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Far Reaching Effects of Environmental Case¹

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Fadeyeva v Russia (No. 55723/00), 9/6/2005
(ECHR: Judgment. Merits and Just Satisfaction)

Facts

Since 1982, the applicant and her family have lived in the city of Cherepovets, a major steel-producing centre in the Russian Federation, 300 km to the north-east of Moscow, in a council flat situated within half a kilometre of a steel plant, which is now operated by Severstal PLC, Russia's largest iron-smelting company. In 2000, the authorities confirmed that the concentration of certain hazardous substances (including carbon disulphide and formaldehyde) in the atmosphere within the zone largely exceeded the 'maximum permitted limit' (MPL) established by Russian legislation. In 1995 the applicant brought an action to the local court, seeking resettlement outside the zone, as a result of which the court recognised that her flat was situated within the 'sanitary security zone', an area around the plant, which delimits areas where pollution may be excessive and was supposed to be free of residential property. The court found that, in principle, the applicant had the right to be resettled, but made no specific order for her resettlement, instead requiring the local authorities to put her on a priority housing waiting list. On 31 August 1999, the Town Court dismissed the applicant's further action against the municipality and confirmed that

she had been put on a 'general waiting list'. The local courts then found that no further steps were necessary, as the original judgment had been executed. In 1999, the applicant complained to the European Court, under Articles 2, 3 and 8 of the Convention that the operation of the Severstal steel-plant in close proximity to her home endangered her life and health and that the failure to resettle her violated those provisions. Under Article 6 of the Convention the applicant also complained that the court proceedings concerning her claims for

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resettlement were unfair. In its admissibility decision of 16 October 2003, the European Court found that the applicant did not face any 'real and immediate risk' either to her physical integrity or her life, and that any issues raised under Article 2 were more appropriately dealt with under Article 8 of the Convention. The Court also considered that there was no evidence to indicate that the applicant's housing conditions amounted to treatment incompatible with Article 3. The Court therefore rejected the applicant's claims under Articles 2 and 3 at the admissibility stage.

Judgment

In its judgment of 9 June 2005, the Court unanimously found that the Russian government was in violation of Article 8 of the European Convention on Human Rights as a result of its failure to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and private life. The state was found to have failed to prevent or adequately regulate the environmental pollution from the plant, which adversely affected the quality of life at the applicant's home and made her more vulnerable to disease. The European Court awarded the applicant €6,000 in non-pecuniary damages, plus legal costs.

Commentary

Concordant with the well-established Convention doctrine of 'positive obligations' the Court found that a state's responsibility under Article 8 in environmental cases may arise not only where a public body causes the pollution, but also from a failure to regulate private industry, and the Court placed the onus on the Government to provide a clear explanation of the policies and practices it adopts in the face of environmental pollution caused by private polluters.

Since the steel plant in question had been privatised in 1993 and bought by Severstal PLC, and thus there was no 'direct' interference with the applicant's rights, the Court assessed whether the state took reasonable and appropriate measures to prevent violations of the applicant's Article 8 rights, taking into consideration the fact that the plant had originally been built by, and initially belonged to the state. However, of greater relevance was the state's continuing exercise of control over the plant after privatisation, in the form of the imposition of operating conditions, the supervision of the implementation of those conditions, inspections of the plant and the imposition of penalties on the plant's owner and management. The position of the domestic authorities was also clearly influential - the European Court noted the domestic legislation defined the zone where the applicant lived as being unfit for habitation, and that the domestic courts recognised that the pollution required her resettlement in an ecologically safer area. Accordingly, the Court was able to conclude that the authorities were well aware of the problems, and that they were both in a position to evaluate the extent of the pollution and to take steps to prevent or reduce the risks.

In applying the usual 'fair balance' test to assess proportionality as between the rights of the individual and those of the wider community, the Court made the point that whilst taking into account the question of compliance with relevant domestic laws or regulations is necessary, it should not, however, be treated as a separate and conclusive test. Previously, the basis of every Strasbourg decision, in which the Convention has been found to have been violated in the environmental context, has been a failure, of one sort or another, to comply with the domestic law. In this case the European Court accepted as reasonable the domestic courts' interpretation of the law as merely requiring that someone in the applicant's position should be placed on a housing waiting list. Nevertheless, the case was still predicated on the fact that the steel plant's emissions breached the domestic environmental and health standards.

A very important, and potentially far-reaching, aspect of the judgment is that the applicant did not have to prove that the pollution had damaged her health, as such, it was enough for her to establish that there was a serious risk to the health of people living in the area, and therefore she had a greater vulnerability to disease.

The Court's judgment significantly strengthens the obligation of governments to impose effective regulation on the private sector to prevent environmental pollution where serious potential health risks exist, although it reiterated that the Convention will not be engaged by any case of environmental deterioration – it must be such as to "directly affect" the applicant's home, family or private life.

Traditionally the European Court's approach to the provision of redress has been limited to declaratory relief, together with the

possibility of the award of damages and costs under Article 41, but there have been a number of significant developments in recent years and this case demonstrates a more interventionist tendency. The Court acknowledged that resettling the applicant in an ecologically safe area would be only one of many possible solutions. It is suggested that, as the applicant still lives in the shadow of the polluting steel plant, compliance will require either providing the necessary assistance for her to move away or taking steps to prevent the pollution (or both). At the time of writing the Government had applied to the Court for the judgment to be re-considered by the Grand Chamber of the Court (Article 43).