CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15339/02
by Khalimat Khuseyevna BUDAYEVA
against Russia
lodged on 15 March 2002

Application no. 21166/02
by Fatima Khuseynovna ATMURZAYEVA
against Russia
lodged on 15 March 2002

Application no. 20058/02
by Raya Meliyevna SHOGENOVA
against Russia
lodged on 10 April 2002

Application no. 11673/02
by Nina Nikolayevna KHAKHLOVA
against Russia
lodged on 18 February 2002

Application no. 15343/02
by Andrey Aleksandrovich SHISHKIN and Irina Ilyinichna SHISHKINA
against Russia
lodged on 9 March 2002

The European Court of Human Rights (First Section), sitting on 5 April 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr G. MALINVERNI, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above applications lodged on 15 March 2002 (nos. 15339/02 and 21166/02), on 10 April 2002 (no. 20058/02), on 18 February 2002 (no. 11673/02) and on 9 March 2002 (no. 15343/02),

Having regard to the decision to grant priority to the above applications under Rule 41 of the Rules of Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant in the first application (no. 15339/02), Ms Khalimat Khuseyevna Budayeva, is a Russian national who was born in 1961 and lives in Tyrnauz, the Elbrus District of the Republic of Kabardino-Balkariya (KBR), Russia (the first applicant).

The applicant in the second application (no. 21166/02), Mrs Fatima Khuseynovna Atmurzayeva, is a Russian national who was born in 1963 and lives in Tyrnauz (the second applicant).

The applicant in the third application (no. 20058/02), Ms Raya Meliyevna Shogenova, is a Russian national who was born in 1953 and lives in Nalchik in the KBR (the third applicant).

The applicant in the fourth application (no. 11673/02), Ms Nina Nikolayevna Khakhlova, is a Russian national who was born in 1955 and lives in Tyranuz (the fourth applicant).

The applicants in the fifth application (no. 15343/02), Mr Andrey Aleksandrovich Shishkin and Mrs Irina Ilyinichna Shishkina, are Russian nationals who were born in 1958 and 1955 respectively and live in Tyrnauz (the fifth and the sixth applicants).

The respondent Government were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

The facts of the case are partially in dispute between the parties. Their submissions on the circumstances in which a mudflow swept through the town of Tyrnauz in 2000 are set out in Section A below. The manner in which these events affected the individual applicants is set out in Section B. A description of the materials submitted to the Court by the applicants is given in Section C.

A. The circumstances of the case

1. Background facts

The town of Tyrnauz is situated in the mountain district adjacent to Mount Elbrus, the central Caucasus. The general urban plan of the town was developed in the 1950s as part of a large-scale industrial construction project. Two tributaries of the Baksan River passing through Tyrnauz, the Gerhozhansu and the Kamyksu, are known to be prone to cause mudflows.

The first documentary evidence of a mudflow in the Gerhozhansu River dates back to 1937. Subsequently mudflows were registered almost every year; occasionally they hit the town causing damage. The heaviest mudflows registered prior to 2000 occurred on 1 August 1960, on 11 August 1977 and on 20 August 1999. According to the Government, the series of mudflows of 18-25 July 2000 were the strongest and most destructive of all.

The inhabitants and authorities of Tyrnauz are generally aware of the hazard, and are accustomed to the mudflows which usually occur in the summer and early autumn.

The first technical research into a scheme to protect Tyrnauz against the mudflow was carried out in the 1950s, and by 1959 a number of proposals had been made. The scheme chosen by the authorities following a comparative feasibility study provided for the construction of a feed-through mud retention collector. The construction works began, but in 1960 were disrupted by an exceptionally strong mudflow, and the project had to be corrected and extended accordingly. The construction of the collector was finished in 1965 and operated successfully for 35 years, apparently providing sufficient defence against the mudflows. In 1977, after a technical review was carried out following a particularly strong mudflow which seriously damaged some sections of the collector, it was considered necessary to carry out repair works. The collector was fully restored by 1982.

In addition, in early 1999 the local authorities put into operation a mud retention dam in the river gorge of Gerhozhan, upstream from the mud retention collector. The dam was intended to enhance the protection of Tyrnauz from mud and debris flows. It measured 160 m x 38 m x 40 m and was built with 6,000 cubic metres of reinforced concrete and 2,000 tons of metal structures.

2. The condition of the dam in the summer of 2000

On 20 August 1999 a mud and debris flow hit the dam, seriously damaging it.

On 30 August 1999 the director of the Mountain Institute, a state agency whose mandate included monitoring weather hazards in high-altitude areas,

called for an independent survey of the damage done to the dam by the mudflow. He made recommendations to the Minister responsible for Disaster Relief of the KBR concerning the composition of the State Commission for the survey.

On the same day he also sent a letter to the President of the KBR in which he called for emergency clean-up and restoration works to the dam and for an early warning system to be set up to raise the alarm in the event of a mudflow (see the full text in Section C "Documents submitted by the applicant").

On 17 January 2000 the acting director of the Mountain Institute sent a letter to the Prime Minister of the KBR warning about the increased risk of mudflows in the coming season. He stated that the dam was seriously damaged, that its reconstruction appeared unfeasible at that stage and that consequently the only way to avoid casualties and mitigate the damage was to establish observation posts to warn the civilians in the event of a mudflow, for which he requested a mandate and financial support (see the full text in Section C below).

On 7 March 2000 the Head of the Elbrus District Administration sent a letter to the Prime Minister of the KBR in which he referred to the imminent large scale mudflow and requested financial aid to perform certain emergency works to the dam. In his request he invoked possible "record losses" and casualties (see the full text in Section C below).

On 7 July 2000 the assistant director and the head of research of the Mountain Institute attended a session at the Ministry for Disaster Relief of the KBR. They issued a warning about the risk of mudflows in that period and requested observation points to be set up in the upper sections of the Gerhozhansu River to monitor the river at all times and to issue an emergency warning in the event of a mudflow.

