IN THE EUROPEAN COURT OF HUMAN RIGHTS
APPLICATION no. 55723/00
FADEYEVA v. RUSSIA
SUBMISSIONS ON THE MERITS OF THE CASE

1. These Observations submitted on behalf of the applicant incorporate the following:

   (i) the applicant's post-admissibility observations (including further expert evidence); and

   (ii) the applicant's replies to the questions put by the Court in the letter of 30 October 2003; and

   (iii) the applicant's replies to the Government's Observations of 13 February 2004.

2. The Court will note that the applicant submits with these Observations the expert report of Mark Chernaik, Ph.D., *Human Health Risk Assessment of Pollutant Levels in the Vicinity of the 'Severstal' Facility in Cherepovets* (attachment 8). Dr. Chernaik's report was commissioned on behalf of the applicant to be submitted to the Court in these proceedings. In his report, Dr. Chernaik analyses the effects of the following pollutants:

   a. Hydrogen Sulfide

   b. Hydrogen Cyanide

   c. Naphthalene

   d. Formaldehyde

   e. Carbon Disulfide

3. In respect of each of these pollutants, Dr. Chernaik analyses their human health effects. He goes on to compare Russian air quality standards with international standards and then assesses the health risks of the measured levels of these pollutants in the Sanitary Security Zone of Cherepovets.

4. As a result of his research, Dr. Chernaik states that he would expect that the population residing within the zone suffers from excess incidences of the following:

   - Odor annoyance, respiratory infections, irritation of the nose, cough and headaches (as a result of hydrogen sulfide pollution);
   - Headaches and thyroid abnormalities (as a result of hydrogen cyanide pollution);
   - Cancer of the nose and respiratory tract (as a result of naphthalene pollution);
   - Cancer of the nasal passages, headaches and chronic irritation of the eyes, nose and throat (as a result of formaldehyde pollution); and
   - Adverse neurobehavioural, neurological, cardiovascular and reproductive impacts (as a result of carbon disulfide pollution).

5. Dr. Chernaik concludes as follows:

> "The toxic pollutants found in excessive levels within the Sanitary Security Zone of Cherepovets are all gaseous pollutants specifically produced by iron and steel manufacturing plants (specifically 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 excess incidences of the above described adverse health effects of persons residing within the Sanitary Security Zone of Cherepovets."

6. The applicant recalls at the outset that the Grand Chamber of the Court noted in *Hatton and others v UK* that in 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 an aspect of the domestic regime (*López Ostra* and *Guerra*). In her submission, and as set out in detail below, this case is similarly predicated on the failure of the authorities in Russia to comply with the relevant domestic law.

I. FACTS

7. The applicant confirms the facts of the case as established in the decision on admissibility.

8. The applicant has lived in her council flat since 1982. There are 3 rooms in the flat, two of which are bedrooms, which is typical for a three-room flat in a block of flats. She has been living in the flat with her husband, Mr. Nikolay Fadeyev and their three children, Mr. Alexander Fadeyev, born in 1972 (Alexander moved out in 1994), Mr. Mikail Fadeyev, born in 1980, and Ms. Marina Fadeyeva, born in 1983.

9. The applicant's flat is situated within the 1,000 metre wide sanitary security zone around the Severstal steel-plant in the city of Cherepovets, as delimited by a municipal resolution of 1991. It is about 450 metres from the plant (see the paper produced to her by the Department of Architecture and City Planning of Cherepovets local administration on 11 April 2003, attachment 3). The Court is also referred to the plan (attachment 4), which shows both the location of the applicant's block of flats and the Severstal plant.

10. As well as having lived within the zone since 1982, the applicant and her family have utilized various public services which are also situated within the zone. The hospital the applicant usually attends is located at Parkovaya street, within the sanitary security zone. The kindergarten which the applicant's children Mikhail and Marina used to go to, as well as the schools of all her children (located at Metallurgov and Stroiteley streets) are also within the zone.

11. The applicant's flat has always been state-owned. It is now owned by the local council, but prior to 1993 it was the property of the Ministry of Steel Production.

12. The plant was owned by the Ministry of Steel Production until it was privatised in 1993. The plant is now owned by the Joint-Stock Company "SeverStal". The net income of the JSC "SeverStal" was RUR 6.35 bln

(approx. USD 211.8 mln, see attachment 5) in 2003 (while in 2000 it reached approx. USD 452 bln). The Chairman of the Board of Directors and CEO of the "SeverStal-group" holding (of which the JSC "SeverStal" forms part) is Mr. Alexey Mordashov who was included as no. 348 in the Forbes' list of the richest people worldwide with USD 1.2 bln capital (attachment 6). Mr. Mordashov has also acted as the representative of Mr. Vladimir Putin in presidential electoral campaigns of 2000 and 2004.

13. As a result of the domestic proceedings, brought by the applicant before Cherepovets Town Court and Vologda Regional Court, she was put on the general "waiting list" for new housing (at number. 6820 on the list). The applicant has not been informed of any change in her position on the "waiting list".

II. MERITS

A. General principles

14. The applicant relies on the following principles of the case-law under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, "the Convention"), as they relate to environmental matters.

15. The European Court of Human Rights (hereinafter, "the Court") has frequently recognized that severe environmental pollution may both (a) affect individuals' well-being and (b) prevent them from enjoying their home in such a way as to affect their private and family life adversely (see the *Lopez Ostra v. Spain* judgment of 9 December 1994, Series A no. 303-C, § 51).

