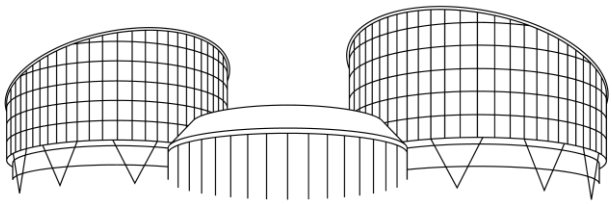

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOLYADENKO AND OTHERS v. RUSSIA

(Applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05)

JUDGMENT

STRASBOURG

28 February 2012

FINAL

09/07/2012

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Kolyadenko and Others v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 February 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in six applications (nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05) 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 Raisa Grigoryevna Kolyadenko on 21 April 2005, Ms Svetlana Vasilyevna Tkachuk on 11 May 2005, Ms Svetlana Anatolyevna Kulikova on 12 May 2005, Ms Valentina Yakovlevna Kulikova on 12 May 2005, Mr Anatoliy Veniaminovich Bolsunovskiy on 3 June 2005 and Ms Valentina Vasilyevna Zaretskaya on 2 September 2005 ("the applicants").

2. The first to fifth applicants were represented by Mr S. Kruglov, a lawyer practising in Vladivostok. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that the State was responsible for having put their lives at risk and for damage done to their homes and property as a result of a sudden large-scale evacuation of water from the Pionerskoye reservoir and the ensuing flooding in the area around the reservoir on 7 August 2001. The applicants also complained that they had no effective remedies in that regard. They relied on Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1.

4. On 2 July and 8 September 2009 and 26 January 2010 respectively the applications were granted priority under Rule 41 of the Rules of Court.

5. On 2 July 2009 the Court decided to join the proceedings in the first four applications (Rule 42 § 1) and to give notice of them to the Government. It also decided to rule on their admissibility and merits at the

same time (Article 29 § 1). On 8 September 2009 and 26 January 2010 respectively the President of the First Section decided to give notice of the last two applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

6. On 7 February 2012 the Court decided to join the proceedings in all six applications (Rule 42 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1938, 1941, 1973, 1945, 1942 and 1946 respectively and live in Vladivostok.

A. Background to the case

8. The city of Vladivostok, an administrative centre of the Primorskiy Region, is in the south-east of Russia on the Pacific coast. Its location explains the city's monsoon-influenced humid continental climate with warm but humid summers when the annual precipitation reaches its maximum. More specifically, the first half of the summer season (June-July) is rainy and foggy, August and September can be marked by typhoons and August is the rainiest month.

9. The area where the applicants live is located in the Sovetskiy District of Vladivostok close to the Pionerskoye (Sedankinskoye) water reservoir (*Пионерское водохранилище*) near the Pionerskaya (Sedanka) river. The reservoir, constructed in 1936, contains supplies of drinking water for the city of Vladivostok. In the Government's submission, on the basis of long-term observations, the floodplain of the Pionerskaya river was an area subject to periodic flooding during heavy rains when water was released from the Pionerskoye reservoir to avoid structural damage to the reservoir.

10. The first applicant lives in a flat which she owns in a low-rise building at 12/3 Semiradskiy Street.

11. The second applicant is a social tenant of a flat in a low-rise building at 20 Semiradskiy Street.

12. The third and fourth applicants, who are relatives, live in a flat owned by the fourth applicant in a low-rise building at 18 Semiradskiy Street.

13. The fifth applicant lives in a house he owns at 14 Semiradskiy Street.

14. The sixth applicant is a social tenant of a flat in a low-rise building at 18/3 Semiradskiy Street.

15. In a letter of 7 June 1999 Mr L., the head of the authority in charge of the Pionerskoye reservoir – the State-owned enterprise "South Primorskiy Region Water-and-sewage Authority" (*государственное унитарное предприятие «Водопроводно-канализационное хозяйство юга Приморья»*, "the Water Company") – warned the acting head of the Vladivostok Administration that the channel of the Pionerskaya river was cluttered with debris and household waste and overgrown with small trees and bushes and that this could have grave consequences given the adverse weather forecast for summer/autumn 1999. In particular, in the event of heavy rain the Water Company would have to release water from the reservoir and, in view of the poor state of the river channel, this might cause flooding over an area with a population of over 5,000 people, as well as a railway, a highway and manufacturing plants. Mr L. requested that appropriate measures be taken to clear the channel.

16. On 6 September 1999 the Vladivostok Commission for Emergency Situations (*Комиссия по чрезвычайным ситуациям г. Владивостока*, "the Vladivostok Emergency Commission") took a decision concerning, among other things, flood prevention work in the floodplain of the Pionerskaya river. The decision stated that although the question of cleaning up the course of the Pionerskaya river was repeatedly raised every year, no actual measures had yet been taken. It went on to say that outlet channels and the river channel itself were abundantly overgrown with small trees and bushes, cluttered with debris and household waste and blocked by unlawfully built dams and various structures which all created a threat of flooding over an area of 15 square kilometres, with a population of over 5,000 people, in the event of the urgent release of a large quantity of water from the Pionerskoye reservoir. The decision called on the Vladivostok Administration, along with the Administration of the Sovetskiy District, to take measures to clean up and deepen the channel of the Pionerskaya river to ensure that its throughput capacity *(пропускная способность*) was no less than 30-40 cubic metres per second. The decision also ordered that the local population be apprised via the media of the possibility of the inundation of the floodplain adjacent to the Pionerskaya river in the event of urgent large-scale evacuation of water from the reservoir, and that the authority in charge of the Pionerskoye reservoir – the Water Company – restore the local early warning system to raise the alarm if there was a risk of a flood.

17. According to the Government, the authorities had taken a number of measures to implement the decision of 6 September 1999. In particular, in a letter of 14 September 1999 the Administration of the Sovetskiy District instructed the head of the Vladivostok bridge construction crew immediately to clean the Pionerskaya river channel in the area where one of

the bridges was being built and the river channel was full of debris. In the Government's submission, in the absence of information concerning the clogged-up river channel in subsequent reports, it was reasonable to assume that the Vladivostok bridge construction crew had cleaned it in compliance with the letter of 14 September 1999.

18. Also, in a letter of 16 September 1999 the Administration of the Sovetskiy District urged the head of the council of horticultural cooperatives to instruct the cooperatives' members to engage in an effort to clean up the Pionerskaya river channel and avoid littering the land around the river. The Government further referred to relevant reports attesting that in September-November 1999 and July and October 2000 work had been done to clean up the river channel. They were unable to say whether those measures helped to increase the river's throughput capacity to 30-40 cubic metres per second as prescribed by the decision of 6 September 1999.

19. In a letter of 29 May 2000 the Vladivostok Administration informed the Administration of the Sovetskiy District that the water level in the Pionerskoye reservoir was close to critical and that some of it would have to be evacuated. However, the Pionerskaya river channel was densely overgrown with small trees and bushes and cluttered with debris and household waste, creating a threat of flooding over a large populated area in the event of the urgent evacuation of water from the dam. The letter went on to say that, in accordance with the decision of the Vladivostok Emergency Commission dated 6 September 1999, it was necessary for the Administration of the Sovetskiy District to take urgent steps to clean up the Pionerskaya river channel.

20. In a letter of 16 June 2000 the Administration of the Sovetskiy District notified the Vladivostok Emergency Commission that, in accordance with the latter's decision of 6 September 1999, work had been carried out to clean up the river channel. In particular, from September to November 1999 the bodies of thirty old cars and sundry household waste had been evacuated from the river, and the population living in its floodplain had been told what to do in the event of serious flooding. The letter also stated that work to cut down trees and bushes along the river was scheduled for June-July 2000.

21. On 3 April 2001 the Vladivostok Administration requested the Administration of the Primorskiy Region to earmark a certain amount from the regional budget for clean-up work on the Pionerskaya river, stating that the work would reduce the area in danger of flooding in the event of the sudden evacuation of water from the reservoir. It does not appear that this request was heeded.

22. On 4 July 2001 a committee of officials from the Vladivostok Administration drew up a report presenting the results of the examination of the Pionerskaya river bed. The report stated that the part of the river that fell within the 300-metre zone under the responsibility of the Water Company

was being kept clear, whereas the river channel and floodplain outside that zone were overgrown with bushes and trees and littered with household waste and bodies of old cars. The report also noted that owners of private houses on the river banks had narrowed the channel by piling earth into the river in an attempt to enlarge the size of their plots of land. Moreover, earth was regularly excavated and removed from the river banks, with the result that the banks crumbled and were washed away. The committee recommended that the municipal authorities clear the bushes and trees from the floodplain, deepen the channel, clear the river bed and banks of household waste and car bodies and restore the banks to their natural state.

23. In a decision of 27 July 2001 the Vladivostok Emergency Commission instructed the city authorities to take a number of measures to prevent emergency situations in connection with the possible flooding of rivers during the summer period. It indicated, in particular, that it was necessary to verify the condition of water evacuation systems, bridges and river beds and channels, to check and activate the early warning system, to check whether rescue services were prepared for flood situations and to equip them with means of communication. It is unclear whether any such measures were taken.

B. Events in August 2001

1. Weather forecast for 7 August 2001

24. On 6 August 2001 at 1.45 p.m. a regional meteorological service forwarded a storm warning for 7 August 2001 to the Primorskiy regional and the Vladivostok city authorities. It stated that heavy rainfall of 100-120 millimetres was expected in the Primorskiy Region and the city of Vladivostok. In particular, for 7 August 2001 the service forecast heavy precipitation of 15-49 millimetres within 12 hours, which would continue throughout the day on 8 August 2001 and through the night. The warning also stated that there was a risk of floods on rivers in the south of the region. In the Government's submission, the population had been duly forewarned about the heavy rain by the media.

25. On the same date, on the basis of the aforementioned warning, the Water Company calculated that the water inflow to the Pionerskoye reservoir, which had a maximum storage capacity of 7 million cubic metres and which on 6 August 2001 contained 5.3 million cubic metres, would be 1.65 million cubic metres. Having regard to these calculations, the Water Company started releasing 12 cubic metres of water per second from the reservoir.

2. Meteorological conditions on 7 August 2001 and the situation at the Pionerskoye reservoir

26. On 7 August 2001 it started raining early in the morning. The intensity of the rain proved to be much higher than forecast by the meteorological service the previous day. The amount of rain that fell on that day was the equivalent of a full month's rainfall. In particular, within a 12-hour period the amount of rain that fell in the area of the Pionerskoye reservoir totalled 236 to 276 millimetres. The rain was heaviest between 10 a.m. and 12 noon, when 189 millimetres fell.

27. Until 9 a.m. on 7 August 2001, water was released from the Pionerskoye reservoir at the rate of 12 cubic metres per second.

28. At 9 a.m. the Water Company increased the rate to 22.8 cubic metres per second.

29. At 9.30 a.m. the Water Company increased the release of water to 44.6 cubic metres per second and kept increasing it every half an hour. By 11.30 the evacuation rate was 122 cubic metres per second.

30. Between 12 noon and 2 p.m. the evacuation of water remained at its maximum rate of 167 cubic metres per second.

31. At 2 p.m. the Water Company decreased the release rate to 119 cubic metres per second, then at 3 p.m. to 109 cubic metres per second, and at 6.30 p.m. down to 90 cubic metres per second.

3. Flood of 7 August 2001

32. According to the applicants, because of the urgent release of a large quantity of water from the Pionerskoye reservoir on 7 August 2001, a large area around the reservoir was instantly flooded, including the area where the applicants resided. In the applicants' submission, the water arrived and rose very quickly at some point between 11 a.m. and 12 noon.

33. According to the applicants, no emergency warning had been given before the flood. The Government referred to a letter of the Main Department of the Russian Ministry for Emergency Situations in the Primorskiy Region, dated 11 September 2009, to the effect that at the relevant time there had been no local emergency warning system in place at the Pionerskoye reservoir.

34. According to the first applicant, a disabled person, on the date in question she was at home and found out about the flood from her daughter and granddaughter, who came running to her flat to help her out to a safe place. Just as they reached her home, the water started rising rapidly, and by the time her relatives had helped her out onto the roof of the building, the water had reached waist level in the flat and was much deeper in the courtyard. In the first applicant's submission, her home and belongings, land, outhouses and two cars were flooded.

35. The second applicant was not at home that day as she was at work. Her disabled brother, who was at home during the flood, apparently later told her that at about 12 noon water started rising from the cellar and within 15-20 minutes the house was flooded. According to the second applicant, some of her belongings were washed out of the house and some damaged by the water, which remained in the house for some time.

36. The third applicant was at home with her 21-month-old son when the flat was instantly flooded. She managed to dress the boy and to escape, wading breast-deep to a nearby motorway, which at that point had not yet been flooded; from there she took a bus to a safe place. Soon after the third applicant had left, all motorways in the vicinity were submerged and the public transport lines disrupted. In the third applicant's submission, her property was severely damaged by the flood.

37. The fourth applicant, the third applicant's mother-in-law, was at work when the flood occurred. She returned home in the evening and, according to her, suffered severe distress when she found her daughter-in-law and grandson missing and her home and possessions ruined.

