CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF BUDAYEVA AND OTHERS v. RUSSIA

(Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02)

JUDGMENT

STRASBOURG

20 March 2008

FINAL

29/09/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Budayeva and Others v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 February 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in five applications (nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Russian nationals, Ms Khalimat Khuseyevna Budayeva and Ms Fatima Khuseynovna Atmurzayeva on 15 March 2002, by Ms Raya Meliyevna Shogenova on 10 April 2002, by Ms Nina Nikolayevna Khakhlova on 18 February 2002 and by Mr Andrey Aleksandrovich Shishkin and Ms Irina Ilyinichna Shishkina on 9 March 2002 ("the applicants").

2. The applicants, who had been granted legal aid, were represented by Mr Dzagashtov, a lawyer practising in Nalchik, Mr Manov, a lawyer practising in Moscow and Mr Serdyukov, a lawyer practising in Pyatigorsk. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. Relying on Articles 2, 8 and 13 of the Convention and on Article 1 of Protocol No. 1 to the Convention, the applicants alleged that the national authorities were responsible for the death of Mr Budayev, for putting their lives at risk and for the destruction of their property, as a result of the authorities' failure to mitigate the consequences of a mudslide which occurred in Tyrnauz on 18-25 July 2000, and that no effective domestic remedy was provided to them in this respect.

4. The Chamber decided to join the proceedings in the applications (Rule 42 § 1).

5. By a decision of 5 April 2007 the Court declared the applications admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

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

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

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

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

12. The facts of the case are partially in dispute between the parties. Their submissions on the circumstances in which a mudslide 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 concerning the mudslide

1. Background facts

13. The town of Tyrnauz is situated in the mountain district adjacent to Mount Elbrus, in the central Caucasus. Its population is about 25,000 inhabitants. 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 causing mudslides.

14. The first documentary evidence of a mudslide in the Gerhozhansu River dates back to 1937. Subsequently mudslides were registered almost every year; occasionally they hit the town, causing damage. The heaviest mudslides 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 mudslides of 18-25 July 2000 were the strongest and most destructive of all.

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

16. The first technical research into a scheme to protect Tyrnauz from the mudslides 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. Construction work began, but in 1960 this was disrupted by an exceptionally strong mudslide, 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 mudslides. In 1977 a technical review was carried out following a particularly strong mudslide which seriously damaged some sections of the collector, and it was considered necessary to carry out repair work. The collector was fully repaired by 1982.

17. 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

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

19. 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 caused to the dam by the mudslide. He made recommendations to the Minister responsible for Disaster Relief of the KBR concerning the composition of a State Commission for the survey.

20. On the same day he also sent a letter to the President of the KBR, calling for emergency clean-up and restoration work to the dam and for an early warning system to be set up to raise the alarm in the event of a

mudslide (see the full text in Section C "Documents submitted by the applicants").

21. 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 mudslides 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 civilians in the event of a mudslide, for which he requested a mandate and financial support (see the full text in Section C below).

22. 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 mudslide and requested financial aid to carry out certain emergency work on the dam. In his request he invoked possible "record losses" and casualties (see the full text in Section C below).

23. 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. At the meeting they reiterated the warning about the risk of mudslides in that period and requested that observation points be set up in the upper sections of the Gerhozhansu River, in order to monitor the river at all times and to issue an emergency warning in the event of a mudslide.

24. 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 mudslide and requested the setting up of twenty-four hour observation posts.

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

3. The mudslide of 18-25 July 2000

26. 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.

27. According to the Government, this first wave caused no casualties. However, the applicants alleged that at least one person was killed. In particular, the second applicant claimed 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 alleged that she had witnessed a Zhiguli vehicle with four men in it being carried away by the mudslide.

28. According to the Government, following the mudslide of 18 July 2000 the authorities ordered the emergency evacuation of the residents of Tyrnauz. The police and local officials went round people's homes to notify them of 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 because of the mud hazard.

29. The Government did not specify when exactly these measures were taken. The applicants agreed that the alarm was indeed raised through loudspeakers once the mudslide 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.

30. 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 mudslide alert was still active, pointing out that there were no barriers or warnings to prevent people from returning to their homes. They did not spot any police or emergency officers near their homes, but could see that their neighbours were all at home and children were playing outside. Water, gas and electricity supplies had been reconnected after being cut off during the night.

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

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

33. Eight people were officially reported dead. According to the applicants, a further 19 persons allegedly went missing.

34. According to the Government, on 3 August 2000 the Prosecutor's Office of the Elbrus District decided not to launch a criminal investigation into the accident. The applicants claimed that they were unaware of this. No copy of this decision was made available to the Court.

35. On 12 August 2000 the Government of the KBR adopted a directive on the payment of compensation for loss of housing to the victims of the mudslide. 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. The loss of a 1-room flat gave rise to payment of up to 15,000 roubles (RUB), of a 2-room flat – to up to RUB 20,000 and of a 3-room flat – to up to RUB 45,000. Alternately, victims could opt for housing vouchers that would entitle families of more than one person to free housing of at least 18 sq. m per family member, and single-person families – to 33 sq. m.

36. 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 mudslide in 2000, either from the Ministry for Disaster Relief of the KBR or from any other authority.

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

38. 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 work required after the 1999 mudslide.

B. The circumstances of the individual applicants

1. The first applicant

39. 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.

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

41. At about noon on the following day (19 July 2000) they returned to their flat. According to the first applicant, the mudslide 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. Exhausted from the events of the previous night, they 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.

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

43. 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.

44. 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 mudslide. The first applicant's parents were rescued.

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

46. 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. Having found that he died as a result of the collapse of the building, it established that the death was accidental and not attributable to any criminal act.

47. 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 RUB 13,200 to compensate for the loss of her possessions, plus an additional allowance of RUB 2,337.

48. 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 RUB 259,200 for the loss of movable and immovable property, and RUB 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 mudslide. 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 the deposits left in the dam and river channel since the 1999 mudslide. 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 mudslide") and other evidence.