On 10 July 2000 the assistant director of the Mountain Institute reported to the agency director that he had warned the Ministry for Disaster Relief of the KBR of the forthcoming mudflow and requested the setting up of twenty-four hour observation posts.

It would appear that none of the above measures were ever implemented.

3. The mudflow of 18-25 July 2000

At about 11 p.m. on 18 July 2000 a flow of mud and debris hit the town of Tyrnauz and flooded some of the residential quarters.

According to the Government, this first wave caused no casualties. However, the applicants allege that at least one person was killed. In particular, the second applicant claims to have witnessed the death of her neighbour Ms B, born in 1934, who was trapped in the debris and drowned in the mud before anybody could help her. She also alleges that she witnessed a Zhiguli vehicle with four men in it being consumed by the mudflow.

According to the Government, following the mudflow of 18 July 2000 the authorities ordered the emergency evacuation of the residents of Tyrnauz. They allege that the police and local officials went round to people's homes to notify them of the mudflow and to help evacuate the elderly and disabled. They also allege that police vehicles equipped with loudhailers drove round the town calling on residents to evacuate because of the mud hazard.

The Government did not specify when exactly these measures were taken. The applicants said that the alarm was indeed raised through loudhailers once the mudflow had struck, but no advance warning was given. They claimed that they had been unaware of the order to evacuate and doubted that any had been issued. They also alleged that there had been no rescue forces or other organised on-the-spot assistance at the scene of the disaster, which became a cauldron of chaos and mass panic.

In the morning of 19 July 2000 the mud level lowered and the residents returned to their homes. The Government alleged that they did so in breach of the evacuation order, while the applicants claimed that they were not aware that the mudflow alert was still active, pointing out that there were no barriers or warnings to prevent people from returning to their homes. They claimed that they had not seen any police or emergency officers near their homes and could see that their neighbours were all at home and children were playing outside. The water, gas and electricity supplies had been reconnected after being cut off during the night.

At 1 p.m. the same day a second, more powerful, mudflow hit the dam and destroyed it. The mud and debris instantly descended on the town sweeping the wreckage of the dam before them. At 17 Otarova Street the mudflow destroyed part of a nine-storey block of flats, with four officially reported casualties. It also caused the river to overflow, flooding the residential quarters on the right bank.

The town was hit by a succession of mudflows until 25 July 2000.

Eight people were officially reported dead. The applicants claim that a further 19 reportedly went missing.

On 12 August 2000 the Government of the KBR adopted a directive for the payment of compensation to the victims of the mudflow for the loss of housing. It established the general principles for the provision of new accommodation and the guidelines for calculating compensation for those who wished to settle outside Tyrnauz.

On 20 December 2000 the Department of Disaster Relief of the Elbrus District issued a written statement, apparently in connection with individual lawsuits, that it had received no advance warning concerning the Tyrnauz mudflow of 2000, either from the Ministry for Disaster Relief of the KBR or from any other authority.

On the same day the Elbrus District Administration also issued a written statement that it had received no warning of a mudflow at any time during the past two years.

On 14 February 2001, apparently following an enquiry from the district administration, the Finance Department of the Elbrus District reported that no funds had been allocated in the district budget for the restoration works required after the 1999 mudflow.

B. The circumstances of the individual applicants

1. The first applicant

Before the events of July 2000 the first applicant, her husband and their two sons born in 1987 and 1997 lived at 17 Otarova Street, Tyrnauz, in a 72 sq. m flat they owned on the seventh floor.

On 18 July 2000 she and her family were asleep when the mudflow began. The first applicant claimed that no emergency warning was given, and the mudflow came as a total shock. They had a narrow escape and spent the night in the mountains.

At about noon on the following day (19 July 2000) they returned to their flat. According to the first applicant, the mudflow appeared to have ended, and since there had been no warning or barriers to stop them, they thought that it must be safe to return home. They were exhausted from the events of the previous night and went straight to bed. However, shortly afterwards the first applicant was woken up by Ms K, a friend of her sister's (see Ms K's testimonies in Section C below), and within minutes they felt the walls shake and heard a loud rumble, glass shattering, cries and people running.

The first applicant and her older son only just managed to escape.

The younger son was carried out by Ms K and rescued from the wreckage, but he sustained serious injuries, including cerebral and spinal contusion, erosion of the cornea, multiple avulsed wounds, abrasions and bruises.

The first applicant's husband, Mr Vladimir Khalimovich Budayev, aged 47, stayed behind to help her parents flee but was killed when the building collapsed after being hit by the mudflow. The first applicant's parents were rescued.

The first applicant's flat and all her possessions were flooded and destroyed by the mudflow.

On 3 August 2000 the Prosecutor's office of the Elbrus District decided not to launch a criminal investigation into the death of the first applicant's husband, ruling that his death was accidental and not attributable to any criminal act.

Following a decision by the Government of the KBR on 12 August 2000, the applicant was issued with a housing voucher on 4 June 2001 entitling

her to 54 sq. m of free accommodation to compensate for the loss of her flat. It would appear that the size of the accommodation was reduced pro rata her deceased husband's share, but, after numerous complaints, she was eventually provided with another 40 sq. m flat in Nalchik. She received a grant from the emergency fund of 13,200 roubles (RUR) to compensate for the loss of her possessions, plus an additional allowance of RUR 2,337.

On an unspecified date, the first applicant brought an action in damages against the Government of the KBR, the Ministry for Disaster Relief of the KBR and the Elbrus District Administration. She claimed RUR 259,200 for the loss of movable and immovable property, as well as RUR 5,000,000 for non-pecuniary damage on account of the death of her husband and the mental and physical suffering she and her children had been caused by the disaster. She claimed that the authorities had persuaded the local population that there was no risk of a mudflow. She also alleged that the authorities had been negligent as they had failed to take measures to mitigate the damage, in particular by establishing an early warning system and clearing out the deposits left in the dam and river channel since the 1999 mudflow. In support of her claims she provided the documents set out in Part 2 of Section C ("Official letters and documents issued before the 2000 mudflow") and other evidence.

