Case of Fadeyeva v. Russia

European Court of Human Rights, First Section
(Application no. 55723/00)
9 June 2005 [final 30 November 2005]

PROCEDURE

1. The case originated in an application (no. 55723/00) 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 a Russian national, Ms Nadezhda Mikhaylovna Fadeyeva ("the applicant"), on 11 December 1999.

3. The applicant alleged, in particular, that the operation of a steel plant in close proximity to her home endangered her health and well-being. She relied on Article 8 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

10. The applicant was born in 1949 and lives in the town of Cherepovets, an important steel-producing centre approximately 300 kilometres north-east of Moscow. In 1982 her family moved to a flat situated at 1 Zhukov Street, approximately 450 metres from the site of the Severstal steel plant ("the plant"). . . .

11. The plant was built during the Soviet era and was owned by the Ministry of Black Metallurgy of the Russian Soviet Federative Socialist Republic (RSFSR). The plant was, and remains, the largest iron smelter in Russia and the main employer for approximately 60,000 people. In order to delimit the areas in which the pollution caused by steel production might be excessive, the authorities established a buffer zone around the Severstal premises – "the sanitary security zone". This zone was first delimited in 1965. It covered a 5,000-metre-wide area around the site of the plant. Although this zone was, in theory, supposed to separate the plant from the town's residential areas, in practice thousands of people (including the applicant's family) lived there. . . .

12. In 1990 the government of the RSFSR adopted a programme "On improving the environmental situation in Cherepovets". The programme stated that "the concentration of toxic substances in the town's air exceed[ed] the acceptable norms many times" and that the morbidity rate of Cherepovets residents was higher than the average. It was noted that many people still lived within the steel plant's sanitary security zone. Under the programme, the steel plant was required to reduce its toxic emissions to safe levels by 1998. The programme listed a number of specific technological measures to attain this goal. The steel plant was also ordered to finance the construction of 20,000 square metres of residential property every year for the resettlement of people living within its sanitary security zone.

13. By Municipal Decree no. 30 of 18 November 1992, the boundaries of the sanitary security zone around the plant were redefined. The width of the zone was reduced to 1,000 metres.

14. In 1993 the steel plant was privatised and acquired by Severstal PLC. In the course of the privatisation the blocks of flats owned by the steel plant that were situated within the zone were transferred to the municipality.

15. On 3 October 1996 the government of the Russian Federation adopted Decree no. 1161 on the special federal programme "Improvement of the environmental situation and public health in Cherepovets" for the period from 1997 to 2010" . . . . The second paragraph of this programme stated:

> "The concentration of certain polluting substances in the town's residential areas is twenty to fifty times higher than the maximum permissible limits (MPLs)[[1]]...The biggest 'contributor' to atmospheric pollution is Severstal PLC, which is responsible for 96% of all emissions. The highest level of air pollution is registered in the residential districts immediately adjacent to Severstal's industrial site. The principal cause of the emission of toxic substances into the atmosphere is the operation of archaic and ecologically dangerous technologies and equipment in metallurgic and other industries, as well as the low efficiency of gas-cleaning systems. The situation is aggravated by an almost complete overlap of industrial and residential areas of the city, in the absence of their separation by sanitary security zones."

The decree further stated that "the environmental situation in the city ha[d] resulted in a continuing deterioration in public health". In particular, it stated that over the period from 1991 to 1995 the number of children with respiratory diseases increased from 345 to 945 cases per thousand, those with blood and haematogenic diseases from 3.4 to 11 cases per thousand, and those with skin diseases from 33.3 to 101.1 cases per thousand. The decree also noted that the high level of atmospheric pollution accounted for the increase in respiratory and blood diseases among the city's adult population and the increased number of deaths from cancer. . . .

B. The applicant's attempt to be resettled outside the zone

1. First set of court proceedings

20. In 1995 the applicant, with her family and various other residents of the block of flats where she lived, brought a court action seeking resettlement outside the zone. The applicant claimed that the concentration of toxic elements and the noise levels in the sanitary security zone exceeded the maximum permissible limits established by Russian legislation. The applicant alleged that the environmental situation in the zone was hazardous for humans, and that living there was potentially dangerous to health and life. . . .