49. 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 mudslide. 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 mudslide 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 mudslides and it took into account the fact that, following the mudslide, the authorities had carried out infrastructure work, such as repairs to a water pipeline, and had offered the applicant social aid in the form of accommodation and financial compensation.

50. 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.

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

52. According to the first applicant, her living conditions have been extremely difficult 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 eyesight. Both her sons require regular neurological

treatment as a result of their injuries and shock. The flat she 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

53. 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.

54. In 1999 a mudslide 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.

55. On 18 July 2000 the second applicant and her family were at home when the mudslide 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, who suffered severe friction burns caused by the debris.

56. 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 mudslide hit the town.

57. Both of the second applicant's flats and all of her possessions were destroyed by the mudslide.

58. 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 flat no. 1. It entitled her to 33 sq. m of free accommodation. She also received a grant from the emergency fund of RUB 13,200 to compensate for the loss of her possessions, plus an additional allowance of RUB 1,168. She has not received any compensation in respect of flat no. 33.

59. 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 RUB 360,000 for the loss of movable and immovable property, and RUB 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.

60. 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.

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

62. According to the second applicant, her living conditions after the disaster were, and remain, very poor. Both her own and her daughter's health deteriorated substantially as a result of the injuries, stress and devastation caused and they had to receive neurological treatment for their injuries and shock.

3. The third applicant

63. 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.

64. On 18-24 July 2000 her flat was flooded and destroyed by the mudslide, together with her possessions. The third applicant claimed that no emergency warning was given and that she only just managed to escape the mudslide.

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

66. 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 RUB 730,662 for the loss of movable and immovable property, as well as RUB 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.

67. 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 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 for the relevant period, it concluded that the local population had been adequately forewarned about the possible mudslides. The court took into account the fact that, following the mudslide, 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 RUB 30,000 subsidy for 33 sq. m of social housing.

68. 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.

69. 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.

70. 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 the losses sustained in the accident.

4. The fourth applicant

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

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

73. 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 RUB 248,942 in compensation for the loss of movable and immovable property and RUB 1,266 for medical treatment; she also claimed RUB 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.

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

75. 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.

76. 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 RUB 30,000 from an emergency fund or, alternatively, for 33 sq. m of free housing, but held that any further claims were unsubstantiated.

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

78. 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 of RUB 13,200 from the emergency

fund to compensate for the loss of her possessions, plus an additional allowance of RUB 584.

79. According to the fourth applicant, her living conditions after the above events were extremely difficult 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

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

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

82. 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 RUB 498,368 for the loss of their movable and immovable property as well as RUB 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.

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

84. 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.

85. 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 RUB 13,200 for the loss of movable property and RUB 45,000 for the loss of the flat or, alternatively, for 33 sq. m of free housing per person, but held that further any claims were unsubstantiated.

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

87. 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 RUB 13,200 to compensate for the loss of their possessions, plus an additional allowance of RUB 2,337.

88. 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 receive extensive psychiatric and neurological treatment following a nervous breakdown caused by living through the disaster and its consequences.

C. Documents submitted by the applicants

89. 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 mudslide

90. 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 mudslide 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 mudslide basin has been destroyed by previous mudslides, 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."

91. 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 mudslide in the Russian Federation. The mudslide 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 mudslide caused the collapse of the dam, with a 60 m fracture line. Damage was caused to Tyrnauz...
>
> In view of the high risk of mudslides 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 mudslide ... Twenty-four-hour monitoring will be carried out in the period from 15 June to 15 September to provide a mudslide forecast and to inform the [Ministry for Disaster Relief of the KBR]...

The Mountain Institute has a wealth of experience of such work 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."

92. 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 mudslide 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 mudslide has also filled up the mud conveying channel to up to 25-30% of capacity; if another mudslide 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 work."

2. Newspaper publications

93. 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 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 from mudslides. The most disastrous were the mudslides 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 ... [it] was launched last year.

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

MZ: Yes. 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 mudslide 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 mudslide 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 work, 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 Zelikhanov, a Member of the Academy, did not sign the report, the facility was nevertheless put into service?

MZ: Yes. And within two months [it] had been destroyed by a mudslide 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..."

94. 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 for clearing the [mud conveying] channel. Otherwise the outcome could have been even more disastrous. However, a mudslide of such force could not have been stopped even by a perfectly clear channel.

About the warning. The very first impact [of the mudslide] tore down the electric wires and telephone cables. We were running around the town with two loudspeakers. 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 mudslide would evolve, but even the scientists did not know that..."

95. 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 mudslide of 2000 (the exact publication reference is not available):

> "The [1999] disaster at the Gerhozhansu mudslide retention dam has vividly demonstrated the danger posed by an unstable mudslide protection device situated above the town. ... The international practice of mudslide defence includes many examples of the collapse of a dam leading to a tenfold increase in the destructive force [of a mudslide] compared with the naturally occurring level...
>
> The mudslides on Gerhozhansu are among the most disastrous in the Central Caucasus. The volume of the 1977 mudslide 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 mudslide 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..."

96. 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 mudslide:

> "V.B.: ... the expedition concluded ... that last year's mudslides 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 mudslides 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 mudslide 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. Work has been under way for some time. ...
>
> To sum up ... the mud activity in this gorge has increased because of last year's mudslide. At the same time the preventive measures that have already been taken inspire optimism. In any event, even if powerful mudslides develop, people's lives will undoubtedly be 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 mudslide 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

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

"On 19 July 2000 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. on the morning of 19 July, I went out and saw people gathered on the mountain ... and found out that a mudslide 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..."

98. 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 mudslide. 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 mudslide, 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."

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

"... Almost every year a mudslide 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 mudslide [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 mudslide 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 mudslide 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 ..."

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

"... The mudslide 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 mudslide. ...

... 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 mudslide 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..."