On 9 October 2001 the Baksan District Court of the KBR examined the case and found that the authorities had taken all reasonable measures to mitigate the risk of a mudflow. Noting that the retention capacity of the dam was calculated for a flow of 500 cu. m. per second, when the actual flow rate was 2,000 cu. m. per second it concluded that a mudflow of such exceptional force could be neither predicted nor stopped. The court also found that the media had informed civilians of the risk of possible mudflows and it took into account the fact that following the mudflow the authorities had carried out infrastructure works, such as repairs to a water pipeline, and offered the first applicant social aid in the form of accommodation and financial compensation.

The court concluded that no fault attached to the authorities for the damage sustained by the applicant and found her claim for pecuniary and non-pecuniary damage unsubstantiated.

On 20 November 2001 the Supreme Court of the KBR upheld the judgment of 9 October 2001.

According to the first applicant, her living conditions have been extremely hard since the disaster. She claimed that both her own and her children's health has deteriorated substantially as a result of the injuries, stress and devastation caused. Her younger son has developed serious chronic post-traumatic conditions, such as enuresis and the progressive deterioration of his eye sight. Both her sons require regular neurological treatment as a result of their injuries and shock. The flat she had bought with the housing voucher had to be sold immediately to cover living

expenses and pay for medical treatment. The flat in Nalchik was in an appalling state (it had not been renovated since its construction in 1952) and she had no means of restoring it sufficiently to make it habitable.

2. The second applicant

Before the events of July 2000 the second applicant, her husband and their daughter lived at 42 Otarova Street in a 44.6 sq. m flat (no. 33) which they owned. She owned another flat (no. 1) in the same block under a social tenancy agreement.

In 1999 a mudflow caused damage to the second applicant's property and she lost some of her livestock. She said that she requested the local authorities to carry out emergency maintenance to the dam and clear away the wreckage. However, despite numerous requests by the residents nothing was done.

On 18 July 2000 the second applicant and her family were at home when the mudflow began at about 11 p.m. She claimed that no emergency warning was given, and they had to flee their home in their pyjamas. As they attempted to escape, the applicant and her daughter were caught in the flow of mud and debris, which dragged them for some distance before passers-by came to their rescue. Both were injured and suffering from severe shock, in particular the second applicant's daughter suffered severe friction burns caused by the debris.

On the following day, 19 July 2000, the second applicant's brother-in-law (the first applicant's husband Vladimir Budayev) died while helping the first and second applicants' parents to flee when a new mudflow hit the town.

Both the second applicant's flats and all her possessions were destroyed by the mudflow.

Following the decision of the Government of the KBR of 12 August 2000, the second applicant received a housing voucher on 29 August 2001 to compensate for the loss of the flat no. 1. It entitled her to 33 sq. m of free accommodation. She also received a grant from the emergency fund of RUR 13,200 to compensate for the loss of her possessions, plus an additional allowance of RUR 1,168. She has not received any compensation in respect of the flat no. 33.

The second applicant brought an action in damages against the Government of the KBR, the Ministry for Disaster Relief of the KBR and the Elbrus District Administration. She claimed RUR 360,000 for the loss of movable and immovable property, as well as RUR 1,000,000 for non-pecuniary damage for the mental and physical suffering she and her daughter had been caused by the disaster. Her allegations, arguments and other submissions were essentially the same as those of the first applicant.

On 9 October 2001 the Baksan District Court of the KBR examined her claim together with that of the first applicant and rejected it on the same grounds.

On 20 November 2001 the Supreme Court of the KBR upheld the judgment of 9 October 2001.

According to the second applicant, her living conditions are hard. She also submitted that both her own and her daughter's health deteriorated substantially as a result of the injuries, stress and devastation caused. The second applicant said that she and her daughter had to have neurological treatment for their injuries and the shock.

3. The third applicant

Before the events of July 2000 the third applicant lived at 17 Otarova Street, Tyrnauz, in a 54.2 sq. m flat which she owned.

On 18-24 July 2000 her flat was flooded and both it and her possessions were destroyed by the mudflow. The third applicant claimed that no emergency warning was given and that she only just managed to escape the mudflow.

Following the decision of the Government of the KBR of 12 August 2000 the third applicant received a subsidy of RUR 30,000 for the loss of her flat and a grant from the emergency fund of RUR 13,200 to compensate for the loss of her possessions, plus an additional allowance of RUR 584.

She brought an action in damages against the Government of the KBR, the Ministry for Disaster Relief of the KBR and the Elbrus District Administration. She claimed RUR 730,662 for the loss of movable and immovable property, as well as RUR 250,000 for non-pecuniary damage for the mental and physical suffering she was caused by the disaster. Her allegations, arguments and other submissions were essentially the same as those of the first and the second applicants.

On 27 August 2001 the Nalchik Town Court of the KBR examined the case and rejected her claims. Its judgment was based on essentially the same reasons as the subsequent judgment of the Baksan District Court of the KBR dated 9 October 2001 in the case brought by the first and the second applicants. In its judgment, the court referred to certain media records of 1999-2000 which had been submitted by the Ministry for Disaster Relief of the KBR. On the basis of these records taken together with the weather reports in the relevant period it concluded that the local population had been adequately forewarned about the possible mudflows. The court took into account the fact that following the mudflow the authorities had offered the applicant welfare aid, namely the subsidy for a flat and the monetary compensation. It also noted, *inter alia*, that the third applicant was entitled to exchange the RUR 30,000 subsidy for 33 sq. m of social housing.

On 25 September 2001 the Supreme Court of the KBR upheld the judgment of 27 August 2001. This decision was served on the third applicant on 25 October 2001.

On 5 June 2004 the third applicant exchanged her housing subsidy for a housing voucher which entitled her to 33 sq. m of free accommodation. She used this voucher to purchase a flat in the Moscow Region, which she resold shortly afterwards.

