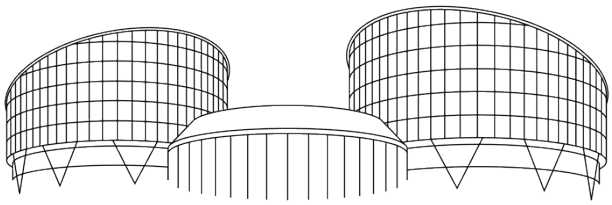

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF MILTAYEV AND MELTAYEVA v. RUSSIA**

*(Application no. 8455/06)*

JUDGMENT

STRASBOURG

15 January 2013

**FINAL**

15/04/2013

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

**In the case of Miltayev and Meltayeva v. Russia,**

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

Isabelle Berro-Lefèvre, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 December 2012,

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

# PROCEDURE

1. The case originated in an application (no. 8455/06) 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 two Russian nationals, Mr Shakhruddi Sharaniyevich Miltayev and Mrs Zarema Vakhayevna Meltayeva ("the applicants"), on 22 January 2006.

2. The applicants were represented by Mr Suleyman Khadzhimuratov, a resident of Grozny. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that their property had been destroyed as a result of the use of force by the Russian military forces in July 2001.

4. On 5 September 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Mr Shakhruddi Sharaniyevich Miltayev, was born in 1958 and lives in Grozny, Chechnya. The second applicant, Mrs Zarema Vakhayevna Meltayeva, is his niece. She was born in 1976 and lives in Argun, Chechnya.

6. The facts of the case are partly disputed by the parties. Their submissions and the relevant documents may be summarised as follows.

## A. Destruction of the applicants' property

7. The applicants ran a private photo laboratory in a rented room in the house at 63 Shosseynaya Street in the town of Argun in Chechnya. On 30 December 2000 the second applicant entered into a lease agreement with Mr U., the owner of the house at 63 Shosseynaya Street, for the renting of one room in the house for commercial purposes – to install a Kodak photo laboratory.

8. On 27 July 2001, during the passage of a tank convoy through the town, it appears that a skirmish took place between the military and unidentified members of illegal armed groups. A shot from a tank set the house at 63 Shosseynaya Street on fire and the applicants' photo laboratory, along with all their equipment and other belongings, was destroyed.

9. On 28 July 2001 the local fire service drew up a report finding that the fire had damaged the house, that shelling had been its cause and that no fire crews had been involved. They made a preliminary estimation of the damage at 1,955,951 Russian roubles (RUB).

10. On 28 July 2001 a commission set up by the Argun town administration recorded the destruction of the house at 63 Shosseynaya Street, which had "burned as a result of shelling".

11. On 28 and 29 July 2001 a commission consisting of the head of the council of elders and two employees of the local convenience store drew up a report listing the losses to the applicants' possessions. The report stated that, as a result of shooting by the federal forces on 27 July 2001, the applicants' property in the house at 63 Shosseynaya Street had been completely destroyed by fire. The list of possessions included a Gretag Kodak micro laboratory, a Honda electric motor; and various office equipment.

12. On 30 July 2001 the second applicant and the owner of the house, Mr U., made written statements describing the events of 27 July. Both indicated that the fire had started after 10 p.m. and that firefighters could not be called in view of curfew. The second applicant attached, in addition, a list of the goods and equipment lost and their value.

13. On unspecified dates three other local residents, eye-witnesses to the events, made written statements pointing to a shot from the tank as the cause of the fire which had destroyed the laboratory.

## B. Criminal proceedings

14. On 28 July 2001 the second applicant lodged a complaint with the Argun Town Department of the Interior ("GOVD"). The document referred to a shot from a tank as the cause of the fire.

15. On 3 August 2001 the local office of the Department of the Interior opened an investigation into the alleged offence of causing damage to the applicants' property by negligent use of a "source of increased danger" (*источник повышенной опасности*). The decision reads as follows:

> "At or around 10 p.m. on 27 July 2001 a federal military convoy was passing through the town of Argun when it fired a shot at a photo laboratory at 63 Shosseynaya Street. Its actions set the building on fire and caused substantial pecuniary loss, estimated at RUB 1,955,351."