II. RELEVANT DOMESTIC LAW

A. Responsibility of the State in the area of emergency relief

101. Section 6 of the Federal Law of 21 December 1994 No. 68-FZ "On Protection of Civilians and Terrains from Emergencies of Natural and Industrial Origin" imposes an obligation on the federal, regional and local authorities to promptly and accurately inform civilians through the mass media and other channels of information about any emergency situations and the safety measures taken to protect the population and about any forecasted disasters and means of protection against them. The same Section provides for the liability of State officials in the event of their failure to make this information public.

102. Section 7 of the same Law provides that prevention of emergencies and mitigation, to the maximum extent possible, of damage and losses

constitutes one of fundamental principles of emergency relief and requires that all preventive measures be carried out in sufficient time in advance.

B. Tort liability of the State

103. Article 1064 § 1 of the Civil Code of the Russian Federation provides that the damage caused to the person or property of a citizen must be compensated in full by the person who caused the damage. Pursuant to Article 1069, a State agency or a State official is liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury.

104. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

105. 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 general ruling of the same Prosecutor's Office, allegedly taken on the same date, that no criminal investigation into the natural disaster of 8-25 July 2000 was needed. Moreover, the applicants did not rely on the violation of the right to life in the civil proceedings for damages.

106. The applicants contested the Government's objection. They pointed out that the events at issue were of such a scale that it was incumbent on the authorities to conduct an investigation without waiting for the victims or their next of kin to 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.

107. The first applicant argued, in particular, that the decision was served on her sister while she herself was watching over her son, who was in intensive care, and that she herself had been in a desperate condition. 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.

108. 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.

B. The Court's assessment

1. As regards the first applicant

109. The Government claimed that the first applicant had not lodged a complaint under the Code of Criminal Procedure against the prosecutor's decision to dispense with criminal proceedings into the circumstances of her husband's death. While it is clear that the State was under an obligation to take the initiative and investigate the death, the Government argued that the applicant did not challenge the authorities' failure to do so, although this remedy, if successful, would have provided all the advantages of a criminal investigation to ascertain the circumstances. However, the applicant preferred another avenue and brought a civil action in damages.

110. The Court firstly notes that where the applicant has a choice of remedies and their comparative effectiveness is not obvious the Court tends to interpret the requirement of exhaustion of domestic remedies in the applicant's favour (see, among numerous examples, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 115-25 and 156-66, 24 February 2005; *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1359-60, § 33; and *Aquilina v. Malta* [GC], § 39, ECHR 1999-III).

111. Moreover, in the specific context of establishing State liability for the damage caused by a natural disaster, it has previously found that successful administrative proceedings were sufficient to deprive the applicant of his victim status (see *Murillo Saldias and Others v. Spain* (dec.), no. 76973/01, 28 November 2006).

112. The Court further notes that the events complained of in the present case were of such a vast scale that bringing the matter to the attention of the authorities did not depend on the applicant's diligence. Moreover, the

advantage to be gained by the applicant in instituting criminal proceedings was not obvious, given that the civil court had competence to engage the responsibility of a particular State authority, and such institutional liability could have provided a basis for reparation to the victims. This consideration is essential given that disasters of this kind are more likely to result from a combined failure of a number of officials, whose individual liability does not necessarily attain the gravity required for a criminal conviction. For this reason and also due to lower standards of proof in civil proceedings, the Court does not find it unreasonable on the part of the first applicant to choose a civil action as means of seeking redress.

113. The Court therefore considers that for the purpose of exhausting domestic remedies in the present case it was sufficient for the first applicant to bring civil proceedings, as she did.

2. As regards other applicants

114. The Government considered that the applicants failed to exhaust domestic remedies as regards their Article 2 complaints because they neither challenged the decision dispensing with a criminal investigation into the natural disaster, nor invoked their right to life in their civil claims for damages. Concerning the decision dispensing with criminal proceedings, the applicants deny any knowledge that such decision has been adopted. Indeed, they were not involved in any such proceedings and it is unclear in what capacity under domestic law they would have been able to challenge the decision referred to by the Government. Unlike the first applicant, they had to prove their victim status before they could commence criminal proceedings. As to the alleged failure to invoke their right to life in the civil proceedings, the Court observes that their statement of claim was formulated in terms that embraced the substance of this guarantee. It therefore considers this part of the Government's preliminary objection also unfounded.

115. The Court accordingly rejects the Government's preliminary objection that the applicants failed to exhaust domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

116. 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 against the natural hazards. The first applicant complained that the domestic authorities were responsible for the death of her husband in the mudslide of July 2000. She and the other applicants also complained 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. They relied on Article 2 of the Convention which, in so far as relevant, provides:

> "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.
>
> ..."

A. The parties' submissions

1. The Government

117. The Government denied any responsibility for the loss of life and other adverse consequences of the 2000 mudslide. They submitted that although the hazards of the area were well known both to the authorities and the civilian population, the mudslide 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 mudslide 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 disaster the construction of a new engineering defence structure had begun, and that this new project with increased mud retention capacity was due for completion in 2006. No up-to-date information on the new construction was made available to the Court.

118. The Government contended that on 5 January 2001 funds were allocated for the reconstruction of the defence infrastructure damaged by the mudslide of 2000.

119. 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.

120. The Government considered that on the night of 18-19 July 2000 the civilian population had received due warning of the mudslide. They submitted that after the first wave of the mudslide, the Elbrus police, the fire brigade and staff from the municipal community services had called at peoples' homes to inform them of the mudslide and had helped evacuate elderly residents who were unable to leave unaided. They also stated that police vehicles equipped with loudspeakers had driven round residential

quarters calling on residents to evacuate because of the mud hazard. The Government 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.

121. The Government further submitted that the local population could have listened to the weather forecasts broadcast by the media and that public servants from 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.

122. 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.

123. 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

124. The applicants contested the Government's submissions pointing out the absence of any specific information about the preventive measures allegedly implemented to mitigate the risks posed by the regular mudslides. 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 the Facts Section (Part C-2 “Official letters and documents issued before the 2000 mudslide”) 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.

125. The applicants further claimed that they had not received warning of the mudslide before it started on 18 July 2000. They did not accept that the warning transmitted through the loudspeakers after the mudslide 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 and was not used for informing the public.