According to the third applicant, her health and living conditions deteriorated as a result of the above events and she was not adequately compensated for her losses sustained in the accident.

4. The fourth applicant

Before the events of July 2000 the fourth applicant lived at 46 Elbrusskiy Prospekt, Tyrnauz, in a 33 sq. m flat which she owned.

On 18-24 July 2000 her flat and possessions were flooded and destroyed by the mudflow. She claimed that no emergency warning had been given prior to the mudflow, but she managed to make her way to safety.

The fourth applicant brought an action in damages against the Government of the KBR, the Ministry for Disaster Relief of the KBR and the Elbrus District Administration. She claimed RUR 248,942 in compensation for the loss of movable and immovable property and RUR 1,266 for medical treatment; she also claimed RUR 100,000 for non-pecuniary damage for mental and physical suffering. Her allegations, arguments and other submissions were essentially the same as those of the other applicants referred to above.

On 25 April 2001 the Elbrus District Court of the KBR examined the fourth applicant's claim and rejected it.

On 22 May 2001 the Supreme Court of the KBR reversed the judgment of 25 April 2001 on the grounds that one of the parties had not attended the trial. The case was remitted for re-examination by a first-instance court.

On 9 October 2001 the Baksan District Court of the KBR examined her claim and rejected it on the same grounds as those of the other applicants referred to above. It noted, *inter alia*, that the fourth applicant was still entitled to apply for compensation of RUR 30,000 from an emergency fund or, alternatively, for 33 sq. m of free housing, but held that any claims beyond that were unsubstantiated.

On 20 November 2001 the Supreme Court of the KBR upheld the judgment of 9 October 2001.

On 7 December 2001 the fourth applicant was issued a housing voucher entitling her to 33 sq. m of free accommodation to compensate for the loss of her flat and received a grant from the emergency fund of RUR 13,200 to compensate for the loss of her possessions, plus an additional allowance of RUR 584.

According to the fourth applicant, her living conditions after the above events were extremely hard and her health deteriorated substantially as a result of the stress and devastation they had caused. Following the disaster she suffered from psychological disorientation and depression for which she had to undergo psychiatric treatment. According to her medical records her condition has been further aggravated by the litigation over the compensation.

5. The fifth and sixth applicants

Before the events of July 2000 the applicants and their two daughters lived in a 72 sq. m flat, which they owned.

On 18-24 July 2000 their flat and possessions were flooded and destroyed by the mudflow. They claimed that no emergency warning was given and that they and their family had only just managed to escape the mudflow.

The fifth and sixth applicants brought an action in damages against the Government of the KBR, the Ministry for Disaster Relief of the KBR and the Elbrus District Administration. They claimed RUR 498,368 for the loss of their movable and immovable property as well as RUR 200,000 for non-pecuniary damage for mental and physical suffering. Their allegations, arguments and other submissions were essentially the same as those of the other applicants referred to above.

On 25 April 2001 the Elbrus District Court of the KBR examined the fifth and sixth applicants' claim and rejected it.

On 22 May 2001 the Supreme Court of the KBR reversed the judgment of 25 April 2001 on the grounds that one of the parties had not attended the trial. The case was remitted for re- examination by a first-instance court.

On 9 October 2001 the Baksan District Court of the KBR examined their claim and rejected it on the same grounds as those of the other applicants referred to above. It noted, *inter alia*, that the fifth and sixth applicants were still entitled to apply for compensation from an emergency fund in the sum of RUR 13,200 for the loss of movable property and RUR 45,000 for the loss of the flat or, alternatively, for 33 sq. m of free housing per person, but held that any claims beyond that were unsubstantiated.

On 20 November 2001 the Supreme Court of the KBR upheld the judgment of 9 October 2001.

On 8 December 2001 the fifth and sixth applicants were issued with a housing voucher entitling them to 72 sq. m of free accommodation to compensate for the loss of the flat and received a grant from the emergency fund of RUR 13,200 to compensate for the loss of their possessions, plus an additional allowance of RUR 2,337.

According to the fifth and sixth applicants, their health deteriorated substantially as a result of the stress and devastation. In particular, the sixth applicant had to have extensive psychiatric and neurological treatment

following a nervous breakdown caused by living through the disaster and its consequences.

C. Documents submitted by the applicants

In support of their allegations the applicants submitted numerous newspaper articles, official letters, documents and witness statements to the Court. In so far as relevant, these documents read as follows.

1. Official letters and documents issued before the 2000 mudflow

Official letter of 30 August 1999 from the director of the Mountain Institute, Mr M. Zalikhanov, to the President of the KBR:

> "As you know, earlier this year, on 20 August, a heavy mudflow with a volume of some 1 million cu. m. was recorded in the valley of the Gerhozhansu River. The aerial visual survey made from a helicopter found that fluid material had formed in the upper stream of one of the mud-bearing deposits of Kaya-Arty-Su. At the same time, another mud-bearing deposit has formed in the Gerhozhan basin, in the Sakashili-Su River, and the mud reserves may soon become active.
>
> Given that the feed-through mud retention collector at the estuary of the mudflow basin has been destroyed by previous mudflows, and the river channel has filled up with mud deposits, the disaster may recur on a larger scale.
>
> We therefore request financial support to set up for the period of September radio-communication posts in the upper section of the river to warn civilians and the [emergency] services of the mud-hazard and to conduct engineering surveys to restore the mud-protection structure, which is now in a critical state of disrepair."