38. The fifth applicant was at work when the flood occurred. His son, A. B., who had been at home at the time, told him what had happened. According to A. B., at around 11.30 a.m. he heard the sound of seething water in the cellar and then saw water running from the street into the cellar. He looked out into the courtyard and realised that the water level was rising fast. He tried to leave but was unable to open the front door because the water in the street was already about 1.30 metres high. A. B. then jumped through a window into the flooded street, where the water was above shoulder level. He swam to a nearby shed, through seething water among household belongings, planks, logs and other litter. He managed to climb onto the roof of the shed and saw the surging water destroy sheds and fences, while people screaming in panic swam to any elevated places they could reach. According to the fifth applicant, when he returned home in the evening the water had already subsided. In his submission, his house and its contents and his land, outhouses and car were all damaged by the water.

39. The sixth applicant and her 19-year-old son were at home when the flood began. They opened the door to the street and their home was instantly flooded with water. They rushed out into the street, where within 15 minutes the water had risen to breast height. According to the sixth applicant, she was in a state of shock, as she could not swim. Her son swam away and brought a ladder, which enabled them to climb onto the roof of a garage. In the sixth applicant's submission, her house and belongings, land and outhouses were all flooded.

40. As far as can be ascertained from the parties' submissions, the water in the first four applicants' flats reached a height of 1.20 metres; in the fifth applicant's home the level was between 1.30 and 1.80 metres and in the

sixth applicant's flat, 1.50 metres. According to the applicants, the water remained at those levels for approximately a day.

4. Rescue operation

41. According to the applicants, no evacuation of the population from the flooded area had been organised following the flood of 7 August 2001. In their submission, they had had to find their own way to safety, and subsequently to cope with the consequences of the flooding on their own.

42. The documents submitted by the Government indicate that by a decision of 7 August 2001 the Vladivostok Emergency Commission ordered that a number of rescue measures be carried out. A similar decision was taken on 8 August 2001 by the Emergency Commission of the Primorskiy Region.

43. According to the Government, those affected by the flood had been evacuated and provided with food and accommodation at temporary accommodation centres. Also, staff from various rescue services had been sent to the flooded area.

44. In a letter of 14 August 2001 the Vladivostok Department for Commerce and Domestic Services reported to the Vladivostok Emergency Commission on the measures taken in the period from 7 to 13 August 2001 to provide those affected by the flood and the personnel engaged in the rescue operation with food and drinking water.

C. Criminal investigation into the incident of 7 August 2001

1. Investigation in case no. 916725

45. On 9 August 2001 the Vladivostok prosecutor's office opened a criminal investigation in connection with the flood of 7 August 2001. At some point criminal proceedings were brought against Mr L., the director of the Water Company, on suspicion of his having committed an offence punishable under Article 293 (1) of the Russian Criminal Code (professional negligence). The case was assigned the number 916725.

46. By two decisions of 21 September 2001 the investigator in charge declared the first applicant both victim and civil claimant in the case. It appears that at some point the second, fourth, fifth and sixth applicants were also granted victim status. The sixth and fifth applicants were informed of the relevant decisions in letters from the Vladivostok Department of the Interior dated 2 July and 27 September 2002 respectively.

47. On 21 September 2001 the investigator in charge inspected the scene of the incident at the first applicant's domicile and questioned her. The first applicant stated that she had spent the day of 7 August 2001 at home. It had been raining but at first there had been no water in the courtyard. At about

11 a.m. a wave of water had swept in from the direction of the Pionerskoye reservoir and within 15-20 minutes the water level had risen to two metres. The first applicant said that there had been no prior warning of any evacuation of water from the Pionerskoye reservoir. She further stated that she had been living in her flat for 41 years and had never been warned that the flat was located in a flood zone. This was the first time that such large-scale flooding had happened. She also listed the property lost in the flood and indicated its value.

48. On the same date the investigator in charge inspected the scene of the flooding at the fifth applicant's domicile. The ensuing report attested, in particular, to the presence of traces on the walls at a height of 1.8 metres, left by water which had remained in the premises for a prolonged period. The investigator also questioned the fifth applicant, who stated that he had been away from home when the flooding had occurred and had been informed of the event by his son. That day he had returned home at 6 p.m. and the water had already subsided. The fifth applicant also said that there had been no prior warning of any evacuation of water from the Pionerskoye reservoir. He had lived in the house for 41 years and had never been warned that it was located in a flood zone. The fifth applicant also listed the property lost in the flood and indicated its value.

49. At some point the investigating authorities questioned the second applicant, who stated that she had been living in her flat for 60 years and that it was only during the last decade that the building in which she lived had been regularly flooded, which she explained by the absence of proper drains along the roads and the fact that the Pionerskaya river was littered and obstructed by unauthorised structures. She explained that on 7 August 2001, at about 12 noon, water had started rising from the cellar of the building in which she lived and filled her flat within 15-20 minutes. There had been no prior warning concerning any evacuation of water from the Pionerskoye reservoir and she had not seen any officials from the district or city authorities on 7 or 8 August 2001. She indicated the amount of the pecuniary damage she had suffered as a result of the flood.

50. The fourth applicant was also questioned as a witness and made oral statements similar to those of the second applicant.

51. On 25 January 2003 the investigating authorities ordered that the criminal proceedings against Mr L. be discontinued owing to the absence of the constituent elements of a criminal offence in his actions. According to the decision, the preliminary investigation had established that because of exceptionally heavy rains on 7 August 2001 the water level in the Pionerskoye reservoir had been close to critical, with the result that there was a real risk of a dam breaking, which could have claimed numerous lives and caused extensive pecuniary damage, and that in ordering the evacuation of water from the reservoir Mr L. had acted within his competence and in full compliance with the relevant regulations and had thus prevented more

extensive damage to the residents of Vladivostok. At the same time, according to an expert report of 24 January 2003 (see paragraphs 72-80 below), the main reason for the flood of 7 August 2001 had been the poor state of the channel of the Pionerskaya river, and in particular the fact that it had been overgrown with trees and bushes and obstructed by various structures. On 24 January 2003 the investigating authorities accordingly ordered that separate criminal proceedings be brought under Article 286 (1) of the Russian Criminal Code (abuse of power) against officials of the Vladivostok municipal and the Primorskiy regional authorities in that connection.

2. Investigation in case no. 292025

(a) Investigation in 2003-2004

52. On 28 January 2003 the district prosecutor's office of the Leninskiy District of Vladivostok ("the district prosecutor's office") brought criminal proceedings in case no. 292025 against officials of the Vladivostok municipal and Primorskiy regional authorities under Article 286 (1) of the Russian Criminal Code (abuse of power) on suspicion on them having, in excess of their power, allocated plots of land for individual housing construction within a water protection zone of the Pionerskaya river. The case file was given the number 292025.

53. In letters of 11 June and 9 August 2004 respectively the prosecutor's office of the Primorskiy Region ("the regional prosecutor's office") informed the second and fourth applicants that the investigation in case no. 292025 had been repeatedly suspended owing to the lack of any evidence of a crime and then reopened, and that on the two most recent occasions it had been suspended and resumed on 5 March and 11 June 2004 respectively.

(b) Decision of 20 July 2004

54. On 20 July 2004 the investigating authorities discontinued the proceedings in case no. 292025, referring to the absence of evidence that a crime had been committed.

55. The decision stated that, in accordance with an applicable governmental regulation, a water protection zone should be delimited in a city's general development plan or, in the absence of such a plan, should be established by a regional administrative authority. Moreover, in accordance with the relevant construction rules and regulations, construction of residential and non-residential buildings and, in particular, the allocation of plots of land for individual house building, was prohibited in water protection zones (*водоохранные зоны*) as well as in catastrophic flood hazard zones (*зоны возможного катастрофического затопления*).

These latter zones were defined as areas where water levels during a flood could reach 1.5 metres and where flooding could cause death, destroy residential and non-residential buildings and disable industrial equipment.

56. The decision noted, with reference to the findings of the investigation, that when the Pionerskoye reservoir had been built in 1936, no severe flood hazard zone had been delimited in the adjacent area as no methods existed in Russia for identifying such zones until the 1990s. It was stated in the decision that an attempt to identify such zones in the city of Vladivostok had been made at some point in the 1990s, when an expert agency was commissioned to prepare a feasibility study on the "Protection of the City of Vladivostok from Floods", in the context of the federal programme for the protection of territories from typhoons and floods. However, the resulting document had not been duly registered with the competent State authority and had thus remained ineffective and could not be taken into account in elaborating town planning restrictions. As a result, no potential flood zones or catastrophic flood hazard zones, including the Pionerskaya river valley, had ever been delimited in the city of Vladivostok's general development plan.

57. The decision also stated that no water protection zones had ever been marked in the city's general development plan either. The Administration of the Primorskiy Region, which by virtue of the aforementioned governmental regulation (see paragraph 55 above) had been under obligation to establish such zones, had repeatedly failed to do so despite requests from the competent State agencies, with the result that regulations imposing town planning restrictions, particularly those restricting construction of individual houses within such zones, had remained inoperative. Not until 4 September 2000 had the Governor of the Primorskiy Region finally adopted a decree establishing a water protection zone that included the Pionerskaya river valley. The decree required the Vladivostok authorities to delimit water protection zones in the city's general development plan, but the instruction was not followed as it would have meant updating that plan, which in turn would have meant conducting an ecological impact assessment of the plan. According to the decision of 20 July 2004, the Vladivostok Administration had not yet submitted the city's general development plan with water protection zones marked on it to the Administration of the Primorskiy Region for impact assessment.

58. In the light of the above findings, the decision concluded that prior to 4 September 2000, when no water protection zones had been established by the Primorskiy regional authorities, any town planning restrictions concerning construction activities in such zones had been inoperative, officials of the Vladivostok Adminsitration could not be said to have exceeded their powers when allocating plots of land on the banks of the Pionerskaya river at that time. After that date, no plots of land had been allocated within that zone. The decision thus confirmed that all the

properties on the banks of the Pionerskaya river that had been flooded on 7 August 2001, including the buildings in which the applicants lived, had been built before 4 September 2000, that is, lawfully.

59. It also stated that construction activities along the Pionerskaya river in the area downstream of the reservoir at present were allowed within the limits of the site where buildings already existed, that no zones where new construction was prohibited were delimited in the city of Vladivostok's general development plan, that no demolition or transfer of previously constructed buildings was planned, and that the owners and leaseholders of those buildings and plots of land were entitled to use and dispose of them, and in particular to construct new buildings in the place of old ones.

60. The decision also stated that there were no legal instruments or documents governing clean-up operations in the downstream area of the Pionerskaya river channel. Also, according to the decision, since 2001 the Main Department for the Administration of Natural Resources and Environmental Protection in the Primorskiy Region ("the Natural Resources Authority") had been making yearly inspections of the Pionerskaya river channel. The results revealed that the Water Company had cleared the part of the river channel near the Pionerskoye reservoir; but the area downstream of that zone was only cleared sporadically by the people living there. The decision further stated that in view of the need to keep the channel of the Pionerskaya river clear the Natural Resources Authority had submitted suggestions to the Administration of the Primorskiy Region concerning measures to be taken with respect to the Pionerskaya river in 2002, 2003 and 2004, including clean-up work. It did not indicate whether those suggestions had been accepted and implemented.

61. The decision went on to note that the Pionerskoye reservoir belonged to the regional authorities and was operated by the Water Company. Under domestic law, the owner of the reservoir and the body operating it were responsible for ensuring its safe exploitation. Accordingly, the authorities of the Primorskiy Region and the Water Company were under obligation to secure the safe evacuation of water from the reservoir, which meant ensuring the necessary throughput capacity of the river channel below the dam. The decision further stated that, according to the relevant governmental decree, the proper technical and sanitary maintenance of reservoirs and use of water resources obeyed rules of exploitation of reservoirs to be elaborated by the owners of the reservoirs or the bodies operating them. It was the owner of the Pionerskoye reservoir and the body operating it who were responsible for planning and carrying out measures to ensure its proper functioning.

(c) Investigation in 2009-2010

62. Following the decision of 20 July 2004, the investigation remained suspended until late 2009.

63. By a decision of 23 September 2009 the regional prosecutor's office ordered that the materials of criminal case no. 292025 be sent to the investigation department of the Leninskiy District of Vladivostok ("the district investigation department") for examination, with a view to setting aside the decision of 20 July 2004 by which the criminal proceedings in the case had been discontinued. The decision of 23 September 2009 stated, in particular, that the decision of 20 July 2004 had been unfounded, as the investigation had not made any assessment of the Vladivostok authorities' failure to clear and clean up the Pionerskaya river channel, or the failure of the Vladivostok city and the Primorskiy regional authorities to delimit water protection and riverside zones in the city of Vladivostok's general development plan, to determine the legal status of the land adjacent to the Pionerskaya river, to comply with the regulations governing the exploitation of that land and to make the necessary changes to the feasibility study on the "Protection of the City of Vladivostok from Floods" so that it finally became operative.

64. In a decision of 5 October 2009 the district investigation department refused to set aside the decision of 20 July 2004.

65. On 28 October 2009 the regional prosecutor's office sent a similar request to the investigation department of the Primorskiy Region. It appears that the latter instructed the district investigation department to re-open the investigation in case no. 292025.

66. On 2 December 2009 the district investigation department resumed the proceedings in the case.

67. By a decision of 9 February 2010 the district investigation department discontinued the proceedings owing to the absence of evidence of a crime. A copy of this decision has not been submitted to the Court.

68. On 12 March 2010 the district prosecutor's office invited the district investigation department to set aside the decision of 9 February 2010 as unlawful. On the date of the submission by the Government of their latest observations in the present case in October 2010, the request of 12 March 2010 seems to have still been pending.