16. The relevant considerations to be assessed in determining whether environmental pollution infringes upon Article 8 rights have been further delineated in *Asselbourg* and *Gronus*. In *Asselbourg and others v Luxembourg*, No. 29121/95, 29.6.99, the applicants complained of a violation of Article 8 of the Convention on the basis that conditions attached to operating licences for electrically-fired steelworks were inadequate. The Court found that in order to justify the applicants' assertion that they were the victims of a violation of the Convention:

> "they must be able to assert, arguably and in a detailed manner, that **for lack of adequate precautions taken by the authorities the degree of probability of the occurrence of damage is such that it can be considered to constitute a violation**, on condition that the consequences of the act complained of are not too remote (see, *mutatis mutandis*, the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 33, § 85)". [emphasis added]

In *Gronus v Poland*, No. 39695/96, 2.12.99 the applicant's complaint about pollution from a heating plant chimney was declared inadmissible on the basis that "it cannot be established on the basis of the applicant's submissions that the operation of the damaged heating plant **caused nuisance, impairing normal environmental health and hygiene to such an extent that would allow the Court to accept that the applicant's and his family's right to respect for home was infringed**". [emphasis added]

17. It is clear that Article 8 applies in environmental cases whether the pollution is directly caused by the State, which thus "interferes" with the applicant's rights for respect of his or her private and/or family life and home, or whether State responsibility arises from the failure to regulate private industry. In the latter type of cases the applicant's complaint falls to be examined 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 the *Powell and Rayner v. the United Kingdom* judgment of 21 February 1990, Series A no. 172, § 41; the *Guerra v. Italy* judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, § 58, and the *Hatton and Others v. the United Kingdom* [GC] judgment of 8 July 2003, § 98).

18. The Court has often reiterated that whether the case is 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 or in terms of an interference by a public authority to be justified in accordance with Article 8 § 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of certain relevance (see the above-mentioned judgments in the cases of *Powell and Rayner*, § 41; *Lopez Ostra*, § 51, and *Hatton and Others*, § 98).

19. In consideration of the environmental case under Article 8 of the Convention the Court has either to have regard to the State's compliance with its domestic law or to assess whether the fair balance has been struck in general (see the above-mentioned *Hatton and Others* judgment, §§ 120 and 99). It is in the applicant's submission that in the present case the Court should analyse both aspects of the issues in question.

20. Crucial to the Court's assessment of the extent of a state's compliance with obligations under Article 8 in respect of environmental pollution will be the measures taken by the authorities to prevent or minimise pollution, and therefore the effects on the applicant, whether by any of the following:

    (i) imposing operating conditions;
    (ii) carrying out inspections and studies into levels of pollution;
    (iii) the provision of public access to information;
    (iv) applying sanctions; or
    (v) providing other civil or criminal remedies.

21. Examples of the Court's assessment of each of these measures follows below.

Operating conditions

22. The Court found no violation of Article 8 in the case of *Asselbourg and others v Luxembourg*, No. 29121/95, 29.6.99, noting that it was "not contested that the Luxembourg authorities took all necessary measures, after steel production began, to ensure that the steelworks complied as soon as possible with the conditions of the operating licences".

Inspections and studies into levels of pollution

23. The applicant's Article 8 complaint in *Gronus v Poland*, No. 39695/96, 2.12.99, about pollution from a nearby heating plant chimney, was declared inadmissible because of appropriate steps taken by the authorities, including the fact that the State Inspection of Environmental Protection carried out an inspection in order to establish whether the pollution control installations of the heating plant were in working order and found that they corresponded to the relevant technical norms as set out in the original permission for the plant to operate. Furthermore, the Court noted that the State Agency of Agricultural Property took steps to eradicate the cause of the pollution by contracting with a building company for the chimney to be re-constructed.

The provision of public access to information

24. As was noted by the Court in *Guerra and others v Italy*, No**.** 14967/89, 19.2.98**,** Parliamentary Assembly Resolution 1087 (1996) on the consequences of the Chernobyl disaster, states that "public access to clear and full information ... must be viewed as a basic human right". The applicants in *Guerra* waited for essential information that would have enabled them to assess the risks they and their families might run if they continued to live in the town of Manfredonia, near a chemical factory. Accordingly, the State was found not to have fulfilled its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8 of the Convention.

Applying sanctions

25. The applicant recalls that in *Lopez Ostra v Spain*, the local authorities both re-housed residents affected by a nearby waste treatment plant for a period of months, and ordered the cessation of one of the plant's activities (namely the settling of chemical and organic residues in water tanks).

Other civil or criminal remedies.

26. In *Moe and others v Norway*, No. 30966/96, 14.12.99, a case concerning a waste treatment plant in the vicinity of housing, the domestic courts (the High Court) had, in substance, acknowledged that until 1990 the activities at the waste-disposal plant entailed an interference with the applicants' enjoyment of their right to respect for private life and home which had not been justified for the purposes of Article 8(2) of the Convention, and that their rights under Article 8(1) had thus been violated. However, as a result of the domestic proceedings brought by the applicants, the activities at the waste-treatment plant were altered to reduce the nuisance. There was accordingly no violation of Article 8 in *Moe*.

27. A further factor for the Court's finding of no violation in *Asselbourg* was that under Luxembourg law the applicants had access to "civil and criminal remedies which would enable them to complain of verifiable consequences for their health or their quality of life resulting from" the steel production.

Procedural safeguards under Article 8

28. In its judgment in *Hatton v UK*, 8 July 2003, the Grand Chamber re-affirmed that in an environmental case, in addition to assessing the substantive merits of the authorities' decisions, to ensure compatibility with Article 8, it may also "scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual".

29. Furthermore, the following passage from the judgment in *Buckley v UK*, 25 June 1996, was cited with approval by the Grand Chamber in *Hatton*:

> "The Court cannot ignore…that in the instant case the interests of the community are to be balanced against the applicant's right to respect for her 'home', a right which is pertinent to her and her children's personal security and well-being ... . The importance of that right for the applicant and her family must also be taken into account in determining the scope of the margin of appreciation allowed to the respondent State. Whenever discretion capable of interfering with the enjoyment of a Convention right such as the one in issue in the present case is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 ..."