126. 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.

127. 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 the hazards to which the area was subject.

B. The Court's assessment

1. General principles applicable in the present case

(a) Applicability of Article 2 of the Convention and general principles relating to the substantive aspect of that Article

128. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B. v. the United Kingdom*, cited above, p. 1403, § 36, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

129. This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see, for example, *mutatis mutandis*, *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115; *Paul and Audrey Edwards*, cited above, § 54; *İlhan v. Turkey* [GC], no. 22277/93, § 91, ECHR 2000-VII; *Kılıç v. Turkey*, no. 22492/93, § 62, ECHR 2000-III; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 85, ECHR 2000-III).

130. This obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII). In particular, it applies to the sphere of industrial risks, or "dangerous activities", such as the operation of waste collection sites in the case of *Öneryıldız* (ibid. §§ 71 and 90).

131. The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-

threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry (*Öneryıldız*, cited above, §§ 89-118).

132. As regards the substantive aspect, in the particular context of dangerous activities the Court has found that special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. Among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. The relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (see *Öneryıldız*, cited above, §§ 89-90).

133. It has been recognised that in the context of dangerous activities the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8 (see *Öneryıldız*, cited above, §§ 90 and 160). Consequently, the principles developed in the Court's case-law relating to planning and environmental matters affecting private life and home may also be relied on for the protection of the right to life.

134. As to the choice of particular practical measures, the Court has consistently held that where the State is required to take positive measures, the choice of means is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see, among other cases, *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).

135. In this respect an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources (see *Osman*, cited above, pp. 3159-60, § 116); this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult social and technical spheres (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, §§ 100-01, ECHR 2003-VIII, and *Öneryıldız*, cited above, § 107). This consideration must be afforded even greater weight in the sphere of emergency relief in relation to a meteorological event, which is as such beyond human control, than in the sphere of dangerous activities of a man-made nature.

136. In assessing whether the respondent State had complied with the positive obligation, the Court must consider the particular circumstances of the case, regard being had, among other elements, to the domestic legality of the authorities' acts or omissions (see *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, pp. 46-47, §§ 16-22, and *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 219, §§ 25-27), the domestic decision-making process, including the appropriate investigations and studies, and the complexity of the issue, especially where conflicting Convention interests are involved (see *Hatton and others*, cited above, § 128, and *Fadeyeva*, cited above, §§ 96-98).

137. In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use (see, *mutatis mutandis*, *Murillo Saldias and others*, cited above). The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation.

(b) Principles relating to the judicial response required in the event of alleged infringements of the right to life: the procedural aspect of Article 2 of the Convention

138. The obligations deriving from Article 2 do not end there. Where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see, *mutatis mutandis*, *Osman*, cited above, p. 3159, § 115, and *Paul and Audrey Edwards*, cited above, § 54).

139. In this connection, the Court has held that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; and *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90 and 94-95, ECHR 2002-VIII).

140. However, in the particular context of dangerous activities, the Court considered that an official criminal investigation is indispensible given that public authorities are often the only entities to have sufficient

relevant knowledge to identify and establish the complex phenomena that might have caused an incident. It held that where the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative (see *Öneryıldız*, cited above, § 93).

141. The approach taken by the Court in a case brought by victims of a natural disaster, namely campers caught in a flood at an official camping site, was consistent with that in the area of dangerous activities. The Court found that successful proceedings for damages before an administrative tribunal, preceded by comprehensive criminal proceedings, were an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Murillo Saldias and others*, cited above).

142. Accordingly, the principles developed in relation to judicial response following incidents resulting from dangerous activities lend themselves to application also in the area of disaster relief. Where lives are lost as a result of events engaging the State's responsibility for positive preventive action, the judicial system required by Article 2 must make provision for an independent and impartial official investigation procedure that satisfies certain minimum standards as to effectiveness and is capable of ensuring that criminal penalties are applied to the extent that this is justified by the findings of the investigation (see, *mutatis mutandis*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, 4 May 2001, and *Paul and Audrey Edwards*, cited above, §§ 69-73). In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue (see *Öneryıldız*, cited above, § 94).

143. Moreover, the requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law (see *Öneryıldız*, cited above, § 95).

144. It should in no way be inferred from the foregoing that Article 2 may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see, *mutatis mutandis*, *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III). In

the particular context of disaster relief the Court found that the adequacy of the domestic judicial response was not undermined by the fact that no official was found criminally liable (see *Murillo Saldias and others*, cited above).

145. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see *Öneryıldız*, cited above, § 93).

2. Application of the general principles in the present case

146. The Court will begin by noting that although only one of the present applications, brought by Ms Budayeva, concerns the death of a family member, the circumstances of the case in respect of the other applicants leave no doubt as to the existence of a threat to their physical integrity (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52-55, ECHR 2004-XI). This brings their complaints within the ambit of Article 2 of the Convention. Moreover, the applicability of Article 2 has not been contested by the Government. Turning to the applicants' specific complaints, the Court observes that they accused the authorities of having allowed three major shortcomings in the functioning of the system for protection against natural hazards in Tyrnauz, which led to casualties and losses in July 2000. Firstly, they alleged a negligent failure to maintain mud-protection engineering facilities, notably to restore the mud-retention dam damaged in 1999 and to clear the mud-retention collector blocked by the leftover debris. Secondly, they complained about the lack of a public warning about the approaching disaster that would help to avoid casualties, injuries and mass panic. Finally, they complained that these events, despite their scale and devastating consequences, did not give rise to an enquiry that would assess the effectiveness of the authorities' conduct before and during the mudslide, in particular whether everything possible had been done to mitigate the damage. The Court will consider each of these aspects in the light of the general principles set out above.

(a) Alleged failure to maintain defence and warning infrastructure: substantive aspect of Article 2

147. The Court, first, observes that the town of Tyrnauz is situated in an area prone to mudslides. The regular occurrence of this calamity in the summer season and the prior existence of defence schemes designed to protect the area indicate that the authorities and the population reasonably assumed that a mudslide was likely in the summer of 2000. This is in fact not in dispute between the parties. What they disagree on is the authorities'

prior knowledge that the mudslide in 2000 was likely to cause devastation on a larger scale than usual.

