FIRST SECTION

CASE OF FADEYEVA v. RUSSIA

(Application no. 55723/00)

JUDGMENT

STRASBOURG

9 June 2005

FINAL

30/11/2005

In the case of Fadeyeva v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 July 2004 and 19 May 2005,

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

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.

2. The applicant, who was granted legal aid in the proceedings before the Court, was initially represented by Mr Y. Vanzha, and subsequently by Mr K. Koroteyev and Ms D. Vedernikova, lawyers with the Russian NGO "Memorial", and Mr B. Bowring and Mr P. Leach, solicitors in England and Wales. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

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.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 16 October 2003, the Chamber declared the application partly admissible and decided to obtain additional information and observations from the parties and hold a hearing on the merits of the case.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The hearing took place in public in the Human Rights Building, Strasbourg, on 1 July 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr P. LAPTEV, Representative of the Russian Federation at the European Court of Human Rights,
Mr Y. BERESTNEV, *Counsel*,
Ms T. GOURNYAK,
Mr M. STAVROVSKIY,
Mr M. VINOGRADOV, *Advisers*;

(b) *for the applicant*
Mr K. KOROTEYEV,

Ms D. VEDERNIKOVA,
Mr B. BOWRING,
Mr P. LEACH, *Counsel*.

8. The Court heard addresses by Mr Laptev, Mr Bowring, Mr Leach and Mr Koroteyev.

9. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former First Section.

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"). This flat was provided by the plant to the applicant's husband, Mr Nikolay Fadeyev, under a tenancy agreement.

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. The blocks of flats in the zone belonged to the plant and were designated mainly for its workers, who occupied the flats as life-long tenants (see "Relevant domestic law and practice" below). A decree of the Council of Ministers of the RSFSR, dated 10 September 1974, imposed on the Ministry of Black Metallurgy the obligation to resettle the inhabitants of the sanitary security zone who lived in districts nos. 213 and 214 by 1977. However, this has not been done.

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" (in 2002 this programme was replaced by the special federal programme "Russia's ecology and natural resources"). Implementation of the 1996 programme was funded by the World Bank. 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.

16. Most of the measures proposed in the programme concerned the functioning of the Severstal steel plant. The decree also enumerated a number of measures concerning the city as a whole: these included the resettlement of 18,900 people from Severstal's sanitary security zone. It transpires from the programme that the State was supposed to be the main source of funding for such resettlement. However, it seems that in subsequent years Severstal PLC continued to pay for the resettlement of the zone's inhabitants, at least as regards districts nos. 213 and 214. Thus, according to Decree no. 1260 by the mayor of Cherepovets dated 4 April 2004, in 2004 the residents of the blocks of flats situated on Gagarin Street were resettled in another district of the city. According to a letter of 3 June 2004 from the mayor of Cherepovets, Severstal funded approximately one-third of the cost of resettlement.

17. On 9 August 2000 the chief sanitary inspector for Cherepovets decided that the width of the sanitary security zone should be 1,000 metres from the main sources of industrial pollution. However, no specific boundaries were identified for the zone. In 2002 the municipality challenged its own Decree no. 30 of 1992, which had established the zone's boundaries (see paragraph 13 above). On 13 June 2002 the Cherepovets City Court declared Decree no. 30 invalid on the ground that it was *ultra vires*. The City Court ruled that at the relevant time the municipality had not had jurisdiction to define the width of the zone. The boundaries of the sanitary security zone around the Severstal facilities currently remain undefined.

18. In 2001 implementation of the 1996 government programme was discontinued and the measures proposed in it were included in the corresponding section of the sub-programme "Regulation of environmental quality" in the special federal programme "Russia's ecology and natural resources (2002-2010)".

19. According to a letter from the mayor of Cherepovets dated 3 June 2004, in 1999 the plant was responsible for more than 95% of industrial emissions into the town's air. According to the State Report on the Environment for 1999, the Severstal plant in Cherepovets was the largest contributor to air pollution of all metallurgical plants in Russia.

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. In support of her claims she relied mainly on the city planning regulations of 1989 (see "Relevant domestic law and practice" below). According to the applicant, these regulations imposed an obligation on the plant's owners to implement various ecological measures in the zone, including the

resettlement of residents in an ecologically safe area. The applicant claimed that Severstal had failed to fulfil this obligation.

21. On 17 April 1996 the Cherepovets City Court examined the applicant's action. The court recognised that the building at 1 Zhukov Street, where she lived, was located within Severstal's sanitary security zone. The court noted that, prior to 1993, the applicant's flat had been owned by the Ministry of Black Metallurgy, which had also owned the plant. Following privatisation of the plant in 1993, it had become a privately owned entity and the applicant's flat had become the property of the local authorities. 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 (see "Relevant domestic law and practice" below). The court also stated that the applicant's resettlement was conditional on the availability of funds.

22. The applicant appealed, claiming that the obligation to resettle was on the plant rather than on the municipality. She also maintained that the court had distorted the object of her claim: whereas she had been seeking immediate resettlement, the court had ordered that she be placed on a waiting list. In the applicant's view, this decision was unworkable because its enforcement depended on too many conditions (the existence of a resettlement order, the number of people on the waiting list, the availability of funds for resettlement, etc.).

23. On 7 August 1996 the Vologda Regional Court upheld in principle the decision of 17 April 1996, and confirmed that the applicant's home was located within the Severstal steel plant's sanitary security zone. The appeal court further found that the applicant's resettlement in an ecologically safe area was to be carried out by the municipality. Finally, the appeal court excluded from the operative part of the judgment the reference to the availability of funds as a precondition for the applicant's resettlement.

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 (see "Relevant domestic law and practice" below).

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

29. The State authorities conduct regular inspections of air quality in the city. Pollution is monitored

by four stationary posts of the State Agency for Hydrometeorology, including one (post no. 1) situated at 4 Zhukov Street, 300 metres from the applicant's home. The emission levels of thirteen hazardous substances are monitored by the authorities (nitrogen dioxide, ammonia, carbon oxide, dust, hydrogen sulphide, carbon disulphide, phenol, formaldehyde, sulphur dioxide, nitric oxide, manganese, benzopyrene and lead). Four stationary posts of the State Agency for Hydrometeorology monitor emissions of only the first eight of the above substances; additionally, post no. 1 monitors emissions of sulphur dioxide, nitric oxide, lead, benzopyrene and manganese, and post no. 2 monitors emissions of benzopyrene, manganese and sulphur dioxide. In addition, the State Agency for Sanitary Control conducts regular air tests at distances of one, two, five, seven, and nineteen kilometres from the steel plant. Finally, Severstal PLC has its own monitoring system, which evaluates emissions from every separate industrial facility at the plant.