30. A series of steps which had been taken by the authorities were considered, in *Hatton*, to have complied with these procedural obligations:

- the Government had consistently monitored the situation relating to night flights at Heathrow Airport;
- there had been research into sleep disturbance and night flights, and each new scheme on night flights took this research into account;
- there had been a series of investigations and studies over a long period of time;
- proposed measures were announced in a Government Consultation Paper;
- the Consultation Paper was sent, inter alios, to people living near airports;
- the applicants and others could have made any representations they felt appropriate;
- had any representations not been taken into account, subsequent decisions could have been challenged in the courts.

31. In the light of these measures, the Court found in *Hatton* that the authorities had not failed to strike a fair balance between the rights of individuals affected and those of the wider community.

32. In *Stockton and others v UK*, No. 30653/97, 15.1.98, a case concerning the pollution of the water supply, the Commission affirmed that procedural safeguards are relevant factors in the assessment of whether the requirements

of Article 8 have been met. In *Stockton* this included the lack or existence of a public inquiry into the cause and effects of the pollution.

B. Positive obligation

33. The applicant submits that in the present case the issues of the State's positive obligation under Article 8 of the Convention arise for the following reasons. In the present case, the State failed to implement existing regulations on resettlement of the applicant and failed to regulate the functioning of the plant. The State, as set out below, failed to undertake reasonable and appropriate measures to secure the applicant's rights.

34. The applicant also submits that living in the sanitary security zone has caused, and continues to cause, adverse effects to her health and well-being, and to that of her family, which in turn has adversely affected her private and family life.

35. First, she refers to the medical report drawn up by the Hospital of North-West Scientific Center for Hygiene and Public Health in Saint-Petersburg on 30 May 2002 (attachment 1), which stated that she suffered from various illnesses of the nervous system, namely professional progressive/motor-sensory neuropathy of the upper extremities with paralysis of both middle nerves at the level of wrist channel (basic diagnosis)(see paras. 2.5.1 & 2.5.3 of Dr. Chernaik's report referring to sensory polyneuritis, of which this is a form), osteochondrosis of the neck division of the spine, deforming arthrosis of the knee joints, drop of the walls of sheath 1st grade, chronic gastroduodenitis, hypermetropia 1st grade (eyes), presbyopia (associated diagnoses). Whilst the causes of these illnesses are not expressly stated in the report, the doctors stated that they would be exacerbated by "working in conditions of vibration, toxic pollution, unfavorable climate", thus inferring that environmental pollution would damage the applicant's health.

36. Secondly, the applicant draws the Court's attention to the Information note of Environmental Department of Cherepovets Town Administration (attachment 2). This note issues recommendations to citizens of Cherepovets on how to act in circumstances of "unfavorable weather conditions", namely when the wind brings emissions from the "SeverStal" plant to the town. The note recommends that people do not leave their homes or other premises, that they restrict physical activity, and suggests what to eat and not to eat. The primary causes of these restrictive recommendations are the emissions from the "SeverStal" plant. The applicant also refers to the letter dated 20 September 2001 to Mrs Zolotareva (the applicant in the pending case of Zolotareva v Russia, No. 53695/00) from the Cherepovets Centre for State Sanitary Epidemiological Inspection (part of the Ministry of Health) which states that in the times of such "unfavourable weather conditions", the admissions of children to the local health clinics increases by 1.3.

37. Finally, in this respect, the applicant refers the Court to the annexed expert report of Dr. Mark Chernaik as to the human health effects of excessive levels of various pollutants within the sanitary security zone (see paragraphs 2-5 above).

C. Domestic irregularities

38. The applicant submits that the failure of the authorities to resettle her violates both domestic law and, by consequence, Article 8 of the Convention.

Applicant's housing in sanitary security zone

39. The applicant maintains that her continued housing in the sanitary security zone *ipso facto* violates Russian law.

40. Under art. 42 of the Constitution of the Russian Federation (attachment 14) everyone has a right to a favourable environment. This article provides as follows:

> "Every person shall have the right to a favourable environment, reliable information about the state of the environment, and compensation for damage to his health or property caused by ecological offences".

Art. 11 of the Law of the Russian Federation of 1991 no. 2060-1 "On Protection of Environment"[1] (in force at the relevant time) stipulated that this right is secured by providing real opportunities to live in a healthy environment to everyone. Under art. 14 of the same law, it is for the State to secure the enjoyment of the right to a favorable environment ("The State guarantees… to the citizens the possibilities to enjoy their environmental rights"). The obligation on enterprises, both public and private, to create sanitary security zones (imposed, i.a., by the Federal Law "On Protection of Atmosphere Air"), as noted by the Supreme Court of the Russian Federation[2], is one of the aspects of securing the constitutional and statutory rights of citizens, affected by environmental pollution.

41. Art. 43 of the City Planning Code of the Russian Federation prohibits any housing in the sanitary security zone. The article provides:

> "1. Industrial zones are intended for placement of industrial objects, public utilities, warehouses… as well as for sanitary security zones thereof.
>
> 2. Arrangement of sanitary security zones should be conducted at the expense of the owners of the industrial objects.
>
> 3. Placement of houses, kindergartens, schools, hospitals, places of resort, fitness and sporting facilities, dacha communities and cottages, and agricultural activity within the sanitary security zone of industrial objects, public utilities, warehouses are prohibited".

Articles 43(3) and 43(2) prohibit both new housing in sanitary security zones and prohibits the existence of housing erected before the delimitation of the sanitary security zone. To similar effect are the Sanitary regulations of 10 April 2003 no. 2.2.1/2.1.1.1200-03 (art. 2.30), which replaced Sanitary regulations of 17 May 2001 (art. 2.30), as well as the regulations on city planning of no. 2.07.01-89 (art. 3-8)[3].

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[1] Excerpts from Russian laws and codes, referred to in these submissions, are listed in attachment 15.

