



## Fadeyeva v Russia: a year and a half after the ECtHR judgment

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**O**n 9 June 2005, the European Court of Human Rights handed down its judgment in the case of *Fadeyeva v Russia* (No. 55723/00) – the first environmental case against Russia, in which the Court found that there had been a violation of Art. 8 of the ECHR by Russia’s failure to strike a fair balance between the interests of the community and the applicant’s right to respect for her home and private life. The applicant was awarded €6,000 in non-pecuniary damage.

The judgment was received enthusiastically in Russia’s mass media; some even jumping to the conclusion that “Russian woman solved her housing problem via the European Court”.<sup>1</sup> But what are the real implications of this judgment for the applicant? Has it changed the lives of thousands of people in Cherepovets and hundreds of thousands of people in Russia living in the same heavily polluted environment? Has it influenced the Government’s environmental policy and legislation? The applicant, Mrs Nadezhda Fadeyeva and her family live in a council

flat situated about 450m from the Severstal steel plant in Cherepovets. The once state-owned plant was privatised in 1993. Severstal is one of the major iron smelters as well as one of the major air polluters in Russia. The hazardous effect of the plant on the environment was recognised in various environmental reports, state and local programmes to improve the environmental situation in Cherepovets, documents of official bodies and was discussed in the mass media.

According to para. 3 of Art. 16 of the Federal law of 04.05.1999 N 96-FZ 'On Protection of the Atmospheric Air' (as amended by the Federal law of 31.12.2005 N 199-FZ), in order to protect the atmospheric air in populated areas, sanitary security zones (SSZ) must be established around every industrial enterprise. Within this zone no housing is to be built. The size of an SSZ is defined by calculating the dispersion of emissions of pollutants in the air and in accordance with the size and type of the industrial enterprise. Currently, the size of the buffer zone around the Severstal plant must be 1,000m. Thus, Mrs Fadeyeva's flat is in fact within the boundaries of the SSZ where the level of the hazardous emissions is much higher than all the maximum permissible levels set by the Government.

In accordance with the Decree of the Council of Ministers of the RSFSR of 10 September 1974, the inhabitants of the Severstal sanitary zone who lived in certain districts were to have been resettled by 1977. This never happened. The applicant tried to uphold her right to be resettled through the domestic courts, however the authorities merely placed her on a general waiting list which gave her no hope of resettlement in the near future.

Assessing the facts of the case, the European Court pointed out some essential gaps in Russian law concerning the regulation of resettlement.<sup>2</sup> The Court found that the State did not offer the applicant any effective solution to help her move from the dangerous area, nor did it design or apply effective measures which would be capable of

reducing the industrial pollution to acceptable levels.<sup>3</sup>

Although the Court did not establish the Government's direct obligation to resettle the applicant, stating in paragraph 142 of its judgment that "the resettlement of the applicant in an ecologically safe area would be only one of many possible solutions", in the same paragraph it noted, that "by finding a violation of Art. 8 in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation."

Unfortunately, it seems that this part of the Court's decision remained unnoticed by the Russian authorities and that the "improvement of the applicant's situation" is limited to paying out non-pecuniary damages to her by the State.

In particular, answering Mrs Fadeyeva's enquiry regarding the implementation of the Court's judgment, the Deputy Governor of the Vologda region N.V. Kostyugov in his letter of 17 August 2006 No. 07-03/1813 stated that "the findings of the European Court of Human Rights ...did not oblige the respondent State to provide you immediately with alternative housing". Mr Kostyugov further noted that according to the Mayor of Cherepovets, M.S. Stavrovsky, the awarded funds were transferred to the applicant's personal account within the time limit and concluded that "citizens are provided with housing in accordance with the procedure prescribed by current housing legislation." Thus, Nadezhda Fadeyeva's problem is unsolved and she and the members of her family are still subjected to hazardous emissions from Severstal.