Official letter of 17 January 2000 from the acting director of the Mountain Institute, Mr Kh. Kalov, to the Prime Minister of the KBR:

> "As you are well aware, the area around Tyrnauz is one of the areas most at risk of a mudflow in the Russian Federation. The mudflow retention dam erected here, which is 160 m long, 38 m high and 40 m broad, ..., was destroyed on 20 August last year. The devastating 1 million cu. m. mudflow caused the collapse of the dam, with a 60 m fracture line. Damage was caused to Tyrnauz ...
>
> In view of the high risk of mudflows in the coming year and given that the reconstruction of the dam does not appear financially or technically feasible, observation points must be set up in the upper section of the Gerhozhansu River to avoid casualties and mitigate the damage... with the task of monitoring the river and giving an emergency warning to civilians in the event of a mudflow ... Twenty-four-hour monitoring will be carried out in the period from 15 June to 15 September to provide a mudflow forecast and to inform the [Ministry for Disaster Relief of the KBR] ....
>
> The Mountain Institute has a wealth of experience of such works in the Tyrnauz area, and will provide members of the expedition with salary, gear and equipment. We request financial aid of 100,000 roubles to cover field supplies and transport."

Official letter of 7 March 2000 from the Head of the Elbrus District Administration to the Prime Minister of the KBR:

"In August 1999 the mudflow from the Sakashili-Su tract blocked the bed of the Baksan River and directed the main water stream outside the retaining wall on the left side of the riverbed. As a result, the foundation soil and spandrels of the retaining wall have eroded and continue to erode. At the moment a 500 m section of the bypass road has been put completely out of service.

The state of the foundation of the retaining wall is near critical. When the thaw floods begin in spring it may lead to the collapse of sections of the retaining wall of the defence system above the hollowed out soil. Their reconstruction will be very costly.

The mudflow has also filled up the mud conveying channel to up to 25-30% of capacity; if another mudflow occurs, the mud conveying channel may overflow and flood the residential neighbourhoods of Tyrnauz. This could lead to an emergency on a scale that is impossible to predict with record financial losses and, probably, casualties.

Taking the above into account, the Elbrus District Administration requests financial aid to perform the above works."

2. Newspaper publications

Interview with Mr M. Zalikhanov published in the national newspaper *Rossiyskaya Gazeta* on 26 July 2000.

" ... M. Zalikhanov, member of the Russian Academy of Sciences, leading expert in the studies of natural disasters, ..., member of the Parliamentary Commission of the State Duma of the Russian Federation on sustainable development ...

MZ: It is not only nature that must take the blame for the tragedy [of 18-25 July 2000, but also] blatant irresponsibility on the part of officials and their reluctance to follow the recommendations of the specialists. ...

RG: ...could this disaster have been foreseen? And why did the mud protection dam on the Gerhozhansu River fail?

MZ: ...Tyrnayz is a mining centre of the [KBR] ... and because of its geographical position it is under permanent threat of mudflows. The most disastrous were the mudflows of 1964 and especially of 1977. [The latter] destroyed over thirty houses in the town centre, and casualties were avoided solely because the specialists of the [Mountain Institute] gave a timely warning to the town authorities about the impending disaster. Later it was decided ... to erect a mud-protection system. I was ordered to develop specifications for the construction ... one of such mud retention dams ... was launched last year.

RG: Is it true that you then refused to sign the commission acceptance report for the mud-protection system?

MZ: True. Why? Because the first construction stage of the complex had been sitting unfinished for over four years. There remained a great risk that the first mudflow to arrive, even if relatively feeble, would break the complex because its top section was not firmly anchored to solid rock. The funding for the completion of the construction had been allocated but as to where the funds had disappeared (between Nalchik and Tyrnauz), nobody could give me a clear answer. Stressing the importance of this issue and the need to complete the construction, I made numerous appeals to the [KBR President], V. Kokov, and to the Minister for Disaster Relief of the Russian Federation, S. Shoigu. Finally more funds were allocated and the construction was ostensibly brought to completion. ... I refused to take part in the [inaugural ceremony] because of concern for my expert and academic reputation. My assistant specialists, in particular my deputy for the construction [Mr R.] and the geologist [Ms N.S.] drew up a report; here are some extracts from it: '... a failure to submit [project documentation] makes it impossible to assess the project's compliance [with the specifications] ... Given the novelty of the [design], ..., the high levels of seismic activity in the area, the high fail-safety requirements for the dam structure, any deformation of which may increase the impact of a mudflow on the town of Tyrnauz and thus significantly aggravate the mud hazard, and also taking into account the inordinate time taken to complete the construction works with intervals as long as four years, it is necessary to subject the facility to a special architectural survey. [A number of serious technical deviations] give grounds for suspecting a degree of tension within the construction even without mud or seismic impact. All of this considerably reduces the project capacity of the dam. The visual survey of the dam construction showed signs of wear and tear of sections of it even without mud ...'

RG: So even though the Member of Academy Zelikhanov did not sign the report the facility was nevertheless put into service?

MZ: Yes. And within two months [it] had been destroyed by a mudflow of far from catastrophic intensity. I wrote to the KBR Minister for Disaster Relief, A. Turkinov, ... and in August last year advised the KBR President, V. Kokov, ... that the mud reserves might become active in the near future ... and that the disaster could be repeated on a much larger scale ... and requested assistance in finding resources for setting up surveillance posts ... and carrying out an engineering study to restore the construction, which was in a critical state. ...

I believe that it is of the utmost importance to set up [without delay] a competent commission comprising prominent experts to establish the true causes of the tragedy. ... Another commission is also needed ... to develop a complex programme for the protection of the KBR community from environmental hazards ..."

Interview with Mr O. Baydayev, the first Deputy Head of the Elbrus District Administration, published in the local newspaper *Gazeta Yuga* on 3 August 2000:

"... 1.2 million roubles were allocated from the district budget to clear the mud conveying channel. We sent this money towards clearing the [mud conveying] channel. Otherwise the outcome could have been even more disastrous. However, a mudflow of such force could not have been stopped even by a perfectly clear channel.

About the warning. The very first impact [of the mudflow] tore down the electric wires and telephone cables. We were running around the town with two loudhailers. It is possible we did not reach every single house or flat but the information was

conveyed to every district of the town. On the very first night the town was divided into five sectors, temporary heads of administrations were appointed, and they received all the information. Understandably, people wanted to know how the mudflow would evolve, but even the scientists did not know that. ...”

