Ledyaeva, Dobrokhotova, Zolotareva and Romashina v. Russia

(Applications nos. 53157/99, 53247/99, 53695/00 and 56850/00)

JUDGMENT

STRASBOURG

26 October 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ledyayeva and Others v. Russia,

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

Mr C.L. ROZAKIS, President,
Mrs N. VAJIC,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, judges,
and Mr S. NIELSEN, Section Registrar,

Having deliberated in private on 5 October 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications (nos. 53157/99, 53247/99, 53695/00, and 56850/00) 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 Lyudmila Konstantinovna Ledyayeva, Elena Grigoryevna Dobrokhotova, Zhanna Vladmirovna Zolotareva and Ekaterina Efimovna Romashina, ("the applicants"), on 9 September, 1 September, 7 October and 27 August 1999, respectively.

2. The applicants, who had been granted legal aid, were initially represented by Mr Yuriy Vanzha, and, subsequently, by Mr Kirill Koroteyev, Ms Dina Vedernikova ("Memorial"), lawyers practising in Moscow, and Mr Bill Bowring and Mr Phillip Leach ("European Human Rights Advocacy Centre"), sollicitors in England and Wales. The respondent Government were represented by Mr Pavel Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that the operation of a steel-plant in close proximity to their homes endangered their health and well-being. They relied on Article 8 of the Convention.

4. The applications were 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 cases (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). The cases were assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 16 September 2004, the Court declared the applications partly admissible. The

Chamber also decided to join the proceedings in the applications (Rule 42 § 1).

7. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 in fine), the parties replied in writing to each other's observations.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was remained with the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

9. The first applicant was born in 1948, the second in 1928, the third and the fourth applicants were born in 1932. They all live in the town of Cherepovets, Vologda region, an important steel-producing centre situated about 300 km north-east of Moscow.

10. The Cherepovets steel plant ("the steel-plant") was built in the 1950-s 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 contributor to the environmental pollution: it is responsible for 95-97 per cent of industrial emissions into the town's air. According to the annual report by the Federal Agency for State Statistics, in 2003 overall emissions from stationary sources of atmospheric pollution were 97 thousand tons for Moscow, a city of more than ten million people, and 349 thousand tons for Cherepovets, which counts less than 350,000 residents. As a result, the concentration of certain dangerous substances in the residential areas around the steel-plant is high above the safe levels, as defined by the domestic legislation.

11. In order to delimit the areas in which pollution caused by steel production could be excessive, the authorities established a buffer zone around the steel-plant premises – "the sanitary security zone." Although this zone was, in theory, supposed to separate the plant from the town's residential areas, in practice thousands of people (including the applicants' families) lived there.

12. The apartment buildings in the zone belonged to the plant and were designated mainly for its workers, who occupied the flats as life-long tenants. Since the 1970-s several consecutive State programs have been adopted and implemented in order to reduce the pollution to acceptable levels and/or to resettle the inhabitants of the zone. Despite certain success in reducing the levels of atmospheric pollution and resettling some of the residents of the zone, these programs failed in bringing the atmospheric pollution down to the safe levels, as defined by Russian legislation.

13. The zone was first delimited in 1965. It covered a 5,000 metre-wide area around the territory of the plant. 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 sanitary security zone was reduced to 1,000 metres from the territory of the plant.

14. In 1993 the steel-plant was privatized and acquired by "Severstal" PLC. In the course of privatisation the apartment buildings owned by the steel-plant and situated within the zone were transferred to the municipality.

15. In 2002 the municipality challenged its own decree no. 30 of 1992, which had established the zone's boundaries. On 13 June 2002 the Cherepovets Town Court declared decree no. 30 invalid. The Town 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.

16. For further details concerning the status of the zone and the environmental situation in Cherepovets in general see the judgement Fadeyeva v. Russia (no. 55723/00, §§ 10-19, and §§ 29-43, ECHR 2005…).

B. The applicants' housing conditions

17. At the relevant time the applicants lived in the council houses situated within the sanitary security zone, as delimited by municipal decree no. 30 of 1992. They acquired those flats from the local authorities or the plant itself and lived there under the "social tenancy agreement" (see the "Relevant domestic law" part below). Their respective housing conditions may be summarised as follows.

18. In the 1960-s the first applicant's family moved to a flat situated at 49, Metallurgov Street in Cherepovets. That flat was provided by the plant to the applicant's father under a "protected tenancy" agreement. After his death in 1968 the applicant became the tenant. In the 1970-s she left Cherepovets but then returned to the city and settled in that flat. In the early 1990-s the applicant's family had obtained from the State a right of protected tenancy to another flat in Cherepovets. The applicant registered that flat as her main place of residence (место прописки). However, there is no indication that she had physically moved there.

19. In 1996 the municipality started repair works in the apartment block where the first applicant lived. In May 1996 the applicant registered again the flat at 49, Metallurgov street as her place of permanent residence. The municipality proposed the applicant to move temporarily to another flat in the same building during the works in her flat. The applicant refused to do so, claiming that she had to be resettled outside the sanitary security zone once and for all. On 7 July 1999, upon the municipal authorities' request, the applicant was temporarily evicted from her flat and moved to another apartment in the same building. In 2002, however, she returned to the flat no. 49.

20. The second applicant lived in a flat at 38, Lomonossova street. In 1992 she privatised the flat. However, in 1997, upon her request, the court declared the privatisation contract null and void. She continues to live in the flat as a tenant.

21. The third applicant lives in a flat at 12, Babushkina street as a tenant. She moved to that flat in 1985.

22. The fourth applicant lived in a flat at 20, Gagarina Street as a tenant. On 2 March 2000 she moved to another flat at 86, Leningradskaya street, which was situated outside the sanitary security zone as defined by the municipal decree of 18 November 1992. That flat was provided to her by the municipality of Cherepovets. She recently privatized that flat.

C. Pollution levels at the applicants' place of residence and their effects on the applicant's health and well-being

1. Summary of the findings in the Fadeyeva judgment

23. On 19 May 2005 the Court adopted a judgement in the case Fadeyeva v. Russia, cited above. Ms Fadeyeva, the applicant, lived within the sanitary security zone and complained about the effects of the operation of the "Severstal" steel-plant on her health and well-being.