148. The Court notes that in the year immediately preceding the mudslide of August 2000 the authorities of the KBR received a number of warnings that should have made them aware of the increasing risks. The first warning, issued in 30 August 1999 by the competent surveillance agency, the Mountain Institute, informed the Minister for Disaster Relief of the KBR about the need to repair the mud-protection dam, damaged by a strong mudslide, and calling for the setting-up of an early warning system that would allow the timely evacuation of civilians in the event of a mudslide. The second warning from the same agency was sent on 17 January 2000 to the Prime Minister of the KBR. It stated that even if restoration of the dam was not feasible, it was indispensible to set up observation posts to ensure the functioning of the warning system in the summer of 2000. The next warning was sent by the Head of the Elbrus District Administration to the Prime Minister of the KBR on 7 March 2000. This warning restated the previous ones and, moreover, referred to possible record losses and casualties in the event of a failure to take the indicated measures. Finally, on 7 July 2000 the Mountain Institute sent another warning to the Minister for Disaster Relief of the KBR calling for urgent installation of the observation posts.

149. It follows that the authorities of the KBR at various levels were aware that any mudslide, regardless of its scale, was capable of causing devastating consequences in Tyrnauz because of the state of disrepair in which the defence infrastructure had been left after the previous mudslide. It is also clear that there was no ambiguity about the scope or the timing of the work that needed to be performed. However, the Government gave no reasons why no such steps were taken. On the basis of the documents submitted by the applicant, it appears that after the 1999 mudslide there was no allocation of funds for these purposes (see paragraph 38 above). It follows from the Government's observations that such funds were only made available after the 2000 disaster. In the absence of any explanation on the part of the Government the Court cannot but conclude that the demands for the restoration of the defence infrastructure after the 1999 mudslide were not given proper consideration by the decision-making and budgetary bodies prior to the hazardous season of 2000.

150. Moreover, it does not appear that at the material time the authorities were implementing any alternative land-planning policies in the area that would dispense with the concept of the mud-defence facilities or suspend their maintenance.

151. Consequently, the Court sees no justification for the authorities' failure to prepare the defence infrastructure for the forthcoming hazardous season in 2000.

152. In such circumstances the authorities could reasonably be expected to acknowledge the increased risk of accidents in the event of a mudslide that year and to show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation. In any event, informing the public about inherent risks was one of the essential practical measures needed to ensure effective protection of the citizens concerned.

153. The applicants consistently maintained that they had not received any warning until the mudslide actually arrived in the town. It also follows from the Government's submissions that the alarm was raised during the first wave of the mudslide on 18 July 2000, but not before. According to the Government, the evacuation order continued on the following day, 19 July 2000, when the most severe destruction occurred. This is contested by the applicants, who claimed that there had been no sign of any evacuation order when they were returning to their flats. They submitted witness statements confirming that people who returned to their homes on 19 July 2000 saw no warning against doing so. Given that the Government did not specify how the order, if it was issued, was publicised or otherwise enforced, the Court may only assume that the population was not made sufficiently aware of it, as the applicants allege.

154. The Court further notes that, in order to be able to inform the neighbourhood of the mudslide hazard, the authorities would need to set up temporary observation posts in the mountains. However, the persistent requests of the specialised surveillance agency indicating that such posts were indispensible for ensuring the residents' safety were simply ignored. By the beginning of the mudslide season the authorities thus found themselves short of means to estimate the time, force or probable duration of the mudslide. Accordingly, they were unable to give advance warning to the residents or to efficiently implement the evacuation order.

155. Since the Government have not put forward any explanation for the failure to set up temporary observation posts, the Court concludes that the authorities' omission in ensuring the functioning of the early warning system was not justified in the circumstances.

156. Finally, having regard to the authorities' wide margin of appreciation in matters where the State is required to take positive action, the Court must look beyond the measures specifically referred to by the applicants and consider whether the Government envisaged other solutions to ensure the safety of the local population. On order to do so the Court has requested the Government to provide information on the regulatory framework, land-planning policies and specific safety measures implemented at the material time in Tyrnauz for deterring natural hazards. The information submitted in response related exclusively to the creation of the mud-retention dam and the mud-retention collector, facilities that, as the Court has established above, were not adequately maintained. Accordingly, in exercising their discretion as to the choice of measures required to

comply with their positive obligations, the authorities ended up by taking no measures at all up to the day of the disaster.

157. It is noteworthy that, as the Government pointed out in their observations, in 2001 budgetary allocations were made for the reconstruction of the defence infrastructure. This yields further support to the applicants' argument that implementing safety measures could have, and should have, taken place earlier, but only the catastrophic consequences of the 2000 mudslide put pressure on the authorities to do so.

158. In the light of the above findings the Court concludes that there was no justification for the authorities' omissions in implementation of the land-planning and emergency relief policies in the hazardous area of Tyrnauz regarding the foreseeable exposure of residents, including all applicants, to mortal risk. Moreover, it finds that there was a causal link between the serious administrative flaws that impeded their implementation and the death of Vladimir Budayev and the injuries sustained by the first and the second applicants and the members of their family.

159. The authorities have thus failed to discharge the positive obligation to establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life as required by Article 2 of the Convention.

160. Accordingly, there has been a violation of Article 2 of the Convention in its substantive aspect.

(b) Judicial response required in the event of alleged infringements of right to life: procedural aspect of Article 2

161. The mudslide of 18-25 July 2000 killed eight people, including the first applicant's husband, Vladimir Budayev, and threatened the lives of an uncertain number of other residents of Tyrnauz.

