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La CEDU su inquinamento proveniente da un cimitero e art.8 Cedu
(CEDU, sez. III, sent. 10 maggio 2022, ric. n. 47987/15)

La Corte Edu si pronuncia sul caso relativo alla denuncia di inquinamento provocato da un cimitero situato molto vicino alla casa (e adiacente appezzamento di terreno) del ricorrente.
La Corte ha osservato, in particolare, che il cimitero si era gradualmente ampliato verso la proprietà del ricorrente e che, secondo alcune relazioni forensi, il suolo e l'acqua nella sua proprietà erano pericolosamente contaminati. Ha, quindi, ritenuto applicabile nel caso di specie l'art. 8 Cedu, pur non essendovi prove di effettivi danni alla salute del ricorrente.
I Giudici di Strasburgo hanno ravvisato una palese violazione del diritto interno, protrattasi nel tempo, nonostante le denunce delle autorità di tutela dei consumatori ed una ingiunzione del Tribunale per la creazione di una zona di protezione sanitaria di 500 metri intorno al cimitero.
Di qui il riconoscimento, all'unanimità, dell'avvenuta violazione del diritto al rispetto della vita domestica, privata e familiare del ricorrente.

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

THIRD SECTION

CASE OF XXXXX v. RUSSIA
(*Application no. 47987/15*)

JUDGMENT
STRASBOURG
10 May 2022

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 XXXXX v. Russia,
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Georges Ravarani, *President*,
María Elósegui,
Darian Pavli,

Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd,
Mikhail Lobov, *judges*,
and Milan Blaško, *Section Registrar*,
Having regard to:
the application (no. 47987/15) 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 a Russian national, Mr Vladimir Vladislavovich XXXXX ("the applicant"), on 22 September 2015;

the decision to give notice to the Russian Government ("the Government") of the complaint concerning the use of cemetery allegedly in breach of the health regulations and to declare inadmissible the remainder of the application;
the parties' observations;
Having deliberated in private on 5 April 2022,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The main issue in the present case is whether the ongoing use of a cemetery that has not been surrounded by a sanitary protection zone (санитарно-защитная зона) and is located in the close vicinity of the applicant's property interferes with his right to respect for private life and home in breach of Article 8 of the Convention.

THE FACTS

2. The applicant, Mr Vladimir Vladislavovich Solyanik, is a Russian national who was born in 1967 and lives in Vladivostok. He is represented before the Court by Ms Tamara Gavrilovna Akulibaba, a lawyer practising in Vladivostok.
3. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by Mr M. Vinogradov, his successor in that office.
4. The facts of the case may be summarised as follows.

I. Background to the case

5. The applicant is the owner of a private house and an adjacent plot of land; half of the house and half of the plot of land he inherited in 1983 – the remainder was bestowed on him in 2007. The house and the plot of land are located near a cemetery ("the Lesnoye cemetery") in Vladivostok, which has been in operation since 1946. The applicant draws water (for drinking and other household needs) from a well located on his property, and that well is his only source of drinking water.

6. On 2 July 1991 a plot of land measuring 89 hectares was allotted by the authorities for the expansion of the Lesnoye cemetery. Burials at the cemetery at that time were conducted by the municipality's "specialised services" unit, which was in 2010 merged with the city's crematorium; in 2010 these two undertakings were officially reorganised to form the city's burial service ("the municipal burial service").

7. On 1 November 1995, having received complaints from local residents, the head of the municipal administration of Vladivostok ("the city administration") issued Decree no. 1206 ordering the closure of the Lesnoye cemetery and a halt to the conducting of burials there because it had been determined that the cemetery's burial capacity had been reached and that any further burials within its boundaries as they then stood would contravene health regulations.

8. On 24 November 2009 the Regional Consumer Protection Authority (Управление Роспотребнадзора по Приморсокму Краю – "the Regional CPA") ordered that samples be taken of the well water and of the soil on the applicant's land for the purposes of preparing an expert hygiene and epidemiology report. The resulting expert report of 8 December 2009 indicated that (i) the quality of water in the well fell short of the required standards for drinking water owing to the abnormal levels of pathogenic bacteria in it, and (ii) the concentration of chlorides in the soil was 25% above the legal limit. The report named the cemetery as a possible source of pollution.

9. On 23 April 2010 the applicant and other persons living in the same street (which ran along the cemetery's boundary) complained to the Regional CPA that, despite the issuance of Decree no. 1206, the carrying out of burials had resumed; they requested that measures be taken in respect of these illegal actions on the part of the municipal burial service. They pointed out that burials had been carried out at the cemetery between at least May 2009 and April 2010 and submitted photographs of the most recent graves.