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). The Cherepovets State Agency for Hydrometeorology reported that the level of atmospheric pollution within the zone during the period from 1997 to 2001 was rated as “high” or “very high”. The State Agency for Hydrometeorology confirmed that an excessive concentration of other hazardous substances, such as hydrogen sulphide and ammonia, was also registered during this period.

32. As regards the year 2002, the applicant submitted a report prepared by the Northern Regional Office of the State Agency for Hydrometeorology and Environmental Monitoring. This report stated, *inter alia*, that in 2002 the annual average concentration of dust near the applicant's home was 1.9 times higher than the MPL, and that the short-term peak concentration of dust was twice as high as the MPL. In July an over-concentration of carbon oxide was registered near the applicant's home: the short-term peak concentration of this element was 7 times higher than the MPL. The agency also reported that the average annual concentration of formaldehyde in the town was 3 times higher than the MPL. The average annual concentration of carbon disulphide near the applicant's home was 2.9 times higher than the MPL. The short-term peak concentration of phenols was 4 times higher than the MPL, and that of hydrogen sulphide was 4.5 times higher.

33. The applicant also submitted information published on the website of the Northern Department of the State Agency for Hydrometeorology. This source reported that in April 2004 the concentration of formaldehyde in Cherepovets exceeded the norms. In March 2004 the monthly average concentration of formaldehyde was 5 times higher than the MPL.

34. The applicant further produced a study paper entitled “Economic effectiveness of public health measures at Severstal PLC”, drawn up by the Centre for the Preparation and Implementation of International Projects on Technical Assistance, a public body established in 1993 under the supervision of the then State Committee for Environmental Protection. The study was commissioned by the Cherepovets municipality in order to obtain an analysis of the cost-effectiveness of various measures suggested in the 1996 federal programme. The expert team had access to data on fifty-eight polluting elements contained in industrial emissions from the Severstal plant. The experts singled out the thirteen most toxic elements and, using a special dispersion dissemination model, established how these elements affected the morbidity rate in the city. The experts then calculated how the implementation of one or another measure from the federal programme would reduce the concentration of these pollutants,

and, consequently, to what extent the morbidity rate would decrease.

35. In April 2004 the applicant informed the Court that further information on atmospheric pollution could be requested from the respondent Government. In particular, the applicant sought to obtain: (a) baseline emissions data for the Severstal plant, including data on the physical parameters of the stacks and the volume of chemicals emitted annually by each process at the Severstal facility; (b) dispersion modelling data for estimating the ambient air concentration of thirteen toxic pollutants at each of the *x* and *y* coordinate locations on the Cherepovets city grid, based on the above emissions data. The applicant indicated that this information might be obtained from the Centre for the Preparation and Implementation of International Projects on Technical Assistance (see paragraph 34 above). The applicant also sought data on the ambient air quality in Cherepovets, obtained between 1998 and 1999 as part of the Project on Environmental Management in the Russian Federation, implemented with financial support from the World Bank. In May 2004 the Court invited the respondent Government to submit the information sought by the applicant.

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:

(i) dust: from 0.2 mg/m³ (1.28 MPL) to 0.11 mg/m³ (0.66 MPL);

(ii) hydrogen sulphide: from 0.016 mg/m³ (3.2 MPL) to 0.006 mg/m³ (1.2 MPL);

(iii) phenols: from 0.018 mg/m³ (0.6 MPL) to 0.014 mg/m³ (0.47 MPL).

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. Thus, the concentration of nitrogen dioxide at post no. 1 was 0.025 mg/m³ in 2003, whereas it was 0.034 mg/m³ at post no. 2, 0.025 mg/m³ at post no. 3 and 0.029 mg/m³ at post no. 4. The average daily concentration of ammonia registered at post no. 1 was 0.016 mg/m³, 0.017 mg/m³ at post no. 2, 0.005 mg/m³ at post no. 3 and 0.0082 mg/m³ at post no. 4. The phenol level registered at post no. 1 was 0.014 mg/m³, 0.015 mg/m³ at post no. 2 and 0.0012 mg/m³ at post no. 4. Finally, the concentration of formaldehyde at post no. 1 was 0.019 mg/m³, whereas it was 0.012 mg/m³ at post no. 2, 0.018 mg/m³ at post no. 3 and 0.02 mg/m³ at post no. 4.

40. The report stated that the average annual concentrations of nitric oxide, lead, manganese, nitrogen dioxide, ammonia, hydrogen sulphide, phenol, carbon oxide and carbon disulphide did not exceed the MPLs. Excessive annual concentrations were recorded only with respect to dust, formaldehyde and benzopyrene. Over the period from 1999 to 2003, a certain improvement in the quality of air was registered under the steel plant's "pollution plume" in the residential area of the town. Thus, the proportion of unsatisfactory tests was 13.2% in 1999, whereas in 2003 it had fallen to 12.7%. The report emphasised that the proportion of unsatisfactory air tests was decreasing: from 18.4% to 14.2%, as measured at a distance of 1,000 metres from the plant; and from 14.05% to 12.8% at a distance of 3,000 metres. The trend was also positive in respect of certain specific substances: within 1,000 metres the proportion of unsatisfactory tests for nitrogen dioxide decreased from 50% in 1999 to 47% in 2003; for hydrogen sulphide they fell from 75% in 1999 to 20% in 2003; and for phenol they decreased from 52% in 1999 to 38% in 2003.

41. The report contained generalised data on average pollution levels for the years 1999 to 2003, collected from four stationary posts of the State Agency for Hydrometeorology. The Government also

produced data collected from monitoring post no. 1, reflecting a reduction in the average annual and maximum pollution levels compared to the situation which existed ten to twenty years ago. The most important data contained in these reports are summarised in the appendix to this judgment.