[2] Supreme Court of the Russian Federation, Civil Chamber, judgment of 3 March 2003 no. ГКПИ 03-191 on application of JSC "Arkhangelsk City Telephone Network" for judicial review of Minister of Health's Decree of 17 May 2001 no. 15 (not reported, see attachment 21).

[3] Excerpts from Russian Sanitary Regulations, referred to in these submissions, are listed in attachment 18.

42. Consequently, the very fact that the applicant is living within the sanitary security zone (taking into account the fact that the flat is not her private property but belongs to the local authorities of Cherepovets, and that she has not had a right to choose her place of residence) does not comply with Russian legislation and violates Article 8 of the Convention in that the authorities have failed to undertake reasonable and appropriate measures in order to secure the applicant's rights under Article 8 § 1 of the Convention.

Applicant's claims for resettlement

43. The applicant further submits that the decisions of the Cherepovets Town Court of 17 April 1996 and 31 August 1999, which were upheld (at least in material issues) by the judgments of the Vologda Regional Court of 7 August 1996 and 17 November 1999, were contrary to Russian law.

44. Russian legislation contains a clear obligation to resettle those living within a sanitary security zone. First, the regulations on city planning of 1989, and, later, the same provisions of art. 43(2) of City Planning Code of 1998, obliges the enterprise to, i.a., observe the regulations pertaining to sanitary security zones, which include resettlement of its inhabitants. Further, and more specificly the Decree of the Council of Ministers of the Russian Soviet Federative Socialist Republic (RSFSR) of 10 September 1974 (attachment 17) obliged the Ministry of Black Metallurgy to resettle the inhabitants of the sanitary security zone of Cherepovets metallurgic plant (now – JSC "SeverStal"). Under the Decree the obligation to re-settle arouse in 1975. This Decree, despite various changes in the relevant domestic law, remained valid and was relied upon by the Cherepovets Town Court in 1996. Since this Decree was issued by the Council of Ministers of the RSFSR, the Decree remained in force without any further 're-validation'.

45. Russian legislation distributes the burden of resettlement of people living in sanitary security zones between the owners of enterprises (including private enterprises), which are surrounded by sanitary security zone, and public authorities. It is for local authorities to determine the new place of residence for people being resettled from a sanitary security zone, but the resettlement should be conducted at the expense of the enterprise. The latter is also proved by Complex Programme of Sanitary-Epidemiological Preventive Measures in Cherepovets in 1995-1996[4], which provides for the resettlement of inhabitants of the sanitary security zone of the JSC "SeverStal" at the expense of the plant (attachment 19).

46. Cherepovets Town Court and Vologda Regional Court ordered that the applicant be included in the "waiting list" for new housing. Following the domestic courts' decisions, the local authorities of Cherepovets put the applicant on the "waiting list" (as number 6,820 on the list).

47. The applicant refers to the jurisprudence of the Supreme Court of the Russian Federation[5], which ruled that the houses located in sanitary security zones should be considered as being "under demolition" and tenants thereof should

[4] Adopted by the Decree of Administration of Cherepovets of 2 March 1995.

[5] Supreme Court of the Russian Federation, Civil Chamber, *Ivashchenko v. Krasnoyarsk Railroad Administration and Krasnoyarsk Distance of Civil Construction* (reported in: Bulletin of Supreme Court of the Russian Federation, 1998, no. 9, Housing disputes, § 22).

be offered new housing outside the sanitary security zone (attachment 20). The Supreme Court noted that art. 29 of the Housing Code of the RSFSR, which provides that tenants whose living conditions do not attain the required standards be included on a "waiting list", is inapplicable to persons living in a sanitary security zone. The Supreme Court stated as follows:

> "…it is impossible to agree with the conclusion of the court [of first instance], that the improper sanitary state of the plaintiff's house gives her the right to be included into the general waiting list of persons who require improvement of their living conditions in accordance with art. 29, 37 of the Housing Code of the RSFSR… Not only is the house ramshackle and in an improper sanitary, technical and fire-prevention state, but is also located within 30 metres of the railway line, in a sanitary security zone, which is prohibited by Sanitary Regulations (this is a 100-metre zone[6], and no housing can be located in the zone). On new consideration of the case, **the court** [of first instance] **should determine specific new housing for the plaintiff as her present housing is under demolition**" (emphasis added).

The Supreme Court thus applied art. 91 of the Housing code, which provides that the tenants of houses under demolition should be provided with new well-equipped housing, without their inclusion on the "waiting list".

48. Similar arguments (seeking resettlement, rather than inclusion in a "waiting list") had been raised by the applicant in her suits and appeals to the domestic courts. However, the Cherepovets Town Court, without the applicant's consent[7], considered her claims as if she sought to be included in the "waiting list" (in application of art. 29 of Housing Code of the RSFSR) rather than being offered new housing outside the sanitary security zone, and didn't rule on the applicant's immediate resettlement.

49. Thus, the Cherepovets Town Court has violated both domestic material and procedural law, and, by consequence, Article 8 of the Convention. The applicant had no further recourse to the domestic courts as only an application for 'supervisory review' of the Regional Court judgment was available to her.

Environmental pollution caused by "SeverStal" steel plant

50. The applicant refers to the correspondence with JSC "SeverStal", where the latter acknowledged that the plant had been constructed with a view to having a sanitary security zone of 5 km (not 1 km, as delimited later).

51. Consecutively, toxic emissions from the "SeverStal" steel plant exceed the "maximum permitted limits" not only within its sanitary security zone, but also outside it. The applicant relies on the expert report of Dr. Mark Chernaik submitted with these Observations. She would also refer the Court to measurements reported in "Review of Environmental Pollution on the Territory of Activities of Northern Department of State Weather Forecast Service"[8], published in 2003 (attachment 11). The applicant notes that some of the measurement posts used by the Northern DSWFS are located outside the

[6] 100-metre sanitary security zones are applicable to railway lines.