69. The Government did not submit a copy of the investigation file in case no. 292025 despite the Court's specific request for them to do so. They stated that the case in question was in the hands of the regional prosecutor's office and the Prosecutor General's Office.

D. Expert inquiries

70. It appears that at least three expert examinations were carried out in the context of the investigation in case no. 916725. The results were reflected in reports dated 15 May and 29 September 2002 and 24 January 2003 respectively. The Court has not been provided with a copy of the report of 15 May 2002 and is unaware of its contents. Nor has the Court

received a copy of the report of 29 September 2002, although the Government largely relied on that report in their submissions. The applicants have submitted a copy of the report of 24 January 2003.

1. Expert report of 29 September 2002

71. In the Government's submission, this report stated that because of the exceptional meteorological conditions on 7 August 2001, when the actual rainfall exceeded several times the amount forecast, it had not been possible to avoid a sudden large-scale evacuation of water from the Pionerskoye reservoir. According to the Government, the report further stated that the actions of the Water Company on the date in question had been in compliance with relevant regulations and correct, and in particular the water release regime chosen by the Water Company on that day had been close to optimal. According to the report, on 7 August 2001 between 12 noon and 2 p.m. the evacuation of water remained at its maximum rate of 167 cubic metres per second. In the Government's submission, if the Pionerskoye reservoir had not existed, rainwater would have flooded to the mouth of the Pionerskaya river at a maximum rate of 440 cubic metres per second.

2. Expert report of 24 January 2003

72. An expert examination of the area flooded on 7 August 2001 was carried out between 21 May 2002 and 24 January 2003.

73. The resulting report, dated 24 January 2003, was entitled "On the flooding of non-residential and residential objects in the area downstream of [the Pionerskoye reservoir] ... as a result of the evacuation of rainwater by the reservoir on [7 August 2001]". It described the system for evacuating excess water from the Pionerskoye reservoir as comprising an open spillway with a floodgate situated below the normal water level, and a siphon spillway. The maximum throughput capacity of each of the two spillways was equal to 200 cubic metres per second. According to the technical documentation of the Pionerskoye reservoir, excess water should normally be evacuated through the open spillway by operating the floodgate. The siphon spillway was to be activated automatically only if the water level was still rising when the floodgate was fully open.

74. The report explained the sudden increase in the water level in the reservoir on 7 August 2001 by the exceptionally heavy rain on that day, which had been much heavier than forecast, making it necessary to evacuate water. It confirmed that the type of flooding that occurred on that day was thought to occur only once a century.

75. The report also noted the extensive damage caused by the flood, listing in particular the residential buildings which had been flooded near the Pionerskaya river, including those in which the applicants lived, and

indicated that over much of the flooded area the water had been 1.5 to 2 metres deep.

76. The report further confirmed that the river bed was overgrown with vegetation and littered with household waste, that its course had been significantly altered by human activity and that a number of unauthorised constructions, including road bridges and footbridges, had been built, reducing its throughput capacity.

77. The report concluded that the staff of the Water Company had done well in evacuating the water from the Pionerskoye reservoir on 7 August 2001. In particular, after partially opening the floodgate of the open spillway for a short time, the staff had then opened the gate completely. However, the water evacuated had flowed down the river in the form of a wave, which had magnified its destructive effect, and the presence of debris and constructions in the floodplain had considerably contributed to raising the water level during the flood. In particular, the presence of bridges and service pipelines at some points on the Pionerskaya river had increased the water level by up to 1.5 metres, which had been the main reason for the destruction of a road and railway bridges at the mouth of the river.

78. The report also stated that under the relevant planning and development rules and regulations governing urban and rural settlements, territories where residential and non-residential buildings had been constructed or were to be constructed should be protected from floods of once-a-century proportions like the one on 7 August 2001. The same regulations prohibited the construction of various buildings in catastrophic flood hazard zones.

79. The report went on to note that the instruction for the exploitation of the Pionerskoye reservoir made it clear that no constructions should be allowed in the area downstream of the reservoir without measures being taken to protect that area from floods. According to the city of Vladivostok's general development plan, there should be no building development in the area downstream of the Pionerskoye reservoir; any individual housing as well as recreational and industrial facilities located in that area should therefore be demolished or transferred.

80. The report further concluded that all building development in the area downstream of the reservoir from its very beginning had been, and was being, carried out in breach of the relevant technical standards and the city of Vladivostok's general development plan. It added that the constant increase in the density of constructions in the area downstream of the reservoir in the absence of any measures to protect the area from floods led to increased losses when floods occurred.

E. Administrative bodies' replies to the applicants' complaints

81. It appears that on 11 August 2001 a commission of officials from the Vladivostok Administration drew up a report presenting the results of the inspection of the flat where the third and fourth applicants lived. The report listed in detail the damaged possessions and stated that the resulting damage amounted to 486,000 Russian roubles ("RUB", approximately 11,500 euros, "EUR").

82. On 14 August 2001 a similar report was drawn up following the inspection by the same authority of the fifth applicant's home. The report confirmed that the fifth applicant's house, its contents, the outhouses and land and two cars had been damaged as a result of the flood, and indicated that the damage amounted to RUB 200,000 (approximately EUR 4,700). It also mentioned that during the flood the water in the fifth applicant's house had reached a level of 1.3 metres.

83. In their reply of 19 September 2001 to the third and fourth applicants' complaint, the Vladivostok Administration stated that according to the information at their disposal, the human factor had played a role in the flood of 7 August 2007, as the water had not been released from the reservoir until a critical situation had emerged where a large volume of water had to be evacuated urgently to save the dam. The letter further stated that the work done by the city authorities to clear the river channel had not helped to prevent the houses and other structures from being flooded because the evacuation of water by the Water Company had been sudden and massive, with the result that even special concrete waterfronts of the dam outlet channel had been broken. The letter went on to say that the reservoir was the property of the regional authorities and therefore the Vladivostok city authorities had no power to reprimand staff of the Water Company. However, criminal proceedings had been brought in connection with the pecuniary damage suffered by residents of Vladivostok and the disruption of transport lines during the heavy rains and the evacuation of water from the Pionerskoye reservoir which should lead to the punishment of those responsible. Also, the Administration of the Sovetskiy District had filed a civil claim requesting that the actions of the Water Company be found unlawful. Lastly, the letter stated that compensation for pecuniary damage would only be possible from the federal budget (a request to that effect had already been sent to the Russian Government) and from insurance companies.

84. On 4 April 2002 the Russian Government ordered that funds be allocated for restoration work in the area flooded on 7 August 2001 and financial support to the victims of the flood. By a decree of 29 April 2002 the Governor of the Primorskiy Region ordered the distribution of the funds allocated by the Government. According to the Government, the first applicant received a lump sum of RUB 14,000 (approximately EUR 350)

and the remaining applicants each received RUB 1,000 (approximately EUR 25) in financial support. Also, according to the Government, the victims of the flood could each have received three tons of coal with a 50% discount.

85. By a letter of 20 May 2002 the Main Department for Civil Defence and Emergency Situations of the Primorskiy Region informed the second applicant that so far no work had been carried out to repair the consequences of the flood.

86. On 8 August 2002 the regional prosecutor's office sent a request (*представление*) to the head of the Vladivostok Administration. An inquiry by the prosecutor's office had established that over the past year the city authorities had not taken any measures to remedy the consequences of the flood of 7 August 2001 and, in particular, that the Pionerskaya river remained abundantly littered with household and other debris, including large fragments of concrete structures destroyed during the flood, as well as wood and silt. The prosecutor's office went on to say that the city authorities' inactivity was putting the lives of the people living along the river in danger, since in view of the heavy rainfall in July-August 2002 and the need to evacuate water from the Pionerskoye reservoir, there was a real risk of a flood similar to that of 7 August 2001. The prosecutor's office thus urged the city authorities to carry out clean-up work and to inform it of the results within a month.

87. In similar letters of 11 June and 9 August 2004 respectively, the regional prosecutor's office notified the fourth and second applicants of the status of the proceedings in cases nos. 916725 and 292025 and stated that, following its requests of 2002, work had been carried out to clean up the Pionerskaya river, financed by the regional budget. Also, further funds would be allocated for flood protection work in the area close to the Pionerskaya river. The fourth applicant was also informed of her right to be declared a civil claimant in criminal case no. 292025, and sought compensation for the pecuniary damage she had suffered as a result of the flood of 7 August 2001.

88. On 7 July 2004 the regional prosecutor's office further replied to the fourth applicant that an expert inquiry had confirmed that the building in which she lived was in an unsound state following the flood and that repair work was necessary. According to the letter, the Vladivostok Administration had been asked to do the work.

89. In a working report of 23 November 2004 the head of the Vladivostok Department for Civil Defence and Emergency Situations informed the deputy head of the Vladivostok Emergency Commission that the residential quarters near the Pionerskaya river were regularly flooded during heavy storms because the river was full of litter and obstructed by earth dumped into it for construction work, as well as the absence or poor state of drainage along the streets in the affected area, including

Semiradskiy Street. A series of measures were needed to protect the city of Vladivostok from floods and, in particular, to clear the Pionerskaya river and equip the streets in the area near the river with a proper drainage system.

90. In a letter of 7 February 2005 the Main Department for Civil Defence and Emergency Situations of the Primorskiy Region notified the second applicant of the allocation in 2004 of funds for work to repair the consequences of the flood of 7 August 2001. According to the letter, the work was scheduled for May-June 2005.

91. On 11 May 2005, in reply to a complaint from the second applicant, the regional prosecutor's office confirmed that the Vladivostok Administration had failed thus far to take any measures to prevent Semiradskiy Street from being flooded and, in particular, to carry out the work indicated in the working report of 23 November 2004, and that no budgetary funds had been or were being allocated for such work.

92. In a letter of 6 June 2005 the regional prosecutor's office further informed the second applicant that the authorities were currently working on a fortification project to protect Vladivostok, including the area near the Pionerskaya river, from floods, that funds for the work had been assigned from the federal budget and that the work would be completed on schedule.

93. On 11 July 2006 the Vladivostok Administration informed the second applicant that no funds had been appropriated for clean-up work in the Pionerskaya river in the 2006 budget.

F. Civil proceedings

94. The applicants brought five separate sets of civil proceedings against the Primorskiy Region and Vladivostok City authorities and – save for the second and fifth applicants – the Water Company, seeking damages for their lost property as well as compensation for the anguish and distress they had suffered during the flood of 7 August 2001. They claimed that the flood had had such devastating effects mainly because of the poor state of the channel of the Pionerskaya river and the drainage system and the authorities' failure to check and clear them. The first and second applicants reported that during the flood the water in their flats had risen to a height of 1.2 metres and remained at that level for a long time. The fifth applicant reported that during the flood the water in his house had risen to a height of 1.3 metres and remained at that level for about six hours. The sixth applicant reported that she had been at home during the flood and that the water in her flat had risen instantaneously to above head level and remained at that level for a long time.

1. Court decisions in the first, second, fifth and sixth applicants' cases

95. In two judgments of 27 October 2004, a judgment of 28 October 2004 and a judgment of 14 December 2004, all very similar, the Sovetskiy District Court of Vladivostok ("the District Court") dismissed the claims brought respectively by the first, second, fifth and sixth applicants. It noted, in particular, that according to the expert report of 24 January 2003 the action taken by the Water Company in a situation of extremely heavy rainfall had been correct. The court further referred to an expert report of 29 September 2002 which had found that the flood had been caused by the fact that the river channel had been narrowed by various structures and overgrown with vegetation, whereas the action taken by the Water Company in the circumstances had been correct. The court concluded that both expert reports suggested that the heavy rainfall had been the main cause of the flood.

96. The court also referred to the investigating authorities' decision of 25 January 2003 to discontinue criminal proceedings against Mr L., the director of the Water Company, owing to the absence of any constituent elements of a crime in his actions, and the decision of 5 March 2004 to discontinue criminal proceedings against officials of the city of Vladivostok and the Primorskiy Region for lack of evidence of a crime.

97. It further noted that under the relevant legislation waterways like the Pionerskaya river could not be municipally owned, so there had been no obligation on the Vladivostok Administration to assign funds from the local budget for clean-up work on the river. The Vladivostok authorities had requested the Administration of the Primorskiy Region to assign money for the work from the regional budget.

98. The court thus concluded that no fault could be attached to any of the defendants for the damage sustained by the relevant applicants, which had been the result of *force majeur*. In the court's opinion that conclusion was corroborated by the fact that following the flood, in the period between 7 and 11 August 2001, the authorities had declared an emergency situation throughout the city of Vladivostok and not only in the flooded area near the Pionerskaya river.

99. On 29 November 2004 the Primorskiy Regional Court ("the Regional Court") upheld on appeal the judgment delivered in the second applicant's case. It confirmed that the Vladivostok city authorities had had no obligation to clear the Pionerskaya river as it was not municipal property, and that any clean-up work should have been carried out by the Water Company. The court went on to say that it followed from the two expert reports relied on by the first-instance court that even if the Pionerskaya river channel and floodplain had been cleared it could not be excluded that the residential buildings near the river, including the one in which the second applicant lived, would nevertheless have been flooded, taking into account the exceptional intensity of the rains on the date in question. The court also

noted that the defendants had offered welfare aid to the victims of the flood, including the second applicant, within the amount assigned for that purpose, and that her claim regarding pecuniary damage had not been supported by any documentary evidence and was therefore unsubstantiated.