42. The Government also produced extracts from a report by the chief sanitary inspector for the Vologda region, which was prepared in June 2004 for the purpose of defining new boundaries for the sanitary security zone. According to the report, Severstal was still responsible in 2004 for 94 to 97% of overall air pollution in the city. The report stated that the emissions from Severstal contained eighty different pollutant substances. Despite a significant reduction in pollution in recent years, the maximum concentrations of "five priority pollutants" (dust containing more than 20% of silicon dioxide, ferroalloy dust, nitrogen dioxide, naphthalene and hydrogen sulphide) still exceeded safety standards at distances of one to five kilometres from the plant. The report further indicated that "more than 150,000 people live [d] in a zone where the acceptable level of risk [was] exceeded". It proposed a number of measures which should reduce the concentration of naphthalene and ferroalloys to safe levels by 2010, and stated that the concentration of all toxic substances originating from the Severstal facilities in the bottom layer of the atmosphere should be below the maximum permissible limits by 2015.

43. Finally, the Government submitted that, should the Court need the documents sought by the applicant and referred to by her representatives as a source of primary information on air pollution, "the authorities of the Russian Federation propose that this document be requested from Mr Koroteyev [one of the applicant's representatives]".

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[2]. 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. The report concluded as follows:

> "The toxic pollutants found in excessive levels within the sanitary security zone in Cherepovets are all gaseous pollutants specifically produced by iron and steel manufacturing plants (in particular, by process units involved in metallurgical coke production), but not usually by other industrial facilities.
>
> It is therefore reasonable to conclude that inadequately controlled emissions from the Severstal facility are a primary cause of the excess incidences of the above-mentioned adverse health conditions of persons residing within the sanitary security zone in Cherepovets."

47. The applicant also submitted an information note from the environmental department of the

Cherepovets municipality, which contained recommendations to Cherepovets residents on how to act in circumstances of "unfavourable weather conditions", namely when the wind carried emissions from the Severstal plant towards the city. The note recommended that people should stay at home and restrict their physical activity. It also contained dietary suggestions. The primary reason for these restrictive recommendations was emissions from the Severstal plant. The applicant also referred to a letter dated 20 September 2001 from the Cherepovets Centre for Sanitary Control, stating that when such "unfavourable weather conditions" occurred, admissions of children to local health clinics increased by 1.3.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Environmental standards

48. Article 42 of the Constitution of the Russian Federation reads as follows:

> "Everyone has the right to a favourable environment, to reliable information about its state, and to compensation for damage caused to his health or property by ecological offences."

49. Pursuant to the Federal Law of 30 March 1999 on sanitary safety (*О санитарно-эпидемологическом благополучии населения*), the Federal Sanitary Service establishes State standards for protecting public health from environmental nuisances. In particular, these standards are applied in assessing air quality in cities: atmospheric pollution is assessed in comparison to the maximum permissible limits (MPLs), the measure which defines the concentration of various toxic substances in the air. It follows from Regulation 2.1 of the Sanitary Regulations of 17 May 2001 and section 1 of the Atmospheric Protection Act 1999 that, if the MPLs are not exceeded, the air is safe for the health and well-being of the population living in the relevant area. Regulation 2.2 of the Sanitary Regulations provides that, for all categories of toxic elements, concentrations should not exceed 1 MPL in residential areas and 0.8 MPL in recreational zones.

50. Pursuant to the Atmospheric Protection Act of 4 May 1999 (*Об охране атмосферного воздуха*), the Federal Environmental Agency establishes environmental standards for various types of polluting sources (cars, farms, industrial plants, etc.). These general standards are applied to specific undertakings by the regional environmental agencies. In principle, an industrial plant's operation should not result in pollution which exceeds the MPLs (section 16 of the Act). However, for the sake of a region's economic development, a regional environmental agency may issue a temporary permit authorising an undertaking to exceed these norms (sections 1 and 12 of the Act). The permit should contain a schedule for the phased reduction of toxic emissions to safe levels.

B. Sanitary security zones

1. Legislation

51. Every polluting undertaking must create a "sanitary security zone" around its premises – a buffer area separating sources of pollution from the residential areas of a city (Regulations 3.5 and 3.6 of the 1996 Sanitary Regulations, enacted by Decree no. 41 of the Federal Sanitary Service of 31 October 1996; similar provisions were contained in the 2000, 2001 and 2003 Sanitary Regulations, which replaced those of 1996). The levels of pollution in this buffer area may exceed the MPLs.

52. The minimum width of the zone is defined by the sanitary regulations for different categories of undertaking. Under the terms of the 1996 Sanitary Regulations, the sanitary security zone around a steel plant the size of Severstal should be 2,000 metres. Under the Sanitary Regulations of 1 October 2000, the width of the sanitary security zone for a metallurgical undertaking of this size should be at least 1,000 metres. In certain cases the Federal Sanitary Service may enlarge the zone (for example, where the concentration of toxic substances in the air beyond the zone exceeds the MPLs). Subsequent sanitary regulations (enacted on 17 May 2001 and 10 April 2003) confirmed these requirements.

53. Regulation 3.6 of the 1989 City Planning Regulations provides that an undertaking must take all

necessary measures in order to set up (*обустроить*) its sanitary security zone in accordance with the law, with a view to limiting pollution.

54. Regulation 3.8 of the 1989 City Planning Regulations provides that no housing should be situated within the sanitary security zone. This provision was later incorporated into the Town Planning Code (*Градостроительный Кодекс*) of 1998 (Article 43) and the Sanitary Regulations of 17 May 2001 and 10 April 2003. According to Regulation 3.3.3 of the 2001 Sanitary Regulations, a project to create a zone may include, as a high-priority objective, resettlement of the zone's residents. However, there is no direct requirement to resettle the residents of the sanitary security zone around an undertaking that is already operating.

55. Article 10 § 5 of the Town Planning Code of 1998 provides as follows:

> "In cases where State or public interests require that economic or other activities be conducted in environmentally unfavourable areas, the temporary residence of the population in these areas is permitted, subject to the application of a special town planning regime ..."