[1] MPLs are the safe levels of various polluting substances, as established by Russian legislation (предельно допустимые концентрации – ПДК).

21. On 17 April 1996 the Cherepovets City Court examined the applicant's action. . . . Referring to the ministerial decree of 1974, the court found that the authorities ought to have resettled all of the zone's residents but that they had failed to do so. In view of those findings, the court accepted the applicant's claim in principle, stating that she had the right in domestic law to be resettled. However, no specific order to resettle the applicant was given by the court in the operative part of its judgment. Instead, the court stated that the local authorities must place her on a "priority waiting list" to obtain new local authority housing. The court also stated that the applicant's resettlement was conditional on the availability of funds. . . .

24. The first-instance court issued an execution warrant and transmitted it to a bailiff. However, the decision remained unexecuted for a certain period of time. In a letter of 11 December 1996, the deputy mayor of Cherepovets explained that enforcement of the judgment was blocked, since there were no regulations establishing the procedure for the resettlement of residents outside the zone.

25. On 10 February 1997 the bailiff discontinued the enforcement proceedings on the ground that there was no "priority waiting list" for new housing for residents of the sanitary security zone.

2. Second set of court proceedings

26. In 1999 the applicant brought a fresh action against the municipality, seeking immediate execution of the judgment of 17 April 1996. The applicant claimed, inter alia, that systematic toxic emissions and noise from Severstal PLC's facilities violated her basic right to respect for her private life and home, as guaranteed by the Russian Constitution and the European Convention on Human Rights. She asked to be provided with a flat in an ecologically safe area or with the means to purchase a new flat.

27. On 27 August 1999 the municipality placed the applicant on the general waiting list for new housing. She was no. 6,820 on that list.

28. On 31 August 1999 the Cherepovets City Court dismissed the applicant's action. It noted that there was no "priority waiting list" for the resettlement of residents of sanitary security zones, and no council housing had been allocated for that purpose. It concluded that the applicant had been duly placed on the general waiting list. The court held that the judgment of 17 April 1996 had been executed and that there was no need to take any further measures. That judgment was upheld by the Vologda Regional Court on 17 November 1999.

C. Pollution levels at the applicant's place of residence

30. It appears that the basic data on air pollution, whether collected by the State monitoring posts or Severstal, are not publicly available. Both parties produced a number of official documents containing generalised information on industrial pollution in the town. The relevant parts of these documents are summarised in the following paragraphs and in the appendix to this judgment.

1. Information referred to by the applicant

31. The applicant claimed that the concentration of certain toxic substances in the air near her home constantly exceeded and continues to exceed the safe levels established by Russian legislation. Thus, in the period from 1990 to 1999 the average annual concentration of dust in the air in the Severstal plant's sanitary security zone was 1.6 to 1.9 times higher than the MPL, the concentration of carbon disulphide was 1.4 to 4 times higher and the concentration of formaldehyde was 2 to 4.7 times higher (data reported by the Cherepovets Centre for Sanitary Control). . . .

2. Information referred to by the respondent Government

36. In June 2004 the Government submitted a report entitled "The environmental situation in Cherepovets and its correlation with the activity of [Severstal PLC] during the period until 2004", prepared by the Cherepovets municipality.

37. According to the report, the environmental situation in Cherepovets has improved in recent years: thus, gross emissions of pollutants in the town were reduced from 370.5 thousand tonnes in 1999 to 346.7 thousand tonnes in 2003 (by 6.4%). Overall emissions from the Severstal PLC facilities were reduced during this period from 355.3 to 333.2 thousand tonnes (namely by 5.7%), and the proportion of unsatisfactory testing of atmospheric air at stationary posts fell from 32.7% to 26% in 2003.

38. The report further stated that, according to data received from four stationary posts of the State Agency for Hydrometeorology, a substantial decrease in the concentration of certain hazardous substances was recorded in the period from 1999 to 2003 . . . .

39. According to the report, pollution in the vicinity of the applicant's home was not necessarily higher than in other districts of the town. . . .

