CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55723/00
by Nadezhda Mikhaylovna FADEYEVA
against Russia

The European Court of Human Rights (First Section), sitting on 16 October 2003 as a Chamber composed of

Mr P. LORENZEN, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 December 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Nadezhda Mikhaylovna Fadeyeva, is a Russian national, who was born in 1949 and lives in the city of Cherepovets. The respondent Government are represented by Mr P. Laptev, the Representative of the Russian Federation in the European Court of Human Rights. The applicant is represented before the Court by Mr Y. Vanzha.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The city of Cherepovets, situated 300 km north-east of Moscow, is a major steel-producing centre. In order to delimit areas where pollution caused by steel production may be excessive, the authorities have established the so-called "sanitary security zones" (see the "Relevant domestic law" part below).

The applicant lives in a local council flat in an apartment building situated within the sanitary security zone ("the zone") around Severstal steel-plant ("the plant"), a privately-owned company. This zone was first delimited in 1965. By a municipal resolution of 18 November 1992 the 1,000 metre-wide zone was delimited anew.

The State authorities conduct regular inspections of the zone and assess the level of pollution there. In 2000 the authorities confirmed that the concentration of certain hazardous substances in the atmosphere within the zone largely exceeded the "maximum permitted limit" ("the MPL") established by the Russian legislation. According to a letter addressed to the applicant by the Cherepovets Centre of Sanitary Control of 7 July 2000, in 1990-1999 the average concentration of dust in the air within this zone exceeded the MPL by 1.6 to 1.9 times, the concentration of carbon disulphide - 1.4 to 4 times, the concentration of formaldehyde - 2 to 4.7 times. The State Weather Forecast Agency of Cherepovets reported that the level of atmospheric pollution during 1997-2001 within the zone was rated as "high" or "very high". An excessive concentration of hazardous substances, such as hydrogen sulphide, ammonia and carbolic acid was in particular registered.

In 1995 the applicant together with other residents of the apartment block brought a court action, seeking resettlement outside the zone. She relied mainly on the governmental regulations of 1989 pertaining to city planning. The applicant claimed that the regulations imposed on the owners of the plant an obligation to take various ecological measures in the zone, and that it had failed to observe the obligation.

On 17 April 1996 the Cherepovets Town Court examined the action. The court first noted that before 1993 the applicant's flat had been owned by the Ministry of Steel Production, which had also owned the plant. Following the privatisation of the plant in 1993 it became a privately-owned entity, while

the applicant's flat had become the property of the local authorities. The court found, by reference to a ministerial decree of 1974, that the authorities had been obliged to resettle all of the residents of the zone, but that they had failed to do so. In view of the findings, the court in principle accepted the applicant's claim, stating that she had the right in domestic law to be resettled. However, no specific order to resettle the applicant was taken by the court in the operative part of the judgment. Instead, the court stated that the local authorities must put her on a "priority waiting list" to obtain new housing from the local authorities (see the 'Relevant domestic law and practice' part below). The court also stated that the applicant's resettlement was conditional on the availability of funds.

The applicant appealed. On 7 August 1996 the Vologda Regional Court upheld the decision of 17 April 1996 in principle, excluding from the operative part of the judgment the reference to the availability of funds as a condition for her resettlement.

The first instance court issued an execution warrant and transmitted it to a bailiff. However, on 10 February 1997 the bailiff discontinued the enforcement proceedings on the ground that there existed no "priority waiting list" for residents of the sanitary security zones to obtain new housing.

In 1999 the applicant brought a fresh action against the municipality, seeking execution of the judgment of 17 April 1996. She asked to be provided with a flat in an ecologically-safe area, or with the means to buy a new flat herself.

On 27 August 1999 the municipality put the applicant on the general "waiting list" for new housing under no. 6820 (see the 'Relevant domestic law and practice' part below).

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

B. Relevant domestic law and practice

Background to the Russian housing provisions

During the Soviet rule of Russia a major part of housing was owned by various public bodies. Following the dissolution of the USSR in 1991 extensive privatisation programmes were carried out in Russia. Real property that had not been privatised was in certain cases transferred into the possession of the local authorities.

To date, a major part of the Russian population continues to live in local council homes because of the advantages they enjoy. In particular, tenants of council homes do not need to pay taxes on property, they pay a rent that is substantially smaller than the market rate, and they have full rights to use

and control the property. In addition, certain persons have the right to claim new housing from the local authorities, provided that they satisfy the conditions established by law.