2. Practice

56. It follows from a judgment of the North-Caucasus Circuit Federal Commercial Court (decision no. Ф08-1540/2003 of 3 June 2003) that the authorities may force an undertaking which has failed to create a sanitary security zone around its premises in accordance with the law to cease operating[3].

57. The applicant produced an extract from the decision of the Supreme Court of the Russian Federation in *Ivashchenko v. the Krasnoyarsk Railways* (published in "Overview of the case-law of the Supreme Court", *Бюллетень Верховного Суда РФ, № 9*, of 15 July 1998, § 22). In that case the plaintiff had claimed immediate resettlement from a decrepit house. The lower court had rejected the plaintiff's action, indicating that she could claim resettlement following the order of priority (in other words, she should be put on the waiting list). The Supreme Court quashed this judgment, stating as follows:

> "The [plaintiff's] home is not only dilapidated ..., but is also situated within 30 metres of a railway, within the latter's sanitary security zone, which is contrary to the sanitary regulations (this zone is 100 metres wide, and no residential premises should be located within it)."

The Supreme Court remitted the case to the first-instance court, ordering it to designate specific housing which should be provided to the plaintiff as a replacement for her previous dwelling.

58. In another case, concerning the resettlement of Ms Ledyayeva, another resident of the sanitary security zone around the Severstal facilities, the Presidium of the Vologda Regional Court, in its decision of 11 February 2002, stated, *inter alia*:

> "The lower court did not assess whether the measures taken in order to resettle the residents of the sanitary security zone are adequate in comparison to the degree of threat that the plaintiff encounters. As a result, the court did not establish whether providing [Ms Ledyayeva] with new housing under the provisions of the housing legislation by placing her on the waiting list can be regarded as giving her a real chance to live in an environment that is favourable for her life and health."

The court also expressed doubts as to whether the State should be held responsible for the resettlement of the zone's residents.

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 (see *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 54, § 51; see also, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 118, ECHR 2003-VIII). 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.

(b) The applicant's submissions

71. The applicant claimed that the extent of environmental pollution at her place of residence was and remains seriously detrimental to her health and well-being and to that of her family.

72. She referred to a number of documents which, in her view, indicated the adverse effects of the Severstal steel plant's industrial activities on the population of Cherepovets. In particular, she referred to the expert opinion by Dr Chernaik (see paragraph 46 above), the report of the North-West Scientific Centre for Hygiene and Public Health (see paragraph 45), the information note from the environmental department of the Cherepovets municipality and the letter from the Cherepovets Centre for Sanitary Control (see paragraph 47).

73. The applicant pointed out that in 2004 the Court had requested that the Government submit certain basic information regarding air pollution in Cherepovets. The applicant insisted that the Government had access to these data but failed to submit them to the Court. The report prepared by the Government contained only long-term averages of pollutant levels, which were insufficient to understand how pollutants were influencing human health in Cherepovets. In the applicant's view, the long-term averages, although themselves far above safe levels, masked episodes of extremely high pollution during peak periods. The applicant proposed that the Court draw adverse inferences from the Government's failure to produce the requested documents.

(c) The Government's submissions

74. The Government generally accepted that the concentration of polluting substances in the air near the applicant's home exceeded the environmental norms. At the same time, there was no evidence that the applicant's private life or health had somehow been adversely affected by the operation of the steel plant in the vicinity of her home. They argued that “the fact that Ms Fadeyeva lived within the [Severstal PLC] sanitary security zone did not indicate any actual damage, but only the possibility of such damage being caused”.

75. The Government pointed out that the domestic courts had never examined the influence of industrial pollution on the applicant's health or assessed the damage caused by it. They claimed that the applicant had not raised these issues in the domestic proceedings.

76. The Government further indicated that the applicant had failed to use the means prescribed by Russian legislation for assessing environmental hazards. In particular, the applicant could have commissioned a “sanitary epidemiological report” on the environmental situation, as provided by the decree of the Ministry of Public Health of 15 August 2001. Moreover, the Government insisted that, “when assessing the level of risk to the health of inhabitants, one should follow the officially registered data on emissions into the atmosphere, which are analysed and summarised on the basis of applicable

methods in accordance with the legislation of the Russian Federation".

77. As regards the disease diagnosed by the North-West Scientific Centre for Hygiene and Public Health (see paragraph 45 above), the Government argued that it was occupational (*профессиональное заболевание*). According to the Government, the applicant was working in a hazardous industry; her duties consisted of covering tubing and other industrial equipment with thermo-insulating materials. Such work required considerable physical strength and was often carried out outdoors or in unheated premises. Therefore, this disease was not attributable to the applicant's place of residence, but rather to her difficult working conditions. In the Government's view, the applicant's concomitant diagnoses were widespread and were not uncommon among persons of her age, regardless of their place of residence.

78. The Government did not disagree with the initial positions contained in Dr Chernaik's report, but contested its findings (see paragraph 46 above). They claimed that "Dr Chernaik's conclusions concerning the increased susceptibility of inhabitants of the [Severstal PLC] sanitary security zone to certain diseases are abstract in nature, have no substantiation and thus cannot be taken into account".

(d) The Court's assessment

79. The Court reiterates at the outset that, in assessing evidence, the general principle has been to apply the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. It should also be noted that it has been the Court's practice to allow flexibility in this respect, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. In certain instances, only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations; consequently, a rigorous application of the principle *affirmanti, non neganti, incumbit probatio* is impossible (see *Aktaş v. Turkey*, no. 24351/94, § 272, ECHR 2003-V).

80. Turning to the particular circumstances of the case, the 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. Thus, the data produced by the Government confirm that during the period from 1999 to 2003 the concentration of dust, carbon disulphide and formaldehyde in the air near the applicant's home constantly exceeded the MPLs (see the appendix to this judgment). In 1999 the concentration of dust was 1.76 times higher than the MPL, and in 2003 it was 1.13 times higher. In 1999 the concentration of carbon disulphide was 3.74 times higher than the MPL; in 2003 the concentration of this substance had fallen but was still 1.12 times higher than the MPL. The concentration of formaldehyde was 4.53 times higher than the MPL. In 2003 it was 6.3 times higher than the MPL. Moreover, an over-concentration of various other substances, such as manganese, benzopyrene and sulphur dioxide, was recorded during this period (see paragraphs 38 et seq. above).

