

Press release issued by the Registrar

**CHAMBER JUDGMENT
FADEYEVA v. RUSSIA**

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Fadeyeva v. Russia* (application no. 55723/00).

The Court held, unanimously, that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 6,000 euros (EUR) for non-pecuniary damage and EUR 6,500 (of which EUR 1,732 in legal aid) for costs and expenses, and 5,540 pounds sterling (GBP) (approximately EUR 8,182.80) in respect of costs and expenses incurred by the applicant's British lawyers and advisers. (The judgment is available only in English.)

1. Principal facts

The case concerns an application brought by a Russian national, Nadezhda Mikhail Fadeyeva, who was born in 1949 and lives in Cherepovets, a major steel-producing centre situated around 300 km north-east of Moscow.

The Severstal steel plant was built in Soviet times and 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 of approximately 60,000 people. In order to delimit the areas in which pollution caused by steel production could 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 territory of the plant (reduced to 1,000 metres in 1992). The applicant has lived in a council flat within this zone with her family since 1982.

Although this zone was, in theory, supposed to separate the plant from the town's residential areas, in practice thousands of people lived there. A Decree of the Council of Ministers of the RSFSR, dated 10 September 1974, obliged the Ministry of Black Metallurgy to resettle the inhabitants of the sanitary security zone who lived in certain districts by 1977. However, this

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

has not been done. In the following years the Government adopted several new programs aimed at the improvement of the environmental situation in Cherepovets. According to the program now in force, the industrial emissions of the Severstal plant should attain safe levels by 2010-2015.

In 1993 the steel-plant was privatized and the apartment buildings owned by the steel-plant and situated within the zone were transferred to the local council.

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

Pollution levels are officially monitored within the security zone. The applicant submitted that, from 1990-1999 the average concentration of dust in the air was 1.6 to 1.9 times higher than the "maximum permitted limit" (MPL); the concentration of carbon disulphide, 1.4 to 4 times higher; and, the concentration of formaldehyde, 2 to 4.7 times higher. Atmospheric pollution from 1997-2001 was rated as "high" or "very high". In particular, an excessive concentration of hazardous substances (such as hydrogen sulphide, ammonia and carbolic acid) was registered.

In 1995 the applicant and other people living within the zone brought a court action against the steel works, seeking resettlement outside the security zone in an environmentally-safe area. On 17 April 1996 Cherepovets Town Court found that, under domestic law, the applicant had the right in principle to be resettled at the local authority's expense. However, the court made no specific resettlement order, but required the local authorities to place her on a "priority waiting list" for new accommodation, making her resettlement conditional on the availability of funds. The decision was upheld on appeal, but the reference to the availability of funds as a condition for resettlement was taken out. An execution warrant was issued. However, on 10 February 1997, the enforcement proceedings were discontinued on the ground that there was no "priority waiting list" for people living in the security zone to obtain new housing. The applicant was put on the general waiting list for new housing; she was no. 6820 on that list.

In 1999 the applicant brought new proceedings against the local council, seeking her immediate resettlement in accordance with the judgment of 17 April 1996. However, Cherepovets Town Court dismissed her action as there was no "priority waiting list" and no allocated council housing. The court concluded that, as the applicant had been put on the general waiting list, the judgment of 17 April 1996 had been executed. This decision was upheld by the regional court on 17 November 1999.

2. Procedure and composition of the Court

The application was lodged on 11 December 1999 with the European Court of Human Rights and declared partly admissible on 16 October 2003. On 1 July 2004, a hearing on the merits of the case took place in public in the Human Rights Building, Strasbourg.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Peer **Lorenzen** (Danish),
Françoise **Tulkens** (Belgian),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelky** (Italian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained, 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.

Decision of the Court

Article 8

Applicability

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. The degree of disturbance caused by Severstal and the effects of pollution on the applicant were disputed by the parties, however.

The Court observed that, over a significant period of time, the concentration of various toxic elements in the air near the applicant's house seriously exceeded the MPLs, defined, under Russian legislation, as safe concentrations of toxic elements. Consequently, where the MPLs were exceeded, the pollution was potentially harmful to the health and well-being of those exposed to it. Moreover, Russian legislation defined the zone, where the applicant's house was situated, as unfit for human habitation. That was a presumption, which might not be true in a particular case. It was also conceivable, despite the excessive pollution and its proven negative effects on the population as a whole, that the applicant did not suffer any special and extraordinary damage.

In the applicant's case, however, the very strong combination of indirect evidence and presumptions made 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 diseases. Moreover, there could be no doubt that it adversely affected her quality of life at home. Therefore, the Court accepted 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.

¹ This summary by the Registry does not bind the Court.

Legitimate aim

The Court observed that the essential justification offered by the Russian 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 domestic legislation. Since the local council 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 lists. Further, the Government referred, at least in substance, to the economic well-being of the country. The Court agreed 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 § 2 of Article 8.

Necessary in a democratic society

The Court noted that Russia authorised the operation of a polluting enterprise in the middle of a densely populated town. Since the toxic emissions from that enterprise exceeded the safe limits established by domestic legislation and might have endangered the health of those living nearby, the State established that a certain territory around the plant should be free of any dwelling. However, those legislative measures were not implemented in practice.

It would be going too far to state that the State or the polluting enterprise were under an obligation to provide the applicant with free housing, and, in any event, it was not the Court's role to dictate precise measures which should be adopted by the States which had ratified the Convention in order to comply with their positive duties under Article 8. In the applicant's case, however, although the situation around the plant called for a special treatment of those living within the zone, the State did not offer her any effective solution to help her move from the dangerous area. Furthermore, although the polluting enterprise at issue operated in breach of domestic environmental standards, there was no information 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.

The Court concluded that, despite the wide margin of appreciation left to the respondent State, it had 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. The Court therefore held, unanimously, that there had been a violation of Article 8.

Judge Kovler expressed a concurring opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.