100. On 16 December 2004 and 9 March 2005 the Regional Court also upheld on appeal the judgments given in the first, fifth and sixth applicants' cases, adhering to the reasoning of the first-instance court.

2. Court decisions in the third and fourth applicants' case

(a) First round of proceedings

101. On 25 February 2003 the District Court delivered a judgment in the case brought by the third and fourth applicants. It based its findings on expert reports of 15 May and 29 September 2002 and 24 January 2003 produced in the context of the investigation in criminal case no. 916725 and on other materials in that criminal case.

102. The court established that the Pionerskoye reservoir was run by the Water Company and was the property of the regional authorities. It also noted that since 1995 a special-purpose federal programme on protection of the Primorskiy Region from floods had been in progress, and that it was the Primorskiy regional authorities who had requested that programme and controlled the receipt and use of the funds earmarked for that purpose. The court went on to say that the programme had envisaged extensive work to reconstruct and build flood-protection facilities in inhabited areas, including the Pionerskaya river channel, and the construction of a water evacuation channel.

103. The judgment further stated that all three aforementioned expert reports had established that no measures to implement the federal programme in question had been taken. It then described in detail the poor state of the Pionerskaya river channel.

104. The court also referred to the decision of 6 September 1999 in which the Vladivostok Emergency Commission had urged the city authorities to clear the Pionerskaya river channel (see paragraph 16 above), and to a report by a committee of officials from the Vladivostok Administration dated 4 July 2001, which reflected on the poor state of the Pionerskaya river channel and invited the city authorities to have it cleared (see paragraph 22 above). The court noted that the city authorities had not adduced any evidence that any such measures had been taken, or that the authorities had ever complied with their own decisions.

105. The court further noted that the defendants had not adduced any evidence confirming that the Pionerskaya river was regional property and that there was any separation of powers between the regional and municipal authorities concerning the maintenance of the Pionerskaya river, which, in the court's opinion, had led to the inactivity and shifting of responsibility by

officials at various levels. The court stressed that proper, reasonable maintenance and exploitation of the river by the authorities would have helped avoid such drastic consequences.

106. As regards the action taken by the Water Company, the court found it established that the third and fourth applicants' flat had remained intact until the large-scale evacuation of water by the Water Company on 7 August 2001, following which the flat had been instantly flooded. The court concluded that on the day in question the Water Company had evacuated a large quantity of water which had overflowed the river banks and flooded the residential area. The court rejected an argument of the Water Company's representative that if the water had not been evacuated the reservoir would have burst its banks, which might have caused more serious damage. The court noted in this connection that in view of the weather conditions the Water Company should have evacuated water in smaller quantities over a longer period of time.

107. The court thus attributed responsibility for the events of 7 August 2001 to all three defendants, stating that they should have foreseen the adverse consequences and prevented them, but failed to do so. It stated that the defendants' fault in the damage caused by the flooding of residential buildings situated in the vicinity of the Pionerskoye reservoir was established by the expert reports of 29 September 2002 and 24 January 2003.

108. As regards the third and fourth applicants' claims, the court established, on the basis of the available evidence, that the fourth applicant was the owner of the damaged flat, where she was living with her husband, her son and daughter-in-law (the third applicant) and a grandchild. The court further examined an evaluation report drawn up in the fourth applicant's presence by a competent State authority (see paragraph 81 above). The court noted that the report was signed by the fourth applicant, who had never disputed the amount of the damage indicated therein. Moreover, she confirmed to the court that as a civil claimant in the criminal proceedings instituted in connection with the incident of 7 August 2001, she had claimed the same amount. The court therefore granted the fourth applicant's claim for pecuniary damage in the amount reflected in the evaluation report and found the remainder of that claim, as well as the third applicant's claim for pecuniary damage, unsubstantiated, given in particular the fact that the third applicant lived in the fourth applicant's flat, and all the damaged possessions in the flat had already been listed and the resulting damage assessed in the aforementioned evaluation report.

109. On 20 April 2004 the Regional Court quashed the first-instance judgment and remitted the case for fresh examination. It noted, in particular, that in stating that the Administration of the Primorskiy Region had funds at its disposal in the context of the federal programme to protect the region from floods, the first-instance court had not checked whether any funds

from the federal budget had ever been allocated to the Primorskiy regional authorities and, if so, how they had been used. Therefore, in the Regional Court's opinion the lower court's finding concerning the regional authorities' failure to have work carried out in the Pionerskaya river had not been based on the materials of the case.

110. The appellate court also noted that the fact that the Water Company was regionally owned, in itself, could not be regarded as engaging the responsibility of the Administration of the Primorskiy Region, as the Water Company was a legal entity, and the responsibility of an owner of an entity such as the Water Company could be limited by relevant civil law provisions or that entity's constituent documents. The Regional Court further stated that in the first-instance judgment no distinction had been made between the consequences of the exceptionally heavy rain on 7 August 2001 and those of the authorities' alleged failure to take measures to prevent flooding.

(b) Second round of proceedings

111. By a judgment of 6 December 2004 the District Court dismissed the third and fourth applicants' claims in their entirety as unsubstantiated. The judgment was based essentially on the same reasoning as the judgments given in the cases brought by the first, second, fifth and sixth applicants.

112. On 25 January 2005 the Regional Court upheld the judgment of 6 December 2004 on appeal. It stated that when rejecting the third and fourth applicants' claims, the first-instance court concluded that the flood of 7 August 2001 had been caused by a natural disaster whose extent could not have been foreseen by the defendants or avoided as a result of any purposeful action on their part.

113. The Regional Court also noted that the first-instance court had duly examined and rightly dismissed the claimants' arguments to the effect that the defendants should be held liable for the destructive consequences of the evacuation of water from the reservoir. The appellate court referred to the expert report of 24 January 2003, which stated that the actions of the Water Company on 7 August 2001 had been correct and explained the flood on that date by the presence downstream of the Pionerskoye reservoir of unauthorised constructions built in breach of the city of Vladivostok's general development plan, and the presence of debris and constructions in the floodplain of the Pionerskaya river.

114. The Regional Court further noted that the expert report of 29 September 2002 stated that the cause of the flood had been the fact that the river channel was narrowed by constructions and overgrown with vegetation, and that the water evacuation strategy used by the Pionerskoye reservoir on the date in question had been optimal.

115. The court also quoted the expert report of 15 May 2002 (see paragraph 70 above), which had established that the vegetation obstructing

the river channel had helped to reduce the force of the wave following the evacuation of water from the reservoir, and that if the water had been evacuated "in accordance with the relevant instruction", the area would have been flooded regardless, but the level of water would have been 1.82 times lower. The report also noted that the Water Company had not taken measures to alert the population with a view to minimising the damage caused by the flood.

116. The Regional Court then concluded that all three expert reports singled out the exceptionally heavy rain as the main reason for the flood on 7 August 2001, and that they considered it likely that flooding would have occurred irrespective of the evacuation of water by the Water Company.

117. The appellate court accordingly found that the District Court had correctly concluded, on the basis of the available materials, that in view of the exceptionally heavy rainfall, the Pionerskaya river would have overflowed its banks irrespective of the state of the river channel. It also noted that since it was impossible in the circumstances of the case to draw a distinction between the consequences of the flooding due to the weather conditions and those due to the poor state of the river channel, there was insufficient evidence to attach responsibility for the events of 7 August 2001 to the defendants.

II. RELEVANT DOMESTIC LAW

A. Russian Civil Code

118. Article 1064 provides for damage caused to the property of an individual or of a legal entity to be compensated for in full by the person responsible for the damage. The latter may be released from the obligation to make compensation if he or she can prove that the damage was not caused through his or her fault; however, the law may provide for compensation in respect of damage even in the absence of fault on the part of the person who caused it. Damage inflicted by lawful actions must be compensated for in the cases prescribed by law.

119. Article 1069 stipulates that a State agency or a State official will be liable towards a citizen for damage caused by their unlawful actions or failure to act. Compensation for such damage is awarded at the expense of the federal or regional treasury.

120. Articles 151 and 1099-1101 provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that compensation shall be made for non-pecuniary damage irrespective of any award for pecuniary damage.

B. Russian Water Code of 1995

121. The Russian Water Code, as in force at the relevant time, provided in its Article 37 that bodies of water located entirely within the territory of a particular region of Russia which were not classified as federal property could be the property of that region. Such bodies of water could be classified as regional property by the executive authorities of the region concerned, with the approval of the federal executive authorities. Regional property was managed by the regional authorities, who were entitled to transfer some of their corresponding powers to competent federal authorities.

122. Under Article 66 regional authorities were entitled to own, use, govern and manage bodies of water in their region.

123. Article 108 stipulated that construction, channel dredging and blasting operations in bodies of water and their water protection zones should be carried out with the approval of the State agency responsible for the administration and protection of water resources.

124. Article 117 imposed an obligation on federal and regional executive authorities and water users to take measures aimed at preventing and repairing the consequences of damage to water as a result of flooding, impoundment, dam- and dyke-breaking, soil erosion, mudslide and the like.

C. Protection from Emergencies Act

125. The Federal Law of 21 December 1994 No. 68-FZ "On Protection of Civilians and Terrains from Emergencies of Natural and Industrial Origin" (*Федеральный закон от 21 декабря 1994 г. № 68-ФЗ «О защите населения и территорий от чрезвычайных ситуаций природного и техногенного характера»*, "the Protection from Emergencies Act"), in its section 6, 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 impending 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 such information public.

126. Under section 7 the prevention of emergencies and the mitigation, as far as possible, of any damage and losses is a fundamental principle of emergency relief and requires that all preventive measures be taken suitably in advance.

D. Hydraulic Structures Safety Act

127. The Federal Law of 21 July 1997 No. 117-FZ "On the Safety of Hydraulic Engineering Structures" (*Федеральный закон от 21 июля 1997 г. № 117-ФЗ «О безопасности гидротехнических сооружений»*, "the Hydraulic Structures Safety Act") stipulates in its section 5 that, where the safety of hydraulic engineering structures is concerned, the regional executive authorities: are responsible for resolving questions of safety of hydraulic engineering structures in territories under their control; participate in the implementation of State policies in that sphere; develop and implement regional programmes on the safety of hydraulic engineering structures; ensure the safety of hydraulic engineering structures used in connection with water resources and environmental protection measures; take decisions on locating hydraulic engineering structures and limiting their exploitation in the event of a breach of the legislation on the safety of such structures; help to repair the consequences of accidents at hydraulic engineering structures; and inform the population of any accident hazard at hydraulic engineering structures that might trigger an emergency situation.

128. Section 8 lists various requirements to ensure the safety of hydraulic engineering structures, including State control in the matter; establishing safety criteria in respect of hydraulic engineering structures and equipping them with appropriate technical means for permanent monitoring of their condition; taking every possible step, in good time, to keep the risk of emergencies at hydraulic engineering structures to a minimum; earmarking sufficient funding for measures aimed at ensuring the safety of hydraulic engineering structures; and liability for actions (or omissions) that reduce the safety of hydraulic engineering structures to unacceptable levels.

129. Section 9 lays down the obligations of owners of, and bodies operating hydraulic engineering structures. It states, in particular, that they must: ensure the observance of safety rules and standards during the construction, exploitation, repair, reconstruction, conservation, dismantling, and so on, of hydraulic engineering structures; monitor the condition of such structures; evaluate natural and industrial threats to them and, on the basis of the data thus obtained, regularly assess the safety of hydraulic engineering structures, including analysis of the reasons for any decrease in safety, taking into account harmful natural and industrial impacts, results of industrial and other activities and the presence of objects in river channels and adjacent areas, upstream and downstream; develop systems for monitoring the condition of hydraulic engineering structures and take timely measures to ensure their proper functioning and prevent accidents; maintain local emergency warning systems in a state of constant readiness to raise the alarm in the event of an accident at a hydraulic engineering structure; inform the local population on questions concerning the safety of, and accidents at, hydraulic engineering structures; finance measures on the

exploitation of hydraulic engineering structures and preventing accidents and repairing their consequences, and so on.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

130. The applicants complained that the authorities had put their lives at risk on 7 August 2001 by releasing a large amount of water, without any prior warning, from the Pionerskoye reservoir into a river which for years they had failed to maintain in a proper state of repair, causing a flash flood in the area around the reservoir where the applicants lived. They also complained that they had no judicial response in respect of those events. The applicants relied on Article 2 of the Convention, which, in so far as relevant, reads as follows:

> "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. Submissions by the parties

1. The applicants

131. The applicants insisted that responsibility for the flood damage on 7 August 2001 lay with the State-owned Water Company and the Primorskiy regional and the Vladivostok city authorities.

132. The applicants pointed out that the authorities had already been aware of the poor state of the channel of the Pionerskaya river two years prior to the events of 7 August 2001, and of the increased risk of large-scale flooding of the area in the event of evacuation of water from the Pionerskoye reservoir. They argued that the authorities at various levels – district, municipal or regional – had consistently ignored warnings, applications and complaints, whether from individual residents of the area in question or from State bodies. They referred to the results of an inspection of the channel of the Pionerskaya river carried out shortly before the flood of 7 August 2001 (see paragraph 22 above) which indicated that the river channel was still in an unsatisfactory condition despite numerous decisions by various authorities that it should be cleaned up.

133. The applicants submitted that the authorities should have been under an obligation to carry out the necessary clean-up work in the river channel to ensure that its throughput capacity could cope with the maximum possible release of water from the Pionerskoye reservoir, which, according to the report of 24 January 2003, was 200 cubic metres per second if an open spillway was used and could be increased by 200 cubic metres per second if a siphon spillway was also opened (see paragraph 73 above).