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. Dr Chernaik described the adverse effects of formaldehyde as follows:

> "Considering the ongoing exposure to formaldehyde within the Cherepovets sanitary security zone, I would expect the population residing within the zone to suffer from above-average incidences of cancer of the nasal passages, headaches, and chronic irritation of the eyes, nose, and throat compared to populations residing in areas not polluted by excessive levels of formaldehyde."

As regards carbon disulphide, the concentration of which exceeded the MPL by 1.1 to 3.75 times during this entire period (except for 2002), Dr Chernaik stated:

> "Considering the ongoing exposure to carbon disulphide within the Cherepovets sanitary security zone, I would expect the population residing within the zone to suffer from above-average incidences of adverse neurobehavioral, neurological, cardiovascular, and reproductive functions compared to populations residing in areas not polluted by excessive levels of carbon disulphide."

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. Admittedly, the effects of pollution on the applicant's private life were not at the heart of the domestic proceedings. However, as follows from the Vologda Regional Court's decision in *Ledyayeva* (see paragraph 58 above), it was not contested that the pollution caused by the Severstal facilities called for resettlement in a safer area. Moreover, domestic legislation itself defined the zone in which the applicant's home was situated as unfit for habitation (see paragraph 51). 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 (see *Hatton and Others*, cited above). 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 (see *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 18, § 41, and *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 227, § 58). 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 (see the appendix and paragraphs 11 and 12 above). 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. The plant was subjected to numerous inspections by the Federal Environmental Agency and administrative penalties were imposed on the plant's owner and management (see paragraph 114 below). The environmental situation complained of was not the result of a sudden and unexpected turn of events, but was, on the contrary, long-standing and well known (see paragraphs 11, 12, and 15 above). As in *López Ostra* (cited above, p. 55, §§ 52-53), in the present case the 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 (see paragraph 42 above). 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 (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

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.

97. The Court notes, at the same time, that in all previous cases in which environmental questions gave rise to violations of the Convention, the violation was predicated on a failure by the national authorities to comply with some aspect of the domestic legal regime. Thus, in *López Ostra* the waste-treatment plant in issue was illegal in that it operated without the necessary licence, and it was eventually closed down (*López Ostra*, cited above, pp. 46-47, §§ 16-22). In *Guerra and Others* too, the violation was founded on an irregular position at the domestic level, as the applicants had been unable to obtain information that the State was under a statutory obligation to provide (*Guerra and Others*, cited above, p. 219, §§ 25-27). In *S. v. France* (no. 13728/88, Commission decision of 17 May 1990, Decisions and Reports 65, p. 263), the internal legality was also taken into consideration.

98. Thus, in 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 (see *Rees v. the United Kingdom*, judgment of 17 October 1986, Series A no. 106, p. 15, § 37).

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

102. The Court reiterates that, in deciding what is necessary for achieving one of the aims mentioned in Article 8 § 2 of the Convention, a margin of appreciation must be left to the national authorities, who are in principle better placed than an international court to evaluate local needs and conditions. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the justification given by the State is relevant and sufficient remains subject to review by the Court (see, among other authorities, *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, §§ 80-81, 27 September 1999).

103. In recent decades environmental pollution has become a matter of growing public concern. As a consequence, States have adopted various measures in order to reduce the adverse effects of industrial activities. When assessing these measures from the standpoint of Article 1 of Protocol No. 1, the Court has, as a rule, accepted that the States have a wide margin of appreciation in the sphere of environmental protection. Thus, in 1991 in *Fredin v. Sweden (no. 1)* (judgment of 18 February 1991, Series A no. 192, p. 16, § 48) the Court recognised that "in today's society the protection of the environment is an

increasingly important consideration", and held that the interference with a private property right (revoking the applicant's licence to extract gravel from his property on the ground of nature conservation) was not inappropriate or disproportionate in the context of Article 1 of Protocol No. 1. Later that year, in *Pine Valley Developments Ltd and Others v. Ireland* (judgment of 29 November 1991, Series A no. 222), the Court confirmed this approach.

104. In another group of cases where the State's failure to act was in issue, the Court has also preferred to refrain from revising domestic environmental policies. In a recent Grand Chamber judgment, the Court held that "it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights" (see *Hatton and Others*, cited above, § 122). In an earlier case the Court held that "it is certainly not for ... the Court to substitute for the national authorities any other assessment of what might be best policy in this difficult technical and social sphere. This is an area where the Contracting Parties are to be recognised as enjoying a wide margin of appreciation" (see *Powell and Rayner*, cited above, p. 19, § 44).

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 (see *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports* 1996-IV, pp. 1292-93, §§ 76-77), and only in exceptional circumstances may it go beyond this line and revise the material conclusions of the domestic authorities (see *Taşkın and Others v. Turkey*, no. 46117/99, § 117, ECHR 2004-X).

(b) The applicant's submissions

106. The applicant first submitted that Russian legislation required her resettlement outside Severstal's sanitary security zone. In her view, the 1974 decree (see paragraph 11 above) imposed an obligation on the State to resettle her outside the sanitary security zone. Further, resettlement of the residents of the sanitary security zone was required by the 1996 federal programme (see paragraph 15 above). The legislation, as interpreted by the Supreme Court in *Ivashchenko* (see paragraph 57 above), provided for the applicant's immediate resettlement, not for her placement on a waiting list. The single criterion for resettlement had always been residence within the sanitary security zone. However, the authorities had failed to comply with the legal obligation to rehouse the applicant and this obligation had not been enforced by the courts.

107. In their submissions, the Government referred to Article 10 § 5 of the Town Planning Code to justify the applicant's continued residence within the sanitary security zone (see paragraph 55 above). However, in the applicant's view, this provision only applied to temporary housing, and not to densely populated residential areas and buildings, in one of which the applicant lived. Consequently, Article 10 § 5 of the Town Planning Code, referred to by the Government, was not applicable to the applicant's situation.

108. The applicant further alleged that the authorities had failed to take adequate measures to secure her rights under Article 8 of the Convention. Firstly, the Government had not sought to justify the interference with her Article 8 rights with any valid reason. Secondly, they had failed to implement effective measures in order to prevent or minimise environmental pollution. In spite of compelling evidence of unacceptable levels of pollution from the Severstal plant, in breach of the domestic limits, the Government had merely asserted that "no question arose of limitation, suspension, or discontinuation of its activity in connection with environmental pollution".