Research note by Ms I. Seinova, holder of a research degree in geography, dated 26 August 1999. The text below is based on the text published in one of the KBR local newspapers after the mudflow of 2000 (the exact publication reference is not available):

“The [1999] disaster at the Gerhozhansu mudflow retention dam has vividly demonstrated the danger posed by an unstable mudflow protection device situated above the town. ... The international practice of mudflow defence includes many examples of the collapse of a dam leading to a tenfold increase in the destructive force [of a mudflow] compared with the naturally occurring level. ...

The mudflows on Gerhozhansu are among the most disastrous in the Central Caucasus. The volume of the 1977 mudflow was 3 million cu. m. of mud and debris, discharging at 500 cu. m. per second. ...

In the current environmental and social situation the most reasonable solution would be to reject the idea of constructing a mud-retention dam. The top priority should be to dismantle the unstable blocks.

Following the mudflow of 20 August [1999] the mud conveying channel retained a considerable amount of mud and debris deposit, but for the most part it settled in the flood-plain of the Baksan River. It is necessary to clear the mud conveying channel because its carrying capacity has reduced significantly. ...”

Interview with Mr V. Bolov, Director of the Centre for Disaster Monitoring and Forecasting of the Ministry of Disaster Relief, published on 28 July 2001 in the newspaper *Gazeta Yuga* following the Centre’s field investigation into the 2000 mudflow:

“V.B.: ... the expedition concluded ... that the last year’s mudflows in Tyrnauz were absolutely unique ... nowadays the profile of the mud phenomena in this basin has drastically changed for the worse.

However, according to preliminary estimates, the extraordinary volume of [active] mud from last year is unlikely to be repeated this year, although the chances of several mudflows of variable intensity remain.

G.Y.: So all of this may happen as unexpectedly as on 18 June 2000?

V.B.: Here we can be certain that the situation has radically improved. The present position is that even before the beginning of the period when the mud is active, surveillance posts have been set up in the immediate vicinity of the glacier as well as [further down] where the mudflow gains force and becomes dangerous for the town.

The [surveillance] posts are functioning and are provided with reliable communication facilities. That is to say, in so far as prevention is concerned, measures have been taken ... The second important problem is ... to close the twist in the mud

conveying channel with a more secure wall. Works have been under way for some time. ...

To sum up, ... the mud activity in this gorge has increased because of last year's mudflow. At the same time the preventive measures that have already been taken inspire optimism. In any event, even if powerful mudflows develop, people's lives will be undoubtedly saved.

G.Y.: Are there any effective methods of influencing the mud activity, for example by blowing up part of a slope or draining a glacier lake, so that the risk of a mudflow is reduced?

V.B.: Yes, there are. ... but [their application] involves very complex and thorough calculations ... This question is currently being examined ... then it will be for the specialists and the authorities to decide whether to use this technology in the Gerhozhansu. ...

...At the same time in a number of mud-affected areas it is necessary to solve the question of [resettling the residents] outside the zone of mud activity in order to ensure [their] safety. This would be much cheaper and quicker. Engineering schemes involve tremendous expenditure, and given that funds are always lacking, are unlikely to offer a solution. Therefore, introducing restrictions in the mud-affected zones and regulating [building] within them, especially of a residential nature, is worth considering."

3. Witness statements

Statement by Ms K, a friend of the first applicant:

"On 19 July 2006 I, [K], born in 1970, decided on my way to work to call at my best friend Fatima's [the second applicant's] home. On the previous night I arrived in town late and went straight to bed ... unaware of what was happening in the town. At 7.30 a.m. in the morning of 19 July, I went out and saw people gathered on the mountain ... and found out that a mudflow had hit Fatima's house ... The bridge had been destroyed and I could not cross to the other side where her house was. I decided to enquire after Fatima and went to the home of her sister Khalimat [the first applicant], who lives on this side. I saw the police nearby and asked them if I could go to this house [pointing at the first applicant's house] and they confirmed that I could, adding that the electricity had been switched back on two hours previously, and people were allowed back in their flats. I headed there with no apprehension, went up to the sixth floor ... walked in and found them asleep. I woke up Khalimat and she told me that on the previous night Fatima had crossed to the other side of the river. We had been talking for about 15 minutes when we heard a loud rumble. I rushed out to the balcony and saw people running. Khalimat also rushed to wake up her husband and children. I grabbed their youngest son, three year old Inar, and ran downstairs. On my way out I saw Khalimat's husband [Vladimir] looking for his trousers and Khalimat herself following me with her eldest son Magomed. Between the third and fourth floors I felt the stairs pitching and realised that the house was collapsing. We fell and I found myself locked with the child under a [concrete sheet] with dust, blood and debris around me. I pushed Inar up between the sheets so that he could get out. A man saw him and pulled him out but I stayed under the sheet. I could feel my legs but could not see them ... they were buried under a concrete sheet ... I later saw three dead bodies underneath the same sheet (a woman and two children of about three to five years of

age). I tried to pull my legs out but felt an awful pain in the pelvis ... Eventually I was helped out by the emergency services and taken to hospital ... For two months I was immobilised and continued to receive treatment for a further nine months ...

I did not sue ... Every time I applied [to the authorities for medical or welfare benefits] I was asked why I had gone there in the first place, to which I could only answer that nobody had stopped me or warned me that it was dangerous; on the contrary they had told me that I could go in ... I am a reasonable person and would never have headed towards the danger, if only I had been warned ..."

Statement by Ms T.K. who lived at 17 Otarova Street, Tyrnauz:

"... On the night of 18 July 2000 I, my husband and our grandson were woken up by a terrible rattling noise. We realised at once that it was a mudflow. We rushed out dressed in whatever we were wearing. It was raining heavily, people were running in fear and panic in all directions. The rest of the night we spent up in the mountains, trembling with cold and fear. In the morning, we saw the awful spectacle of the town partly covered in mud and rocks with some areas, especially Otarova Street, destroyed by the mud, and the centre flooded with water from the Baksan River.