162. Within a week of the incident the prosecutor's office decided to dispense with a criminal investigation into the circumstances of Vladimir Budayev's death. However, in conducting the inquest the prosecutor's office confined itself to establishing the immediate cause of his death, which was found to be the collapse of the building, and did not enter into the questions of safety compliance or the possible engagement of the authorities' responsibility. Moreover, it does not appear that those questions were the subject of any enquiry, whether criminal, administrative or technical. In particular, no action has been taken to verify the numerous allegations made in the media and in the victims' complaints concerning the inadequate maintenance of the mud-defence infrastructure or the authorities' failure to set up the warning system.

163. In so far as the question of State liability has been raised in certain individual civil actions, the Court notes that in order to be successful in these proceedings the plaintiffs would have to demonstrate to what extent the damage attributable to the State's alleged negligence exceeded what was

inevitable in the circumstances of a natural disaster. Indeed, the applicants' claims for damages were dismissed precisely for the failure to do so (see paragraphs 49-50, 60, 67, 76 and 85 above). However, this question could only be answered, if at all, by a complex expert investigation involving the assessment of technical and administrative aspects, as well as by obtaining factual information available to the authorities alone. The claimants were thus required to discharge a burden of proof in respect of facts that were beyond the reach of private individuals. Accordingly, without the benefit of an independent criminal enquiry or expert assessment the victims would inevitably fall short of means to establish civil liability on the part of the State.

164. Moreover, the domestic courts deciding on the applicants' claims did not make full use of the powers they possessed in order to establish the circumstances of the accident. In particular, they dispensed with calling any witnesses, whether officials or ordinary citizens, or seeking an expert opinion which would have enabled them to establish or to disprove the authorities' responsibility, despite the plaintiffs' requests. The courts' reluctance to exercise their powers to establish the facts does not appear justified in view of the evidence already produced by the applicants, including the official reports suggesting that their concerns were also shared by certain officials. Accordingly, these proceedings were not capable of providing the judicial response required by the deaths caused by the mudslide in Tyrnauz.

165. Having found that the question of State responsibility for the accident in Tyrnauz has never as such been investigated or examined by any judicial or administrative authority, the Court concludes that there has also been a violation of Article 2 of the Convention in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

166. The applicants complained that the authorities' failure to maintain the mud-defence infrastructure, to monitor the hazardous area, to provide an emergency warning or to take other reasonable measures to mitigate the risk and the effects of the natural disaster also constituted a violation of their right to protection of property. They complained, in particular, that they had not received adequate compensation in respect of their losses. They relied on Article 1 of Protocol No. 1 to the Convention, which provides:

> "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."

A. The parties' submissions

1. The Government

167. On the question of compliance with the State's positive obligations under Article 1 of Protocol No. 1 to the Convention, the Government made no submissions other than those submitted under Article 2 of the Convention.

168. As regards compensation, they claimed that all the applicants had benefitted from disaster-relief benefits in the form of replacement accommodation and lump-sum compensations. They considered these benefits sufficient to cover the damage sustained by the applicants.

2. The applicants

169. Referring to the omissions in ensuring the functioning of the mud-defence and warning infrastructures, the applicants submitted that the authorities' failure to take even the most basic steps to mitigate the risks and effects of the mudslide also led to the destruction of their flats and possessions.

170. They contested the Government's argument as to the adequacy of the compensation granted to them. In particular, they pointed out that the above benefits were offered to them as victims of natural disaster on humanitarian grounds, irrespective of the property they had lost. Compensation of the full amount of damage was refused by the domestic courts, since they concluded that the responsibility for the damage was not attributable to the authorities.

B. The Court's assessment

171. The Court notes, first, that the applicants were the lawful owners and occupants of the flats destroyed by the mudslide, and of all of the destroyed belongings comprising their households. In fact, the existence of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention, or the list of objects that have been destroyed, are not in dispute between the parties. The Court will therefore proceed to examine to what extent the authorities were under an obligation to take measures for the protection of these possessions and whether this obligation has been complied with in the present case.

172. The Court reiterates that allegations of a failure on the part of the State to take positive action in order to protect private property should be examined in the light of the general rule in the first sentence of the first

paragraph of Article 1 of Protocol No. 1 to the Convention, which lays down the right to the peaceful enjoyment of possessions (see *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I, and *Öneryıldız*, cited above, § 133). It also reiterates that genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 to the Convention does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Bielectric S.r.l. v. Italy* (dec.), no. 36811/97, 4 May 2000, and *Öneryıldız*, cited above, § 134).

173. In the context of the State's positive obligation in the sphere of dangerous activities, the Court has found that the causal link established between the gross negligence attributable to the State and the loss of human lives also applied to the engulfment of the applicant's house (see *Öneryıldız*, cited above, § 135). It considered that in a situation where lives and property were lost as a result of events occurring under the responsibility of the public authorities, the scope of measures required for the protection of dwellings was indistinguishable from the scope of those to be taken in order to protect the lives of the residents. Treatment of waste, a matter relating to industrial development and urban planning, is regulated and controlled by the State, which brings accidents in this sphere within its responsibility. Accordingly, the Court concluded that the authorities were required to do everything within their power to protect private proprietary interests (ibid.).

174. In the present case, however, the Court considers that natural disasters, which are as such beyond human control, do not call for the same extent of State involvement. Accordingly, its positive obligations as regards the protection of property from weather hazards do not necessarily extend as far as in the sphere of dangerous activities of a man-made nature.

175. For this reason the Court considers that for the purposes of the present case a distinction must be drawn between the positive obligations under Article 2 of the Convention and those under Article 1 of Protocol No. 1 to the Convention. While the fundamental importance of the right to life requires that the scope of the positive obligations under Article 2 includes a duty to do everything within the authorities' power in the sphere of disaster relief for the protection of that right, the obligation to protect the right to the peaceful enjoyment of possessions, which is not absolute, cannot extend further than what is reasonable in the circumstances. Accordingly, the authorities enjoy a wider margin of appreciation in deciding what measures to take in order to protect individuals' possessions from weather hazards than in deciding on the measures needed to protect lives.