24. In that judgment the Court found that the concentration of certain toxic substances in the air near the applicant's home had constantly exceeded the safe levels established by the Russian legislation. The Court also established that the nuisances endured by the applicant were in direct relation with the operation of the steel-plant.

25. In reaching that conclusion the Court relied, inter alia, on the information on air pollution in the whole town. In addition, the Court referred to the data collected by the State Agency for Hydrometeorology at the monitoring post situated at 4 Zhukov Street (post no. 1). That post was the

closest one to the applicant's house, and in the absence of any more precise measurement, the data obtained from post no. 1 was regarded as the nearest approximation to the applicant's individual situation.

26. Information referred to in the Fadeyeva judgment is fully relevant for the purpose of the proceedings in the present four cases and will be taken into account by the Court. However, the parties produced certain new evidence as to the pollution in the area and its effects on the applicants' health and well-being. This information will be examined below.

2. Information specific to the present cases

(a) Evidence produced by the Government

27. The first and fourth applicants' houses are located in the vicinity of post no. 1, situated at 4, Zhukov Street. The data collected from that post showed that in 1999-2003 the concentration of dust, carbon disulphide and formaldehyde in the air constantly exceeded the "maximum permissible limits" (MPLs, safe levels of various polluting substances, as established by Russian legislation, предельно допустимые концентрации). Moreover, an over-concentration of various other substances, such as manganese, benzopyrene and sulphur dioxide, was registered during that period (for further details see § 28 et seq. of the Fadeyeva judgment, with further references). In 2004 an over-concentration of manganese (1.12 times higher than MPL), dust (1.18 times higher), and formaldehyde (6.29 times higher) was registered.

28. As regards the houses of the second and third applicants, they are located somewhere in between post no. 1 and post no. 2, situated at 43, Stalevarov street. As follows from the data produced by the Government in the Fadeyeva case, the pollution levels registered there were slightly lower than those registered at post no. 1. Nevertheless, in 1999-2003 the concentration of formaldehyde in the air was from 2.6 to 4.4 times higher than the respective MPL. The concentration of carbon disulphide was from 1.24 to 3.6 times higher (except for 2002, when it did not reach dangerous levels). Other pollution levels were below MPL (except for the over-concentration of dust registered in 1999). In 2004 the over-concentration of the following substances was registered: nitrogen dioxide (1.06 times higher than MPL), carbon disulphide (1.2 times), and formaldehyde (3.73 times).

29. As regards general effects of industrial pollution on the population of Cherepovets, the Government produced a report, prepared in 2003 by the Mechnikov Medical Academy in St-Petersburg in order to delimit the boundaries of the sanitary security zone. The conclusions of the report may be summarised as follows. The steel-plant's emissions in 2000 were half as much as in 1982. However, in 2000-2001 the concentration of several polluting substances in the air of the residential areas of the town still exceeded safe levels. At the same time the birth rate in the town was higher than the average in the country and the morbidity rate was lower. Most of the deceases registered in the town were not place-specific. However, prevalence of some chronic respiratory diseases was directly linked to the distance of the patients' houses from the territory of the steel-plant. The measures provided by the steel-plant in order to reduce emissions, would be capable of reducing health risks for the population of Cherepovets. If all these measures were implemented, by 2015 the concentration of pollutants in the air of the residential areas of the town could reach 1 MPL, which is the acceptable level. It would be possible to establish a sanitary security zone at a distance of one kilometre from the main sources of pollution. Having regard to the measures, scheduled for the period of 2002-2015, it would be possible to fix the boundaries of the sanitary security zone at the confines of the residential areas of the city.

30. On the basis of that report the Chief Sanitary Inspector of the Russian Federation issued a certificate, confirming that the project "On creating a sanitary security zone around the Severstal PLC" was in conformity with the requirements of the relevant Russian legislation. That certificate concluded that the realisation of the project would allow by 2015 a complete reduction of the

concentration of air contaminants to hygienic standards, which would "guarantee reaching acceptable levels of public health hazards."

31. The Government further produced a set of materials, prepared by the "Severstal" PLC called "For the important contribution to the environmental protection." These materials described the environmental protection policy of the plant, environmental risks assessment mechanisms in place, the management structure of the environmental protection programs, particular technological measures implemented by the plant in order to reduce pollution levels and to normalise the environmental situation in the town, payments to the local budget for excessive pollution levels, participation of the plant in environmental education programs etc.

32. The Government further produced a certificate, issued by the Bureau Veritas Quality International, which confirmed that the management systems of the "Severstal" PLC in the areas of environmental protection and occupational hazards were in accordance with the standards, applied by that organisation.

33. As regards the effects of the pollution on the applicants' health, the Government produced the following information. As regards the first applicant, the Government did not have official information on her state of health, and, therefore, could not comment on it. As to the second and third applicants, according to the Public Health Department of the Vologda Region, their diseases were occupational or age-related. As to the fourth applicant, the Government stated that in 1997 she had been excluded from the list of people in need of regular examinations by the TB dispensary. In sum, the Government claimed that the applicants' diseases were of general character and had not been caused by the their living near the steel-plant.

(b) Evidence produced by the applicants

34. The applicants claimed that the air pollution in the area where they lived was and continued to be above safe levels. Thus, according to a letter of the Cherepovets Centre for Sanitary Control, between 1990 and 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 bisulphide – by 1.4 to 4 times, the concentration of formaldehyde – by 2 to 4.7 times. The State Weather Forecast Agency of Cherepovets reported that the level of atmospheric pollution between 1997 and 2001 within the zone was rated as "high" or "very high." Notably, a high concentration of hazardous substances, such as hydrogen sulphide, ammonia and carbolic acid was registered. According to a resolution of the Chief Health Inspector (главный санитарный врач) of 7 August 2000, the atmospheric pollution in the zone adversely affected public health, increasing the risk of cancer, as well as of respiratory and cardiac diseases.

35. According to the letter of the Head of the Environment Protection Department of the Vologda Region, in 2003 atmospheric pollution in the town was rated as "high." Namely, over-concentrations of formaldehyde, benzopyrene, dust and carbon disulphide were registered.