From the historical standpoint, the right to claim new housing was among the cornerstone of various socio-economic rights enshrined in the Soviet legislation. Pursuant to the Soviet Housing Code of 1983, which is still valid in Russia, every tenant whose living conditions do not correspond to the required standards is eligible to be put on a "waiting list" of the local authorities in order to obtain new council housing. The "waiting list" establishes the priority order in which housing is attributed when it is available. However, being on the "waiting list" does not entitle the person concerned to claim from the State any specific conditions or delays in obtaining new housing. Certain categories of persons, such as judges, policemen, or handicapped persons are entitled to be put on a special "priority waiting list". However, it appears that the Russian legislation guarantees no right to be put on the "priority waiting list" solely on the ground of serious ecological threats.

Since the Soviet time, virtually all the population of Russia has been put on "waiting lists", the lists becoming longer with each year because of the lack of resources to build new council homes. At present, the fact of being on the "waiting list" represents nothing more than a mere acceptance by the State of its intention to provide new housing depending on the availability of resources. The applicant submits, for example, that in the "waiting list" in her municipality, where she has been attributed no. 6820 in 1999, the person who is first on the list has been waiting for new housing in a council home since 1968.

The status of the "sanitary security zone"

In accordance with the Russian law, industrial emissions should not exceed the established environmental standards. If an enterprise cannot meet these requirements, the relevant domestic provisions require that the enterprise create around its territory a "sanitary security zone". The zone denotes an area where the level of pollution may be above the accepted norms. Pursuant to Article 3-8 of the governmental regulations of 1989 on city planning, no housing should be situated within the zone.

Pursuant to Article 3-6 of the above regulations, the enterprise must take all the necessary measures in order to "arrange" (*обустроить*) its sanitary security zone in accordance with law, with a view to limiting pollution. It is unclear from the relevant provision what the word "arrange" means. In a letter to the applicant of 27 October 2000, the State Committee on Construction has interpreted these provisions in such a way that the obligation to resettle the applicant outside the zone rests on the plant, not on the State authorities.

These provisions of the above regulations were later incorporated in the City Planning Code of 1998 (Article 43).

The case of T. Ledyaeva

On 16 January 2002 the Vice-Chairman of the Supreme Court of the Russian Federation lodged an extraordinary appeal against the decision of 8 December 1999 taken by the Cherepovets Town Court in respect of another resident of the zone of the Severstal steel-plant, Mrs T. Ledyaeva (the proceedings were almost identical to those regarding the present applicant). On 11 February 2002 the Presidium of the Vologda Regional Court stated *inter alia*:

> "The lower court did not assess whether the measures taken in order to re-settle 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 [T. Ledyaeva] with new housing under the provisions of the housing legislation by way of putting her on the waiting list can be regarded as giving [her] a real chance to live in an environment favourable for her life and health".

The court also expressed doubts as to whether the State should be obliged to re-settle residents of the zone.

COMPLAINTS

1. Under Articles 2, 3 and 8 of the Convention the applicant complains that the operation of the Severstal steel-plant in close proximity to her home endangers her life and health. She also complains under the above provisions that she has been unable to be resettled outside the "sanitary security zone" of the plant regardless of the domestic legal provisions prohibiting any dwelling in the area.

2. Under Article 6 of the Convention the applicant complains that the court proceedings concerning her claims for resettlement were unfair. She also alleges a breach of this provision in view of the authorities' failure to resettle her.

THE LAW

1. Under Articles 2 and 3 of the Convention the applicant complains that the operation of the steel-plant in close proximity to her home endangers her life and health, and that the authorities' failure to resettle her in a safer place is in breach of the above provisions.

First of all, the Court considers that the applicant in the present case did not face any "real and immediate risk" either to her physical integrity or her life (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3160, § 116). The alleged detriment suffered by the applicant cannot be said to raise any issues under Article 2 of the Convention and is more appropriately dealt with in the context of Article 8.

Furthermore, the applicant has presented no medical records or other *prima facie* evidence showing that the sole fact of her living close to the

plant could raise an issue under Article 3 of the Convention. While it can be accepted that the applicant's present housing conditions are difficult, there is no indication that they as such amount to treatment incompatible with Article 3 (see, *mutatis mutandis*, *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 54, § 60).

It is true that the applicant's complaints in this part of the application also relate to the question of the State's positive obligations under Article 3 of the Convention. The Court has held that such an obligation may arise, for example, in the context of an investigation of detention conditions or ill-treatment in prison (see, among other authorities, *Labita v. Italy* [GC], no. 6772/95, 6 April 2000, ECHR 2000-IV; *Valašinas v. Lithuania*, no. 44558/98, 24 July 2001, ECHR 2001-VIII; *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002, ECHR 2002-VI). However, the question of a positive obligation under Article 3 may arise only where there is at least a "credible assertion of ill-treatment" upon which the authorities must act (see the *Valašinas v. Lithuania* judgment, cited above, § 122).

