

Press release issued by the Registrar

**CHAMBER JUDGMENT
BUDAYEVA AND OTHERS v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Budayeva and Others v. Russia* (application nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02).

The Court held unanimously that there had been:

- a **violation of Article 2** (right to life) of the European Convention on Human Rights on account of Russia's failure to protect the life of Vladimir Budayev, and, the applicants and the residents of Tyrnauz from mudslides which devastated their town in July 2000;
- a **violation of Article 2** of the Convention on account of the lack of an adequate judicial enquiry into the disaster;
- **no violation of Article 1 of Protocol No. 1** (protection of property); and,
- **no violation of Article 13** (right to an effective remedy) in conjunction with **Article 1 of Protocol No. 1**.

Under Article 41 (just satisfaction), the Court awarded in respect of non-pecuniary damage 30,000 euros (EUR) to Khalimat Budayeva, EUR 15,000 to Fatima Atmurzayeva and EUR 10,000 to each of the other applicants. (The judgment is available only in English.)

1. Principal facts

The applicants, Khalimat Budayeva, Fatima Atmurzayeva, Raya Shogenova, Nina Khakhlova, Andrey Shishkin and Irina Shishkina, are Russian nationals who were born in 1961, 1963, 1953, 1955, 1958 and 1955, respectively. Except for Ms Shogenova, who lives in Nalchik, all the applicants live in the town of Tyrnauz, situated in the mountain district adjacent to Mount Elbrus in the Republic of Kabardino-Balkariya (Russia). Mudslides have been recorded in the area every year since 1937, especially in summer.

The case concerned, in particular, the applicants' allegations that the Russian authorities failed to heed warnings about the likelihood of a large-scale mudslide devastating Tyrnauz in July 2000, to warn the local population, to implement evacuation and emergency relief policies or, after the disaster, to carry out a judicial enquiry.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

At about 11 p.m. on 18 July 2000 a flow of mud and debris hit the town of Tyrnauz and flooded part of the residential area. According to the applicants there was no advance warning and they all only just managed to escape. Fatima Atmurzayeva and her daughter, caught in the mud and debris while trying to escape, were injured and suffered severe friction burns. Once the mudslide struck, the alarm was raised through loudspeakers, but the applicants claimed that there were no rescue forces or any other emergency relief at the scene of the disaster. In the morning of 19 July 2000 the mud level fell and, as there were no barriers, police or emergency officers to stop them, certain residents, among them Khalimat Budayeva and her family, returned to their homes. They were not aware of any order to evacuate.

At 1 p.m. that day a second, more powerful, mudslide hit the town. Ms Budayeva and her eldest son managed to escape. Her younger son was rescued, but sustained serious cerebral and spinal injuries. Her husband, Vladimir Budayev, who had stayed behind to help his parents-in-law, was killed when the block of flats in which he and his family lived collapsed.

The town was subsequently hit by a succession of mudslides over a period lasting until 25 July 2000. Eight people were officially reported dead, although the applicants alleged that a further 19 people went missing.

All the applicants claimed that their homes and possessions were destroyed and that their living conditions and health had deteriorated since the disaster. Certain applicants had suffered from depression and had had to have psychiatric and/or neurological treatment.

According to the Government, the mudslides' exceptional force could not have been predicted or stopped. Following the first wave of mud on 18 July 2000 the authorities ordered an emergency evacuation of Tyrnauz. Police and local officials called at people's homes to inform them about the mudslide and to help evacuate the elderly and disabled. In addition, police vehicles equipped with loudspeakers drove round the town, calling on residents to evacuate. Those residents who returned to their homes did so in breach of the evacuation order. All necessary measures were taken to rescue victims, to resettle residents and to bring in emergency supplies.

On 3 August 2000 the Prosecutor's Office of the Elbrus District decided not to launch a criminal investigation into the disaster or into Mr Budayev's death, which was considered accidental.