By about 11 a.m. [on 19 July] it seemed to everybody that the flow of mud had begun to settle and we approached our house. Nobody stopped us, there were no barriers. All the residents of our apartment block and of the two neighbouring nine-storey apartment blocks returned to their flats. We ate and went to sleep. I woke up because the house was shaking and I heard the noise and people screaming. I opened the door and saw that the right side of our house was missing and the staircase had collapsed. I grabbed my grandson and ran out to the balcony where the fire exit was. We could only make it to the fourth floor where the fire staircase ended; there were about 30 of us gathered there, while people from the lower floors were jumping out of their windows and balconies, which I could see. My neighbours, the men, found some ropes and began taking us down, the children first and then the women. It took me a while to come to my senses after the descent. My neighbour, [the first applicant], was crying and asking about her husband and child. But nobody knew what had become of them and the rest of us were also looking for our relatives. After these events we were in a state of shock for a long time, but no one paid any attention to us. The authorities still do not admit that they were not actually in control of the situation and that nothing had been done to save us from the disaster. They had taken no measures before the mudflow, or while it continued from 18 to 25 July, basically leaving us to our own devices. In our apartment block alone four people were killed and many were injured and remained disabled for life; it is a pity, especially about the children. Nobody knows how many people in fact died, in particular on the night of 18 July, as these facts have been vigorously concealed. We did not bring proceedings with a view to punishing those who were really responsible for everything we had had to endure, because we were sure that the court would never give a just ruling as these people occupy very high posts."

Statement by Mr B, father of the first and the second applicants:

"... Almost every year a mudflow descends through the bed of the Gerhozhansu River. Back in the 1970s there existed a special organisation to monitor the river estuary, and an alarm outside the factory would be activated when the [lookouts] warned the duty officer of danger. In the 1980s all that was [abandoned]. ... On the night of 18 to 19 July [2000] my wife and I were at home. We went to bed at about 10 p.m., but I was soon woken up by my wife's cries. I went out to the balcony but

could not see anything because the electricity pylons had been taken down by the flow of mud. I lit a torch and saw the mud running through the entrance to our apartment block ... I saw a passenger car being carried along by the wave of mud ... The staircase had collapsed and the house was falling apart. ... we did not know what to do. I picked up the phone. It was still working, so I dialled the police and reported what was happening to us, and they told us to "wait, help will come".

We sat there until 3 a.m., until my son in law Vladimir Budayev, his friends and our neighbours came [to help] us ...

Just before the mudflow [of July 2000] we sent a collective petition to the Head of the Elbrus District Administration, Mr B. Sh. Chechenov, asking for the waterway to be cleared. Having received no reply to our petition, we went to meet him for public consultations. At our meeting he said that he had no money to clear the waterway, as no funds had been allocated, so there was nothing he could do for us. We suggested writing a letter to the government requesting the funds, but he began shouting at us that the government had enough work to deal with without us. We then demanded that a commission be set up to find out whether it was true that no money had been allocated for clearing the mud conveying channel, after which B. Sh. Chechenov called the police and they escorted us - respectable people, men with grey hair - out of his office. ...

Then the mudflow occurred, and if only timely measures had been taken many victims could have been spared and there would not have been destruction on such a scale. Many of the casualties could have been avoided. Could they not have told people just an hour before the mudflow what they had known for 11 days before the tragedy? ...

...I lost my flat; my children were left without their flats, property, and most importantly my son-in-law was killed, my grandson remained between life and death for a long time, my granddaughter Indira and my grandsons Inar and Magomet Budayev are still receiving medical treatment ..."

Statement by Ms Zh. who lived at 42 Otarova Street, Tyrnauz:

"... The mudflow of 2000 was terrible. It took away my home, all my possessions ...

On the night it occurred I was at home at 42 Otariva Street, already asleep. I woke up because of the rattling noise. I tried to get out of the flat but could not. I was crying out for help ... but nobody could hear me because of the horrible noise of the mudflow. ...

... This night was the most harrowing of my life ... because of the stress I lost my eyesight and cannot see anything now. For this I blame the mudflow and our authorities who did not prepare people psychologically for the possibility of a natural disaster and found themselves unable to provide relief to the victims. ..."

COMPLAINTS

The first applicant complained under Article 2 of the Convention that the domestic authorities were responsible for the death of her husband in the mudflow of July 2000. She and the other applicants also complained under the same Article that the domestic authorities were responsible for putting their lives at risk, as they had failed to discharge the State's positive obligations and had been negligent in the maintenance of the dam, in monitoring the hazardous area and in providing an emergency warning or taking other reasonable measures to mitigate the risk and the effects of the natural disaster. They also complained that they had had no redress, in particular they had not received adequate compensation in respect of their pecuniary and non-pecuniary damage.

The applicants complained under Article 8 and Article 1 of Protocol No. 1 that their home and property had been destroyed by the mudflow of July 2000. They alleged that the authorities were responsible for this damage as they were responsible for the above omissions and had failed to provide them with adequate compensation.

The applicants finally complained that they had no effective remedy in respect of the above violations, as required by Article 13 of the Convention. In particular, they alleged that the various sets of proceedings they had instituted in the domestic courts did not constitute an effective remedy for the purposes of this provision.

THE LAW

1. The applicants complained that the authorities had failed to comply with their positive obligations to take appropriate measures to mitigate the risks to their lives, health, homes and property against the natural hazards. Referring to Vladimir Budayev's death in the mudflow, they alleged that the State was responsible both for his death and for putting all their lives at risk. They alleged that the authorities had neglected the technical maintenance of the protection infrastructure, failed to maintain an early-warning system and, more generally, to provide information concerning the risks involved in living in the area. The applicants invoked Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Finally, they complained that they did not have an effective remedy in respect of the alleged violations, as required by Article 13 of the Convention. The Convention Articles relied on provide in so far as relevant:

Article 2

"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.