36. As regards 2004, the applicants referred to the information published on the website of the Northern Department of the State Agency for Hydrometeorology. This source reported that in January-October 2004 the concentration of formaldehyde in Cherepovets was from 4 to 8 times higher than the respective MPL. According to an article published in the local newspaper "Golos Cherepovtsa" in May 2004 the concentration of dust registered at post no. 1 was 2 times higher than MPL, the concentration of nitrogen dioxide was 1.2 times higher, the concentration of carbonic oxide was 1.9 times higher. Pollution levels registered at the post no. 2 were 1.2, 2.6 and 1.6 higher than the corresponding MPLs.

37. The applicants also produced various medical documents, which confirmed that they suffered from certain chronic diseases. However, none of these documents certified that there was a link between any given illness and the place of residence of the respective applicant.

38. Finally, the applicants relied on the expert report of Mark Chernaik, Ph.D., submitted to the

Court in the Fadeyeva case. In that report Dr. Chernaik analysed the effects of several polluting substances, present in the town's air in excessive quantities. As a result of his research Dr. Chernaik concluded that he would expect that the population residing within the sanitary security zone would suffer from excess incidences of various diseases, such as respiratory infections, cancer of nasal passages, chronic irritation of the eyes etc. Dr. Chernaik attributed these effects to the emissions of the steel industry (for further details see the Fadeyeva judgment, § 45).

39. In April 2005 Dr. Chernaik updated his report, taking into account data produced by the Government. In this new report Dr Chernaik concluded that emissions of harmful pollutants from the Severstal steel-plant and ambient levels of pollutants in the vicinity of it had not substantially declined in recent years; levels of dust, carbon disulfide and formaldehyde were still above permissible levels and were generally higher at monitoring stations closest to the Severstal facility. Dr. Chernaik also found that there was no substantiation of the claim that the Severstal Company had complied with the European and international environmental requirements.

C. Domestic proceedings

1. Proceedings concerning the first applicant

40. On 30 March 1999 the first applicant requested the municipality to confirm that her house was located within the sanitary security zone. On 27 May 1999 the municipality replied that the boundary of the zone had not been officially delimited. On 9 July 1999, upon the applicant's request, the Cherepovets Town Court ordered the municipality to provide her with the information sought. That decision was upheld on 29 September 1999 by the Vologda Regional Court. The Regional Court found that, pursuant to Resolution no. 30 of 1992, the applicant's house was indeed located within the zone.

41. Shortly thereafter the first applicant brought proceedings against the "Severstal" company. She claimed that the "City Planning Regulations", a Government Decree adopted in 1989, imposed on the owners of the plant an obligation to take various environmental protection measures in the zone, including the resettlement of its inhabitants, which obligation the company had failed to observe. Consequently, she claimed the resettlement outside the zone or the payment of a sum sufficient to purchase new housing in a safer area.

42. On 8 December 1999 the Cherepovets Town Court rendered a judgment in that case. The court discharged the company from any obligation to resettle the applicant, and ordered the municipality to put the applicant on the general waiting list for the new housing. This judgment was upheld by the Vologda Regional Court on 1 March 2000. The applicant was placed on two waiting lists. In 2004 the first applicant was no. 7613 on the general waiting list and no. 3692 on the priority waiting list.

43. On 11 February 2002 the Presidium of the Vologda Regional Court quashed, by way of supervisory review, the judgment of 8 December 1999. The Presidium established that the applicant lived in the sanitary security zone of the plant, where the concentration of by-products of steel production regularly exceeded the health limits. The Presidium further criticized the judgment of 8 December 1999 in the following words:

"The lower court did not assess whether the measures taken in order to resettle the residents of the sanitary security zone were adequate in comparison to the degree of the 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 could be regarded as giving her a real chance to live in an environment that is favourable for her life and health."

The Presidium further analysed the legislation and concluded that it was for the polluting enterprise to take all necessary measures and to "develop" the sanitary security zone around its premises. The

Presidium remitted the case to the Cherepovets Town Court for a fresh examination.

44. In 2002 the municipality challenged before the town court Resolution no. 30 of 1992 fixing the boundary of the zone. The applicant requested that she participate in the proceedings as a third party but this motion was refused. On 13 June 2002 the Cherepovets Town Court declared Resolution no. 30 invalid as ultra vires, in the presence of the only interested party – the municipality.

45. On 12 July 2002 the Cherepovets Town Court rejected the applicant's claims against the steel-plant. The court, referring to its judgment of 13 June 2006, held that the new boundary of the sanitary security zone had not been defined yet. The Federal Program of 1996, referred to by the applicant, contained such measure as the resettlement of the zone residents. However, that program has been abolished by Government Decree no. 860 of 7 December 2001, which did not provide for any resettlement.

46. Further, the court found that the 1989 town planning regulations provided that no housing should be situated within the sanitary security zone. However, those regulations had been adopted after the applicant's house had been built and, therefore, could not be referred to. Finally, the court noted that the applicant's family had moved to the flat at issue voluntarily.

47. The court also observed that the "Severstal" PLC was aware of the environmental consequences of its activities and was taking measures in order to reduce their impact.

48. The court concluded that the "Severstal" PLC could not be held responsible for not resettling the applicant from the zone. On 14 August 2002 this decision was upheld by the Vologda Regional Court.

2. Proceedings concerning the second, third and fourth applicants

49. In 1996 the second, third and fourth applicants brought a court action against the company, seeking their resettlement outside the zone.

50. On 25 April 1996 the Cherepovets Town Court rendered a judgment regarding the third applicant. On 10 July 1996 this judgment was upheld by the Vologda Regional Court on appeal. The judgment in respect of the second applicant was rendered by the town court on 23 May 1996, and upheld on appeal on 31 July 1996. The judgment with respect to the fourth applicant was delivered on 30 October 1996 and upheld on 25 December 1996.

51. In each case the courts came to the same conclusion by using a similar line of reasoning, which can be summarised as follows.

52. The courts noted that, before 1993, the applicants' flats had been owned by the Ministry of Steel Production, which had also owned the steel plant. Following the privatisation of the plant in 1993, it became a privately-owned entity, while the applicants' flats had become the property of the local authorities. The courts concluded that the company was therefore under no obligation to resettle the applicants.

53. The courts further recognised that the applicants lived in the sanitary security zone, where the concentration of dangerous substances and the level of noise exceeded the maximum limits permitted. The courts in principle accepted the applicants' claims, stating that they had the right in domestic law to be resettled by the local authorities. However, no specific order to resettle the applicants was made by the courts in the operative parts of the judgments. Instead, the courts stated that the municipality should put the applicants on a waiting list to obtain new housing (see the 'Relevant domestic law and practice' part below).