[7] Under art. 34 of the Code of Civil Procedure of the RSFSR (in force at the material time) the court may change the substance of claims with the plaintiff's consent only.

[8] Northern Department of State Weather Forecast Service is a public institution, subordinated to the Federal Service for Weather Forecast and Environmental Monitoring.

sanitary security zone, but even there, the measured pollution exceeded the maximum permitted levels on numerous occasions.

52. Thus, posts no. 1, 2, 3 and 5 of the Northern DSWFS conduct environmental monitoring in Cherepovets. Of those four, only post no. 1 is located within the sanitary security zone of the "SeverStal" plant and within 270-300 metres from the applicant's flat. However, on all four posts emissions of carbon dioxide (7, 2, 3 and 2 days respectively), nitrogen dioxide (6, 6, 20 and 26 days respectively) exceeded the maximum permitted levels in 2002.

53. These measurements were taken only in respect of gases and dust, but noise emissions and emissions of metals (cadmium, vanadium etc.) have never been monitored. The applicant would emphasize the importance of measuring the emissions of metals in that the metals emitted by "SeverStal" catalyze the adverse environmental effects produced by gases[9]. The applicant also refers to a study "Hygienic Estimation of Micro-element State of Children, Living in Conditions of an Industrial City", where it is stated that number of children with high concentration of toxic metals (As, Pb, Cd, Mn) is significantly more in Industrialny District of Cherepovets (the closest to the "SeverStal" plant) than in Severny and Zasheksninsky districts[10].

D. Fair balance

54. In addition to the various violations of the requirements of domestic law in the applicant's case, she submits that the authorities have failed to strike a fair balance between the interests of an individual and a community as a whole, as is required under Article 8.

55. First, the applicant refers to the cases of *Lopez Ostra* and *Hatton and Others*, where the Court considered whether a fair balance was struck between the competing interests of the applicants and those of the local (*Lopez Ostra*) or even national (*Hatton and Others*) economic well-being.

56. However, in the present case the respondent Government didn't raise any arguments concerning economic interests of the country (though "SeverStal" is one of its main steel producers). Rather, the Government argued that the failure to provide the applicant with new housing was in order to protect the rights of others, namely, other people on the "waiting list" for new housing.

57. However, as explained above, the applicant's resettlement, if conducted in accordance with national law, would not in any way concern the rights of other people on the "waiting list" because proper resettlement of the applicant does not require putting her on a "waiting list" at all.

58. Even if considered in terms of balance between the applicant's interests and wider economic interests, the applicant's resettlement cannot be in any way detrimental either to the local, regional or national economy as a whole, because the applicant, as she pointed out at the domestic level, never sought

[9] The applicant points out to the summary of study "Sources of Technogennous Air Pollution in Arkhangelsk Industry District" by A.F. Nadenin, S.N. Tarkhanov, O.A. Lobanova (attachment 12) published at http://alphais.inep.ksc.ru/tezis7.html.

[10] *Limin B.V. et al.* Micro-elements in Medicine. – Vol. 3. Issue 3. – Hygienic Estimation of Micro-element State of Children Living in Conditions of an Industrial City. – P. 35-37.

for the plant to be closed. Furthermore, the resettlement, if conducted at the expense of the plant would not jeopardize its owners' business, not least because the financial burden, as provided by the Federal programme of 3 October 1996, should be distributed over more than 10 years.

E. Reasonableness and appropriateness of general measures

59. In the applicant's submission, the Government's approach to environmental problems in Cherepovets cannot be regarded as complying with its duty to take reasonable and appropriate measures to secure the applicant's rights.

60. As set out above, Article 8 imposes obligations on the authorities to balance the rights of the individual as against those of the wider community, including various procedural obligations, which may require:

(i) imposing operating conditions;
(ii) carrying out inspections and studies into levels of pollution;
(iii) the provision of public access to information;
(iv) applying sanctions; and/or
(v) providing other civil or criminal remedies.

However, no such steps, or no adequate steps, have been taken by the authorities in this case.

61. First, the federal programme of improvement of the ecological situation in Cherepovets[11] for 1997 – 2010, referred to by the Government, was abolished by the Government's Decree of 7 December 2001 no. 860 (*Собрание законодательства Российской Федерации. – 2001. № 52 (ч. II). Ст. 4973*). Since 1996 no official inquiry into the environmental situation in Cherepovets, which could influence the Government's actions towards the resolution of environmental problems, has ever been carried out. The specific consequences of any official inquiries has never been stated by the Government and such information has not been made adequately publicly available

62. Every year, the National Report on Ecological Situation in Russia is published by the relevant federal body (the State Committee for the Environment, or, later, the Ministry of Natural Resources). The applicant attaches extracts from these reports for 1997-2002 (attachment 13). It is to be noted that every year the same information appears in the part of the Report pertaining to the Vologda Region.

63. The only legal mechanism which could force the Government to introduce stricter regulations relating to activities which may be dangerous to the environment is the adoption of new legislation. However, the applicant was not in a position herself to introduce amendments to the legislation in force. Under art. 11 of the Federal Law on Protection of the Environment of 2002 citizens have the right to bring proposals and motions to the organs of state power and local self-government, but are entitled to "a substantive reply" only.

[11] Initially adopted by Government's Decree of 3 October 1996 no. 1161 (Собрание законодательства Российской Федерации. – 1996. № 42. Ст. 4801). Excerpts from Russian Federal programmes, referred to in these submissions, are listed in attachment 16.

64. The applicant is not aware of any fines ever having been imposed on JSC "SeverStal", although the Code of Administrative Offences (both the Code of the RSFSR of 1984 and the Code of the RF of 2001) provides for such possibility. Indeed on the contrary, the Government of the Russian Federation subsidizes the suppliers of coal for "SeverStal", so that the latter is able to purchase coal for prices lower than the market price. In support of this argument the applicant refers to the financial results of JSC "Vorkutaugol" (attachment 7), main coal supplier of "SeverStal".

