



Russian authorities responsible for Vladivostok flood which put lives at risk and damaged homes

In today's Chamber judgment in the case [Kolyadenko and Others v. Russia](#) (applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been **violations of Article 2 (right to life), Article 8 (right to respect for private and family life and the home) and Article 1 of Protocol No. 1 (protection of property)** of the European Convention on Human Rights, and **no violation of Article 13 (right to an effective remedy)**.

The case concerned the complaint by victims of a flash flood in Vladivostok in 2001 who alleged that the authorities were responsible for the flood and that there had been no adequate judicial response to it.

Principal facts

The applicants are six Russian nationals who live in Vladivostok near the Pionerskaya river and water reservoir. They were all affected by a heavy flash flood in Vladivostok in August 2001, after an urgent massive evacuation of water from the reservoir.

Reacting to exceptionally heavy rain on 7 August 2001 – the rainfall of that day being equivalent to the average rainfall of a full month - and the risk of the dam breaking, the State-owned water company in charge of the reservoir decided to release a large amount of water into the river. According to the applicants, no emergency warning was given. The water reached their flats and rose very quickly to levels between 1.20 and 1.50 metres. Three of the applicants, including a disabled 63-year-old woman, were at home during the flood and could barely save their lives, two of them, who could not swim, only with the help of others. All six applicants suffered damages to their flats and their belongings.

Two days after the flood, a criminal investigation was opened in connection with the events. Subsequently, criminal proceedings were brought against the director of the State-owned water company and at some point the applicants were granted victim status. However, in January 2003, the proceedings were discontinued. According to the investigating authorities' decision, the director had acted in compliance with the relevant regulations when ordering the release of the water.

At the same time, according to an expert report of January 2003, the main reason for the flood had been the fact that the channel of the Pionerskaya river was overgrown with trees and bushes and littered with household waste. The report also noted that under the relevant regulations no construction should have been allowed in the area downstream of the reservoir without measures being taken to protect the area from

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

floods. Following the report, the investigating authorities ordered that criminal proceedings be brought against city officials and regional authorities in connection with the maintenance of the channel. A few days later, the district prosecutor brought criminal proceedings against those officials and authorities on suspicion on them having, in excess of their power, allocated plots of land for individual housing construction within a water protection zone of the Pionerskaya river. In July 2004, those proceedings were discontinued. The investigation authorities' decision, while noting a number of shortcomings by the city and regional officials, including their failure to identify flood-prone areas so that suitable construction restrictions could be implemented, concluded that there had been no evidence of a crime.

The applicants brought several sets of civil proceedings against the region and city authorities and the water company, seeking damages for their lost property and compensation for the anguish and distress suffered during the flood. All their claims were eventually dismissed in 2004. The courts held in particular that the action taken by the water company had been correct in view of the heavy rainfall, and noted that the criminal proceedings against its director had been discontinued. In 2002, the applicants received small sums of money in extra-judicial compensation for the losses sustained as a result of the flood.

As documented by the material submitted by the applicants, the director of the water company had warned the Vladivostok city authorities already in a letter of June 1999 of the poor state of the channel of the Pionerskaya river and had pointed out that in the event of heavy rain the company might have to evacuate water from the reservoir, which might cause flooding over an extensive area. In a decision of September 1999, the Vladivostok Emergency Commission had pointed out that although the question of cleaning up the course of the river had repeatedly been raised every year, no actual measures had been taken. The Commission had then called on the city and district administration to clean up and deepen the channel.

Complaints, procedure and composition of the Court

Relying on Article 2, the applicants complained that the authorities had put their lives at risk by releasing the water without any prior warning and by having failed to maintain the river channel, and that there had been no adequate judicial response in that respect. Relying on Article 8, Article 1 of Protocol No. 1 and Article 13, they complained that their homes and property were severely damaged, and that they had no effective remedies in respect of their complaints.