134. The applicants argued that the Water Company had neglected its duty, imposed on it by section 9 of the Hydraulic Structures Safety Act (see paragraph 129 above), to ensure the safety of the Pionerskoye reservoir, including monitoring the state of the Pionerskaya river channel and keeping it in a proper condition. Moreover, in breach of section 6 of the Protection from Emergencies Act (see paragraph 125 above), the Water Company had failed to set in place an emergency warning system and to give to the residents of the area along the Pionerskaya river an emergency warning of the sudden evacuation of water on 7 August 2001.

135. The applicants further argued that, as established in relevant expert reports, the presence of various constructions in the floodplain of the Pionerskaya river had contributed significantly to raising the water level during the flood, which had magnified its destructive effect. They argued that under national law town planning, and in particular the regulation of construction activities in Vladivostok, was the responsibility of the Vladivostok Administration. However, for many years the city authorities had turned a blind eye to spontaneous and unauthorised building around the Pionerskaya river and were therefore responsible for the dramatic consequences of the flood.

136. The applicants added that at the material time the Pionerskaya river was the property of the Primorskiy Region, and that under section 5 of the Hydraulic Structures Safety Act (see paragraph 127 above) the regional authorities had been under an obligation to ensure the safety of the Pionerskoye reservoir and to inform the population of any risk of accidents at such constructions which could create emergency situations. The allocation of funds for clean-up work in river channels and measures aimed at securing the safety of reservoirs also fell within the competence of the Primorskiy Region, but the authorities had failed to earmark the necessary amounts for that purpose.

137. The applicants thus argued that the authorities' negligent attitude towards their responsibilities, the lack of monitoring and the failure to comply with their own decisions had significantly increased the risk to the lives of residents in the area round the Pionerskaya river, including the applicants.

138. The applicants further argued that during and after the flood they had been left to their own devices, that no evacuation had been organised

and that they had had to make their way to safety and to deal with the consequences of the flood on their own.

139. They pointed out that even today the authorities had not taken any measures to eliminate the danger of a flood – the state of the Pionerskaya river channel remained unsatisfactory and the area where they lived was regularly flooded. In support of their assertions they referred to a working report of 23 November 2004 (see paragraph 89 above).

140. Lastly, the applicants contended that none of the two sets of criminal proceedings instituted in connection with the events of 7 August 2001 had brought any tangible results, and that they had therefore received no adequate judicial response in respect of the alleged infringement of their right to life.

141. The applicants accordingly insisted that there had been a breach of Article 2 of the Convention in their case.

2. The Government

142. The Government contended that Article 2 of the Convention was inapplicable in the present case. They pointed out, first of all, that the second, fourth and fifth applicants had not been at home during the flood and that there was no evidence that their lives had been put at risk at any time. The Government then argued that the first, third and sixth applicants, who had been at home when the flood had occurred, had never claimed in the civil proceedings brought by them that their lives had been in danger. In particular, the third applicant had been able to leave home with her child and make her way to a safe place. The Government contended that the circumstances of the present case were different from those in *Budayeva and Others v. Russia* (nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008) or *Murillo Saldias and Others v. Spain* ((dec.), no. 76973/01, 28 November 2006), where the applicants' relatives had died and a number of the applicants had been injured as a result of the natural disasters concerned – a mudslide and a flood respectively – whereas in the present case none of the applicants had lost any relatives or sustained any injuries during the flood of 7 August 2001.

143. As to the merits of the applicants' relevant complaint, and in so far as the Court's question about the legislative and administrative framework for dealing with floods in the area where the applicants lived, and its implementation at the material time was concerned, the Government referred to a large number of federal laws and legal acts and other instruments adopted by various authorities in the Primorskiy Region, without, however, explaining how they were relevant in the circumstances, or referring to any particular relevant provisions.

144. The Government further submitted that the authorities had taken a number of measures to comply with the decision of the Vladivostok Emergency Commission of 6 September 1999 (see paragraph 16 above),

including clean-up work in the channel of the Pionerskaya river. In the Government's submission, they had no information as to whether those measures had ensured that the overall throughput capacity of the Pionerskaya river channel was no less than 30-40 cubic metres per second as prescribed by the aforementioned decision. The Government argued, however, that even if such a throughput capacity had been ensured, it would have been impossible to avoid the flood, or even to mitigate its consequences, given that in the period between 12 noon and 2 p.m. the release of water from the Pionerskoye reservoir had been at its maximum of 167 cubic metres per second.

145. The Government also argued that the amount of rain that fell on 7 August 2007 in the vicinity of Vladivostok had exceeded several times the amount forecast. In fact, such heavy rain had never been seen in the region before. Therefore, according to the Government, there was no way the authorities could have foreseen the drastic consequences of that rain. In particular, with reference to the relevant expert reports (see paragraphs 71 80 above), the Government argued that it had been impossible to avoid the urgent large-scale evacuation of water from the Pionerskoye reservoir, and that the rate of the release of water from the reservoir on 7 August 2001 had been close to optimal. If the Pionerskoye reservoir had not existed, on the date in question the rain flooding to the mouth of the Pionerskaya river would have reached a maximum volume of 440 cubic metres per second. The Government also contended that prior to the heavy rain on 7 August 2001 the Pionerskoye reservoir had had sufficient water storage capacity to hold the rainwater if the amount that fell had corresponded to the amount forecast, and therefore before 7 August 2001 there had been no need to evacuate water in smaller quantities over a longer period in an attempt to avoid the flood. Indeed, as pointed out by the Government, the Pionerskoye reservoir, which supplied drinking water to the city of Vladivostok, was usually only refilled over a limited period during the rainy season.

146. The Government admitted that at the time of the flood of 7 August 2001 there had been no operational emergency warning system in the Pionerskoye reservoir to raise the alarm in the event of a sudden large-scale evacuation of water, as prescribed by the decision of the Vladivostok Emergency Commission of 6 September 1999. They insisted, however, that the population of Vladivostok had been informed about forthcoming heavy rain by the media. They also stated that the lack of an emergency warning system had not prevented the third applicant from leaving her apartment when the water began to rise and going to a safe place.

147. They further argued that immediately after the flood the evacuation of the affected population had been organised in accordance with the decision of the Vladivostok Emergency Commission of 7 August 2001. In particular, those residents who found themselves in a flooded area had been

moved to temporary accommodation centres and provided with meals and drinking water.

148. Lastly, the Government submitted that on 9 August 2001 a criminal investigation in case no. 916725 had been opened in connection with the incident of 7 August 2001, and the applicants had been granted the status of victims and civil claimants. The proceedings were discontinued on 25 January 2003 owing to the absence of the constituent elements of a criminal offence in the actions of Mr L., the director of the Water Company. The Government said they had been unable to submit the materials of that investigation to the Court because, as stated in a letter of 4 September 2009 from a representative of the Department of the Interior of the Primorskiy Region, the materials had been destroyed upon expiry of the period for their storage. Also, on 24 January 2003 a separate set of criminal proceedings had been disjoined from the aforementioned investigation. The Government refused to submit the materials from this latter investigation, stating that they were being studied by the Prosecutor General's Office.

149. Overall, the Government insisted that, apart from setting in place an emergency warning system at the Pionerskoye reservoir, they had taken all possible measures to prevent the risk to the applicants' lives. However, the rain on 7 August 2001 had been of such intensity that the authorities could not possibly have foreseen and prevented the flood and its consequences.

B. The Court's assessment

1. Admissibility

150. The Court notes at the outset that the Government contested the applicability of Article 2 of the Convention in the present case, stating that the second, fourth and fifth applicants had been absent from their flats when they were flooded, and that the first, third and sixth applicants, although they had been at home during the flood, had not sustained any injuries, or lost any of their relatives as a result of the flood. According to the Government, therefore, at no moment had there been any risk to the physical integrity of any of the applicants.

151. The Court reiterates in the above connection that Article 2 of the Convention 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, among other authorities, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII, and *Budayeva and Others*, cited above, § 128). Moreover, this Article, read as a whole, covers not only situations where certain action or omission on the part of the State led to a death complained of, but also situations where, although an applicant survived, there clearly existed a risk to his or her life

(see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI, and *Budayeva and Others*, cited above, § 146). It is therefore essential to determine in the present case whether the applicants' lives were endangered as a result of the events complained of.

152. The Court observes that, as the parties agreed, the second, fourth and fifth applicants were away from their homes during the flood on 7 August 2001. Moreover, it appears that by the time they returned home in the evening there was already no water left in their flats (see paragraphs 37-38 above). Also, the aforementioned applicants never alleged that they had been caught by the flood in the places where they had spent the day in question. In such circumstances, the Court accepts the Government's argument that there was no evidence that any threat to the lives of the second, fourth and fifth applicants had ever existed as a result of the flood of 7 August 2001. Article 2 of the Convention is therefore inapplicable. It follows that the complaint brought by the second, fourth and fifth applicants under that Article is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4 thereof.

153. On the other hand, the Court is unable to reach the same conclusion as regards the relevant complaint lodged by the first, third and sixth applicants. It notes in this connection that, as the parties agreed, these applicants were at home during the flood. The Court further takes into account these applicants' submission – undisputed by the Government – that the water arrived and rose very quickly (see paragraphs 32, 34, 36 and 39 above). Nor is it in dispute between the parties that the water reached a level of 1.20 metres in the first and third applicants' flats, and up to 1.50 metres in the sixth applicant's dwelling (see paragraph 40 above). In the Court's opinion, even a level of 1.20 metres can be regarded as sufficiently high to have put these applicants' lives at risk, given, in particular, that the first applicant was a disabled 63-year-old at the time, and the then 55-year-old sixth applicant, in her own submission, could not swim.

154. As regards the third applicant, the Court is unable to agree with the Government that her life was not endangered because she managed to leave the flooded area on her own. The Court considers a situation where the third applicant had to wade, with her 21-month-old child in her arms, in seething, breast-deep, turbid water full of floating debris, as being dangerous to her life. The Court also takes into account the applicants' submission that the level of water in the street was even higher than inside their homes (see paragraphs 34 and 38 above), which matches the finding of the expert report of 24 January 2003 that over much of the flooded area the water had been 1.5-2 metres deep (see paragraph 75 above).

155. Overall, in the Court's opinion, these circumstances leave no doubt as to the existence of an imminent risk to the lives of the first, third and

sixth applicants, which brings their complaint on that account within the scope of Article 2 of the Convention. The fact that they survived and sustained no injuries has no bearing on this conclusion.

156. The Court notes therefore that this part of the application, in so far as it was brought by the first, third and sixth applicants ("the relevant applicants"), is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Substantive aspect of Article 2 of the Convention

i. General principles

157. The Court reiterates that the positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 (see paragraph 151 above) 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 *Öneryıldız*, cited above, § 89, and *Budayeva and Others*, cited above, § 129).

158. The Court considers that 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, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous. In the particular context of dangerous activities 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 (see *Öneryıldız*, cited above, §§ 71 and 90).

159. 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, and *Budayeva and Others*, cited above, § 132).

160. 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. 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; this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult social and technical spheres (see *Budayeva and Others*, cited above, §§ 134-35).

161. In assessing whether the respondent State complied with its 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, the domestic decision-making process, including the appropriate investigations and studies, and the complexity of the issue, especially where conflicting Convention interests are involved. 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 (see *Budayeva and Others*, cited above, §§ 136-37).

ii. Application of the general principles in the present case

162. The Court notes at the outset that it does not seem to be in dispute between the parties that the area where the relevant applicants lived was flooded on 7 August 2001 after an urgent massive evacuation of water from the Pionerskoye reservoir. The Government, however, denied their responsibility for the incident in question, stating that the evacuation of water on 7 August 2001 had been rendered necessary by the exceptionally heavy rain which had proved to be several times heavier than forecast and which they could not have foreseen. Therefore, in the Government's submission, they could not have prevented or avoided the release of water and the ensuing flood and were not responsible for its consequences.

163. Having regard to the materials in its possession, the Court is prepared to accept that the evacuation of water on 7 August 2001 could not have been avoided given the exceptional weather conditions on that day and the risk of the dam breaking, which could have entailed serious consequences (see paragraphs 51, 71 and 77 above). It will, furthermore, not speculate as to whether the flood on the aforementioned date could have been prevented if the Water Company had released water in smaller quantities over a longer period, as some of the national authorities appear to have suggested (see paragraphs 83 and 106 above).

164. At the same time, the Court is not convinced that the events of 7 August 2001 could be explained merely by adverse meteorological conditions on that date which were beyond the Government's control, as they seem to have suggested. In this regard, the Court notes that the

Pionerskoye reservoir is a man-made industrial facility containing millions of cubic metres of water (see paragraph 25 above) and situated in an area prone to heavy rains and typhoons during the summer season (see paragraphs 8-9 above). In the Court's opinion, the operation of such a reservoir undoubtedly falls into the category of dangerous industrial activities (see paragraph 158 above), particularly given its location.