65. The applicant also points to the fact that for a significant period of time payments for harmful influence on the environment (*платежи за вредное воздействие на окружающую среду*) have not been collected by the authorities from any entity. These are fiscal payments, which every enterprise conducting activities which may be dangerous to the environment is obliged to pay. The Government's Decree of 28 August 1992 no. 632, which established the principle of calculation of these payments, has been abolished by the decision of Civil Chamber of the Supreme Court of 28 March 2002 no. ГКПИ 2002-178 (upheld by the judgment of Cassational Chamber of the Supreme Court of 4 June 2002 no. КАС 02-232). Despite the decision of the Constitutional Court of the Russian Federation of 10 December 2002 no. 284-О, which ruled on the constitutionality of the Government's Decree in issue, the Decree was again abolished by the decision of Civil Chamber of the Supreme Court of 12 February 2003 no. ГКПИ 03-49 (upheld by the judgment of Cassational Chamber of 15 May 2003 no. КАС 03-167). On 12 June 2003 the Government adopted amendments to the Decree of 28 August 1992, which entered into force on their publication in "Rossiyskaya Gazeta" of 21 June 2003. Thus, the payments have not been collected for 1 year and 17 days.

66. In conclusions, the applicant submits that, as explained above, there has been a violation of Article 8 of the Convention in the present case.

F. Replies to the questions of the Court

*1. Is the level of detriment suffered by the applicant in view of the location of her home within "the sanitary security zone" (*санитарно-защитная зона*, hereinafter "the zone") of the Severstal steel plant ("the plant") such as to raise an issue of a positive obligation of the State under Article 8 of the Convention?*

- Living in the zone for more than 20 years has adversely affected the applicant's health, and impaired normal environmental health and hygiene. Furthermore, the levels and nature of toxic emissions of the plant prevent the applicant from enjoying her home. The applicant also submits that in the present case issues of positive obligations arise on account of the State's failure to regulate private industry. (See also §§ 33-37).

2. Is there a positive obligation for the State to resettle the applicant outside "the zone" in order to comply with the requirements of Article 8 of the Convention to protect her right to respect for her private life and home? If so, has the State complied with its obligation in this respect? In particular:

a. Does the Russian legislation impose on the authorities an obligation to resettle the applicant outside "the zone"?

b. Does the Russian legislation impose on the owners of the plant an obligation to resettle the applicant outside "the zone"?

- An obligation to resettle the applicant from the zone was stipulated in the Government's Decree of 10 September 1974. It exists even after the privatization of the plant. The Russian legislation distributes the burden of resettlement of the residents of the zone between public authorities and owners of the plant: it is for the authorities to determine new housing for the residents of the zone, but the resettlement is conducted at the expense of the plant (See also §§ 41, 44-45). A positive obligation arises from both the domestic law and the principles established in respect of Article 8 of the European Convention.

c. Does putting the applicant on a "waiting list" for new housing constitute the only possible means to resettle her in accordance with the domestic legislation? What other remedies are available in Russia for the applicant to claim resettlement?

- In the case of *Ivashchenko* the Supreme Court of the Russian Federation ruled that the procedure of putting on a "waiting list" of the residents of a sanitary security zone does not apply to their resettlement. Rather, under art. 91 of the Housing Code local authorities (or the court, if a case is brought before it) should determine specific new well-equipped housing (See also §§ 47-48).

d. Do the environmental consequences of the functioning of the plant comply with the standards established in the relevant Russian legislation? In particular, does the level of noise, gas and dust emissions and other effects of functioning of the plant correspond to the relevant domestic requirements?

- Emissions of the plant exceed the standards set out in Russian legislation (the "maximum permitted levels") both within the zone and outside it. (See also §§ 50-53). The applicant refers to the expert report of Dr. Chernaik in this respect.

e. Is the level of detriment suffered by the applicant as a result in her living in "the zone" such as to require her resettlement from the point of view of Article 8 of the Convention?

- The applicant submits that the human health and environmental consequences of excessive levels of pollution from the Severstal plant are indeed such as to require her resettlement – the applicant refers to the expert report of Dr. Chernaik in this respect. Her health has been adversely affected and continuing to live in the zone would further adversely impact on her health (see in particular the medical conclusions, § 35) and hinder enjoyment of her home. She refers, *mutatis mutandis*, to her reply to the Question 1.

3. Is the resettlement outside "the zone" the only means for the State to comply with its positive obligation vis-à-vis the applicant under Article 8 of the Convention? If not, what other actions could have been carried out by the State in order to protect the applicant's right to respect for her private life and home? In particular:

a. Assuming that the applicant does not need to be re-settled from the point of view of Article 8 of the Convention, what other forms of protection of the applicant's rights in this respect are available to the authorities, aimed in particular at reducing the environmental consequences of the functioning of the plant (also see Question 2 point d) above)?

- The Government might have introduced stricter environmental regulations (e.g., by changing the MPLs), however, since the present regulations are not complied with, it remains doubtful whether the stricter ones would be complied with.

b. What legal mechanisms are provided for in the Russian law to enable the authorities to regulate effectively the environmental consequences of the functioning of the plant? What use, if any, have the authorities made of these mechanisms? For example, have the authorities imposed any penalties on the plant for polluting the environment?

- Russian law does not provide for any specific mechanism to enable the authorities to regulate the functioning of the plant other than that, mentioned in the reply to the Question 3 point a). Citizens have the right to bring proposals and motions to the authorities, but are entitled to "a substantive reply" only. (See also § 63). The applicant is not aware of nature and amount of fines, if any, imposed on the plant.

c. Have there been any studies or investigations by the authorities in order to measure the impact of the industrial emissions and other effects of the functioning of the plant on the health and well-being of the residents of "the zone"? If so, have these studies had any practical implications on the Government's actions aimed at the protection of the rights of the residents of "the zone" within the meaning of Article 8 of the Convention?