D. Effects of pollution on the applicant

44. Since 1982 Ms Fadeyeva has been supervised by the clinic at Cherepovets Hospital no. 2. According to the Government, the applicant's medical history in this clinic does not link the deterioration in her health to adverse environmental conditions at her place of residence.

45. In 2001 a medical team from the clinic carried out regular medical check-ups on the staff at the applicant's place of work. As a result of these examinations, the doctors detected indications of an occupational illness in five workers, including the applicant. In 2002 the diagnosis was confirmed: a medical report drawn up by the Hospital of the North-West Scientific Centre for Hygiene and Public Health in St Petersburg on 30 May 2002 stated that she suffered from various illnesses of the nervous system, namely occupational progressive/motor-sensory neuropathy of the upper extremities with paralysis of both middle nerves at the level of the wrist channel (primary diagnosis), osteochondrosis of the spinal vertebrae, deforming arthrosis of the knee joints, moderate myelin sheath degeneration, chronic gastroduodenitis, hypermetropia first grade (eyes) and presbyopia (associated diagnoses). Whilst the causes of these illnesses were not

expressly indicated in the report, the doctors stated that they would be exacerbated by "working in conditions of vibration, toxic pollution and an unfavourable climate".

46. In 2004 the applicant submitted a report entitled "Human health risk assessment of pollutant levels in the vicinity of the Severstal facility in Cherepovets". This report, commissioned on behalf of the applicant, was prepared by Dr Mark Chernaik. Dr Chernaik concluded that he would expect the population residing within the zone to suffer from above-average incidences of odour annoyance, respiratory infections, irritation of the nose, coughs and headaches, thyroid abnormalities, cancer of the nose and respiratory tract, chronic irritation of the eyes, nose and throat, and adverse impacts on neurobehavioral, neurological, cardiovascular and reproductive functions. . . .

II. RELEVANT DOMESTIC LAW AND PRACTICE

C. Background to the Russian housing provisions

59. During the Soviet era, the majority of housing in Russia belonged to various public bodies or State-owned companies. The population lived in these dwellings as life-long tenants. In the 1990s extensive privatisation programmes were carried out. In certain cases, property that had not been privatised was transferred to local authorities.

60. To date, a certain part of the Russian population continues to live as tenants in local council houses on account of the related advantages. In particular, council house tenants are not required to pay property taxes, the amount of rent they pay is substantially lower than the market rate and they have full rights to use and control the property. Certain persons are entitled to claim new housing from the local authorities, provided that they satisfy the conditions established by law.

61. From a historical standpoint, the right to claim new housing was one of the basic socio-economic rights enshrined in Soviet legislation. Under the Housing Code of the RSFSR of 24 June 1983, which was still valid in Russia at the time of the relevant events, every tenant whose living conditions did not correspond to the required standards was eligible to be placed on a local authority waiting list in order to obtain new council housing. The waiting list establishes the priority order in which housing is attributed once it is available.

62. However, being on a waiting list does not entitle the person concerned to claim any specific conditions or time-frame from the State for obtaining new housing. Certain categories of persons, such as judges, policemen or handicapped persons are entitled to be placed on a special "priority waiting list". However, it appears that Russian legislation does not guarantee a right to be placed on this special list solely on the ground of serious ecological threats.

63. Since Soviet times, hundreds of thousands of Russians have been placed on waiting lists, which become longer each year on account of a lack of resources to build new council housing. At present, the fact of being on a waiting list represents an acceptance by the State of its intention to provide new housing when resources become available. The applicant submits, for example, that the person who is first on the waiting list in her municipality has been waiting for new council housing since 1968. She herself became no. 6,820 on that list in 1999.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicant alleged that there had been a violation of Article 8 of the Convention on account of the State's failure to protect her private life and home from severe environmental nuisance arising from the industrial activities of the Severstal steel plant.

65. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home, and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Applicability of Article 8 in the present case

1. Nature and extent of the alleged interference with the applicant's rights

66. Both parties agreed that the applicant's place of residence was affected by industrial pollution. Neither was it disputed that the main cause of pollution was the Severstal steel plant, operating near the applicant's home.