176. In the present case the Court found that the measures invoked by the applicants, that is, the maintenance of the mud-defence infrastructure and the setting up of the early warning system, were vital for the protection of the lives and well-being of the civilians. However, it cannot be said that

the causal link between the State's failure to take these measures and the extent of the material damage is similarly well-established.

177. The Court notes, and it is not in dispute between the parties, that the mudslide of 2000 was exceptionally strong, and the extent to which the proper maintenance of the defence infrastructure could have mitigated its destructive effects remains unclear. There is also no evidence that a functioning warning system could have prevented damage to the apartment blocks or the applicants' other possessions.

178. As regards the alleged lack of an independent enquiry and judicial response, the Court considers that this procedural duty does not have the same significance with regard to destroyed property as in the event of loss of life. Moreover, the extent of the material damage attributable to State negligence might not be susceptible to accurate evaluation in circumstances of outstanding complexity, as in the present case. In fact, providing redress by means of tort action may not always be the most appropriate response to a large-scale calamity. Considerations of urgency and efficiency may lead the authorities to give priority to other general and individual measures, such as providing emergency assistance and allotting benefits to all victims irrespective of the actual losses.

179. In the present case, the domestic courts found that the applicants were all granted free substitute housing and a lump-sum emergency allowance and that the authorities carried out emergency repairs of public facilities to restore the living conditions in residential quarters.

180. In so far as the applicants argued that these benefits did not fully cover their pecuniary losses, the Court observes that the terms of compensation have previously been found an essential element in cases concerning the taking of property under the second sentence of the first paragraph of Article 1 of Protocol No. 1. The Court found that while the absence of compensation would usually be incompatible with this provision, it does not guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II).

181. Moreover, payment of full compensation cannot be regarded as a prerequisite for compliance with the first rule set out in the first sentence of the first paragraph. In order to be compatible with the general rule an interference with the right to the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Beyeler*, cited above, § 107). Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance, and notably, whether it does not impose a disproportionate burden on the applicant (see *Former*

King of Greece and Others v. Greece, [GC], no. 25701/94, § 89, ECHR 2000-XII).

182. The Court considers that the positive obligation on the State to protect private property from natural disasters cannot be construed as binding the State to compensate the full market value of destroyed property. In the present case, the damage in its entirety could not be unequivocally attributed to State negligence, and the alleged negligence was no more than an aggravating factor contributing to the damage caused by natural forces. In such circumstances the terms of compensation must be assessed in the light of all the other measures implemented by the authorities, account being taken of the complexity of the situation, the number of affected owners, and the economic, social and humanitarian issues inherent in the provision of disaster relief.

183. The Court observes that the disaster relief payable to the mudslide victims under the directive of 12 August 2000 entitled the applicants to free housing and an allowance of RUB 13,200 (then an equivalent of about 530 euros). The victims had equal, direct and automatic access to these benefits, which did not involve a contentious procedure or a need to prove the actual losses. As regards the first, the fourth, the fifth and the sixth applicants, the size of the free housing they received was equivalent to their perished flats. As regards the second applicant, she opted to receive free housing vouchers issued on the basis of the number of family members. She applied as a single-person family and received a voucher for 33 sq. m, as opposed to the 54 sq. m that she could have received had she applied as a family of three. She did not elaborate on the reasons for doing so. As regards the third applicant, she initially received monetary compensation that took account of the size of the perished flats. However, she later exchanged this for a housing voucher, with which she bought housing in the Moscow region which she resold shortly afterwards. Since she did not disclose the details of this transaction, the Court cannot assess her resulting losses or benefits.

184. On the basis of the foregoing, the Court concludes that the housing compensation provided to the applicants was not manifestly out of proportion to their lost accommodation. Given the importance of this asset, the large number of affected persons and the scale of emergency relief to be handled by the authorities in such circumstances, the cap of RUB 13,200 on compensation for household belongings appears justified. In sum, the Court considers that the conditions under which victims were granted compensation for possessions lost in the mudslide did not impose a disproportionate burden on the applicants.

185. It follows that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

186. The applicants complained that they had no effective remedy in respect of their above complaints, as required by Article 13 of the Convention, which provides:

> "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. The parties' submissions

187. The Government considered that the applicants have been provided adequate domestic redress through the system of disaster relief. Each applicant has thus benefitted from free substitute housing and a lump-sum allowance. Moreover, the applicants had availed themselves of civil proceedings in which they claimed damages against the State.

188. The applicants contested the Government's submissions arguing that there had been no means of establishing the State's responsibility for the deaths and other adverse consequences of the mudslide. Moreover, without the benefit of an official investigation into these events their civil claims were devoid of any chances of success, and therefore they were unable to obtain adequate compensation in respect of the pecuniary and non-pecuniary damage sustained by them.

B. The Court's assessment

1. Principles applicable in the instant case

189. The Court reiterates that Article 13 of the Convention requires domestic legal systems to make available an effective remedy empowering the competent national authority to address the substance of an "arguable" complaint under the Convention (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 108, ECHR 2001-V). Its object is to provide a means whereby individuals can obtain appropriate relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court (see *Kudła v. Poland* [GC], no. 31210/96, § 152, ECHR 2000-XI).

190. However, the protection afforded by Article 13 does not go so far as to require any particular form of remedy, Contracting States being afforded a margin of discretion in conforming to their obligations under this provision (see, for example, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

191. The nature of the right at stake has implications for the type of remedy the State is required to provide under Article 13. Where violations

of the rights enshrined in Article 2 are alleged, compensation for pecuniary and non-pecuniary damage should in principle be possible as part of the range of redress available (see *Paul and Audrey Edwards*, cited above, § 97; *Z and Others v. the United Kingdom*, cited above, § 109; and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V). On the other hand, neither Article 13 nor any other provision of the Convention guarantees an applicant a right to secure the prosecution and conviction of a third party or a right to "private revenge" (see *Perez*, cited above, § 70). What is important is the impact the State's failure to comply with its procedural obligation under Article 2 had on the deceased's family's access to other available and effective remedies for establishing liability on the part of State officials or bodies for acts or omissions entailing the breach of their rights under Article 2 and, as appropriate, obtaining compensation (see *Öneryıldız*, cited above, § 148).

