

Positive and Procedural Obligations Arising from the Right to Life

Budayeva v Russia [2008] ECHR 15339/02 & Ors (20 March 2008)

The European Court of Human Rights held that the Russian Federation violated its positive obligation to protect the right to life under art 2 of the *European Convention on Human Rights* by failing to:

- establish legislative and administrative frameworks to deter any threat to the right to life; and
- provide an adequate judicial response following alleged infringements of the right to life.

Facts

The town of Tyrnauz, with a population of 25,000, is situated in the mountain district near Mount Elbrus. Documentary evidence dating from 1937 indicates the region is prone to mudslides. Because these mudslides occasionally hit the town, authorities built a retention collector in 1965 and a retention dam in 1999 to protect the town's citizens.

On 20 August 1999, a mud and debris flow hit the dam, seriously damaging it. On 17 January 2000, the Prime Minister was warned about the increased risk of mudslides in the coming season. Reconstruction of the dam appeared unfeasible at that stage. Consequently, the only way to avoid casualties was to establish observation posts to warn civilians of the threat of an impending mudslide. This measure was never implemented.

On 18 July 2000, a flow of mud and debris hit the town and flooded some of the residential quarters. Tyrnauz was then hit by a succession of mudslides until 25 July 2000. Eight people died, including the first applicant's husband, Vladimir Budayeva. The lives of a number of other residents were threatened.

Decision

Article 2 of the *Convention* imposes a positive obligation on the State to safeguard the lives of people within its jurisdiction. It carries substantive and procedural aspects.

Positive Obligations Arising from the Right to Life

The Court held that states must establish legislative and administrative frameworks to deter any threat to the right to life. The scope of this obligation depends on the origin of the threat and the extent to which it can be mitigated. The obligation applies to imminent, clearly identifiable natural hazards. It applies especially to recurring calamities affecting a distinct area developed for human habitation.

Authorities received several warnings in 1999 about the increased risk of mudslides in Tyrnauz. One specifically stated that record casualties would result if recommended measures were overlooked. There was no ambiguity in the scope or timing of the work needed to prevent such losses. However, despite these clear warnings, steps were not taken to prevent harm coming to the citizens of Tyrnauz, and no reason was given as to why.

The Court concluded that there was no justification for authorities' failure to implement land-planning and emergency relief policies in Tyrnauz. Moreover, it found a causal link between administrative flaws which impeded implementation of relief policies and the death of Vladimir Budayeva, as well as the injuries sustained by other applicants. Therefore, the authorities failed to discharge the positive obligation to establish a legislative and administrative framework to deter threats to the right to life required as required by the substantive aspect of art 2.

Procedural Obligations Arising from the Right to Life

The Court held that legislative and administrative frameworks must be properly implemented.

Authorities administering these frameworks must:

- ascertain the circumstances under which the incident took place and any shortcomings in the operation of the regulatory system; and
- identify State officials or authorities involved in the chain of events.

Where lives are lost, the judicial system must conduct an independent, impartial investigation that ensures appropriate penalties are applied to those who are responsible for failure of these legislative and administrative frameworks.

Within a week of the incident, the prosecutor's office commenced a criminal investigation into the circumstances of Vladimir Budayeva's death. However, it confined the investigation to establishing the immediate cause of death, which was found to be the collapse of the building. It failed to consider safety compliance and the authorities' responsibility. Importantly, those questions were not the subject of any enquiry, whether criminal, administrative or technical. In particular, no action was taken to verify numerous media allegations and victims' complaints concerning inadequate maintenance of the mud-defence infrastructure or the authorities' failure to set up the warning system. Therefore, for failing to investigate shortcomings in the operation of the regulatory system and identify State officials or authorities involved in the chain of events, the Court concluded that there was a violation of the procedural aspect of art 2.

Relevance to the Victorian *Charter*

Section 9 of the *Charter* provides that every person has the right to life and has the right not to be arbitrarily deprived of life. This case is a useful illustration of the obligations any state must abide by in maintaining the safety and wellbeing of its citizens, and should that obligation fail, the measures that must be exercised in determining how the failure came about.

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