67. The Court observes, however, that the degree of disturbance caused by Severstal and the effects of pollution on the applicant are disputed by the parties. Whereas the applicant insists that the pollution seriously affected her private life and health, the respondent Government assert that the harm suffered by the applicant as a result of her home's location within the sanitary security zone was not such as to raise an issue under Article 8 of the Convention. In view of the Government's contention, the Court has first to establish whether the situation complained of by the applicant falls to be examined under Article 8 of the Convention.

(a) General principles

68. Article 8 has been relied on in various cases involving environmental concern, yet it is not violated every time that environmental deterioration occurs: no right to nature preservation is as such included among the rights and freedoms guaranteed by the Convention (see Kyrtatos v. Greece, no. 41666/98, § 52, ECHR 2003-VI). Thus, in order to raise an issue under Article 8 the interference must directly affect the applicant's home, family or private life.

69. The Court further points out that the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8. The assessment of that

minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects. The general context of the environment should also be taken into account. There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city.

70. Thus, in order to fall within the scope of Article 8, complaints relating to environmental nuisances have to show, firstly, that there was an actual interference with the applicant's private sphere, and, secondly, that a level of severity was attained.

(d) The Court's assessment

80. . . . [T]he Court observes that, in the applicant's submission, her health has deteriorated as a result of living near the steel plant. The only medical document produced by the applicant in support of this claim is a report drawn up by a clinic in St Petersburg (see paragraph 45 above). The Court finds that this report did not establish any causal link between environmental pollution and the applicant's illnesses. The applicant presented no other medical evidence which would clearly connect her state of health to high pollution levels at her place of residence.

81. The applicant also submitted a number of official documents confirming that, since 1995 (the date of her first recourse to the courts), environmental pollution at her place of residence has constantly exceeded safe levels (see paragraphs 31 et seq. above). According to the applicant, these documents proved that any person exposed to such pollution levels inevitably suffered serious damage to his or her health and well-being.

82. With regard to this allegation, the Court bears in mind, firstly, that the Convention came into force with respect to Russia on 5 May 1998. Therefore, only the period after this date can be taken into consideration in assessing the nature and extent of the alleged interference with the applicant's private sphere.

83. According to the materials submitted to the Court, since 1998 the pollution levels with respect to a number of rated parameters have exceeded the domestic norms. . . .

84. The Court observes further that the figures produced by the Government reflect only annual averages and do not disclose daily or maximum pollution levels. According to the Government's own submissions, the maximum concentrations of pollutants registered near the applicant's home were often ten times higher than the average annual concentrations (which were already above safe levels). The Court also notes that the Government have not explained why they failed to produce the documents and reports sought by the Court (see paragraph 43 above), although these documents were certainly available to the national authorities. Therefore, the Court concludes that the environmental situation could, at certain times, have been even worse than it appears from the available data.

85. The Court notes further that on many occasions the State recognised that the environmental situation in Cherepovets caused an increase in the morbidity rate for the city's residents (see paragraphs 12, 15, 34 and 47 above). The reports and official documents produced by the

applicant, and, in particular, the report by Dr Mark Chernaik (see paragraph 46), described the adverse effects of pollution on all residents of Cherepovets, especially those who lived near the plant. Thus, according to the data provided by both parties, during the entire period under consideration the concentration of formaldehyde in the air near the applicant's home was three to six times higher than the safe levels. . . .

86. Finally, the Court pays special attention to the fact that the domestic courts in the present case recognised the applicant's right to be resettled. . . . Therefore, it can be said that the existence of interference with the applicant's private sphere was taken for granted at the domestic level.

87. In summary, the Court observes that over a significant period of time the concentration of various toxic elements in the air near the applicant's home seriously exceeded the MPLs. The Russian legislation defines MPLs as safe concentrations of toxic elements (see paragraph 49 above). Consequently, where the MPLs are exceeded, the pollution becomes potentially harmful to the health and well-being of those exposed to it. This is a presumption, which may not be true in a particular case. The same may be noted about the reports produced by the applicant: it is conceivable that, despite the excessive pollution and its proved negative effects on the population as a whole, the applicant did not suffer any special and extraordinary damage.