However, on 29 November 2006, on the official Cherepovets website 'Cherepovets Time' it was stated that all people living in the Severstal SSZ would be resettled before 2007 as this issue is "not so much technical as political now."<sup>4</sup> According to Nikolay Arkhipov, deputy of the Legislative Assembly of Vologda region, 7,000,000 roubles were allocated in the regional budget to resettle six housing estates situated in the zone and the same amount would be planned in

the budget of the next year. There are two discrepancies that strike the eye here. First of all, taking into account the cost of housing, the allocated funds are not sufficient. Secondly, if the estimated deadline for the resettlement was "before 2007", why is part of its funding planned in the 2007 budget? Nevertheless, it is a positive sign showing that the situation is slowly changing.

The State has also taken certain steps to regulate the setting up and development of sanitary zones and to control the observance of environmental legislation by industrial enterprises.

On 17 April 2006, G. Onischenko, the Head of *Rospotrebnadzor* - one of the several federal services within the Ministry of Health Protection and Social Development of the RF issued a letter No. 0100/4317-06-32 'On the setting up of sanitary security zones in the territory of the Russian Federation'. In this letter Onischenko pointed out that the supervision by the regional departments of *Rospotrebnadzor* of the development of SSZ around industrial enterprises, in particular, over the resettlement of the inhabitants of these zones was unsatisfactory. According to *Rospotrebnadzor* data, in 2005 2,671,421 people (2% of the whole population of the country) lived within sanitary security zones of industrial enterprises. Only 145,443 people, that is, 5.4% were resettled within the last 10 years. Referring to the *Fadeyeva* judgment, the Head of *Rospotrebnadzor* set out a series of measures that have to be carried out in order to improve the development of the sanitary zones and organise the resettlement of the people.<sup>5</sup> The regional departments of *Rospotrebnadzor* later issued similar letters.<sup>6</sup>

In Cherepovets, the setting up of the sanitary zone around Severstal and its development is only scheduled to be completed by 2015. By that time hazardous emissions from Severstal and other large industrial facilities should be reduced to the permissible level.<sup>7</sup>

Another Federal Service – *Rosprirodnadzor* – the Federal Service for Supervision in the Field of Environmental Management – has been conducting

inspections of large industrial facilities, including Severstal, concerning their observance of environmental legislation and drafting a report on the results of these inspections. Actions were brought against some major industrial enterprises after the findings of the inspection were communicated to the Public Prosecutor's Office and the Ministry of the Interior.<sup>8</sup> Do all these actions mean qualitative change in the State's environmental policy or is it just another campaign done pro forma? Time will tell. It is obvious that to solve the problem of people who, like Nadezhda Fadeyeva, live in close proximity to industrial enterprises, strong political will, sufficient funding, a distinct policy and systematic action by the Government are needed.<sup>9</sup>

1 <http://www.seu.ru/members/ucs/ecohr/2005/1778.htm> ; [http://www.echr.ru/news/msg.asp?id\\_msg=690](http://www.echr.ru/news/msg.asp?id_msg=690)

2 See: *Fadeyeva v Russia* (No. 55723/00) 9/6/05, paras. 122 & 123.

3 *Ibid*, para. 133.

4 <http://news.cherinfo.ru>.

5 See: [www.rospotrebnadzor.ru](http://www.rospotrebnadzor.ru).

6 See, for example: Letter N11 of 15 June 2006 'On setting up of sanitary security zones on the territory of Komy republic' [www.gsenrk.ru](http://www.gsenrk.ru).

7 <http://newsvo.ru/rubrics/obschestvo/2004/05/12/14:38:44.html>.

8 <http://www.mnr.gov.ru/part/?act=more&id=1913&pid=508>.

9 The Committee of Ministers is currently supervising the execution of the Fadeyeva judgment. There is a list of questions communicated to the Russian authorities that has yet to be answered. The Government should also provide an "action plan" for the implementation of the judgment. See further: *Environmental Pollution – supervising the execution of the Fadeyeva judgment*, EHRAC Bulletin, Issue 6, Winter 2006, p. 15.