..."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. 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."

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. Exhaustion of domestic remedies

The Government contended that the complaint concerning the alleged violation of the right to life guaranteed by Article 2 should be declared inadmissible for non-exhaustion of domestic remedies. They considered that the applicants should have challenged the respective decisions to dispense with a criminal investigation into the catastrophe. In the first applicant's case, this was the decision taken by the Prosecutor's office of the Elbrus District of 3 August 2000, which specifically concerned her husband's death and stated that it did not call for a criminal investigation. As regards the other applicants, the Government referred to the same Prosecutor's office

general ruling on the same date that no criminal investigation into the natural disaster of 18-25 July 2000 was needed.

The applicants contested the Government's objection. They pointed out that the events at issue were on such a scale that it had been incumbent on the authorities to conduct an investigation without waiting for the victims or their next of kin to take the initiative and ask the authorities to take action. They further argued that the manner in which the decisions dispensing with criminal proceedings were taken and served had made it impracticable for the victims to challenge them.

The first applicant argued, in particular, that the decision was served on her sister while she was watching over her son who was in intensive care while in a desperate condition herself. She maintained that the decision did not state how it could be challenged, and that in the circumstances of the loss of her husband and the devastation of her home she was not in a position to seek and pay for legal advice. She added that it was clear that the prosecutor's office was determined not to give the matter any further consideration and that attempts to challenge it would be futile. She therefore decided that the best way of obtaining redress would be through civil proceedings.

As for the decision refusing to launch criminal proceedings into the catastrophe in general, all the applicants, including the first applicant, denied any knowledge of its existence and said that they had therefore been unable to challenge it before the competent authorities.

The Court considers that the question of the exhaustion of domestic remedies is so closely linked to the merits of the case that it is inappropriate to determine it at the present stage of the proceedings. It therefore decides to join this objection to the merits.

B. As to the merits of the application

1. The Government

The Government denied any responsibility for the loss of life or for the other adverse consequences of the 2000 mudflow. They submitted that although the hazards of the area were well known both to the authorities and the civilian population the mudflow of 18-25 July 2000 had been unpredictable owing to its exceptional force. It was an act of God the time and the extent of which could neither be foreseen nor influenced. Even if the mudflow had been forecast no effective technical measures could have prevented a catastrophe on that scale at such short notice. They submitted that after the 2000 mudflow the construction of a new engineering defence structure had begun, and that this new project with increased mud retention capacity was near completion in 2006.

Concerning the arrangements in place for warning the local population, the Government submitted that there was an operational system of general weather monitoring in the area. In particular, during the period of mud activity every year the Mountain Institute engaged in a special surveillance mission staffed by its research fellows. In the event of a mud hazard the evacuation of the civilian population would be ordered. In 2000 the visual monitoring of the mud slippage was performed by the KBR division of the integrated national system of disaster prevention and relief.

The Government considered that on the night of 18-19 July 2000 the civilians had received due warning of the mudflow. They also claimed that all necessary measures had been taken to rescue the victims, to resettle the residents of affected apartment blocks and to bring in emergency supplies. 620 members of the rescue services, 106 units of technical facilities, 9 floating facilities and 3 helicopters had been engaged on the site of the disaster. The Government submitted that after the first mudflow officers of the Elbrus police and fire brigade and staff from the municipal community services had called round at peoples' homes to inform them of the mudflow and had helped evacuate elderly residents who were unable to leave unaided. They also stated that police vehicles equipped with loudhailers had driven round residential quarters calling on residents to evacuate because of the mud hazard.

The Government further submitted that the local population could have listened to the weather forecasts broadcasted by the media and that public servants of various State institutions were trained to respond to emergencies. They finally submitted that since 1994 a central warning system had been functioning in the KBR.

In so far as the applicants claimed that they had not had an effective remedy in respect of the alleged violations, the Government contended that they had, in fact, availed themselves of such a remedy, namely, the civil action in damages against the State, even though they were ultimately unsuccessful.

The Government also referred, as in their preliminary objection above, to a remedy which the applicants had allegedly failed to use, namely an application for review of the decisions dispensing with the inquest into the deaths and with the criminal investigation into the circumstances of the disaster.

2. The applicants

The applicants contested the Government's allegations. They maintained that the authorities had found themselves in a position where they were simply incapable of providing an adequate response to the disaster or of giving an early warning because they had failed to ensure the functioning of the safety infrastructure. In particular, they had failed to organise surveillance of the mud slippage in the summer period and had neglected

the maintenance of the mud defence structure. They referred to the official letters referred to above in Part 2 of Section C ("Official letters and documents issued before the 2000 mudflow") and claimed that the authorities could not deny knowledge of the imminent threat to lives and property, or their failure to take even the most basic steps to mitigate the risk. In addition, they referred to the petition whereby the civilian population had called upon the local authorities to clear the mud conveying channel in readiness for the forthcoming season.

The applicants furthermore claimed that they had not received warning of the mudflow before it started on 18 July 2000. They did not accept that the warning transmitted through the loudhailers after the mudflow had already hit the town could count as such a warning because it was given too late. They also denied knowledge of the existence of a central warning system referred to by the Government and suggested that even if such a system was indeed functioning in the KBR it obviously did not cover their area.

The applicants also contested the Government's allegation that their return home on 19 July 2000 was in breach of an order to evacuate. They maintained that no ban or warning had been communicated to them. In particular, there had been no sign or barrier, or other indication of any ongoing mud alert.

The applicants considered that through these omissions the authorities had failed to comply with their positive obligations to take reasonable and appropriate measures to protect people and property from hazards to which the area was subject.

3. The Court's assessment

The Court considers, in the light of the parties' submissions, that these applications raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. Consequently, it concludes that they cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Decides to join the applications;

Joins to the merits the Government's objection concerning non-exhaustion of domestic remedies;

Declares the applications admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President