(c) The Government's submissions

109. The Government contended that the applicant's complaint was ill-founded and that no violation of Article 8 of the Convention had occurred in this case. The Government's arguments may be summarised as follows.

110. In their initial observations to the Court, the Government accepted the fact that the applicant's home was located within Severstal's sanitary security zone but argued that the domestic courts' decisions dismissing the applicant's claim for immediate resettlement had been lawful. The applicable Russian legislation provided only for placing the applicant on the general waiting list for future resettlement, which was the duty of the municipal authorities. The Government further argued that providing the applicant with a flat irrespective of her position on the waiting list would breach the rights of other people entitled to free housing under the domestic legislation.

111. In their post-admissibility observations and at the oral hearing, the Government contended that the domestic courts' decisions were erroneous because the applicant's home was not situated within the sanitary security zone. The Government also indicated that, under domestic law, "Ms N.M. Fadeyeva's temporary residence within the sanitary security zone [was] permissible" in so far as "the State or public interests require[d] the performance of economic or other activity in such areas". They referred in particular to Article 10 of the Town Planning Code (see paragraph 55 above). The Government stated that "under Article 10 § 5 of the Town Planning Code of the Russian Federation, temporary residence [was] permitted in environmentally unfavourable areas in cases where State or public interests require[d] the performance of economic or other activity in such areas".

112. The Government also alleged that the applicant had moved to the flat at 1 Zhukov Street of her own free will and that nothing prevented her from leaving it. Moreover, she could always privatise the flat and then sell it in order to purchase housing in another district of the city.

113. The Government asserted that the State authorities conducted regular monitoring of air quality in the city and had, moreover, undertaken a number of scientific studies in order to assess the impact of pollution on the inhabitants of Cherepovets.

114. The Government further submitted that the State authorities had imposed various administrative sanctions on Severstal PLC in order to ensure that its activities complied with the domestic norms. In particular, between 1995 and 2000 the State Committee for the Protection of the Environment had carried out 89 checks of Severstal PLC, bringing to light more than 300 violations. During this period the managers of the steel plant had been charged with administrative offences in the sphere of environmental protection on 45 occasions. Between 2001 and 2003 the Ministry of Natural Resources of the Russian Federation had carried out 4 complex checks of the plant, in the course of which 44 violations of the environmental legislation had been brought to light. To date, the majority of the violations indicated by the statutory authorities had been eliminated.

115. Finally, the Government argued that in recent years the implementation of a number of federal and municipal programmes had resulted in a reduction of pollution in Cherepovets. They stressed that the environmental monitoring carried out by State agencies had revealed an improvement in the overall environmental situation throughout the city, and that the pollution levels near the applicant's home did not differ significantly from the average levels across the city. The Government also enumerated various technological modifications undertaken by the steel plant in order to reduce emissions and asserted that several new improvements were due to be made in the near future.

(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. The main purpose of the sanitary security zone is to separate residential areas from the sources of pollution and thus to minimise the negative effects thereof on the neighbouring population. The

Government have shown that, in the course of the past twenty years, overall emissions from the Severstal steel plant have been significantly reduced, and this trend can only be welcomed (see paragraphs 37 et seq. above). However, within the entire period under consideration (since 1998), pollution levels with respect to a number of dangerous substances have continued to exceed the safe levels. Consequently, it 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.

118. The parties argue as to the actual size of the zone. In their later post-admissibility observations and oral submissions to the Court, the Government denied that the applicant lived within its boundaries. However, in their initial observations the Government openly stated that the applicant's home was located within the zone. The fact that the Severstal steel plant's sanitary security zone included residential areas of the town was confirmed in the federal programme of 1996 (see paragraph 15 above). As regards the applicant's home in particular, the fact that it was located within the steel plant's sanitary security zone was not disputed in the domestic proceedings and was confirmed by the domestic authorities on many occasions. The status of the zone was challenged only after the application had been communicated to the respondent Government. Therefore, the Court assumes that during the period under consideration the applicant lived within Severstal's sanitary security zone.

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 (see paragraphs 59 et seq. above). 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. Since the 1970s, air quality in the town has changed for the better. Thus, when the applicant's family moved into the flat in issue in 1982, the overall atmospheric pollution in Cherepovets was more than twice as high as in 2003. Since 1980 toxic emissions from the Severstal steel plant into the town's air have been reduced from 787.7 to 333.2 thousand tonnes. Following the enactment of the 1996 federal programme (see paragraph 15 above), the annual overall emissions of air polluting substances attributable to the Severstal facilities have been reduced by 5.7%. The report submitted by the Government indicated that by 2003 the average concentration of certain toxic elements in the air of the town had been significantly reduced (see paragraphs 37 et seq. above); the proportion of “unsatisfactory tests” of the air around the Severstal plant had fallen in the past five 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. Whereas, according to the 1990 programme, the steel plant was obliged to reduce its toxic emissions to a safe level by 1998, in 2004 the chief sanitary inspector admitted that this had not been done and that the new deadline for bringing the plant's emissions below dangerous levels was henceforth 2015.

127. Undoubtedly, significant progress has been made in reducing emissions over the past ten to twenty years. However, if only the period within the Court's competence *ratione temporis* is taken into account, the overall improvement of the environmental situation would appear to be very slow. Moreover, as the Government's report shows, the dynamics with respect to a number of toxic substances are not constant and in certain years pollution levels increased rather than decreased (see the appendix to

this judgment).

128. It might be argued that, given the complexity and scale of the environmental problem around the Severstal steel plant, it cannot be resolved in a short period of time. Indeed, it is not the Court's task to determine what exactly should have been done in the present situation to reduce pollution in a more efficient way. However, it is certainly within the Court's jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests. In this respect the Court reiterates that the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community. Looking at the present case from this perspective, the Court notes the following points.

129. The Government referred to a number of studies carried out in order to assess the environmental situation around the Cherepovets steel plant. However, the Government have failed to produce these documents or to explain how they influenced policy in respect of the plant, particularly the conditions attached to the plant's operating permit. The Court also notes that the Government did not provide a copy of the plant's operating permit and did not specify how the interests of the population residing around the steel plant were taken into account when the conditions attached to the permit were established.