Following a decision by the Government of the Republic of Kabardino-Balkariya on 12 August 2000, all the applicants were granted free replacement housing and an emergency allowance in the form of a lump-sum (13,200 roubles (RUB): equivalent at that time to EUR 530).

The applicants subsequently brought civil proceedings for compensation. Their claims were rejected on the grounds that the authorities had taken all reasonable measures to mitigate the risk of a mudslide. Furthermore, the courts found that the local population had indeed been informed of the risk of possible mudslides by the media.

The applicants disagreed with those conclusions. They accused the authorities of three major shortcomings in the functioning of the system for protection against natural hazards in Tyrnauz. Firstly, they alleged that the authorities failed to maintain mud-protection

engineering facilities, notably to repair a mud-retention dam which had been damaged in 1999 and to clear a mud-retention collector which was blocked by leftover debris. Secondly, they complained about the lack of a public warning which would have helped to avoid casualties, injuries and mass panic. Finally, they complained that there was no enquiry to assess the effectiveness of the authorities' conduct before and during the mudslide.

In support of those accusations, the applicants submitted newspaper articles, including an interview with an expert who accused officials of "blatant irresponsibility"; witness statements from the applicants' family and neighbours who were also victims of the mudslide; and, official letters and documents which proved that no funds had been allocated in the Elbrus district budget for the repair work required after the 1999 mudslide and that, between 30 August 1999 and 7 July 2000, the authorities received a number of warnings about the imminent disaster from the Mountain Institute, a state agency responsible for monitoring weather hazards in high-altitude areas. In its warnings, the Institute recommended that the damaged mud-protection dam be repaired and that observation posts be set up to facilitate the evacuation of the population in the event of a mudslide. One of the last warnings referred to possible record losses and casualties if those measures were not carried out as a matter of urgency.

2. Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 15 March 2002, 10 April 2002, 18 February 2002, and 9 March 2002 and declared admissible on 5 April 2007.

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

Christos **Rozakis** (Greek), *President*,
Nina **Vajić** (Croatian),
Anatoly **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Giorgio **Malinverni** (Swiss),
George **Nicolaou** (Cypriot), *judges*,

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

3. Summary of the judgment¹

Complaints

Relying on Articles 2 (right to life), 8 (right to respect for private and family life), 13 (right to an effective remedy) and Article 1 of Protocol No. 1 (protection of property), the applicants alleged that, as a result of the Russian authorities' failure to mitigate the consequences of the mudslides from 18 to 25 July 2000, the authorities put their lives at risk and were responsible for the death of Mr Budayev and the destruction of their homes. They also complained under Article 2 that the authorities failed to carry out a judicial enquiry into the disaster.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 2

Concerning the inadequate maintenance of mud-defence infrastructure and failure to set up a warning system

It was not in dispute that Tyrnauz was situated in an area prone to mudslides in the summer season and, given the defence schemes designed to protect the area, both parties could reasonably have assumed that a mudslide had been likely to occur in the summer of 2000. The parties disagreed, however, as to whether the authorities had known that the mudslide of July 2000 was going to cause devastation on a larger scale than usual.

The Court noted that in 1999 the authorities had received a number of warnings that should have made them aware of the increasing risks of a large-scale mudslide. Indeed, they were aware that any mudslide, regardless of its scale, could have had devastating consequences because of the defence infrastructure's state of disrepair. What needed to be done and its urgency had been made quite clear. No explanation was provided by the Russian Government as to why those recommendations had not been followed. Given the documents submitted by the applicants indicating that no funds had been allocated for recommended repair work, the Court could only conclude that the requests had not been given proper consideration by the relevant decision-making and budgetary bodies.

In such circumstances, the authorities should have acknowledged the likelihood of a mudslide and taken essential practical measures to ensure the safety of the local population such as warning the public and making prior arrangements for an emergency evacuation.