16. On 17 August 2001 the second applicant was questioned by the police as a witness. She explained that the photo laboratory had been owned by her uncle, the first applicant. At about 10 p.m. on 27 July 2001 a convoy of tanks had passed along the street; there had been an exchange of fire between the soldiers and unidentified armed persons. As a result of the shelling, the laboratory had been set on fire. When questioned on 22 December 2003, the second applicant confirmed her previous statements.

17. On 3 September 2001 the investigation was suspended owing to the absence of identified culprits.

18. On 4 September 2003 the head of the Argun GOVD issued a note to the second applicant confirming that her property, a Gretag photo laboratory valued at 1,955,351 Russian roubles (RUB) had been destroyed on 27 July 2001 as a result of shelling.

19. The proceedings were resumed on 21 November 2003. In December 2003 the Argun military commander replied to the GOVD that "on 27 June 2001" no tank columns had passed through Argun. The applicants drew the attention of the investigators to the fact that the wrong date had been referred to in that reply. However it does not appear that any further steps have been taken to discover which military units were involved in the incident.

20. On 25 December 2003 the first applicant was granted the status of victim in the criminal proceedings. The decision referred to a shot from a tank as the cause of the damage to the applicant's property.

21. On the same day the first applicant was questioned as a victim. He stated that he had owned the laboratory situated in the rented room at 63 Shosseynaya Street since 1999. On 27 July 2001, at about 10 p.m., he had been at the laboratory together with four other persons. At that time a tank column had been passing through the street. Unidentified persons had fired shots with automatic guns and the applicant and the others had taken cover in the cellar of a nearby house. About one hour later, when the

shooting subsided, they had come out and found the house and the laboratory on fire.

22. Two other persons who had been at the laboratory at the time were questioned in December 2003 and gave similar statements.

23. On 27 December 2003 the prosecutor again stayed the investigation because the offenders had not been identified. The proceedings were resumed on 11 March 2005 and terminated on the same date with reference to the expiry of the statutory time-limit for prosecution. The first applicant was informed accordingly.

24. On 7 November 2008 the Chechnya Department of the Investigative Committee quashed the decision of 11 March 2005. The investigator pointed to the incomplete nature of the investigation and ordered, in particular, that the owner of the house, the neighbours and other witnesses, as well as the members of the commissions which had inspected the house immediately after the events and drawn up the relevant reports, be questioned.

### C. Civil proceedings

25. The applicants sued the Russian Ministry of Defence, claiming compensation for their destroyed property and for non-pecuniary damage.

26. On 25 March 2005 the Presnenskiy District Court of Moscow issued its judgment. It held that under Article 1069 of the Civil Code the State was only liable in respect of damage caused by its agents if they had acted unlawfully. The District Court noted that the military operation in Chechnya had been authorised by Presidential Decree no. 2166 of 30 November 1994, and Government Decree no. 1360 of 9 December 1994. Both decrees had been found to be compatible with the Constitution by the Constitutional Court on 31 July 1995. The District Court concluded that the Ministry had not acted unlawfully in respect of the applicants.

27. The court further held that under Article 1079 of the Civil Code, damage caused by a "source of increased danger" had to be compensated by the person or entity using it. However, in the court's view, the applicants had not adduced any evidence confirming that their property had been destroyed by such source of danger owned by State agents. Accordingly, it dismissed the applicants' claims.

28. On 19 August 2005 the Moscow City Court upheld the first-instance judgment.

### D. Documents relating to the property issues

29. The Government submitted a copy of a purchase contract of 22 April 1997 according to which the equipment for the photo laboratory had been bought by "the charity foundation Asir" and its president Mr A. The value

of the goods was given as 51,556 US dollars (USD). On 3 June 1997 the foundation had transferred the amount of RUR 118,240,277 to the vendor. On 10 June 1997 the president of Asir, Mr A., had issued a power of attorney authorising a Mr G. to collect the equipment.

30. In November 2008 the State Tax Inspectorate Office for Chechnya informed the police investigator in Argun that the "Gretok-260" photo laboratory was not listed as a legal entity and that neither applicant had been registered as a private entrepreneur.