- Since 1996 no official inquiry into the environmental situation in Cherepovets, which could influence the Government's actions towards the resolution of environmental problems, has ever been carried out (See also §§ 61-62). The specific consequences of any official inquiries has never been stated by the Government and such information has not been made adequately publicly available.

G. Reply to the Government's submissions on the merits

1. The respondent Government assert that the applicant doesn't live in the sanitary security zone of the JSC "SeverStal". However, the applicant refers to a paper produced to her by the Department of Architecture and City Planning of Cherepovets local administration on 11 April 2003, which states that the applicant's house is located within 450 meters from the plant, i.e. within 1000-meter sanitary security zone.

2. The respondent Government assert that the detriment suffered by the applicant in view of the location of her home within the sanitary security zone is not such as to raise an issue of positive obligations under Article 8 of the Convention. The applicant primarily refers to her submissions on the merits, in which the detriment to her health and well-being has been set out in detail. She further refers to the judgment in the case of *Balmer-Schafroth and others v. Switzerland*, where the Court has recognized the possibility of existence of the State's positive obligation even in the absence of detriment.

3. The respondent Government assert that the Russian law contains no obligation of the State to resettle the residents of sanitary security zone. The Government invoke art. 10(5) of the City Planning Code of the RF of 1998. This article allows for temporary housing in environmentally unfavourable conditions. However, the mentioned provision has no direct relevance to sanitary security

zones. In any event, the City Planning Code allows only for temporary housing, and not for permanent housing, as in the applicant's situation. It is not disputed by the Government that the applicant has been living in her present flat for more than 20 years. Further, the applicant refers to her submissions on the merits, in which the prohibition of permanent housing and the obligation in Russian law to resettle the residents of the sanitary security zone has been set out. The respondent Government's assertion to the contrary can merely be regarded as their reluctance to undertake reasonable and appropriate measures to secure the applicant's rights under Article 8 § 1 of the Convention.

4. The respondent Government's assert that the applicant could refuse an offer of her present flat in 1982. However, before moving into this flat, the applicant's housing had been significantly worse that the flat offered. She submits that in 1982 no information on environmental pollution caused by the steel plant was publicly available. The applicant also emphasizes that the mere possibility to refuse and offer of a council flat doesn't constitute a fundamental guarantee of the right to freedom of movement.

5. The respondent Government's assertion that environmental pollution in Cherepovets is caused not only by the JSC "SeverStal" but also by other sources cannot be regarded as plausible for the reason that, according to various sources, i.a., public bodies, 93-98% of all toxic emissions in Cherepovets are attributable to the JSC "SeverStal" plant. Further, the applicant points out that the source of levels of emissions submitted to the Court by the respondent Government is the JSC "SeverStal" itself, i.e. not an impartial source (for contents of attachments 2 and 3 to the Government's submissions on the merits see http://www.severstal.ru/docs/responsibility/eco/presentations/). Also, as to the amount of emissions, annex 3 to the Government's submissions on the merits, mentions around 330 thousand tons per year in 2000-2003, while the Government's Decree of 7 December 2001 mentions about 645 thousand tons. In any event the respondent Government does not contest that maximum permitted levels of the concentration of various substances have been exceeded due to emissions from the JSC "SeverStal".

6. The respondent Government assert that officials of the JSC "SeverStal" have been subjected 45 times to administrative liability in 1995-2000 and that 44 violations of environmental legislation have been established in 2001-2003. However, the Government has failed to provide any information regarding the nature of these administrative charges and the amounts of any fines imposed. Nor has the Government explained what effects, if any, such 'administrative liability' has had on the workings of the plant and the levels of pollutants being emitted.

7. The respondent Government enumerate several research works concerning environmental situation in Cherepovets. However, it has failed to set out any causal link between such research and the Government's policy. The Government assert that the provisions of the Federal programme adopted by the Government's Decree of 3 October 1996 were incorporated into the Federal programme "Ecology and Natural Resources of Russia" adopted by the Government's decree of 7 December 2001. However, the only provision,

which has really been incorporated into the new programme, is reduction of 30% of toxic emissions in Cherepovets.

III. JUST SATISFACTION

1. As set out above, the applicant seeks a finding of a violation of Article 8 of the Convention.

2. The applicant claims EUR 10,000 (ten thousand euros) for the non-pecuniary damage she has suffered. This figure is justified by the excessive environmental pollution within the sanitary security zone, which has adversely affected the applicant's health and enjoyment of her home and family life. Such conditions have also caused distress and frustration at her and her family having to live in the zone for more than 20 years.

3. Under the head of pecuniary damage the applicant claims the following:

   (i) that the Government should be required to offer her new housing comparable to her current flat, outside the sanitary security zone in Cherepovets;

   It is well established that the finding of a Convention violation imposes a legal obligation on the state to put an end to the breach and "make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach"[12].

   In principle, the state is free to choose the means as to how it will comply with the judgment. But the state must effect *restitutio in integrum* if the nature of the breach allows it. Compensation will be payable if, as in the vast majority of cases, national law does not allow either full or partial reparation to be made for the consequences of the breach. Accordingly, the Court in some cases has ordered the state to return land and/or buildings which had been unlawful and unjustifiably expropriated. In *Papamichalopoulos and others v Greece*[13], the Court held that the unlawfulness of an expropriation would affect the criteria for determining the reparation owed, taking inspiration from the judgment of the Permanent Court of International Justice in the *Chorzów Factory Case* (of 13 September 1928) and referring to the principle of restitution in kind. A similar decision was made in *Brumarescu v Romania*[14], reflecting the final domestic court order which had not been enforced. Failing such restitution, the Court ordered the state to pay damages equivalent to the current value of the property (more than $136,000).