88. In the instant case, however, the very strong combination of indirect evidence and presumptions makes it possible to conclude that the applicant's health deteriorated as a result of her prolonged exposure to the industrial emissions from the Severstal steel plant. Even assuming that the pollution did not cause any quantifiable harm to her health, it inevitably made the applicant more vulnerable to various illnesses. Moreover, there can be no doubt that it adversely affected her quality of life at home. Therefore, the Court accepts that the actual detriment to the applicant's health and well-being reached a level sufficient to bring it within the scope of Article 8 of the Convention.

2. Attribution of the alleged interference to the State

89. The Court notes that, at the material time, the Severstal steel plant was not owned, controlled, or operated by the State. Consequently, the Court considers that the Russian Federation cannot be said to have directly interfered with the applicant's private life or home. At the same time, the Court points out that the State's responsibility in environmental cases may arise from a failure to regulate private industry. Accordingly, the applicant's complaints fall to be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under Article 8 § 1 of the Convention. In these circumstances, the Court's first task is to assess whether the State could reasonably be expected to act so as to prevent or put an end to the alleged infringement of the applicant's rights.

90. The Court observes in this respect that the Severstal steel plant was built by and initially belonged to the State. The plant malfunctioned from the start, releasing gas fumes and odours, contaminating the area, and causing health problems and nuisance to many people in Cherepovets. Following the plant's privatisation in 1993, the State continued to exercise control over the plant's industrial activities by imposing certain operating conditions on the plant's owner

and supervising their implementation. . . . [T]he municipal authorities were aware of the continuing environmental problems and applied certain sanctions in order to improve the situation.

91. The Court further observes that the Severstal steel plant was and remains responsible for almost 95% of overall air pollution in the city. In contrast to many other cities, where pollution can be attributed to a large number of minor sources, the main cause of pollution in Cherepovets was easily definable. The environmental nuisances complained of were very specific and fully attributable to the industrial activities of one particular undertaking. This is particularly true with respect to the situation of those living in close proximity to the Severstal steel plant.

92. The Court concludes that the authorities in the present case were certainly in a position to evaluate the pollution hazards and to take adequate measures to prevent or reduce them. The combination of these factors shows a sufficient nexus between the pollutant emissions and the State to raise an issue of the State's positive obligation under Article 8 of the Convention.

93. It remains to be determined whether the State, in securing the applicant's rights, has struck a fair balance between the competing interests of the applicant and the community as a whole, as required by paragraph 2 of Article 8.

B. Justification under Article 8 § 2

1. General principles

94. The Court reiterates that whatever analytical approach is adopted – the breach of a positive duty or direct interference by the State – the applicable principles regarding justification under Article 8 § 2 as to the balance between the rights of an individual and the interests of the community as a whole are broadly similar.

95. Direct interference by the State with the exercise of Article 8 rights will not be compatible with paragraph 2 unless it is "in accordance with the law". The breach of domestic law in these cases would necessarily lead to a finding of a violation of the Convention.

96. However, 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 "respect for private life", 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. Therefore, in those cases the criterion "in accordance with the law" of the justification test cannot be applied in the same way as in cases of direct interference by the State.

98. . . . [I]n cases where an applicant complains about the State's failure to protect his or her Convention rights, domestic legality should be approached not as a separate and conclusive test, but rather as one of many aspects which should be taken into account in assessing whether the State has struck a "fair balance" in accordance with Article 8 § 2.

2. Legitimate aim

99. Where the State is required to take positive measures in order to strike a fair balance between the interests of an individual and the community as a whole, the aims mentioned in the second paragraph of Article 8 may be of a certain relevance, although this provision refers only to "interferences" with the right protected by the first paragraph – in other words, it is concerned with the negative obligations flowing therefrom.

100. The Court observes that the essential justification offered by the Government for the refusal to resettle the applicant was the protection of the interests of other residents of Cherepovets who were entitled to free housing under the domestic legislation. In the Government's submissions, since the municipality had only limited resources to build new housing for social purposes, the applicant's immediate resettlement would inevitably breach the rights of others on the waiting list.