31. The applicants, in reply, submitted a notice issued by the local village administration of Tevzan in the Vedeno District confirming that the applicants had run a private photo business since 1994. They also submitted an undated statement co-signed by Mr G. and another individual stating that the first applicant had been the legal owner of the photo laboratory.

## II. RELEVANT DOMESTIC LAW

### A. Criminal Code of the Russian Federation of 1996

32. Article 168 of the Criminal Code contains a definition of causing damage to property as a result of the improper handling or firing of "sources of increased danger". The maximum penalty is one year's imprisonment.

33. Article 78 sets time-limits for criminal liability. A person cannot be held liable for a crime after two years in the case of a minor crime (punishable by up to three years' imprisonment). The time starts to run from the date of the crime and stops running on the date of the judgment of the trial court. If the person escapes justice, the time does not start to run until the person is found.

### B. Civil Code of the Russian Federation

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

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

36. Article 1079 stipulates that damage inflicted by a "source of increased danger" (*источник повышенной опасности*) is to be compensated by the person or entity using that source of danger, unless it has been proved that the damage was caused by *force majeure* or through the fault of the person affected.

# THE LAW

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

37. The applicants complained about a breach of their right to respect for their property, as provided for in Article 1 of Protocol No. 1 to the Convention, which reads, in so far as relevant:

> "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. ..."

### A. Admissibility

38. The Government questioned the applicants' ownership of the equipment in question and thus the admissibility of the complaint *ratione personae*. They argued that the laboratory had been bought by a legal entity, the charity foundation Asir. They further pointed to the absence of any documents proving the transfer of ownership of the laboratory in question from Asir or Mr A. to the applicants. They further stressed that no legal entity had been registered in Chechnya in the applicants' names, nor were they listed as private entrepreneurs, and that the Tax Inspectorate had been unaware of the existence of such a business.

39. The applicants, in reply, pointed to the difficulties associated with running businesses and carrying out legal transactions in Chechnya at the end of 1990s, under the *de facto* control of the self-proclaimed "independent Republic of Ichkeria". They referred to the virtual breakdown of many institutions and services affecting the registration of businesses, banking transfers and collection of taxes. They noted that their ownership of the photo laboratory had not been challenged in either of the two sets of domestic proceedings, criminal or civil. They further pointed to the witness testimony collected by them in support of their position.

40. The Court notes that the numerous documents submitted by the parties support the applicants' claim of ownership of the destroyed goods

and equipment. Thus, in both sets of domestic proceedings the applicants declared themselves to be the owners of the photo laboratory in question and their position as such was not contested (see paragraphs 15 and 26 above). The documents drawn up after the fire named them as the proprietors; the first applicant was granted the status of victim in the criminal proceedings concerning the destruction of the photo laboratory; their claims for compensation were reviewed in substance by civil courts at two levels of jurisdiction without any doubt as to their status *vis-à-vis* the property in question; and their statements and the statements of other witnesses collected by the police during the criminal investigation referred to them as the owners of the damaged property (see paragraphs 9-11, 16, 18 and 20-22 above). They entered into a lease contract with the owner of the premises, indicating the opening of a photo laboratory as the purpose of the lease (see paragraph 7 above).

41. Furthermore, the Court takes into account the applicants' explanations as to the difficulties associated with running and registering businesses in a situation of civil strife and virtual breakdown of law and order (see, *mutatis mutandis*, *Nakayev v. Russia*, no. 29846/05, § 64, 21 June 2011, and *Khamidov v. Russia*, no. 72118/01, § 154, 15 November 2007). Against this background, the Court does not find that the purchase contract of 1997 submitted by the Government, or the absence of a reference to the applicants' business in the tax register for 2008, can be interpreted as decisive evidence against the applicants in this regard. The Government's objection to the admissibility of the complaint *ratione personae* should, therefore, be dismissed.

42. The Court notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

43. The applicants argued that there was overwhelming evidence that their property had been destroyed by a shot fired by military servicemen from a tank at no. 63 Shosseynaya Street in Argun between 10 p.m. and 11 p.m. on 27 July 2001. They pointed to numerous official documents and extensive testimony supporting this conclusion.

