Court must reach its decision on the basis of the available evidence submitted by the parties (see, mutatis mutandis, *Aksakal v. Turkey*, no. 37850/97, §§ 35 and 38, 15 February 2007, and *Luluyev and Others v. Russia*, no. 69480/01, § 93, ECHR 2006-XIII (extracts)).

Taking all the above elements into account, the Court finds that the applicant has failed to sufficiently substantiate her claim that there had been State interference with her rights guaranteed under Article 8 of the Convention and Article 1 of Protocol No. 1 and which has not already been compensated. It thus concludes on the basis of the above that this part of the

application, too, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

The applicant also complained of a violation of Article 2 of Protocol No. 4. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that it do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President