

March 2008

Budayeva and Others v. Russia - 15339/02

Judgment 20.3.2008 [Section I]

Article 2

Positive obligations

Failure by authorities to implement land-planning and emergency-relief policies in the light of foreseeable risk of a mudslide that would lead to loss of life: *violations*

Article 1 of Protocol No. 1

Article 1 para. 1 of Protocol No. 1

Peaceful enjoyment of possessions

Adequacy of measures taken by the authorities to provide alternative accommodation and emergency relief for victims of property damage caused by mudslide: *no violation*

Facts: The town of Tyrnauz (Russia) is situated in an area where mudslides have been recorded every year since 1937. In the summer of 2000 it was hit by a succession of mudslides over a seven-day period in which there were at least 8 reported deaths, including the first applicant's husband. Her younger son was also seriously injured while the second applicant and her daughter suffered severe friction burns. The applicants' homes and belongings were destroyed and, although they were granted free replacement housing and a lump-sum emergency allowance, their health has deteriorated since the disaster. The prosecutor's office decided not to launch a criminal investigation into either the disaster or the death of the first applicant's husband, which was considered accidental. A civil action subsequently brought by the applicants against the authorities was dismissed on the grounds that the local population had been informed of the risk by the media and all reasonable measures had been taken to mitigate it.

In the proceedings before the European Court, the Government maintained that the exceptional force of the mudslides meant that they could not have been predicted or stopped while any residents who had returned to their homes after the first wave had done so in breach of orders to evacuate.

For their part, the applicants accused the authorities of having failed to make essential repairs to defective equipment, to issue advance warnings or to hold an inquiry. They produced official papers showing that no funds had been allocated for the repairs in the district budget and that well before the disaster the authorities had received a series of warnings from the mountain institute (the state agency responsible for monitoring weather hazards in high-altitude areas) urging them to carry out the repairs and to set up observation posts to facilitate the evacuation of the population if necessary. One of the last warnings had

referred to possible record losses and casualties if the measures were not carried out as a matter of urgency.

Law: Article 2 – (a) Inadequate maintenance and failure to set up a warning system: The scope of the State's positive obligations in the sphere of emergency relief depended on the origin of the threat and the extent to which the risk was susceptible to mitigation. A relevant factor here was whether the circumstances of the case pointed to the imminence of clearly identifiable natural hazards, such as a recurring calamity affecting a distinct area developed for human habitation or use. The authorities had received a number of warnings in 1999 that should have alerted them to the increasing risks of a large-scale mudslide. Indeed, they were aware that any mudslide, regardless of its scale, was liable to have devastating consequences because of the damage to the defence infrastructure. Although the need for urgent repairs had been made quite clear, no funds had been allocated. Essential practical measures to ensure the safety of the local population were not taken: no warning had been given and no evacuation order issued, publicised or enforced; the mountain institute's persistent requests for temporary observation posts to be set up were ignored; there was no evidence of any regulatory framework, land-planning policies or specific safety measures having been put in place; and the mud-retention equipment had not been adequately maintained. In sum, the authorities had not taken any measures before the disaster. There had been no justification for their failure to implement land-planning and emergency-relief policies in view of the foreseeable risk of loss of life. The serious administrative flaws which had prevented the implementation of these policies had caused the death of the first applicant's husband and injuries to her and other members of their family. The authorities had therefore failed in their duty to establish a legislative and administrative framework to provide effective protection of the right to life.

Conclusion: violation (unanimously).

(b) The judicial response to the disaster: Within a week of the disaster the prosecutor's office had already decided to dispense with a criminal investigation into the death of the first applicant's husband. The inquest had been limited to the immediate cause of death and had not examined questions of safety compliance or the authorities' responsibility. Nor had those questions been the subject of any criminal, administrative or technical inquiry. In particular, no action had ever been taken to verify the numerous allegations of inadequate maintenance and a failure to set up a warning system. The applicants' claims for damages had effectively been dismissed by the domestic courts because they had failed to demonstrate to what extent State negligence had caused damage exceeding what was inevitable in a natural disaster. That question could, however, only have been answered by a complex expert investigation and the establishment of facts to which only the authorities had access. The applicants had therefore been required to provide proof which was beyond their reach. In any event, the domestic courts had not made full use of their powers to establish the facts by calling witnesses or seeking expert opinions, when the evidence produced by the applicants included reports which suggested that their concerns were shared by certain officials. Thus, the question of the State's responsibility for the accident had never been investigated or examined by any judicial or administrative authority.

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – It was unclear to what extent proper maintenance of the defence infrastructure could have mitigated the exceptional force of the mudslides. Nor had it be shown that the damage to the applicants' homes or

possessions would have been prevented by a warning system, so that it could not be unequivocally attributed to State negligence. Moreover, a State's obligation to protect private property could not be seen as synonymous with an obligation to compensate the full market value of the destroyed property. The compensation offered by the State had to be assessed in the light of all the other measures implemented by the authorities, the complexity of the situation, the number of owners, and the economic, social and humanitarian issues inherent in providing disaster relief. The housing compensation offered to the applicants was not manifestly out of proportion. Given also the large number of victims and the scale of the emergency relief operations, the upper limit (RUB 13,200, approximately EUR 530) on compensation for household belongings appeared justified. Access to the benefits had been direct and automatic and had not involved a contentious procedure or the need to prove the actual losses. The conditions under which compensation was granted had not, therefore, imposed a disproportionate burden on the applicants.

Conclusion: no violation (unanimously).

Article 41 – Awards in respect of non-pecuniary damage of EUR 30,000 to the first applicant, EUR 15,000 to the second applicant and EUR 10,000 to each of the remaining applicants.

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