192. In relation to fatal accidents arising out of dangerous activities which fall within the responsibility of the State, Article 2 requires the authorities to carry out of their own motion an investigation, satisfying certain minimum conditions, into the cause of the loss of life. Without such an investigation, the individual concerned may not be in a position to use any remedy available to him for obtaining relief, given that the knowledge necessary to elucidate facts such as those in issue in the instant case is often in the sole hands of State officials or authorities. Accordingly, the Court's task under Article 13 is to determine whether the applicant's exercise of an effective remedy was frustrated on account of the manner in which the authorities discharged their procedural obligation under Article 2 (see *Öneryıldız*, cited above, §§ 90, 93-94 and 149).

193. These principles must equally apply in the context of the State's alleged failure to exercise their responsibilities in the area of disaster relief.

2. Application of these principles in the instant case

(a) As regards the complaint under Article 2 of the Convention

194. The Court refers to its finding above that the circumstances in which lives were lost in the mudslide of 2000, or the question of the authorities' responsibility, have not been a subject of any enquiry, whether criminal, administrative or technical (see paragraph 162 above). It has also been established that the failure to conduct such an enquiry undermined the applicants' prospects of success in the civil proceedings (see paragraphs 163-64 above).

195. The Court observes that the above failures gave rise to a violation of Article 2, given the lack of an adequate judicial response as required in the event of alleged infringements of the right to life. Making its assessment in the context of the procedural aspect of the right to life, the Court has addressed not only the absence of a criminal investigation following

accidental deaths, but also the lack of further means available to the applicants by which they could secure redress for the authorities' alleged failure to discharge their positive obligations. Accordingly, the Court considers that it is not necessary to examine this complaint also under Article 13 of the Convention as regards the complaint under Article 2.

(b) As regards the complaint under Article 1 of Protocol No. 1 to the Convention

196. The Court refers to its finding above that there has been no violation of Article 1 of Protocol No. 1 to the Convention. It considers, however, that the applicants' claim for compensation was nonetheless "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). Accordingly, they should have had effective and practical remedies in order to have their claims decided and, if appropriate, to obtain redress for their losses.

197. The Court notes that the applicants were able to lodge a claim for damages and have it examined by competent courts. The reason why no award was made in these proceedings was that the applicants had already received free substitute housing and monetary allowance, and no grounds were found to establish tort liability of the State in respect of the difference between that compensation and the actual losses. Moreover, the Court has held above that it would not be appropriate to impose an absolute obligation on the State to evaluate material damage and to assume tort liability in the circumstances where it implemented measures through the general scheme of emergency relief (see paragraph 178 above). In view of these factors taken into account by the domestic courts, their refusal to award the applicants damages in the part not covered by the disaster victims' benefits they received cannot be considered unreasonable or arbitrary. The Court sees no other grounds to conclude that the civil proceedings did not constitute an effective remedy for the applicants' complaints in respect of Article 1 of Protocol No. 1 to the Convention.

198. It follows that there has been no violation of Article 13 as regards Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

199. The applicants lastly complained that the circumstances of the case had also infringed their right to respect for private and family life and their home as enshrined in Article 8 of the Convention, as well as their right to effective remedy in respect of this complaint. Article 8 provides:

> "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."

200. The parties' submissions under this head were essentially the same as those submitted under Articles 2 and 13 of the Convention.

201. The Court notes that the complaint under Article 8 of the Convention concerns the same facts as those examined under Article 2, Article 1 of Protocol No. 1 and of Article 13 in conjunction with these Articles. Having regard to its findings under those provisions, the Court considers that it is unnecessary to examine those complaints separately.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

202. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

203. The applicants submitted the following claims as regards pecuniary and non-pecuniary damage:

(a) the first applicant claimed 262,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, which, according to her, comprised 8,000,000 roubles (RUB) on account of moral harm and RUB 1,200,000 on account of material losses;

(b) the second applicant claimed EUR 137,000 in respect of pecuniary and non-pecuniary damage, which, according to her, comprised RUB 3,000,000 on account of moral harm and RUB 1,800,000 on account of material losses;

(c) the third applicant claimed EUR 1,099,861 in respect of pecuniary and non-pecuniary damage, which, according to her, comprised RUB 730,662 in pecuniary damage and RUB 38,495,140 in non-pecuniary damage;

(d) the fourth applicant claimed 100,000 United States dollars (USD) in respect of pecuniary and non-pecuniary damage;

(e) the fifth and the sixth applicants claimed together USD 20,000 and RUB 500,000 in respect of pecuniary and non-pecuniary damage.

204. The Government contested these claims as excessive and unsubstantiated.

205. The Court observes that it has found violations of the substantive and procedural limbs of Article 2 of the Convention. The Court accepts that the applicants have suffered non-pecuniary damage and awards them the following amounts:

(a) EUR 30,000 to the first applicant;

(b) EUR 15,000 to the second applicant;

(c) EUR 10,000 to each of the third, fourth, fifth and sixth applicants,

plus any tax that may be chargeable on these amounts.

B. Costs and expenses

206. The applicants did not make any claims as regards the costs and expenses, accordingly no award is made under this head.

C. Default interest

207. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 2 of the Convention in its substantive aspect on account of the State's failure to discharge its positive obligation to protect the right to life;

3. *Holds* that there has been a violation of Article 2 of the Convention in its procedural aspect, on account of the lack of an adequate judicial response as required in the event of alleged infringements of the right to life;

4. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 2 of the Convention;

6. *Holds* that there has been no violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention;

7. *Holds* that no separate issue arises under Article 8 of the Convention and under Article 13 of the Convention in conjunction with Article 8 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts:

(i) EUR 30,000 (thirty thousand euros) to the first applicant;

(ii) EUR 15,000 (fifteen thousand euros) to the second applicant;

(iii) EUR 10,000 (ten thousand euros) to each of the third, the fourth, the fifth and the sixth applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 20 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President