130. The Government submitted that, during the period under consideration, Severstal PLC was subjected to various checks and administrative penalties for different breaches of environmental law. However, the Government did not specify which sanctions had been applied and the type of breaches concerned. Consequently, it is impossible to assess to what extent these sanctions could really induce Severstal to take the necessary measures for environmental protection.

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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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. Non-pecuniary damage

136. The applicant claimed 10,000 euros (EUR) in compensation for the non-pecuniary damage she had suffered. This figure, in the applicant's view, was justified by the excessive environmental pollution within the sanitary security zone, which had adversely affected her health and her enjoyment of her home and private life. Such conditions had also caused distress and frustration on account of the fact that she and her family had had to live in the zone for more than twenty years.

137. The Government considered that these claims were exaggerated and that the finding of a violation would be adequate just satisfaction. Alternatively, the Government submitted that "only a symbolic amount would be equitable with regard to non-pecuniary damage".

138. The Court is prepared to accept that the applicant's prolonged exposure to industrial pollution caused her much inconvenience, mental distress and even a degree of physical suffering – this is clear from the grounds on which the Court found a violation of Article 8. At the same time, the Court notes that the Convention came into force in respect of Russia on 5 May 1998; therefore, the Court has no competence *ratione temporis* to make an award for the period prior to that date. In sum, taking into account various relevant factors, such as the age and state of health of the applicant and the duration of the situation complained of, and making an assessment on an equitable basis in accordance with Article 41, the Court awards the applicant EUR 6,000 under this head, plus any tax that may be chargeable on this amount.

2. Pecuniary damage

139. Under the head of pecuniary damage, the applicant claimed that the Government should be required to offer her new housing, comparable to her current flat, outside the Cherepovets sanitary security zone. She submitted that, in the light of the principles established in similar cases, and the State's failure in this case to comply with Russian domestic law requiring her rehousing, the State should be ordered to provide her with housing outside the sanitary security zone. Alternatively, the applicant claimed an award of damages of EUR 30,000, which was the value of a flat comparable to the applicant's but located outside the Cherepovets sanitary security zone.

140. The Government argued that this claim should be rejected.

141. With regard to this claim the Court notes, first of all, that the violation complained of by the applicant is of a continuing nature. Within the period under consideration the applicant lived in her flat as a tenant and has never been deprived of this title. Although during this time her private life was adversely affected by industrial emissions, nothing indicates that she has incurred any expenses in this connection. Therefore, in respect of the period prior to the adoption of the present judgment the applicant failed to substantiate any material loss.

142. As regards future measures to be adopted by the Government in order to comply with the Court's finding of a violation of Article 8 of the Convention in the present case, the resettlement of the applicant in an ecologically safe area would be only one of many possible solutions. In any event, according to Article 41 of the Convention, by finding a violation of Article 8 in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation.

B. Costs and expenses

143. Finally, under the head of costs and expenses the applicant claimed the following:

(i) EUR 2,000 in respect of her representation by Mr Yuriy Vanzha before the domestic authorities and before the Court at the initial stage of the proceedings, for forty hours, at the rate of EUR 50 per hour;

(ii) EUR 3,000 in respect of her representation before the Court by

Mr Kirill Koroteyev, for sixty hours, at the rate of EUR 50 per hour;

(iii) 2,940 pounds sterling (GBP) in respect of costs and expenses incurred by the applicant's representatives in London (Mr Philip Leach and Mr Bill Bowring);

(iv) GBP 600 for advice from Ms Miriam Carrion Benitez.

144. In her additional submissions on this topic, the applicant claimed the following amounts related to the participation of her representatives at the hearing of 1 July 2004:

(i) GBP 1,200 (GBP 800 as fees for Mr Philip Leach, at the rate of GBP 100 per hour, plus GBP 400 for his travel time, at the rate of GBP 50 per hour);

(ii) GBP 1,400 (GBP 1,000 as fees for Mr Bill Bowring, at the rate of GBP 100 per hour, plus GBP 400 for his travel time, at the rate of GBP 50 per hour);

(iii) EUR 1,000 (EUR 500 as fees for Mr Kirill Koroteyev, at the rate of EUR 50 per hour, plus EUR 500 for his travel time, at the rate of EUR 25 per hour);

(iv) EUR 700 (EUR 200 as fees for Ms Dina Vedernikova, at the rate of EUR 50 per hour, plus EUR 500 for her travel time, at the rate of EUR 25 per hour).

145. In reply, the Government argued that the applicant's claims in this part were unsubstantiated. They submitted that "no contracts with [the applicant's representatives] or payment receipts have been presented by the applicant to confirm that the costs are real". They also challenged certain details of the lawyers' bills, in particular the time allegedly spent by Mr Koroteyev in a telephone interview with the applicant, and the necessity of Ms Vedernikova's appearance before the European Court.

146. The Court has to establish, firstly, whether the costs and expenses indicated by the applicant were actually incurred and, secondly, whether they were necessary (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 85, § 220).

147. As to the first question, the Court notes that the applicant did not present any written agreement between her and her lawyers. However, this does not mean that such an agreement does not exist. Russian legislation provides that a contract on consulting services may be concluded in an oral form (Article 153 read in conjunction with Article 779 of the Civil Code of the Russian Federation), and nothing indicates that this was not the case in respect of the applicant and her representatives. In any event, the Government have not presented any argument to the contrary. Therefore, the lawyers' fees are recoverable under domestic law, and, from the standpoint of the Convention, real. The fact that the applicant was not required to cover these fees in advance does not affect this conclusion.

148. Further, it has to be established whether the applicant's lawyers' expenses were necessary. As regards the costs claimed by Mr Yuriy Vanzha, a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible. Making an assessment on a reasonable basis, the Court awards EUR 1,500 for the costs incurred under this head.