44. The Government argued that the perpetrators of the alleged acts had not been established. They noted that the criminal investigation into the crime had been resumed in 2008, but that it had not obtained conclusive evidence that the fire had started as a result of the actions of the military. They relied on the witness testimony collected by the investigators, which pointed to a skirmish, or exchange of fire, between the military and unidentified illegally armed men. They drew the Court's attention to the differences between the applicants' testimony given in the course of the domestic criminal investigation and the testimony submitted directly to the

Court, since the latter did not mention the presence of illegal armed groups at the site of the incident. They argued that the applicants' claim that the State was responsible for the damage was unfounded. The civil courts, at two levels of jurisdiction, had reached the same conclusion. In such circumstances, the applicants' allegation of a breach of their property rights by the State had not met the required standard of proof – "beyond reasonable doubt". The Government referred, in this connection, to the Court's decision in the case of *Umarov v. Russia* ((dec.), no. 30788/02, 18 May 2006).

45. The Court observes that no state of emergency or martial law has been declared in the Chechen Republic, no federal law has been enacted restricting the rights of the population of the area, and no derogation under Article 15 of the Convention has been made. The operations in question therefore have to be examined against a normal legal background (see *Isayeva v. Russia*, no. 57950/00, § 191, 24 February 2005).

46. The Court reiterates its finding above that the applicants' ownership of the property in question has been sufficiently confirmed by the domestic bodies. It is also not in dispute between the parties that the property in question was destroyed. However, the Government denies the State's interference with the right in question. The Court must therefore determine the existence of an interference by the State.

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

48. The applicants in the present case complained to the local police, who, in August 2003, opened a criminal investigation. However, that investigation was closed in March 2005 owing to the expiry of the time-limit for criminal liability. The investigation was unable to reach any conclusions as to the perpetrators of the events, despite the rather impressive body of evidence available. The Court notes that the investigation was unable to discover the most basic information about the military unit which was involved in the incident, or to identify the servicemen concerned and question them about the events. Nor did it commission or draw up any special expert reports in order to establish the cause of the fire. Some of these shortcomings were identified in the decision of the Investigative Committee in November 2008 (see paragraph 24 above), but no information has been made available to the Court indicating that these faults have been remedied.

49. The Government referred to that decision to argue that the domestic proceedings were still pending and thus could potentially determine liability for the impugned acts. However, as noted above, the Court has not been made aware of any steps to remedy the shortcomings identified in the

preceding paragraph. In view of the passage of time and the inevitable loss of evidence, as well as the expiry of the prescription period for the crime, the possibility of obtaining answers within those proceedings at this stage may be considered negligible. While the Court finds the evidence collected within the proceedings and made available to it by the parties reliable, it also considers that the applicants could not realistically have been expected to wait for any further developments in the criminal investigation once it had been terminated in March 2005 on expiry of the prescription period.

50. In assessing the materials submitted in the present case, the Court observes that the applicants furnished numerous documents capable of laying the arguable basis for their claims of State responsibility. Thus, the three commissions which inspected the site in the immediate aftermath of the attack indicated "shelling" as the cause of the fire (see paragraphs 9-11 above). On 3 August 2001 the decision to open a criminal investigation referred to the damage to property caused by shelling by military servicemen (see paragraph 15 above). Similar information is repeated on several occasions in various official documents issued by the investigation (see paragraphs 18 and 20 above). The applicants and other witnesses consistently indicated that the fire had started as the result of shooting from a tank (see paragraphs 16, 21 and 22 above).

51. It is true that the applicants' statements, produced over the years, differed as to whether there had been gunfire which had provoked the shelling. However, they are consistent in pointing to shelling by the military as the cause of the fire. In this respect their accounts are also fully consistent with the above-mentioned documents reviewed by the Court. Any differences are not, in the Court's view, sufficient to cast doubt on the overall credibility of their statements in the present case.

52. Finally, the Court notes that in the civil proceedings the domestic courts dismissed the applicants' claims as unsubstantiated. While they found that the actions of the State authorities in carrying out the counter-terrorist operation in Chechnya had been lawful under the domestic legal order, they did not go on to establish that the damage to the applicant's property was imputable to the Ministry of Defence. The Court reiterates that, although sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, the Court is nevertheless not bound by the findings of the 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).