165. Moreover, in so far as the Government may be understood as having asserted that they could not have foreseen that it would be necessary to evacuate such a large quantity of water from the Pionerskoye reservoir on 7 August 2001, because such heavy rainfall as on that day had never occurred in that region before, the Court finds this argument unconvincing. Indeed, it is clear from the adduced materials that in the years preceding the flood, the authorities knew that it might be necessary urgently to release water from the reservoir. In particular, in his letter of 7 June 1999 the head of the Water Company informed the Vladivostok Administration that it might be necessary to evacuate water urgently from the reservoir in the event of heavy rain (see paragraph 15 above); and in a letter of 29 May 2000 the Vladivostok Administration admitted that the water level in the reservoir was close to critical and some of it would have to be evacuated (see paragraph 19 above). Against this background, even if it is prepared to accept that the rain on 7 August 2001 was of an exceptional intensity, the Court is not persuaded that the authorities could claim to have been taken unaware by the rain in so far as the operation of the Pionerskoye reservoir was concerned. It considers that, irrespective of the weather conditions, they should have foreseen the likelihood as well as the potential consequences of releases of water from the reservoir.

166. Overall, the Court finds that the authorities had positive obligations under Article 2 of the Convention to assess all the potential risks inherent in the operation of the reservoir, and to take practical measures to ensure the effective protection of those whose lives might be endangered by those risks.

167. The Court notes first of all, in this connection, that in listing various legal acts and other legal instruments adopted by both the federal and the regional authorities, the Government provided no explanation as to how they were relevant in the circumstances of the present case, and whether they were effectively implemented at the relevant time (see paragraph 143 above). In the absence of any such explanation, the Court will make its assessment of the legislative and administrative framework in place at the material time on the basis of the available evidence.

168. The Court takes note of the existence of technical requirements which made it clear that the area along the Pionerskaya reservoir should not be inhabited unless certain preventive measures were taken. In particular, as stated in the expert report of 24 January 2003, which is the only report made available to the Court (see paragraph 70 above), the instruction for the

exploitation of the Pionerskoye reservoir clearly prohibited any urban development in the area downstream of the reservoir without measures being taken to protect that area from floods (see paragraph 79 above). The authorities were therefore expected either to apply town planning restrictions and to prevent the area in question from being inhabited, or to take effective measures to protect the area from floods before allowing any development there.

169. The Court notes that, in practice, neither was done. Indeed, as is clear from the expert report of 24 January 2004, urban development in the area downstream of the Pionerskoye reservoir went on despite the relevant technical requirements and in the absence of any measures aimed at protecting the area from floods (see paragraph 80 above). Moreover, as can be ascertained from the decision of 20 July 2004, by which criminal proceedings against officials of the Vladivostok city and the Primorskiy regional authorities in connection with the alleged breach of town planning restrictions were discontinued, the urban development in the aforementioned area was lawful given the absence of any legal framework banning such development in the area in question (see paragraph 58 above).

170. In other words, it appears that the authorities disregarded technical and safety requirements and, therefore, potential risks, including risk to human lives, by failing to reflect them in legal acts and regulations and allowing urban development in the area downstream from the Pionerskoye reservoir. The Court considers that the authorities' failure to regulate settlements on that territory is an element to be taken into account when considering the Government's responsibility in the context of their positive obligations under Article 2 of the Convention. The Court is aware that it cannot be excluded that construction has gone on in the area downstream of the reservoir ever since the facility went into operation in 1936. The Court is also mindful of the fact that it has no temporal jurisdiction to assess this situation as it may have existed prior to 5 May 1998, the date of the entry into force of the Convention in respect of Russia.

171. However, the facts as they stand make it clear that the situation also obtained after the crucial date. Indeed, it is clear from the materials at the Court's disposal that, in the period following the ratification, the authorities remained inactive and failed to apply any town planning restrictions or to take other necessary steps to protect those individuals who, on the date of the entry into force of the Convention in respect of Russia, were living in the area downstream of the Pionerskoye reservoir.

172. First of all, there was a deficiency in the legislative and administrative framework as regards town planning policy in the area below the Pionerskoye reservoir. Indeed, whereas the expert report of 24 January 2003 stated that all residential buildings and recreational and industrial facilities in the downstream area had been constructed in breach of relevant technical requirements and should be removed or transferred (see

paragraph 79 above), the decision of 20 July 2004 made it clear that construction activities in the downstream part of the Pionerskaya river were allowed within the limits of the site with already existing buildings, that no zones where new construction was prohibited were delimited in the general development plan for Vladivostok, that no demolition or transfer of previously constructed buildings was planned, and that the owners and leaseholders of those buildings and plots of land were entitled to use and dispose of them, and in particular to construct new buildings in the place of old ones (see paragraph 59 above).

173. The Court also notes the authorities' continuous failure, in breach of the relevant regulations, to establish flood zones, catastrophic flood hazard zones and water protection zones in the city of Vladivostok and to determine whether the land below the Pionerskoye reservoir belongs to any such zones (see paragraphs 55-57 above), without any rational explanation. As a result, it appears that no assessments have been made to date as regards the risk of floods potentially dangerous to individuals living in that area, and no measures have been taken to prevent such a risk, so the danger to those individuals' lives is ever present. In the absence of any explanation by the Government, the Court can see no justification for the aforementioned failings by the authorities.

174. The Court further considers that the authorities' responsibility under Article 2 of the Convention is also engaged on account of their failure to keep the Pionerskaya river channel free of obstruction, and in particular to ensure that its throughput capacity met the relevant technical requirements of the Pionerskoye reservoir, and to set an emergency warning system in place at the reservoir.

175. In this regard the Court refers first of all to the findings of the expert report of 24 January 2003 to the effect that the water evacuated from the reservoir on 7 August 2001 had flowed down the river in the form of a wave, and that the presence of debris and unauthorised constructions in the flood plane of the Pionerskaya river had contributed significantly to raising the water level during the flood. In particular, the report reveals that the presence of bridges and service pipelines in some parts of the river had raised the water level by up to 1.5 metres (see paragraph 77 above). It appears that similar findings were made in the report of 29 September 2002 (see paragraphs 95 and 114 above).

176. The Court further notes that at least two years before the flood of 7 August 2001 the authorities were made aware of the poor state of the Pionerskaya river channel and of the risk, as well as the possible extent and consequences, of a flood in the area around the Pionerskoye reservoir in the event of urgent evacuation of water from the reservoir. In particular, in a letter of 7 June 1999 addressed to the Vladivostok city authorities, the head of the Water Company stated that in view of the adverse weather forecast for the summer/autumn 1999, and in particular in the event of heavy rain,

the Water Company might have to evacuate water from the reservoir, which might cause flooding over an extensive area given the poor state of the river channel (see paragraph 15 above).

177. Furthermore, as can be ascertained from the decision of the Vladivostok Emergency Commission of 6 September 1999, the authorities' attention was drawn to the problem of proper maintenance of the Pionerskaya river channel even before 1999. In particular, the said decision stated that the question of cleaning up the course of the Pionerskaya river was regularly raised every year, and yet no measures had been taken. The decision attested to the poor condition of the river channel, confirming, in particular, that the river channel as well as its outlet channels were abundantly overgrown with vegetation, cluttered with debris and household waste, and blocked by unauthorised dams and other structures which created a threat of flooding over an area of 15 square kilometres, with a population of over 5,000 people, in the event of the urgent large-scale release of water from the Pionerskoye reservoir. The decision urged the authorities at the municipal and district levels to take the necessary measures, including cleaning and deepening the river channel to ensure that its throughput capacity was no less than 30-40 cubic metres per second. It was also prescribed that the local population be duly informed that the floodplain of the Pionerskaya river might be inundated in the event of the urgent large-scale evacuation of water from the Pionerskoye reservoir. The decision also ordered the restoration of the local early warning system to raise the alarm if there was a threat of flooding (see paragraph 16 above).

178. In so far as the decision of 6 September 1999 urged the authorities to ensure the throughput capacity of the river channel of at least 30 to 40 cubic metres per second, the Court notes that the expert report of 24 January 2003 indicated that the throughput capacity of the two spillways of the Pionerskoye reservoir totalled 400 cubic metres per second (see paragraph 73 above), which is ten times higher. Thus, the Court cannot but accept the relevant applicants' argument that the Vladivostok Emergency Commission's reference to the minimum throughput capacity of 30 to 40 cubic metres per second remains unclear.

179. In any event it does not appear that, even as it stood, the decision of 6 September 1999 was duly implemented. Although, according to the Government's submissions, certain measures were taken (see paragraphs 17, 18 and 20 above), they were obviously insufficient, the poor state of the Pionerskaya river channel being regularly attested by various authorities in the subsequent period. Indeed, a letter from the Vladivostok Administration dated 29 May 2000 made it clear that the river channel remained overgrown with vegetation and cluttered with debris, that the risk of flooding persisted and that urgent steps should be taken in that connection (see paragraph 19 above). A report by the Vladivostok Administration drawn-up on 4 July 2001, that is shortly before the events under examination, reflected in detail

the poor state of the river channel and recommended a number of measures, similar to those already prescribed on several occasions (see paragraph 22 above).

180. It is therefore clear that, for years, the authorities failed to make any meaningful effort to ensure that the throughput capacity of the Pionerskaya river channel was sufficient in view of the technical characteristics of the Pionerskoye reservoir (see paragraph 73 above), or at least to keep the river channel clear with a view to mitigating, if not preventing, the risk and consequences of flooding in the event of the urgent evacuation of water from the reservoir.

181. Under the circumstances, the authorities could reasonably have been expected to acknowledge the increased risk of grave consequences in the event of flooding following the urgent evacuation of water from the Pionerskoye reservoir, and to show all possible diligence in alerting the residents of the area downstream of the reservoir. In any event, informing the public of the inherent risks was one of the essential practical measures needed to ensure effective protection of the citizens concerned (cf. *Budayeva and Others*, cited above, § 152). In this connection, the Court notes that in a letter of 16 June 2000 the Administration of the Sovetskiy District of Vladivostok stated that the population living in the floodplain of the Pionerskaya river had been told what to do in the event of serious inundation (see paragraph 20 above). However, the Court is sceptical about that statement, given that the letter provided no further details, for example, as to the form in which the information concerned had been provided to the population, or what the contents of that information were. At the same time, the Court notes that the applicants consistently maintained that, even though by 7 August 2001, when the flood occurred, they had been living near the Pionerskoye reservoir for many years, they had never been warned by the authorities that they lived in a flood-prone area (see paragraphs 47-49 above).

182. Moreover, the Court notes the authorities' continued failure to restore and maintain an operational emergency warning system to raise the alarm in the event of the massive release of water from the Pionerskoye reservoir, in spite of various requests to that effect (see paragraphs 16 and 23 above). The Court further notes that, even after the flood of 7 August 2001, the authorities remained passive and failed to take any practical measures to clear the river channel. Their manifest inactivity, putting the lives of people living along the Pionerskaya river in danger, was acknowledged by prosecutors and other State agencies (see paragraphs 85, 86, 89, 91 and 93 above).

183. The Court does not overlook the authorities' wide margin of appreciation in matters where the State is required to take positive action (see paragraph 160 above). It is convinced, however, that no impossible or disproportionate burden would have been imposed on the authorities in the

circumstances of the present case if they had complied with their own decisions and, in particular, taken the action indicated therein to clean up the Pionerskaya river to increase its throughput capacity and to restore the emergency warning system at the Pionerskoye reservoir.

184. The Court also notes that the Government did not indicate whether any other solutions were envisaged to ensure the safety of the local population, and in particular whether any town planning policies or specific safety measures were in application at the material time in the area where the relevant applicants lived. The information they submitted related exclusively to certain measures taken in an attempt to clear the Pionerskaya river channel, which, as the Court has established in paragraph 179 above, were inadequate and insufficient. Moreover, the Government failed to indicate the relevant legislative and administrative framework, merely referring to various legal acts and instruments (see paragraph 167 above). Nor did they clearly indicate which authority was responsible for the proper maintenance of the Pionerskaya river at the relevant time. From the facts as they stand, it appears that, as was pointed out by the Sovetskiy District Court of Vladivostok in its judgment of 25 February 2003, there was no separation of responsibilities between the authorities at various levels concerning the maintenance of the Pionerskaya river, which led to inactivity and the shifting of responsibility by officials, and, as a result, to the drastic consequences of the flood of 7 August 2001 (see paragraph 105 above).

185. In the light of the foregoing, the Court finds that the Government's responsibility was engaged for the following reasons. Firstly, the authorities failed to establish a clear legislative and administrative framework to enable them effectively to assess the risks inherent in the operation of the Pionerskoye reservoir and to implement town planning policies in the vicinity of the reservoir in compliance with the relevant technical standards. Secondly, there was no coherent supervisory system to encourage those responsible to take steps to ensure adequate protection of the population living in the area, and in particular to keep the Pionerskaya river channel clear enough to cope with urgent releases of water from the reservoir, to set in place an emergency warning system there, and to inform the local population of the potential risks linked to the operation of the reservoir. Lastly, it has not been established that there was sufficient coordination and cooperation between the various administrative authorities to ensure that the risks brought to their attention did not become so serious as to endanger human lives. Moreover, the authorities remained inactive even after the flood of 7 August 2001, with the result that the risk to the lives of those living near the Pionerskoye reservoir appears to persist to this day.

186. The aforementioned findings are sufficient to enable the Court to conclude that the Government failed in its positive obligation to protect the relevant applicants' lives. In such circumstances, it does not consider it

necessary further to examine whether the rescue operation was duly organised.

187. There has accordingly been a violation of Article 2 of the Convention in its substantive aspect.

(b) Procedural aspect of Article 2 of the Convention

i. General principles

188. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 of the Convention 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 *Öneryıldız*, cited above, § 91, and *Budayeva and Others*, cited above, § 138).