149. With regard to the costs and expenses incurred by the applicant after her application was declared admissible, referred to in paragraph 143 above, items (ii) to (iv), the Court notes that a large amount of legal and technical work was required from both parties in preparation of this case. Consequently, the Court regards these as necessarily incurred and awards the whole sum requested under this head, namely EUR 3,000 in respect of Mr Koroteyev's fees and expenses and GBP 3,540 in respect of fees and expenses for the applicant's British lawyers and advisers.

150. Finally, as regards the costs related to the hearing of 1 July 2004, the Court notes that the presence of all four of the applicant's representatives was not absolutely necessary. Making a reasonable assessment, the Court awards EUR 2,000 and GBP 2,000 under this head respectively for the Russian and British lawyers' fees and expenses.

151. Any tax that may be chargeable should be added to the above amounts.

C. Default interest

152. 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. *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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Christos ROZAKIS
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Kovler is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE KOVLER

I share the Chamber's unanimous opinion that the Russian authorities failed in the present case to fulfil their positive obligation to protect the applicant's rights under Article 8 of the Convention. At the same time, I would like to explain my approach to the specific interest protected in the present case.

In the leading case of *López Ostra v. Spain* (judgment of 9 December 1994, Series A no. 303-C), referred to in the judgment, the Court found that the State had not succeeded in striking a fair balance between the interest of the town's economic well-being and the applicant's effective enjoyment of her right to respect for her home and her private and family life. In its Grand Chamber judgment in *Hatton and Others v. the United Kingdom* ([GC], no. 36022/97, ECHR 2003-VIII), also cited, the Court adopted the same line of reasoning (although the Grand Chamber did not ultimately find a violation of Article 8). In a recent case concerning noise pollution (*Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X), the problem was again regarded as having an effect both on the applicant's private life and on her home.

On the other hand, in *Guerra and Others v. Italy* (judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I), where access to information on industrial hazards was in issue, the Court found a violation only of the applicants' right to private and family life, without mentioning their "homes". I would be inclined to agree with the latter approach and to consider that "environmental rights" (in so far as they are protected by Article 8) relate more to the sphere of "private life" than to the "home". In my view, the notion of "home" was included in the text of this provision with the clear intention of defining a specific area of protection that differs from "private and family life". In support of this interpretation, I would quote from a dissenting opinion by Judge Greve annexed to the Chamber judgment in *Hatton and Others v. the United Kingdom* (no. 36022/97, 2 October 2001), in which she stated that "environmental rights are ... of a different character from the core right not to have one's home raided without a warrant". Therefore, without casting doubt on the Court's finding of a violation of Article 8, I would prefer to describe the violation as an unjustified interference with the applicant's private life.

Consequently, the State's omission in the present case lies not only in the authorities' failure to resettle the applicant to a safer area. The State has a margin of appreciation in devising measures to strike the proper balance between respect for Article 8 rights and the interests of the community as a whole. In the present case, therefore, the resettlement of those living near the plant may be regarded as only one of many possible solutions, and, in my view, not the best one: had the authorities been stricter and more consistent in applying domestic environmental regulations, the problem

would have been resolved without any need to resettle the population and with a positive impact on the environmental situation in general.

Appendix

Extracts from the Government's report on the environmental situation in Cherepovets[4]

mics of air pollution in the years 1999 to 2003 (compared to MPLs)

Toxic element	Average daily MPL, mg/m³	1999	2000	2001	2002	2003
Nitrogen dioxide	0.04	0.027	0.022	0.018	0.016	0.025
Nitric oxide	0.06	0.021	0.015	0.011	0.01	0.024
Ammonia	0.04	0.0125	0.011	0.011	0.005	0.016
Manganese	0.001	0.0006	0.002	0.0007	0.0004	0.0008
Carbon oxide	3.0	1.884	1.3	1.5	1.28	1.76
Dust	0.15	0.264	0.25	0.24	0.2	0.17
Hydrogen sulphide	0.008	0.0002	0.0007	0.0004	0.0006	0.0006
Carbon disulphide	0.005	0.0187	0.015	0.011	0.004	0.0056
Phenols	0.003	0.002	0.0014	0.0012	0.0009	0.0014
Formaldehyde	0.003	0.0136	0.02	0.013	0.0099	0.019
Sulphur dioxide	0.05	0.0049	0.0056	0.0021	0.0024	0.0037

ıge and maximal concentrations of toxic elements over the past 20 to 30 years

Substance monitored	1974		1983		1989		1996		2003	
	Aver.	Max.	Aver.	Max.	Aver.	Max.	Aver.	Max.	Aver.	Max.
Dust	–	–	0.3	4.0	0.3	2.1	0.1	1.2	0.2	0.8
Sulphurous anhydride	0.08	0.86	0.04	0.79	0.03	1.17	0.004	0.16	0.004	0.114
Carbon oxide	7	20	1	7	1	16	1	7	1	18
Nitrogen dioxide	0.07	0.65	0.04	0.31	0.04	0.23	0.02	0.16	0.03	0.45
Nitrogen oxide	–	–	0.07	0.058	0.05	0.43	0.02	0.30	0.03	1.02
Hydrogen sulphide	–	–	0.006	0.058	0.002	0.029	0.002	0.023	0.001	0.013
Carbon disulphide	–	–	–	–	–	–	0.011	0.076	0.006	0.046
Phenol	–	–	–	–	0.003	0.018	0.003	0.04	0.001	0.021
Ammonia	–	–	0.27	5.82	0.08	1.37	0.02	0.23	0.02	0.21
Formaldehyde	–	–	–	–	–	–	0.014	0.129	0.019	0.073

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

2. Dr Chernaik has a Ph.D. in biochemistry from the Johns Hopkins University School of Public Health, Baltimore, Maryland, United States. His doctoral studies and research focused on environmental toxicology. Since 1992 Dr Chernaik has served as a staff scientist for the United States Office of the Environmental Law Alliance Worldwide. In this capacity, he provides requested scientific information to lawyers in more than sixty countries. He has frequently advised lawyers on the human health effects of exposure to air pollutants, including hydrogen sulphide, hydrogen cyanide, naphthalene, formaldehyde, carbon disulphide and particulate matter.

3. This decision concerned the closure by the authorities of a petrol station which had no sanitary security zone around its premises.

1. The data provided here reflect only the results received from stationary monitoring post no. 1 of the State Agency for

Hydrometeorology, the nearest to the applicant's home.

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