101. Further, the Government referred, at least in substance, to the economic well-being of the country (see paragraph 111 below). Like the Government, the Court considers that the continuing operation of the steel plant in question contributed to the economic system of the Vologda region and, to that extent, served a legitimate aim within the meaning of paragraph 2 of Article 8 of the Convention. It remains to be determined whether, in pursuing this aim, the authorities have struck a fair balance between the interests of the applicant and those of the community as a whole.

3. "Necessary in a democratic society"

(a) General principles

105. It remains open to the Court to conclude that there has been a manifest error of appreciation by the national authorities in striking a fair balance between the competing interests of different private actors in this sphere. However, the complexity of the issues involved with regard to environmental protection renders the Court's role primarily a subsidiary one. The Court must first examine whether the decision-making process was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8, and only in exceptional circumstances may it go beyond this line and revise the material conclusions of the domestic authorities.

(d) The Court's assessment

(i) The alleged failure to resettle the applicant

116. The Court notes at the outset that the environmental consequences of the Severstal steel plant's operation are not compatible with the environmental and health standards established in the relevant Russian legislation. In order to ensure that a large undertaking of this type remains in operation, Russian legislation, as a compromise solution, has provided for the creation of a buffer zone around the undertaking's premises in which pollution may officially exceed safe levels. Therefore, the existence of such a zone is a condition *sine qua non* for the operation of an environmentally hazardous undertaking – otherwise it must be closed down or significantly restructured.

117. . . . [I]t would only be possible for the Severstal plant to operate in conformity with the domestic environmental standards if this zone, separating the undertaking from the residential areas of the town, continued to exist and served its purpose.

119. The Government further submitted that the pollution levels attributable to the metallurgic industry were the same if not higher in other districts of Cherepovets than those registered near the applicant's home (see paragraph 39 above). However, this proves only that the Severstal steel plant has failed to comply with domestic environmental norms and suggests that a wider sanitary security zone should perhaps have been required. In any event, this argument does not affect the Court's conclusion that the applicant lived in a special zone where the industrial pollution exceeded safe levels and where any housing was in principle prohibited by the domestic legislation.

120. It is material that the applicant moved to this location in 1982 knowing that the environmental situation in the area was very unfavourable. However, given the shortage of housing at that time and the fact that almost all residential buildings in industrial towns belonged to the State, it is very probable that the applicant had no choice other than to accept the flat offered to her family. Moreover, due to the relative scarcity of environmental information at that time, the applicant may have underestimated the seriousness of the pollution problem in her neighbourhood. It is also important that the applicant obtained the flat lawfully from the State, which could not have been unaware that the flat was situated within the steel plant's sanitary security zone and that the ecological situation was very poor. Therefore, it cannot be claimed that the applicant herself created the situation complained of or was somehow responsible for it.

121. It is also relevant that it became possible in the 1990s to rent or buy residential property without restrictions, and the applicant has not been prevented from moving away from the dangerous area. In this respect the Court observes that the applicant was renting the flat at 1 Zhukov Street from the local council as a life-long tenant. The conditions of her rent were much more favourable than those she would find on the free market. Relocation to another home would imply considerable financial outlay which, in her situation, would be almost unfeasible, her only income being a State pension plus payments related to her occupational disease. The same may be noted regarding the possibility of buying another flat, mentioned by the respondent Government. Although it is theoretically possible for the applicant to change her personal situation, in practice this would appear to be very difficult. Accordingly, this point does not deprive the applicant of the status required in order to claim to be a victim of a violation of the Convention within the meaning of Article 34, although it may, to a certain extent, affect the scope of the Government's positive obligations in the present case.