54. Enforcement proceedings were opened in this respect. In the absence of any special procedure for the resettlement of residents of the sanitary security zone, the applicants were put on the general waiting list for those entitled to better housing on social grounds. The second applicant was put on the list on 23 May 1999 with the number 6859, and the third and fourth applicants on 23 April 1999

with the numbers 6827 and 7032, respectively.

55. In 1999 the applicants brought new court proceedings, alleging that the judgments of 1996 had not been duly enforced. The applicants claimed flats in an ecologically-safe area, or the means to buy new flats themselves.

56. The Cherepovets Town Court dismissed their claims. The court established that no special waiting list existed for the zone residents and that on different dates the applicants had been put on the general waiting list. Therefore, the judgments of 1996 had been duly executed, and there was no need to undertake any further measures. These decisions were upheld by the Vologda Regional Court with respect to the second, third and fourth applicants on 4 August, 22 September and 7 July 1999 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

57. 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”

58. 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 (Об охране атмосферного воздуха, 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. Pursuant to Regulation 2.2 of the Sanitary Regulations, the air quality in the residential zones of cities should not exceed 1.0 MPL for all categories of toxic elements, and should not exceed 0.8 MPL in recreational zones.

59. Pursuant to the Atmospheric Protection Act, the federal environmental agency establishes environmental standards for various types of polluting sources (cars, farms, industrial enterprises etc). These general standards are applied to specific enterprises by the regional environmental agencies. In principle, an industrial enterprise’s operations 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 enterprise 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

60. Every polluting enterprise must create a “sanitary security zone” around its territory – 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 State Sanitary Service of 31 October 1996; similar provisions were contained in the sanitary regulations of 2000, 2001 and 2003, which replaced the 1996 regulations). The levels of pollution in this buffer area may exceed the MPLs.

61. The minimum width of the zone is defined by the sanitary regulations for different categories of enterprises. Pursuant to the 1996 regulations, the sanitary security zone around a steel-plant of the size of Severstal ought to be 2,000 metres from the boundaries of the territory of the industrial zone. Pursuant to the sanitary regulations of 1 October 2000, the width of the sanitary security zone for a

metallurgical enterprise of this size ought to be at least 1,000 metres. In certain cases the State Sanitary Service may enlarge the zone (for example, where the concentration of toxic substances in the air beyond the zone exceeds the MPLs). The width of the sanitary security zone is calculated from the confines of the industrial territory or from the sources of pollution depending upon the type of polluting emissions.

62. Regulation 3.6 of the 1989 city planning regulations provided that an enterprise must take all necessary measures in order to develop (обустроить) its sanitary security zone in accordance with the law, with a view to limiting pollution.

63. Regulation 3.8 of the 1989 town planning regulations provided 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. Art. 43 of the Town Planning Code of 1998 provided:

"Industrial zones are intended for placement of industrial objects, public utilities, warehouses… as well as for sanitary security zones thereof.

Development of sanitary security zones should be conducted at the expense of the owners of the industrial objects.

Placement of houses, kindergartens, schools, hospitals, […]within the sanitary security zones of industrial objects […] is prohibited."

64. According to Regulation 3.3.3 of the 2001 sanitary regulations, a project to develop the 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 enterprise which is already in operation.

65. Article 10 § 5 of the Town Planning Code of 1998 provided as follows:

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

66. On 29 December 2004 the new Town Planning Code was adopted. It came into force on 30 December 2004. The new Code does not contain the regulations on sanitary security zones, similar to article 43 of the former Code. The only provision on the matter is the inclusion of sanitary security zones in the category of "zones with special conditions in the use of territories." The legal regime for this type of zone remains to be determined in accordance with article 36(5) of the new Code.

2. Practice

67. It follows from a judgment of the North-Caucasus Circuit Federal Commercial Court (decision of 3 June 2003, No. Ф08-1540/2003) that the authorities may discontinue the operation of an enterprise which has failed to create a sanitary security zone around its premises in accordance with the law2.

68. The applicant produced an extract from the decision of the Supreme Court of the Russian Federation in the case Ivaschenko 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 (i.e. should be put on the waiting list). The Supreme Court quashed this judgment, stating as follows:

"the [plaintiff's] house 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 define specific housing which should be provided to the individual concerned as a replacement for her previous dwelling.

C. Background to the Russian housing provisions

69. During the Soviet period, the majority of housing in Russia belonged to various public bodies or State-owned enterprises. The population lived in those flats as life-long tenants under "social tenancy agreements" (for further details see Teteriny v. Russia, no. 11931/03, § 19 et seq.,, 30 June 2005). In the 1990s extensive privatisation programmes were carried out. In certain cases, property that had not been privatised was transferred to local authority possession.

70. By the time of the events at issue, a certain part of the Russian population continued to live as tenants in local council homes on account of the related advantages. In particular, council house tenants were not required to pay property taxes, they paid a rent that was substantially lower than the market rate and they had full rights to use and control the property. Certain persons were entitled to claim new housing from the local authorities, provided that they satisfied the conditions established by law.

71. From a historical standpoint, the right to claim new housing was one of the basic socio-economic rights enshrined in Soviet legislation. Pursuant to the Housing Code of the RSFSR of 24 June 1983 in force 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 established the priority order in which housing was attributed once it was available.

72. However, being on a waiting list did not entitle the person concerned to claim any specific conditions or timetable from the State for obtaining new housing. Certain categories of persons, such as judges, policemen or handicapped persons were entitled to be placed on a special "priority waiting list." However, it appears that the Russian legislation guaranteed no right to be placed on the priority waiting list solely on the ground of serious ecological threats.

73. 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. The fact of being on a waiting list represented an acceptance by the State of its intention to provide new housing when resources become available. The applicants submit, for example, that the person who is the first on the waiting list in the Cherepovets municipality has been waiting for new council housing since 1968. On 29 December 2004 the new Housing Code of the Russian Federation was adopted. It came into force on 1 February 2005. Pursuant to the provisions of the new code the social housing may be obtained on very limited grounds. However, those who were placed on the "waiting lists" before the entry into force of the new Housing Code remained on the "waiting lists" (article 6 of the Federal Law "On the Entry into Force of the Housing Code of die Russian Federation" of 29 December 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

74. The applicants complained that there had been a violation of Article 8 of the Convention on account of the State's failure to protect their private lives and homes from severe environmental nuisance arising from the industrial activities of the Severstal steel-plant.