53. Having regard to the evidence submitted by the applicants to the domestic courts, which included eye-witness statements concerning the cause of the fire, the above-mentioned findings by the commissions, and documents from the criminal investigation, the Court finds that it is unable to endorse the findings reached by the domestic civil courts. In so far as the

cause of the damage is concerned, their conclusions appear to be very brief and, in the particular circumstances of the present case, irreconcilable with the body of evidence submitted by the applicants.

54. The Government pointed by way of example to the decision in the case of *Umarov v. Russia* (cited above). The Court finds it necessary, at this stage, to note that it has essentially reviewed two types of complaints brought by residents of Chechnya in respect of violations of their property rights during anti-terrorist operations. Aspects of the relevant practice of the Russian courts have been summarised in the judgments *Esmukhambetov and Others v. Russia* (no. 23445/03, §§ 89-91, 29 March 2011), and *Kerimova and Others v. Russia* (nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, §§ 192-94, 3 May 2011).

55. Thus, in some cases property was damaged during a period – essentially between the end of 1999 and first half of 2000 – characterised by significant civil strife in the Chechen Republic, which, at the time, was the scene of a violent confrontation between the Russian military and security forces and illegal armed groups. The applicants, who were often absent when the damage was inflicted, were unable to furnish the domestic courts, or this Court, with reliable evidence confirming the involvement of State agents in the infliction of the damage to their property. Having regard to the twofold violence ensuing from the actions of both parties to the conflict, the Court was not convinced that in such circumstances the State could be held responsible for any damage inflicted during the military operation, or that the State's responsibility was engaged by the mere fact that the applicant's property had been affected (see *Umarov* (dec.), cited above, and *Trapeznikova v. Russia*, no. 21539/02, § 108, 11 December 2008). It therefore endorsed the findings of the domestic courts to that effect.

56. However, in another group of cases arbitrary or manifestly unreasonable decisions of the domestic courts as to the absence of State responsibility could lead the Court to reach a different conclusion. This happened, for instance, if the applicants produced sufficient evidence that the State was responsible for the interference in question (see *Khamidov*, cited above, § 137).

57. In the Court's opinion, the case at hand falls within the second category. The various evidence detailed above (see paragraphs 50-51), along with the above-mentioned considerations, is sufficient to enable it to conclude that the State is responsible for the interference in question. It also finds that the conclusions of the domestic civil courts as to the absence of State responsibility appear, in the present case, to be arbitrary or manifestly unreasonable, and therefore cannot be relied on.

58. The Government did not put forward any arguments as to the lawfulness, legitimate aim or proportionality of the interference with the applicants' property.

59. The Court also notes that in previous similar cases it has expressed its concern over the lawfulness of the measures leading to the destruction of the applicants' property in view of the vague and general terms in which the Suppression of Terrorism Act, and other legal documents to which the Government had referred, had been formulated (see, among other authorities, *Khamidov*, cited above, § 143; *Esmukhambetov and Others*, cited above, §§ 176-77; *Kerimova and Others*, cited above, §§ 295-97; and *Gubiyev v. Russia*, no. 29309/03, § 79, 19 July 2011).

60. Noting the above finding that the interference in question was imputable to the State, the absence of any arguments as to the lawfulness, legitimate aim or proportionality of such interference, and its previous findings pointing to the inadequacy of the domestic legal framework in this regard, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

62. The Court notes that the applicants' just satisfaction claims were set out on their application form, but that no claims were submitted to the Court within the time-limit set after the communication of the complaint to the Government. The applicants have therefore failed to comply with Rule 60 §§ 2 and 3 of the Rules of Court, as well as paragraph 5 of the Practice Direction on Just Satisfaction Claims, which, in so far as relevant, provides that the Court "will also reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings". The applicants' just satisfaction claims must therefore be dismissed.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 the Convention;

3. *Dismisses* the applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Søren Nielsen<br>Registrar | Isabelle Berro-Lefèvre<br>President |