189. 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).

190. However, in the particular context of dangerous activities, the Court has considered that an official criminal investigation is indispensable 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 has 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 were not 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, and *Budayeva and Others*, cited above, § 140).

191. To sum up, 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 where lives are lost, or put at mortal risk, as a result of a dangerous activity if and to the extent that this is justified by the findings of the investigation. 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, *mutatis mutandis*, *Öneryıldız*, cited above, § 94, and *Budayeva and Others*, cited above, § 142).

192. 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 or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). On the other hand, the national authorities should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, *Öneryıldız*, cited above, § 96).

193. The Court's task therefore consists in reviewing whether and to what extent the national authorities, 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, § 96, and *Budayeva and Others*, cited above, § 145).

ii. Application of the general principles in the present case

194. The Court observes at the outset that some degree of investigation was carried out into the events of 7 August 2001. It has to assess whether this investigation can be regarded as an adequate judicial response in the light of the aforementioned principles.

195. In this connection, the Court notes that the investigation into the flood of 7 August 2001 was commenced on 9 August 2001, that is two days later, which can be regarded as being in compliance with the requirement of promptness. It further appears that on 21 September 2001 the investigator in charge acknowledged the first applicant as a victim and civil claimant in the case, interviewed her and inspected the scene of the incident at her domicile (see paragraphs 46-47 above). The sixth applicant was also granted victim status and informed thereof in a letter of 2 July 2002, that is almost eleven months after the proceedings were instituted. It is unclear whether she was ever interviewed and whether the scene of the incident at her domicile was ever inspected. It is also unclear whether any procedural steps were taken with respect to the third applicant.

196. However, the Court does not consider it necessary to establish whether the aforementioned investigative measures were taken and, if so, whether they were taken promptly, and if not, whether this affected the effectiveness of the investigation in the present case. The Court considers that rather than examining whether the preliminary investigation was fully compatible with all the procedural requirements established in such matters, it is essential to determine whether the competent authorities were determined to establish the circumstances of the events of 7 August 2001 and to identify and bring to justice those responsible (see paragraph 191 above).

197. With this in mind, the Court notes that originally criminal proceedings in connection with the flood of 7 August 2001 were brought against Mr L., the head of the Water Company, who ordered the evacuation of water from the Pionerskoye reservoir on the date in question. It appears that in the context of that investigation in case no. 916725, efforts were made to establish the circumstances of the incident of 7 August 2001. In particular, several expert examinations were carried out (see paragraph 70 above). The resulting reports appear to have confirmed that the actions of the personnel of the Water Company, including Mr L., were correct in the circumstances (see paragraphs 71 and 77 above), which prompted the investigating authorities to discontinue the criminal proceedings against Mr L. At the same time, as is clear from the decision of 25 January 2003, by which the criminal proceedings against Mr L. were terminated, the investigation established that the main reason for the flood of 7 August 2001 had been the poor state of the channel of the Pionerskaya river, and in particular the fact that it had been overgrown with trees and bushes and obstructed by various structures (see paragraph 51 above). As a result, separate criminal proceedings were ordered against officials from the Vladivostok municipal and Primorskiy regional authorities, presumably in that connection.

198. In practice, however, rather than in connection with the poor maintenance of the Pionerskaya river channel which, as was established by the investigation in case no. 916725, had as its consequence the flood of 7 August 2001, on 28 January 2003 a prosecutor's office of the Leninskiy District of Vladivostok brought criminal proceedings in case no. 292025 against officials of the municipal and regional authorities on suspicion of them having abused their power when allocating plots of land for individual housing construction within a water protection zone in the Pionerskaya river basin (see paragraph 52 above).

199. The Court notes that despite its request the Government did not submit a copy of the file of the investigation in case no. 292025, and therefore its ability to assess the effectiveness of that investigation is limited. The Court further has doubts that this latter investigation, as such, can be regarded as an adequate judicial response to the events of 7 August

2001, given that its main purpose appears to have been to establish whether there were any abuses in town planning policies in the Pionerskaya river valley, rather than to pursue any further the relevant findings previously made by the investigation in case no. 916725, and to identify those responsible for the poor maintenance of the Pionerskaya river channel, which, as established by the investigation in case no. 916725, had been the main reason for the flood of 7 August 2001.

200. Indeed, according to the decision of 20 July 2004 (see paragraphs 54-61 above), while establishing, with reference to the relevant laws and by-laws, that it was the authorities of the Primorskiy Region and the Water Company who were in charge of securing the safe operation of the Pionerskoye reservoir, including ensuring that the river channel downstream of the reservoir had an adequate throughput capacity (see paragraph 61 above), the investigation made no apparent attempts to find out whether any responsibility should be attached to those authorities – let alone to establish the identity of the particular officials responsible – for the poor state of the Pionerskaya river, and in particular its obviously inadequate throughput capacity during the flood of 7 August 2001.

201. Moreover, concerning town planning policy in the city of Vladivostok, including the area near the Pionerskoye reservoir, the decision of 20 July 2004 listed a number of failings by both the municipal and the regional authorities, in particular their continuous failure to identify flood-prone areas so that suitable planning restrictions could be applied (see paragraphs 55-57 above). The Court is struck by the fact that, having detected all those shortcomings, the investigating authorities decided to close the investigation, referring to the absence of evidence of a crime. It also notes that, while the decision of 20 July 2004 stated that the reason why the investigating authorities discontinued the proceedings against the officials of the Vladivostok Administration was that they had not exceeded their powers when allocating plots of land near the Pionerskaya river in the absence of any town planning restrictions at the time (see paragraph 58 above), the reason why the proceedings against the authorities of the Primorskiy Region were also discontinued eludes the Court, as the aforementioned decision remained silent in that regard.

202. In view of the foregoing, the Court is not persuaded that the manner in which the competent Russian authorities acted in response to the events of 7 August 2001 secured the full accountability of the State officials or the authorities concerned for their role in those events and the effective implementation of the relevant provisions of domestic criminal law guaranteeing respect for the right to life (see, in a somewhat similar context, *Öneryıldız*, cited above, § 117). In the light of this finding and its general principles mentioned above (see paragraph 190 above), the Court further does not consider that any other remedy, in particular the civil proceedings to which the relevant applicants had recourse to claim damages in

connection with the flood of 7 August 2001, could have provided an adequate judicial response in respect of their complaint under Article 2 of the Convention.

203. Accordingly, the Court concludes 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 by the authorities to the events of 7 August 2001.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

204. The applicants also complained that the authorities' failure to maintain the channel of the Pionerskaya river in a proper state of repair and to take appropriate measures to mitigate the risk of floods resulted in the damage done to their homes and property, and that no compensation had been awarded to them for their losses. They referred to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant provide as follows:

Article 8

"Everyone has the right to respect for ... his home ...

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Submissions by the parties

205. The applicants submitted that their homes and property had been severely damaged by the flood caused by the sudden large-scale evacuation of water from the Pionerskoye reservoir. According to them, their lives had

not yet returned to normal, and they had not received proper compensation for their damaged property. They considered the extra-judicial compensation that had been paid to them humiliating. Moreover, in view of the authorities' continued failure to take any measures to clean up and deepen the Pionerskaya river channel, there was no guarantee that the events of 7 August 2001 would not re-occur.

206. The Government insisted that there had been no breach of the applicants' rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1. They argued that there was no evidence that the damage to the applicants' homes and possessions could have been avoided if the Pionerskaya river channel had been cleaned up or an emergency warning system at the Pionerskoye reservoir had been in place. They referred to court decisions taken in the applicants' civil cases at the domestic level, stating that the alleged losses had been suffered as a result of a natural disaster, in the form of exceptionally heavy rain. The Government also stated that the relevant domestic legislation imposed no obligation on the State to refund the market value of damaged property, and that given the large number of residents affected by the flood of 7 August 2001, the financial aid accorded by the State could scarcely have been more generous; however, the authorities had distributed what financial support they could to all those affected by the flood, directly, automatically and irrespective of whether they produced proof of any actual pecuniary damage.

B. The Court's assessment

1. Admissibility

207. The Court reiterates at the outset that whilst at times there may be a significant overlap between the concept of "home" under Article 8 of the Convention and that of "property" under Article 1 of Protocol No. 1, a home may be found to exist even where the applicant has no right or interest in real property (see, *mutatis mutandis*, *Prokopovich v. Russia*, no. 58255/00, §§ 35-39, 18 November 2004, and *Khamidov v. Russia*, no. 72118/01, § 128, 15 November 2007). Conversely, an individual may have a property right in a particular building or land, within the meaning of Article 1 of Protocol No. 1, without having sufficient ties with it for it to constitute a home under Article 8 (see *Loizidou v. Turkey* (merits), 18 December 1996, § 66, *Reports of Judgments and Decisions* 1996-VI). In the present case, the applicants' complaints concerned damage done by the flood to their homes – of which the first, fourth and fifth applicants were owners and the second and sixth applicants were social tenants, and which the third applicant shared with the fourth applicant, her relative (see paragraphs 10-14 above) – and to their possessions in and around those homes. The Court considers it

appropriate to examine the applicants' relevant complaints under both Article 8 of the Convention and Article 1 of Protocol No. 1.

208. The Court further observes that the applicants received certain extra-judicial compensation in respect of pecuniary losses they sustained as a result of the flood of 7 August 2001. In particular, the first applicant received a lump sum of RUB 14,000 (approximately EUR 350) and the remaining applicants each received RUB 1,000 (approximately EUR 25) in financial support. The question therefore arises whether, for the purposes of Article 34 of the Convention, the applicants can still claim to be "victims" of the alleged violation of their rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1. In this connection, the Court reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

209. In the present case, there is no evidence that the authorities at any point acknowledged the violations alleged by the applicants. Indeed, it is clear from the Government's submissions on the issue that the compensation in question was accorded to all the victims of the flood of 7 August 2001 as financial aid and not in acknowledgment of the authorities' responsibility for the events in question. Moreover, no such acknowledgement was made in the criminal proceedings instituted in connection with the events of 7 August 2001, or in the civil proceedings which the applicants brought seeking compensation for their pecuniary losses. Also, even if the Court were prepared to regard the compensation in the amount of RUB 14,000 paid to the first applicant as an appropriate and sufficient redress, it clearly could not reach the same conclusion as regards the compensation in the amount of RUB 1,000 paid to the remaining applicants.

210. The Court is therefore satisfied that the applicants retain their victim status, within the meaning of Article 34 of the Convention, in so far as their complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 are concerned.

211. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

212. The Court has held on many occasions that the State has a positive duty to take reasonable and appropriate measures to secure an applicant's rights under Article 8 of the Convention (see *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C, *Powell and Rayner v. the*

United Kingdom, 21 February 1990, § 41, Series A no. 172, and many other authorities). It has also recognised that in the context of dangerous activities the scope of the positive obligations under Articles 2 and 8 of the Convention largely overlap (see *Budayeva and Others*, cited above, § 133).

213. The Court 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). 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; *Öneryıldız*, cited above, § 133; and *Budayeva and Others*, cited above, § 172).

214. Turning to the present case, the Court observes first of all that the Government did not dispute that the dwellings to which each of the applicants' referred were their "homes" within the meaning of Article 8. Nor did they dispute the existence of the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1, or that the above homes and possessions were damaged as a result of the flood of 7 August 2001. The Court will therefore proceed to examine to what extent the authorities were under obligation to take measures to protect the applicants' homes and possessions, and whether this obligation was complied with in the present case.

215. The Court further notes that the Government seem to have argued, with reference to the findings of the domestic courts in the applicants' civil cases, that the alleged infringements of their rights under Article 8 and Article 1 of Protocol No. 1 were the result of a natural disaster, in the form of exceptionally heavy rain, which could not have been foreseen, and could therefore not be imputed to the State. The Court cannot accept this argument. It reiterates in this connection that, being sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, the Court nevertheless is not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002). In the present case, the Court has established in paragraphs 162-165 above that the flooding of 7 August 2001 occurred after the urgent large-scale evacuation of water from the Pionerskoye reservoir, the likelihood and potential consequences of which the authorities should have foreseen. The Court has

furthermore established that the main reason for the flood, as confirmed by the expert reports, was the poor state of repair of the Pionerskaya river channel because of the authorities' manifest failure to take measures to keep it clear and in particular to make sure its throughput capacity was adequate in the event of the release of water from the Pionerskoye reservoir. The Court has concluded that this failure as well as the authorities' failure to apply town planning restrictions corresponding to the technical requirements of the exploitation of the reservoir put the lives of those living near it at risk (see paragraphs 168-180 and 185 above).

216. The Court has no doubt that the causal link established between the negligence attributable to the State and the endangering of the lives of those living in the vicinity of the Pionerskoye reservoir also applies to the damage caused to the applicants' homes and property by the flood. Similarly, the resulting infringement amounts not to "interference" but to the breach of a positive obligation, since the State officials and authorities failed to do everything in their power to protect the applicants' rights secured by Article 8 of the Convention and Article 1 of Protocol No. 1 (see *Öneryıldız*, cited above, § 135). Indeed, the positive obligation under Article 8 and Article 1 of Protocol No. 1 required the national authorities to take the same practical measures as those expected of them in the context of their positive obligation under Article 2 of the Convention (see, *mutatis mutandis*, *Öneryıldız*, cited above, § 136). Since it is clear that no such measures were taken, the Court concludes that the Russian authorities failed in their positive obligation to protect the applicants' homes and property.