75. Article 8 of the Convention, insofar as relevant, reads as follows:

"1. Everyone has the right to respect for his private and family life, [and] his home ...

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 … public safety or the economic well-being of the country, … for the protection of health …, or for the protection of the rights and freedoms of others."

A. The Government's submissions

76. The Government's submissions in the present cases may be summarised as follows.

77. First, the Government emphasised that the applicants had moved to the houses situated within the zone voluntarily, and, therefore, the State could not be held responsible for resettling them outside of it.

78. Secondly, they claimed that after the annulment of municipal decree no. 30 the sanitary security zone has not been delimited, and the applicants, therefore, were not living in the zone. In any event, the applicants' temporary residence in an environmentally unfavourable territory was permissible under Article 10 of the Town Planning Code.

79. Thirdly, the domestic courts had never examined the influence of industrial pollution on the applicants' health nor assessed the damage caused by it, because the applicants had not raised these issues in the domestic proceedings. Numerous examinations of the state of environmental pollution in the town did not reveal any extreme cases of environmental pollution. The applicants have failed to use the means prescribed by the Russian legislation for assessing environmental hazards. Namely, they did not obtain a report from the State Sanitary and Epidemiologic Service, as provided by decree no. 326 of the Public Health Ministry of the Russian Federation of 2001. Their flats were not declared unfit for living by a special commission, as provided by the Government Decree no. 552 of 2003. The different illnesses from which the applicants suffered have not been caused by the emissions from the Severstal steel plant, but were of general or occupational character.

80. Fourthly, the Government claimed that, although the law provided for suspension or cessation of industrial activities of the polluting enterprises, "such question has never come up" with respect to the Severstal steel-plant. Since the 1980-s, the volume of overall emission of the steel-plant was reduced almost to one third. The most dangerous industrial units were closed and the emissions of high-risk chemical substances were reduced by 100 times. Every year the "Severstal" PLC spent about 250 million Roubles on environmental protection programs. In 2000 the company was audited by the "Bureau Veritas Quality International", an international organisation, which established that the system of the environmental protection management of the company was in conformity with international standards. Further, in 1999 the Severstal steel-plant underwent technical and ecological expertise of the European Bank of Reconstruction and Development (EBRD). As a result, the operation of the steel-plant was recognised to be in conformity with EBRD standards. The Government concluded that these aspects of the present cases permitted to distinguish them from the case L?pez Ostra v. Spain (judgment of 9 December 1994, Series A no. 303C, p. 46-47, § 16-22), where the plant had operated without the appropriate licence and had been finally closed.

81. Finally, the Government argued that the authorities had conducted regular examinations of the public health situation and had adopted various programs in order to improve it. In recent years the implementation of a number of federal and municipal programmes, as well as projects funded by the "Severstal" PLC resulted in a reduction of pollution in Cherepovets. Thus, in 1991 the proportion of "irregular samples" of the town's air was 37,6 per hundred. In 1998 it was 32,8 per hundred, and in 2004 only 23,6 per hundred. The Government stressed that the environmental monitoring carried out by State agencies revealed an improvement in the overall environmental situation throughout the town, and that the pollution levels near the applicants' houses did not differ

significantly from the average levels across the town. They produced reports, prepared by the "Severstal" PLC for the general public, which described the plant's environmental policy and the progress made in recent years. Therefore, unlike in the L?pez Ostra case, cited above, in the present cases the applicants' situation was improving, and not degrading with the course of time.

82. The Government asked the Court to conclude that there had been no violation of the applicants' rights guaranteed by Article 8.

B. The applicants' submissions

83. The applicants submitted that the histories of how and why their families had moved to the houses located within the zone had no relevance for the purpose of the present proceedings.

84. Further, they claimed that it was illogical to require them to prove the presence of their homes in the sanitary security zone in the absence of its limits. However, it was the finding of the domestic courts that the houses where the applicants lived were located within the sanitary security zone of the Severstal steel-plant. It was only after their applications had been lodged with the Court that the Russian authorities changed the regulations pertaining to the sanitary security zone of the Severstal steel plant. Consequently, the applicants submitted that they should be considered as having lived in the sanitary security zone at the material time. They lived there for many years, so Article 10 of the former City Planning Code, referred to by the Government, which allowed temporary dwelling in conditions of unfavourable environment, was not applicable.

85. The applicants asserted that the emissions from the Severstal steel plant exceeded and continued to exceed safe levels. The Government's argument that the steel plant operated in full compliance with domestic legislation could not be upheld. As to the link between the state of their health and the steel-plant's industrial emissions, the applicants noted that they have never alleged that the sole cause of their diseases was the operation of the steel-plant. The primary argument that they had consistently made was the fact that the persons suffering from such illnesses were more vulnerable than others to living in such an unhealthy environment.

86. As regards the measures, taken by the authorities and the plant itself in order to improve the environmental situation, the applicants noted the following. The federal programme of improvement of the ecological situation in Cherepovets for 1997 — 2010, referred to by the Government, was abolished by the Government's Decree of 7 December 2001. 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 have never been stated by the Government and such information has not been made adequately publicly available. The yearly National Report on Ecological Situation in Russia indicated year by year that the environmental situation in the Vologda region remained "difficult", which significantly undermined the Government's arguments on effectiveness of the measures alleged aimed at amelioration of the environmental situation in the Vologda Region.

87. The only legal mechanism which could force the Government to introduce stricter regulations relating to dangerous industrial activities was the adoption of new legislation. However, the applicants were not in a position to introduce amendments to the legislation in force. The applicants were not aware of any fines ever having been imposed on the "Severstal" PLC, although the Code of Administrative Offences provided for such possibility.

88. For these reasons the applicants submitted that there had been a violation of Article 8 of the Convention, on the same grounds as in the above-cited case Fadeyeva v. Russia.

C. The Court's assessment

1. Nature and extent of the alleged interference with the applicants' rights under Article 8 of the Convention

89. At the outset, the Court recalls that in assessing evidence it uses the standard of proof "beyond reasonable doubt." However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 147, 6 July 2005, with further references).