   The applicant submits that in the light of the principle established in these, and similar cases, and the failure of the state in this case to comply with Russian domestic law requiring the applicant's re-housing, the state should be ordered to provide her with housing outside the sanitary security zone.

   or, alternatively,

[12] See, e.g., *Brumarescu v Romania*, No. 28342/95, 23.1.01, para. 19; *Vasiliu v Romania*, No. 29407/95, 21.5.02; *Hodos and others v Romania*, No. 29968/96, 21.5.2002.
[13] No. 14556/89, 31.10.95.
[14] No. 28342/95, 23.1.01. See also *Zwierzynski v Poland*, No. 34049/96, 2.7.02.

(ii) an award of damages of EUR 30,000 (thirty thousand euros), being the value of a flat comparable to the applicant's, but which is located outside the sanitary security zone in Cherepovets (see annexed document for justification of this figure, attachment 22).

In substantiation of her claims for reimbursement of pecuniary damage the applicant refers, *mutatis mutandis*, to the judgment in *Lopez Ostra*, where the Court expressly recognized that the issue of pecuniary damage arises in environmental cases in view of the need of the applicant to change his or her place of residence. However, this case differs from *Lopez Ostra* for the reason that the applicant, unlike Mrs. Lopez Ostra, has not been offered by the authorities new housing with better environmental conditions.

4. Under the head of costs and expenses the applicant claims the following:

(i) EUR 2,000 (two thousand euros) in respect of her representation before domestic authorities and before the Court by Mr. Yury Vanzha, for 40 hours, as set out in annexed documents (attachment 23), at the rate of EUR 50 per hour;

(ii) EUR 3,000 (three thousand euros) in respect of her representation before the Court by Mr. Kirill Koroteev, for 60 hours, as set out in annexed documents (attachment 24), at the rate of EUR 50 per hour. The applicant emphasizes that this case involved drafting submissions on complex issues of the State's positive obligations under Article 8 of the Convention.

(iii) GBP 2,940 (two thousand nine hundred forty pounds) in respect of costs and expenses incurred by the applicant's representatives in London (for breakdown see attachment 25).

(iv) GBP 600 (six hundred pound) for advice of Ms. Miriam Carrion Benitez (for her professional fees see attachment 26).

Yours faithfully,

Kirill Koroteev,

Applicant's legal representative.

Documents attached to these submissions

- *relating to the applicant's personal situation*

1. Medical report drawn by Hospital of North-West Scientific Center for Hygiene and Public Health in Saint-Petersburg on 30 May 2002
2. Information note of Environmental Department of Cherepovets Town Administration
3. Letter to the applicant from the Department of Architecture and City Planning of Cherepovets local administration of 11 April 2003
4. Map of the vicinity of the applicant's house

- *relating to the JSC "SeverStal"*

5. Income and loss report of the JSC "SeverStal"
6. Forbes' information concerning Mr. Alexey Mordashov
7. Financial results of JSC "Vorkutaugol"

- *relating to environmental situation in Cherepovets*

8. Expert report by Dr. Mark Chernaik
9. "Economic efficiency of sanitation measures at the JSC "Severstal" in the town of Cherepovets," which appears // *Meditsina Truda I Promyshlennaia Ekologiia* (Occupational Medicine and Industrial Ecology). No. 4. Pages 18-25.
10. Use of health information systems in the Russian Federation in the assessment of environmental health effects. Jaakkola JJK, Cherniak M, Spengler JD, Özkaynak H, Wojtyniak B, Egorov A, Rakitin P, Katsnelson B, Kuzmin S, Privalova L, Lebedeva NV. Environ Health Perspect 2000;108:589-594.
11. "Review of Environmental Pollution on the Territory of Activities of Northern Department of State Weather Forecast Service"
12. *A.F. Nadenin, S.N. Tarkhanov, O.A. Lobanova*, "Sources of Technogennous Air Pollution in Arkhangelsk Industry District", summary.
13. National Reports on Ecological Situation in Russia, excerpts pertaining to Vologda Region

- *relating to the relevant Russian legislation, regulations and jurisprudence*

14. Constitution of the Russian Federation, art. 42
15. Excerpts from federal laws
    a) City Planning Code of 1998, art. 43

b) Housing Code of 1983, arts. 29, 37, 91

c) Federal Law "On Protection of Environment" of 2002, art. 11

d) Federal Law "On Protection of Atmosphere Air" of 1999, art. 16

e) Law of the Russian Federation of 1991 no. 2060-1 "On Protection of Environment", arts. 11 and 14

16. Excerpts from Government's Federal programmes

a) Federal programme of 3 October 1996;

b) Federal programme of 7 December 2001.

17. Government's Decree of 10 September 1974

18. Sanitary regulations

a) Sanitary regulations of 10 April 2003 no. 2.2.1/2.1.1.1200-03 (art. 2.30)

b) Sanitary regulations of 17 May 2001 no. 2.2.1/2.1.1.1200-03 (art. 2.30)

19. Complex Programme of Sanitary-Epidemiological Preventive Measures in Cherepovets in 1995-1996

20. Supreme Court of the RF judgment in the case of *Ivashchenko v. Krasnoyarsk Railroad Administration and Krasnoyarsk Distance of Civil Construction*.

21. Supreme Court of the Russian Federation, Civil Chamber, judgment of 3 March 2003 no. ГКПИ 03-191 on application of JSC "Arkhangelsk City Telephone Network" for judicial review of Minister of Health's Decree of 17 May 2001 no. 15.

- *relating to justification of claims for just satisfaction*

22. Prices of flats in Cherepovets

23. Mr. Yury Vanzha's costs

24. Mr. Kirill Koroteev's costs

25. Costs of the applicant's representatives in London.

26. Professional fees of Ms. Miriam Carrion Benitez.