On the facts of the present case, the Court detects no "credible assertion of ill-treatment" by the applicant in the course of the impugned domestic proceedings concerning her claim for resettlement. Indeed, it observes that the applicant's assertions throughout the above proceedings and the Russian courts' replies to those assertions concerned solely the question of the lawfulness of her housing status (see 'the Facts' part above). The Court considers that the impugned proceedings were not such as to warrant its attention from the point of view of a positive obligation under Article 3 of the Convention. At the same time, it is to be noted that the Court will examine the merits of the applicant's complaints about the outcome of these proceedings under Article 8 of the Convention (see, *mutatis mutandis*, the *López Ostra* judgment, cited above; also see, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, 8 July 2003; also see below).

Against the above background, the applicant's complaints in this part of the application are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. These complaints should therefore be rejected under Article 35 §§ 3 and 4 of the Convention.

2. Under Article 6 of the Convention the applicant next complains that she has been denied a fair hearing in her case.

The Court notes, firstly, that the applicant failed to comply with the six months time-limit under Article 35 § 1 of the Convention in regard to her complaints about the first set of proceedings concerning her resettlement claim. Those proceedings ended with the final decision of the Vologda Regional Court of 7 August 1996, whereas the application was introduced only on 11 December 1999.

Furthermore, to the extent that the applicant complains about the procedure which ended with the final decision of the Vologda Regional Court of 17 November 1999, the question arises whether the above procedure concerning the lawfulness of the applicant's housing status determined the applicant's "civil" rights or obligations within the meaning of Article 6 § 1 of the Convention. The Court does not consider it necessary to determine the above question as this part of the application must in any event be rejected for the following reasons.

In this respect, the Court observes that the applicant has presented no complaint about unfairness of the proceedings within the meaning of Article 6 of the Convention. Indeed, on the basis of the material before it, it appears that the applicant was afforded ample opportunity to state her case and contest the evidence that she considered false. The court decisions do not appear arbitrary. This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

Finally, to the extent that the applicant complains under Article 6 of the Convention that she has not been resettled, the Court considers that in this part of the application she essentially alleges non-execution of the court decisions taken in the above sets of proceedings. It observes that the "right to a court" under Article 6 includes the right to have a judgment duly executed (see, for example, *Burdov v. Russia*, no. 59498/00, 7 May 2002, §§ 37, 40-41, ECHR 2002-III). The applicant complains in this respect that as a result of the court judgments adopted in 1996 and 1999 she has not been resettled.

However, the Court notes that the applicant's resettlement had not been ordered by way of the impugned court decisions. The courts only ordered the local authorities to include the applicant on the waiting list for new housing when it became available; no conditions or time-limits were established in the impugned judgments to require the executive or local authorities to resettle the applicant (see the 'Facts' and the 'Relevant domestic law and practice' parts above). While the fact of the applicant being on the waiting list has not yet enabled her to be resettled, it is not for the Court, from the point of view of Article 6 of the Convention, to assess the relevance of the outcome of the proceedings to her initial claims. The fact remains that the court judgments in the applicant's case were executed (see, by contrast, the *Burdov v. Russia* judgment, cited above, where the Court found a violation of Article 6 in view of the authorities' failure to pay a pecuniary award made by a domestic court).

Against the above background, the applicant's complaints in this part of the application are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. These complaints should therefore be rejected under Article 35 §§ 1, 3 and 4 thereof.

3. Finally, the applicant complains that the failure of the authorities to resettle her breaches the State's obligation to protect her right to respect for her private life and home. In this respect, she relies on Article 8 of the Convention, which provides:

> "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."

In their observations, the Government admit the State's obligation to resettle the applicant outside the sanitary security zone in order to protect her private and family life under Article 8 of the Convention. However, the Government also submit that the outcome of the court proceedings brought

by the applicant, whereby the applicant was not resettled but put on the "waiting list", is lawful. The Government submit that the measure of putting the applicant on the "waiting list" was justified by the interest of the protection of the rights of other individuals waiting for resettlement. The Government also state that a federal programme aimed at the improvement of the environmental situation in Cherepovets is being implemented in co-operation with the municipal authorities.

The applicant contests the Government's submissions. She maintains that the impugned court decisions were contrary to domestic law, and that the outcome of the domestic proceedings on her claim for resettlement was inadequate. The applicant submits that she still lives in a dangerous zone, despite the courts' and the executive authorities' acknowledgement that she should be resettled.

In view of the parties' observations, the Court considers that the issues raised in this part of the application concern complex questions of fact and law which require an examination of the merits. This part of the application cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 8 of the Convention

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Peer LORENZEN
President