90. Whereas in many cases the existence of an interference with a Convention right is evident and does not give rise to any discussion, in other cases it is a subject of controversy. The present four applications belong to this second category. There is no doubt that serious industrial pollution negatively affects public health in general. However, it is often impossible to quantify its effects in each individual case, and distinguish them from the influence of other relevant factors, such as age, profession etc. The same concerns possible worsening of the quality of life caused by the industrial pollution. The "quality of life" is a very subjective characteristic which hardly lends itself to a precise definition. Therefore, taking into consideration the evidentiary difficulties involved, the Court has no other choice than to repose thrust primarily, although not exclusively, in the findings of the domestic courts and other competent authorities in establishing factual circumstances of the case (see Buckley v. the United Kingdom, judgment of 25 September 1996, Reports of Judgments and Decisions 1996IV, pp. 1291-93, §§ 74-77). However, the Court cannot rely blindly on the decisions of the domestic authorities, especially when they are obviously inconsistent or contradict each other. In such situation it has to assess the evidence in its entirety.

(a) Summary of the Court's findings in the Fadeyeva judgment

91. The Court recalls its findings in the Fadeyeva case, where it found that the applicant's private life and enjoyment of her home had been seriously affected by the pollution, caused by the industrial emissions of the Severstal steel-plant. In reaching that conclusion, the Court paid special attention to the following facts.

92. First of all, it was widely recognised that the environmental situation in Cherepovets was unfavourable for the residents of the town and adversely affected their health and well-being. Although the situation improved since the 1980-s, when it was almost catastrophic, it still remained unsatisfactory, at least from the standpoint of the domestic standards. Namely, concentration of several polluting substances in the air of the city continuously exceeded safe levels, established by the domestic legislation, the MPLs.

93. Secondly, it was established that Ms Fadeyeva lived in the territory of the zone, which was initially designated to separate residential areas from the sources of pollution, but, in the course of time, was turned into a residential area. Although the law did not clearly require the resettlement of the residents of such zones, it prohibited any permanent dwelling in it because of the dangers it represented.

94. Thirdly, the Court relied on the reports on the environmental situation in Cherepovets, which confirmed that the over-concentration of certain pollutants in the town's air caused an increase in the morbidity rate for the city's residents (see §§ 11, 14, 33, 45 and 46 of the Fadeyeva judgment).

95. In that case the Court did not establish that the applicant's health had deteriorated solely because of her living within the zone. Nevertheless, the Court found that the excessive levels of industrial pollution inevitably made her more vulnerable to various diseases. Moreover, there was no doubt that it had adversely affected the quality of life at her home.

(b) The Court's conclusions in the present cases

96. Turning to the present cases, the Court notes that the applicants' situations do not differ significantly from that of Ms Fadeyeva. Although at the relevant time all of them lived at different addresses, their flats were located within the sanitary security zone of PLC "Severstal", as defined by municipal decree no. 30. It should be noted that on 2 March 2000 the fourth applicant obtained a new flat from the authorities and moved outside the zone. The Court is thus prepared to accept that she is no longer exposed to dangerous levels of pollution. However, the interference complained of was of a continuing nature and lasted almost two years, if counted from 5 May 1998 (the date when the Convention entered into force with respect to Russia). Therefore, her moving outside the zone did not by itself eradicate the adverse effects of her living there, and for a certain period of time she was in the same situation as other applicants (for further details see paragraph 106 below).

97. The Court does not agree with the applicants that the circumstances in which they had acquired their flats were absolutely irrelevant. However, it appears that at the time the applicants were unable to make an informed choice, or were not in a position to reject the housing offered by the State, or move elsewhere at their own expense (see the Fadeyeva judgment, §§ 119 and 120). Thus, it cannot be claimed that the applicants themselves created the situation complained of or were somehow responsible for it (see also, mutatis mutandis, ?nery?ld?z v. Turkey [GC], no. 48939/99, § 105 et seq., ECHR 2004…).

98. The Government further indicated that in 2002 municipal decree no. 30 had been annulled, and, at present, the boundary of the sanitary security zone remains undefined. The Federal Program of 1996, which provided for the resettlement of the residents of the zone, is no longer in force. On these grounds on 12 July 2002 the Cherepovets Town Court rejected the first applicant's claims against the steel-plant. However, in the Court's view, it does not mean that the danger for the first and other applicants' health and well-being is no longer there. The de facto abolishment of the sanitary security zone was decided not because the concentrations of toxic substances reached safe levels, but on formal grounds. For almost ten years decree no. 30 was in force and applied by the courts. Its validity has not been called into question either by the steel-plant, or by the municipality itself. Moreover, on many occasions various domestic official bodies confirmed that the applicants lived in the territory of the sanitary security zone where concentrations of certain toxic substances were above acceptable levels and which was therefore unsuitable for human residence. At last, in their observations on admissibility and merits the Government admitted that the applicants' houses were located within the zone (see the decision on admissibility of the present cases of 16 September 2004). Thus, in the eyes of the Court, the annulment of decree no. 30 and ensuing changes in the legal status of the zone has no bearing on the applicants' situation from the standpoint of their complaints under Article 8 of the Convention.

99. The Government finally indicated that the applicants had not obtained appropriate reports from relevant State bodies confirming that the place where they lived was unfit for living and that this matter had not been discussed before the domestic courts. In this respect the Court notes, first of all, that the Government referred to the legislation which had been enacted in 2001 — 2003, which was after the applicant's cases had been examined by the domestic courts. Secondly, the Court reiterates that in the proceedings before it there are no procedural barriers to the admissibility of evidence (see paragraph 89 above). The applicants produced a large number of other documents, official reports,

letters of various State authorities, confirming that the concentration of certain pollutants near the applicants' houses was constantly above safe levels, established by the Russian legislation. Moreover, this fact is supported by the data produced by the Government itself (see above, paragraphs 27 et seq.). Finally, at the time when the domestic proceedings took place the existence of interference with the applicants' private sphere was taken for granted at the domestic level, since the law defined the territory where they dwelled as unfit for residence, and presumed that the concentrations of pollutants that they had been exposed to were unsafe.