However, the applicants consistently maintained and the Government confirmed that residents had not received any warning until the mudslide had actually arrived in the town on 18 July 2000. Furthermore, the witness statements submitted by the applicants corroborated the claim that there had been no sign of any evacuation order on 19 July 2000. Given that the Government had not specified how an evacuation order had been publicised or otherwise enforced on that day, the Court could only assume that the population had not been adequately informed.

Moreover, despite persistent requests by the Mountain Institute, temporary observation posts in the mountains had not been set up, such that the authorities had no means to estimate the time, force or duration of the mudslide. They were therefore unable to give an advance warning or efficiently implement the evacuation order.

Finally, the Government provided no information concerning other solutions which had been envisaged to ensure the safety of the local population such as a regulatory framework, land-planning policies or specific safety measures. Their submissions exclusively referred to the mud-retention dam and collector, which, as already established, had not been adequately maintained. The authorities had, in effect, taken no measures at all with regard to the mudslides until the day of the disaster.

The Court concluded that there had been no justification for the authorities' failure to implement land-planning and emergency relief policies in the hazardous area of Tyrnauz concerning the foreseeable risk to the lives of its residents, including all the applicants.

Moreover, it found that the serious administrative flaws which had prevented the implementation of those policies had caused the death of Vladimir Budayev and injuries to his wife, to Fatima Atmurzayeva and members of their family. The Russian authorities had therefore failed in their duty to establish a legislative and administrative framework with which to provide effective deterrence against a threat to the right to life, in violation of Article 2.

Concerning 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 circumstances of Vladimir Budayev's death. The inquest had been limited to the immediate causes of his 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 enquiry. In particular, no action had ever been taken to verify the numerous allegations concerning the inadequate maintenance of the mud-defence infrastructure or the authorities' failure to set up a warning system.

The applicants' claims for damages had effectively been dismissed by the Russian courts for failing to demonstrate to what extent the State's negligence had caused damage exceeding what had been 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 circumstances of the accident. In particular, they had not called witnesses or sought expert opinions. The courts' reluctance to establish the facts was not justified in view of the evidence produced by the applicants, especially as it included reports which suggested that the applicants' concerns were shared by certain officials.

The Court therefore concluded that the question of Russia's responsibility for the accident in Tyrnauz had never as such been investigated or examined by any judicial or administrative authority, in violation of Article 2.

Article 1 of Protocol No. 1

The parties agreed that the applicants had been the lawful owners of possessions which had been destroyed by the mudslides of July 2000. They also agreed that it was unclear to what extent proper maintenance of the defence infrastructure could have mitigated the exceptional force of those mudslides. It was not proven either that a warning system would have prevented the damage to the applicants' homes or possessions. The damage caused by the mudslides could not therefore 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 a destroyed property. The terms of compensation, although considered by the applicants to be insufficient, had to be assessed in the light of all the other measures implemented by the authorities and of the complexity of the situation, the number of owners, and the economic, social and humanitarian issues inherent in providing disaster relief.

On that basis, the Court concluded that the housing compensation to which the applicants had been entitled had not been manifestly out of proportion to their lost accommodation. Given also the large number of victims and the scale of the emergency relief to be handled by the authorities, the upper limit of RUB 13,200 on compensation for household belongings appeared justified. Access to those benefits had also been direct and automatic and had not involved a contentious procedure or a need to prove the actual losses. The Court concluded that the conditions under which victims had been granted compensation had not imposed a disproportionate burden on the applicants. There had therefore been no violation of Article 1 of Protocol No. 1.

Article 13

The Court found that no separate issues arose under Article 13 in conjunction with Article 2 or 8.

In view of the findings under Article 1 of Protocol No. 1, the Court did not consider the Russian courts' refusal to award the applicants further damages unreasonable or arbitrary. It saw no other grounds to conclude that the civil proceedings had not constituted an effective remedy and therefore held that there had been no violation of Article 13 in conjunction with Article 1 of Protocol No. 1.

Article 8

The Court considered that it was unnecessary to examine separately the complaint under Article 8.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.