The case originated in six applications, which were lodged with the European Court of Human Rights on 21 April 2005, 11 May 2005, 12 May 2005, 3 June 2005 and 2 September 2005 respectively.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 2

The Court declared the complaints under Article 2 admissible in so far as they concerned three of the applicants, who were at home during the flood. It declared the complaints under Article 2 by the remaining three applicants inadmissible.

While the Court was prepared to accept that the evacuation of water had been unavoidable given the exceptional weather and the risk of dam breaking, it was not convinced that the flood could be explained only by the adverse meteorological conditions. The Pionerskoye reservoir was a massive man-made industrial facility and its operation fell undoubtedly into the category of dangerous industrial activities. It was clear from the submitted materials that the authorities had been aware that in case of heavy rain it might be necessary urgently to release water from the reservoir and that this might cause extensive flooding.

Furthermore, although according to the expert report of January 2003 any urban development was prohibited in the area downstream of the reservoir without flood protection measures, the authorities had neither prevented that area from being inhabited nor had they taken effective measures to protect it from floods. While the Court had no temporal jurisdiction to assess construction in that area before 5 May 1998, when the Convention entered into force in respect of Russia, it was clear that the authorities failed to apply any town planning restrictions also after that date or to take the necessary steps to protect people living in the area.

Although the poor state of the river channel and the problem of its proper maintenance had been brought to the authorities' attention two years or more before the flood of 2001, the recommended measures had not been properly implemented. Under the circumstances, the authorities could have reasonably been expected to show all possible diligence in alerting the residents of the risks. However, the applicants maintained that in the many years they had been living near the reservoir they had never been warned that they lived in a flood-prone area. Even after the flood of August 2001, the authorities had failed to take measures to clear the river channel. The Court concluded that the Russian Government had failed in its obligation to protect the relevant applicants' lives, in violation of Article 2.

As regards the judicial response to the events of August 2001, the Court noted that despite its requests, the Russian Government had not submitted a copy of the file of the investigation against the city and regional authorities. The Court's ability to assess the effectiveness of that investigation was therefore limited. It furthermore had doubts that that investigation could be regarded as an adequate judicial response to the flood, given that its main purpose was apparently to establish whether there had been abuses in town planning rather than to identify those responsible for the poor maintenance of the river channel.

Although the decision to discontinue the proceedings stated that the regional authorities and the water company were in charge of ensuring the safe operation of the reservoir, no attempt was made to find out whether those authorities should be held responsible, let alone to establish the identity of the particular officials responsible, for the poor state of the channel and its inadequate throughput capacity. The Court was struck by the fact that the investigators listed a number of shortcomings by the cities and regional authorities but nevertheless decided to close the investigation referring to the absence of a crime. The Court was therefore not convinced that the judicial response to the events of August 2001 secured the full accountability of the officials or authorities in charge. There had accordingly been a violation of Article 2 in that respect as well.

Article 8 and Article 1 of Protocol No. 1

The Court had no doubt that the causal link it had established, with regard to the complaints under Article 2, between the negligence attributable to the State and the risk to the lives of people living in the vicinity of the reservoir also applied to the damage caused to the applicants' homes and property by the flood. The responsible officials and authorities had failed to do everything in their power to protect the applicants' rights under Article 8 and Article 1 of Protocol No. 1. There had accordingly been a violation of those articles.

Article 13

The Court found no violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1. It held in particular that Russian law provided the applicants with the possibility of bringing civil proceedings to claim compensation. The Russian courts had had at their disposal the necessary material to be able in principle to address in the civil proceedings the State's liability and they had in principle been empowered to attribute responsibility for the events in the criminal proceedings. The fact alone that the outcome of the proceedings was unfavourable to the applicants, as their claims were finally rejected, could not be said to have demonstrated that the available remedies were insufficient for the purpose of Article 13.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay the first applicant 1,500 euros (EUR), the third and fourth applicants jointly EUR 11,500 and the fifth applicant EUR 4,700 in respect of pecuniary damage; it was to pay the first, third and sixth applicants EUR 20,000 each, and the fourth and fifth applicants EUR 10,000 (ten thousand euros) each in respect of non-pecuniary damage.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.