100. In sum, after having examined all the evidence in the case-file, the Court does not see any reason to depart from its findings in the Fadeyeva judgment. The Court will refrain from making any conclusive findings as to whether or not the industrial pollution was the cause of the applicants' specific diseases. Nevertheless, the Court concludes that the actual detriment to the applicants' health and well-being reached a level sufficient to bring it within the scope of Article 8 of the Convention.

2. Justification under Article 8 § 2

101. As in Fadeyeva, the Court finds that the applicants' complaints in the present cases 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 (for more details see §§ 88 – 92 of the Fadeyeva judgment). Further, the Court considers that the continuing operation of the Severstal steel-plant 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 (see Fadeyeva, §§ 98 – 100). It remains to be determined whether, in pursuing this aim, the authorities have struck a fair balance between the interests of the applicants and those of the community as a whole.

(a) Summary of the Court's findings in the Fadeyeva judgment

102. The Court recalls that in Fadeyeva it established that the Severstal steel-plant's operations did not fully comply with the environmental and health standards established in the relevant Russian legislation. The operation of the Severstal plant in conformity with the domestic legislation would be possible only if the zone, separating the enterprise from the residential areas of the town, continued to exist and served its purpose.

103. In that case the Court considered two alternative avenues that could have been employed by the authorities in order to solve the applicant's problem: the resettlement of the applicant outside the zone and the reduction of the toxic emissions. As regards the resettlement, the Court found that little, if nothing, had been done in order to help the applicant moving to a safer area. As to the efforts of the authorities, aimed at reducing the pollution, the Court noted that a certain progress has been made since the 1980-s. However, the governmental programs and privately funded projects did not achieve expected results. Whereas, according to the 1990 Government 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. During the period falling within the Court's competence ratione temporis (since 5 May 1998), the overall improvement of the environmental situation was very slow.

104. The Court accepted that, given the complexity and the scale of the environmental problem around the Severstal steel-plant, this problem could not be resolved in a short period of time. However, it did not mean that the authorities might remain passive. On the contrary, they had to take "reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8" (Hatton and Others v. the United Kingdom [GC], no. 36022/97, § 98, ECHR 2003VIII) in a shortest delay possible. Given the seriousness of the situation, the onus was on the State to show how it coped with the environmental problem. However, in that case the Government failed to do

so. They did not show that the effects of the operation of the plant on public health and well-being were regularly monitored and the information obtained was shared with the population concerned. Further, the Government did not explain how the information available influenced their policy vis-?-vis the plant, and what that policy consisted of. Finally, the Government failed to show how the policy (if any) was enforced, which sanctions had been applied and for what kind of breaches. In these circumstances the Court drew adverse inferences and concluded that in regulating the steel-plant's industrial activities the authorities had not given due weight to the interests of the community living in close proximity to the premises of the Severstal steel-plant.

(b) The Court's conclusions in the present four cases

105. Turning to the present cases, the Court observes that, as regards possible resettlement, the first, the second and the third applicants were in the same position as Ms Fadeyeva, since none of them has been resettled or received compensation for the resettlement costs.

106. Ms Romashina, the fourth applicant, obtained a flat outside the zone in 2000, free of charge. Therefore, it may be assumed that she had had to endure the adverse effects of pollution for a shorter period of time than the other applicants. Indeed, the resettlement may have solved her problem for the future. However, it did not put right the alleged breach of her rights during the antecedent period and the authorities did not acknowledge the alleged breach of her rights under the Convention, nor expressly neither in substance. Accordingly, this fact does not deprive the fourth applicant of the status required to claim to be a victim of a violation of the Convention within the meaning of Article 34.

107. As regards measures of general character, undertaken by the Government in order to solve the problem of pollution, the Court notes the following. The Government referred to a number of studies carried out in order to assess the environmental situation around the Severstal steel-plant. However, the Government have failed to produce these documents or to explain how they influenced the public policy vis-?-vis the plant. The only relevant report produced to the Court (see paragraph 29 above) was commissioned in 2003 by the plant itself in order to delimit its sanitary security zone. The information contained in that report was definitely useful for defining the extent of the environmental problem and its consequences, but it did not impose any particular obligations on the plant or the State authorities.

108. As regards other documents, produced by the Government, the Court notes that they reflect the company's environmental protection policy and the overall progress made in the recent years. However, this policy was not legally binding on the plant and its realisation to a great extent depended on the good will of the plant. The Court recalls in this respect that the central question of the present cases was how the State protected the applicants' rights under the Convention by regulating private industry. Since the interference with the applicants' rights persisted, it was of little relevance that the plant was willing to stop it and was taking practical steps in that direction. What is central for the present cases is how the State reacted to that situation, what legal mechanisms were employed in order to reduce the pollution to acceptable levels or, at least, to exclude those affected by the pollution from its effects.

109. Pursuing that matter, the Court notes that the Government did not produce the plant's operating permit, licence or other documents which would establish the Government's policy regulating the plant's industrial activities. The Government did not explain how the plant's compliance with the operating conditions of its licence, permit or general environmental standards was monitored and how it was enforced. The Government's argument that the plant functioned in compliance with the domestic and international environmental standards is not convincing. Thus, the fact that the management system of the plant was certified by an international organisation does not mean that the plant's emissions were at acceptable levels. The same concerns the audit by the EBRD experts, referred to by the Government. Nor did the Government provide the Court with a copy of the audit report, neither it explained what had been the purpose of it and its findings and recommendations.

110. Having examined the materials submitted to it, the Court notes that in the present cases the Government did not put forward any new fact or argument capable of persuading it to reach a conclusion different from that of the Fadeyeva case. The Court concludes that, despite the wide margin of appreciation left to the respondent State, the authorities failed to take appropriate measures in order to protect the applicants' right to respect for their homes and private lives against serious environmental nuisances. In particular, the authorities have neither resettled the applicants outside the dangerous zone, nor have they provided for a compensation for those seeking the resettlement. Furthermore, it appears that the authorities failed to develop and implement an efficient public policy which would induce the steel-plant to reduce its emissions to the safe levels within a reasonable time. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. Each of the applicants claimed EUR 10,000 for non-pecuniary damage they had suffered because of the adverse effects of the pollution, they and their families had to endure for up to 40 years. Under the head of pecuniary damage the applicants (except for Ms Romashina) claimed that the Government should be required to (i) offer them new housing comparable to their currents flats, outside the sanitary security zone, or, alternatively, (ii) award them damages equal to the price of a flat located outside the sanitary security zone, comparable with their current flats. The justification of the amounts claimed was based on the average figure of 20,000 Russian roubles for a square meter of a housing. The sums claimed were EUR 25,000 in respect of the first applicant, EUR 30,500 in respect of the second one, and EUR 38,500 in respect of the third applicant. The fourth applicant did not claim any pecuniary damage, as she had moved outside the sanitary security zone and now possesses her own flat.