217. There has, accordingly, been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention in the present case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

218. Lastly, the applicants complained that they had had no effective domestic remedies in respect of their aforementioned complaints. This complaint falls to be examined under Article 13 of the Convention, which reads as follows:

> "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. Submissions by the parties

219. The applicants maintained their complaint, stating that they had been unable to obtain adequate judicial response to the alleged infringements of their rights either in criminal proceedings – two sets of

criminal proceedings instituted in connection with the flood of 7 August 2001 having brought no tangible results – or in civil proceedings, the domestic courts at two level of jurisdiction having rejected their claims for compensation.

220. The Government contended that the applicants had had effective domestic remedies at their disposal as criminal proceedings had been instituted in respect of the events of 7 August 2001. Also, in the Government's submission, the applicants had been able to bring civil proceedings in an attempt to obtain compensation for damages, and had availed themselves of that opportunity, even though the outcome of those proceedings had been unfavourable to them.

B. The Court's assessment

1. Admissibility

221. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In the present case, the Court has found a violation on account of the State's failure to take measures to protect the right to life of the first, third and sixth applicants as well as all the applicants' homes and property. On the other hand, the Court has held that the complaints lodged under Article 2 of the Convention by the second, fourth and fifth applicants, are incompatible *ratione personae* with the provisions of the Convention.

222. Against this background, the Court is satisfied that the first, third and sixth applicants have an arguable claim under Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 for the purpose of Article 13, and that the remaining applicants have an arguable claim under Article 8 of the Convention and Article 1 of Protocol No. 1 for the purpose of Article 13, but no such claim under Article 2 to bring Article 13 of the Convention into play.

223. Accordingly, the Court finds that the first, third and sixth applicants' complaints under Article 13, in conjunction with Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1, and the remaining applicants' complaints under Article 13, in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

224. The Court further finds that the second, fourth and fifth applicants' complaint under Article 13 in conjunction with Article 2 of the Convention is inadmissible as being incompatible *ratione personae* with the provisions

of the Convention, and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Merits

225. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (see, among recent authorities, *Esmukhambetov and Others v. Russia*, no. 23445/03, § 158, 29 March 2011).

226. In the present case, the Government argued that the applicants had been able to bring civil proceedings seeking compensation for damage to their homes and property as well as compensation for non-pecuniary damage for the anguish and distress they suffered during the flood of 7 August 2001 (see paragraph 94 above). The Court will proceed, in the light of the aforementioned principles, to assess the effectiveness of this remedy for the purpose of Article 13, taken in conjunction with Article 2 as well as in conjunction with Article 8 and Article 1 of Protocol No. 1 in respect of those complaints which the Court has found admissible (see paragraph 223 above).

(a) Article 13 in conjunction with Article 2

227. The Court has found in paragraph 202 above that the first, third and sixth applicants' right to life was inadequately protected by the proceedings brought by the public authorities under the criminal law, and that any other remedy, in particular the civil proceedings to which these applicants had recourse, could not have provided an adequate judicial response in respect of their complaint under Article 2 of the Convention.

228. In the light of this finding, the Court does not consider it necessary to examine these applicants' complaint under Article 13, taken in conjunction with Article 2 of the Convention, since it raises no separate issue in the circumstances of the present case.

(b) Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1

229. The Court observes that Russian law provided the applicants with the possibility of bringing civil proceedings to claim compensation for

damage done to their homes and property as a result of the flood of 7 August 2001.

230. It notes in this connection that, as it has observed in paragraph 197 above, some efforts were made to establish the circumstances of the incident of 7 August 2001 during an investigation in case no. 916725, and, in particular, at least three expert examinations were carried out. The resulting reports, and in particular those of 29 September 2002 and 24 January 2003, seem to have provided a rather detailed account of the flood of 7 August 2001, including its main cause and its scale and destructive effects. The domestic courts therefore had at their disposal the necessary materials to be able, in principle, in the civil proceedings to address the issue of the State's liability on the basis of the facts as established in the criminal proceedings, irrespective of the outcome of the latter proceedings (see, by contrast, *Budayeva and Others*, cited above, §§ 162-63). In particular, they were, in principle, empowered to assess the facts established in the criminal proceedings, to attribute responsibility for the events in question and to deliver enforceable decisions (see *Öneryıldız*, cited above, § 151).

231. It is furthermore clear that the domestic courts examined the applicants' claims on the basis of the available evidence. In particular, they addressed the applicants' arguments and gave reasons for their decisions. It is true that the outcome of the proceedings in question was unfavourable to the applicants, as their claims were finally rejected. However, in the Court's view this fact alone cannot be said to have demonstrated that the remedy under examination did not meet the requirements of Article 13 as regards the applicants' claims concerning the damage inflicted on their homes and property. In this respect, the Court reiterates that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

232. In the light of the foregoing the Court therefore finds that there has been no violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1 in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

233. 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

1. Pecuniary damage

(a) The applicants

234. The applicants sought compensation for pecuniary losses they had sustained as a result of the damage done to their possessions by the flood of 7 August 2001.

235. In particular, the first applicant claimed 417,000 Russian roubles ("RUB", approximately 10,000 euros, "EUR") for her lost possessions. In support of this claim, she referred to a transcript of her witness interview of 21 September 2001, where she listed her lost property in detail and indicated its value as RUB 417,000. She also enclosed an estimate indicating that the cost of the work necessary to repair her home amounted to RUB 63,114.97 (approximately EUR 1,500).

236. The second applicant claimed RUB 3,375,301 (approximately EUR 80,000), representing the costs of repair work on her flat and outhouses. She did not submit any supporting evidence in respect of this claim.

237. The third applicant claimed RUB 311,543 (approximately EUR 7,400) for the property lost during the flood. She did not submit any supporting evidence in respect of this claim.

238. The fourth applicant sought RUB 483,731 (approximately EUR 11,400) representing the cost of replacing her lost belongings with new ones, and of repair work on her flat. She submitted numerous documents, including receipts confirming the purchase of various household and other items, estimates of repair costs and a report confirming that repair work had been carried out.

239. The fifth applicant claimed RUB 400,000 (approximately EUR 9,500) representing the cost of the property he lost adjusted for inflation. In support of his claim, the fifth applicant referred to the evaluation report of 14 August 2001 (see paragraph 82 above). He submitted a certificate of a State statistics agency indicating the inflation rate in the Murmansk Region in the period between 2001 and 2009.

240. The sixth applicant claimed RUB 52,000 (approximately EUR 1,200) for her lost possessions. According to her, documents corroborating her claim could be found in the materials of her civil case examined by the Russian courts.

(b) The Government

241. The Government disputed the applicants' claims in respect of pecuniary damage. They argued that no award should be made to any of the applicants under this head as they had failed to corroborate their respective

claims with documentary evidence. They also pointed out that the domestic courts had refused to grant the applicants' similar claims in the domestic proceedings, and argued that the Court could not substitute its view for that of the domestic courts on this issue.

242. The Government also argued that since the third and fourth applicants lived together in the same flat, they were not justified in lodging separate claims for compensation in respect of pecuniary damage.

243. The Government further contested the documents submitted by the fourth applicant in support of her claim. They pointed out, in particular, that the receipts mostly pertained to the period between May and September 2009, that the estimates for and the report on the repair work were not corroborated by appropriate documents and evidence, and that, overall, the fourth applicant had failed to prove that the expenses attested by the documents she submitted to the Court had been incurred to erase the consequences of the flood of 7 August 2001, rather than in some other connection.

244. The Government contested the claim submitted by the fifth applicant, stating that the pecuniary damage sustained by him as reflected in the evaluation report of 14 August 2001 amounted to RUB 200,000 (approximately EUR 4,700), and that the certificate indicating the inflation rate could not be taken into account as it concerned inflation in the Murmansk Region, whereas the applicant lived in the Primorskiy Region.

(c) The Court's assessment

245. The Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by an applicant and the violation of the Convention (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). In the present case, the Court has found a violation of Article 1 of Protocol No. 1 on account of the authorities' failure to take measures to protect the applicants' property. It has no doubt that there is a direct link between that violation and the pecuniary losses alleged by the applicants.

246. The Court notes that the first applicant submitted a transcript of her witness interview during which she had listed her damaged property and stated that the pecuniary damage totalled RUB 417,000. The Court cannot, however, regard this document as proof that the damage sustained actually amounted to the sum indicated therein, as it is clear that the transcript was only a formal record of the first applicant's submissions, not a document confirming their accuracy. On the other hand, the Court takes note of the estimate indicating that the cost of repair work on the first applicant's house would amount to RUB 63,114.97 (approximately EUR 1,500). It therefore awards the first applicant EUR 1,500 in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

247. As regards the third and fourth applicants, the Court considers it appropriate to examine their relevant claims jointly, given that, as pointed out by the Government, they lived in the same flat, and therefore presumably the pecuniary losses they incurred related to the same possessions. The Court further considers it unnecessary to assess the relevance and reliability of the documentary evidence submitted by the fourth applicant to corroborate her claim for pecuniary damage, and to address the Government's arguments in this respect (see paragraph 254 above). It notes that an evaluation report drawn up by a competent State authority, as referred to by the Sovetskiy District Court of Vladivostok in its judgment of 25 February 2003, attested that the damage done to the possessions in the flat where the third and fourth applicants lived amounted to RUB 486,000 (approximately EUR 11,500). It further notes that the said court accepted that document as reliable proof of the actual damage sustained, and the Court has no reason to question that court's reasoning (see paragraph 108 above). It therefore awards EUR 11,500 to the third and fourth applicants jointly in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

248. The Court further accepts the Government's argument with regard to the claim in respect of pecuniary damage submitted by the fifth applicant that this claim was corroborated only in so far as the damage in the amount of RUB 200,000 (approximately EUR 4,700) was concerned, as it was this sum that was indicated in the evaluation report of 14 August 2001 attesting to the damage done to the fifth applicant's property as a result of the flood of 7 August 2001 (see paragraph 82 above). The Court agrees with the Government that it cannot take into account the certificate submitted by the fifth applicant to substantiate his claim for the inflation-adjusted amount of the pecuniary damage he sustained, as the document in question refers to the price index in a region other than the one where the fifth applicant lives. Accordingly, the Court awards the fifth applicant EUR 4,700 under this head, plus any tax that may be chargeable on that amount.

249. Lastly, the Court observes that the second and sixth applicants failed to substantiate their claim with any documentary evidence. In particular, it is unclear whether the second applicant ever attempted, like the fourth and fifth applicants, for example, to have the alleged pecuniary losses duly assessed, and whether there are any documents at all which could confirm her claim. The sixth applicant, on the other hand, alleged that such documents could be found in the materials of her civil case examined by the national courts; however, she failed to explain why she did not submit those documents to the Court. Against this background, the Court considers that there is no call to make any award to the second and sixth applicants under this head.

2. Non-pecuniary damage

250. The third, fourth and sixth applicants each claimed RUB 5,000,000 (approximately EUR 120,000), and the first and fifth applicants each claimed RUB 500,000 (approximately EUR 12,000) in respect of non-pecuniary damage they sustained as a result of the events of 7 August 2001. The second applicant submitted no claim under this head.

251. The Government contested these claims as wholly excessive and unreasonable. They also argued that no award should be made to the second applicant in the absence of any claim on her part under this head.

252. The Court accepts the Government's argument that no award in respect of non-pecuniary damage should be made to the second applicant, as she did not submit any claim under this head.

253. As regards the remaining applicants, the Court observes that it has found a violation of Article 2, in its substantive and procedural aspects, on account of the State's failure in its positive obligation to protect the right to life of the first, third and sixth applicants and to provide adequate judicial response in connection with the events which put their lives at risk. It has also found a violation of Article 8 and Article 1 of Protocol No. 1 on account of the State's failure to take steps to protect the applicants' homes and property. The applicants must have suffered anguish and distress as a result of all these circumstances. Having regard to these considerations, the Court awards, on an equitable basis, EUR 20,000 each to the first, third and sixth applicants, and EUR 10,000 each to the fourth and fifth applicants, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

254. The applicants having submitted no claim for costs and expenses, the Court considers there is no call to award them any sum under this head.

C. Default interest

255. 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. *Declares* the complaints under Article 2 and Article 13 in conjunction with Article 2, in so far as they were lodged by the first, third and sixth applicants, as well as the complaints under Article 8 and Article 1 of Protocol No. 1 and Article 13 in conjunction with Article 8 and Article 1

of Protocol No. 1 admissible and the remainder of the applications inadmissible;

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 first, third and sixth applicants' 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 the alleged infringement of the right to life, in so far as the first, third and sixth applicants are concerned;

4. *Holds* that there has been a violation of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that there is no need to examine separately a complaint under Article 13 in conjunction with Article 2, in so far as the first, third and sixth applicants are concerned;

6. *Holds* that there has been no violation of Article 13 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

7. *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:

(i) EUR 1,500 (one thousand five hundred euros) to the first applicant, EUR 11,500 (eleven thousand five hundred euros) to the third and fourth applicants jointly, and EUR 4,700 (four thousand seven hundred euros) to the fifth applicant in respect of pecuniary damage;

(ii) EUR 20,000 (twenty thousand euros) each to the first, third and sixth applicants, and EUR 10,000 (ten thousand euros) each to the fourth and fifth applicants in respect of non-pecuniary damage;

(iii) any tax, including value-added tax, that may be chargeable on the above amounts;

(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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President