122. The Court observes that Russian legislation directly prohibits the building of any residential property within a sanitary security zone. However, the law does not clearly indicate what should be done with those persons who already live within such a zone. The applicant insisted that the Russian legislation required immediate resettlement of the residents of such zones and that resettlement should be carried out at the expense of the polluting undertaking. However, the national courts interpreted the law differently. The Cherepovets City Court's decisions of 1996 and 1999 established that the polluting undertaking is not responsible for

resettlement; the legislation provides only for placing the residents of the zone on the general waiting list. The same court dismissed the applicant's claim for reimbursement of the cost of resettlement. In the absence of any direct requirement of immediate resettlement, the Court does not find this reading of the law absolutely unreasonable. Against the above background, the Court is ready to accept that the only solution proposed by the national law in this situation was to place the applicant on a waiting list. Thus, the Russian legislation as applied by the domestic courts and national authorities makes no difference between those persons who are entitled to new housing, free of charge, on a welfare basis (war veterans, large families, etc.) and those whose everyday life is seriously disrupted by toxic fumes from a neighbouring plant.

123. The Court further notes that, since 1999, when the applicant was placed on the waiting list, her situation has not changed. Moreover, as the applicant rightly pointed out, there is no hope that this measure will result in her resettlement from the zone in the foreseeable future. The resettlement of certain families from the zone by Severstal PLC is a matter of the plant's good faith, and cannot be relied upon. Therefore, the measure applied by the domestic courts makes no difference to the applicant: it does not give her any realistic hope of being removed from the source of pollution.

(ii) The alleged failure to regulate private industry

124. Recourse to the measures sought by the applicant before the domestic courts (urgent resettlement or reimbursement of the resettlement costs) is not necessarily the only remedy to the situation complained of. The Court points out that "the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring 'respect for private life', and the nature of the States obligation will depend on the particular aspect of private life that is at issue" (see X and Y v. the Netherlands, judgment of 26 March 1985, Series A no. 91, p. 12, § 24). In the present case the State had at its disposal a number of other tools capable of preventing or minimising pollution, and the Court may examine whether, in adopting measures of a general character, the State complied with its positive duties under the Convention.

125. In this respect the Court notes that, according to the Government's submissions, the environmental pollution caused by the steel plant has been significantly reduced over the past twenty years. . . .

126. At the same time, the Court observes that the implementation of the 1990 and 1996 federal programmes did not achieve the expected results: in 2003 the concentration of a number of toxic substances in the air near the plant still exceeded safe levels. . . . .

131. The Court considers that it is not possible to make a sensible analysis of the Government's policy vis-à-vis Severstal because they have failed to show clearly what this policy consisted of. In these circumstances, the Court has to draw an adverse inference. In view of the materials before it, the Court cannot conclude that, in regulating the steel plant's industrial activities, the authorities gave due weight to the interests of the community living in close proximity to its premises.

132. In sum, the Court finds the following. The State authorised the operation of a polluting plant in the middle of a densely populated town. Since the toxic emissions from this plant exceeded the safe limits established by the domestic legislation and might endanger the health of those living nearby, the State established through legislation that a certain area around the plant should be free of any dwelling. However, these legislative measures were not implemented in practice.

133. It would be going too far to assert that the State or the polluting undertaking were under an obligation to provide the applicant with free housing and, in any event, it is not the Court's role to dictate precise measures which should be adopted by the States in order to comply with their positive duties under Article 8 of the Convention. In the present case, however, although the situation around the plant called for a special treatment of those living within the zone, the State did not offer the applicant any effective solution to help her move away from the dangerous area. Furthermore, although the polluting plant in issue operated in breach of domestic environmental standards, there is no indication that the State designed or applied effective measures which would take into account the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels.

134. The Court concludes that, despite the wide margin of appreciation left to the respondent State, it has failed to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and her private life. There has accordingly been a violation of Article 8 of the Convention. . . .

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. Holds that there has been a violation of Article 8 of the Convention;

2. Holds
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
(b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 6,500 (six thousand five hundred euros) in respect of costs and expenses incurred by her Russian lawyers and their fees, to be converted into Russian roubles at the rate applicable at the date of settlement, less EUR 1,732 (one thousand seven hundred and thirty-two euros), already paid to Mr Koroteyev in legal aid;
(ii) GBP 5,540 (five thousand five hundred and forty pounds sterling) in respect of costs and expenses incurred by her British lawyers and advisers and their fees;
(iii) any tax that may be chargeable on the above amounts;

(c) 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 . . . .