113. The Government claimed that the applicants' claims for non-pecuniary damages were excessive and unreasonable. If the Court finds a violation of the applicants' rights, it would be by itself a sufficient just satisfaction. Alternatively, the Government claimed that a symbolic amount would be equitable under the head of non-pecuniary damages. As regards the pecuniary damages, the Government submitted that the applicants' claims concerning the provision of the new housing was irrelevant, since it concerned the compensation for the property lost – a complaint which had been declared inadmissible.

114. As regards non-pecuniary damages, the Court is prepared to accept that the applicants' prolonged exposure to industrial pollution caused them much inconvenience, mental distress and even a degree of physical suffering. At the same time the Court recalls that the Convention entered 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 this date. In sum, taking into account various relevant factors, such as age, the applicant's state of health 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 applicants under the head of non-pecuniary damages the following amounts:

(i) EUR 7,000 to the first applicant,

(ii) EUR 8,000 to the second applicant,

(iii) EUR 8,000 to the third applicant,

(iv) EUR 1,500 to the fourth applicant,

plus any tax that may be chargeable on these amounts.

115. As regards pecuniary damages, the Court notes that, like in Fadeyeva, in the present four cases the applicants failed to substantiate any material loss in respect of the period prior to the adoption of the present judgment (see § 140 of the Fadeyeva judgment).

116. 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, the Court notes the applicants in this respect are in different situations. The fourth applicant has been resettled outside the zone in 2000. Having regard to the information available and the scope of the present case, the Court considers that her individual problem has thus been solved and the Government has no further obligations vis-?-vis this applicant under the Convention, apart from paying her compensation for the past sufferings (see paragraph 114 above).

117. As regards other applicants, the Court notes that they are still residing within the zone. The Court notes that the resettlement of them in an environmentally safer area (a measure sought by the applicants before the domestic instances) would be only one of many possible solutions. The Court is conscious that there are other possible ways of reducing the negative effects of the plant's activities on those who, like the applicants, reside in the vicinity of it. Therefore, given the complexity of the situation, and in line with its approach to the Fadeyeva case, cited above, the Court will not prescribe any particular legal, administrative or other measure to be adopted by the Government. According to Article 41 of the Convention, by finding a violation of Article 8 in the present case, the Court establishes the Government's obligation to take appropriate measures to remedy the applicant's individual situation. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Articles 41 and 46 of the Convention, provided that such means are compatible with the conclusions set out in the present judgment (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII), in particular, with the two alternative solutions examined by the Court (see paragraph 110 above).

B. Costs and expenses

118. Under the head of costs and expenses the applicants claimed EUR 9,000 in respect of their representation before the domestic courts and other authorities by Mr. Yuri Vanzha. Mr. Yuri Vanzha produced a calculation of his fees, based at the rate of EUR 50 per hour, for 180 hours of legal work and travel time. As to the representation by the British and Russian lawyers working with "Memorial" and the "European Human Rights Advocacy Centre", their services were covered by legal aid and the applicants did not claim any additional amounts in this respect.

119. In reply the Government argued that the applicants' claims in this part were unsubstantiated. They submitted that "no contracts with [Mr Vanzha] or payment receipts have been presented by the applicants to support that the costs are real. The letter of Mr Vanzha could only be considered as a price-list for services or description of services, for which the applicants were supposed to pay." In any event, the amount of Mr Vanzha's fee was unreasonable and excessive.

120. The Court recalls its findings in the Fadeyeva judgment, where it held that the absence of a written agreement on legal representation did not mean that such an agreement did not exist (§ 146). From the materials of the case and correspondence with the Court it is clear that Mr Vanzha represented the applicants in the domestic proceedings and before the Court at the initial stage of the proceedings. The applicants claimed that they were under an obligation to pay Mr Vanzha certain amounts for his work. Mr Vanzha, in his turn, confirmed this claim by producing the calculation of his fees. Therefore, the Court concludes that the lawyer's fees are real.

121. As to whether the applicants' lawyer's expenses were necessary, a reduction should be applied on account of the fact that some of the applicants' complaints were declared inadmissible. Further, the Court excludes expenses which were not related to the proceedings before the domestic courts

and the European court. Finally, the Court considers that since the individual situations of the applicants were quite similar, the preparation of their cases did not require as much time is indicated in the calculation produced by Mr Vanzha. Consequently, making an assessment on a reasonable basis, the Court awards each of the applicant EUR 800 for the costs incurred under this head, or EUR 3,200 for all of them.

C. Default interest

122. 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage:

(i) EUR 7,000 (seven thousand euros) to the first applicant,

(ii) EUR 8,000 (eight thousand euros) to the second applicant,

(iii) EUR 8,000 (eight thousand euros) to the third applicant,

(iv) EUR 1,500 (one thousand five hundred euros) to the fourth applicant,

to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;

(b) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 800 (eight hundred euros) in respect of costs and expenses incurred by Mr Vanzha, to be converted into Russian roubles at the rate applicable at the date of settlement, plus 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S?ren 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 A. Kovler is annexed to this judgment.

C.L.R.

S.N.

CONCURRING OPINION OF JUDGE KOVLER

As in the case Fadeyeva v. Russia (55723/00, judgment of 9 June 2005), without casting doubt on the Court's finding of a violation of Article 8, I would prefer to describe the violation as unjustified

interference with the applicant's private life without mentioning "right to home" as it was done in the Guerra and Others v. Italy case (judgment of 19 February 1998, 14967/89, Reports 1998-I).

1 Information summarised below is taken form the Government's submissions on the merits in the Fadeyeva case, as well as from the relevant documents, attached to the Government's submissions in the present four cases.

2. This decision concerned the closure by the authorities of a filling station which had no sanitary security zone around its territory.