10. On 23 July 2010 the city administration issued Ruling no. 830, by which Decree no. 1206 closing the cemetery (see paragraph 7 above) was quashed as invalid.

11. On 13 June 2012 fresh samples of soil and underground water taken from the applicant's land were examined by forensic experts by order of the Leninskiy District Court of Vladivostok. The experts established that the soil's chemical, bacteriological and parasitological markers exceeded the safety standards to an "extremely dangerous extent" and that the activities of the municipal burial service could contaminate the soil and endanger the lives and health of people residing on the land. The testing of water from the well had not revealed any abnormalities.

12. By letters dated 13 August 2013, 10 February 2014 and 31 March 2015 the Regional CPA informed the applicant and one of his neighbours that the municipal burial service had been reprimanded for its failure to produce a proposal for the demarcation of a sanitary protection zone around the Lesnoye cemetery and that proceedings under the Code of Administrative Offences had been brought in that respect by the Regional CPA.

I. Domestic proceedings

13. The applicant lodged a complaint with the Leninskiy District Court of Vladivostok, requesting that it order the municipal burial service and the city administration to discontinue the carrying out

of burials at the cemetery. On 22 April 2013, the court dismissed the applicant's complaint, having found that the relevant provisions of the domestic law had not been breached.

14. On 25 April 2013, the Primorsk Bureau of Forensic Expertise (ООО Приморское бюро судебных экспертиз) – a private company – conducted a survey of the applicant's land, at his request. According to the results of the survey, the outer border of the cemetery (which had shifted after the area of the cemetery had started to expand in 2009) was located (according to the standards set out by the relevant regulations) too close to the applicant's house (77.1 metres) and to the applicant's plot of land (67.7 metres), which meant that they were both located within the presumed sanitary protection zone, in violation of the applicable health regulations. It was determined that graves had contaminated underground water and soil adjacent to the cemetery, which could cause mass the outbreaks of infectious diseases. The experts furthermore established that the cemetery's layout sloped downwards, towards the well on the applicant's plot of land, and thus posed a threat to the life and health of the applicant and the individuals sharing the house with him.

15. Following an appeal lodged by the applicant, on 16 October 2013 the Primorsk Regional Court quashed the 22 April 2013 judgment of the Leninskiy District Court of Vladivostok and ordered the defendants to cease carrying out (in violation of regulations regarding sanitary protection zones) burials at the Lesnoye cemetery. It held, in particular, that the expert reports of 13 June 2012 and 25 April 2013 (see paragraphs 11 and 14 above) had shown that burials were being carried out in breach of the relevant health regulations, endangering the lives and the health of the applicant and other people living in the house with him. The municipal burial service and the city administration appealed.

16. On 30 July 2014 the Primorsk Regional Court (sitting as an appellate court) re-examined the applicant's case. It found that when the cemetery had been expanded, a 500-metre sanitary protection zone should have been created around it, as required by the 2007 Health Regulations (see paragraph 23 below), but this had never been done. It also held that the size of the sanitary protection zone could be reduced under certain conditions. It furthermore quashed the judgment of 22 April 2013 and ordered the city administration and the municipal burial service to prepare, by 31 December 2014, plans illustrating and substantiating the proposed demarcation of a sanitary protection zone around the cemetery. It refused the applicant's request to discontinue burials.

17. Following an appeal by the applicant, the judgment of the Primorsk Regional Court of 30 July 2014 was upheld on 2 October 2014 by the same court and on 25 March 2015 by the Supreme Court of Russia.

18. On 5 July 2017 the applicant informed the Court that a sanitary protection zone around the cemetery had not been established.

RELEVANT LEGAL FRAMEWORK

I. national regulations

. Federal Law no. 8-FZ of 12 January 1996 on burials and funeral services

19. The legislation governing burials and funeral services consists of (i) Federal Law no. 8-FZ and (ii) other laws and regulations adopted in accordance with it (Article 2 § 1).

20. The size of plot of land allocated for use as a cemetery is calculated according to the number of residents of the city (or other population centre) in question, but in any event it cannot exceed 40 hectares (Article 16 § 5).
21. The administration of cemeteries is regulated by the health and environmental regulations enacted by the municipal authorities (Article 17 § 1).

A. Federal Law no. 52-FZ of 30 March 1999 on health and epidemiological safety

22. Water drawn from sources within urban or suburban residential areas and used for drinking and other private purposes should not have a negative chemical, biological and physical effect on humans (Article 18). The quality of drinking water should be free from epidemiological and radioactive markers and the chemicals contained in it should be at safe levels. It should have acceptable organoleptic characteristics (Article 19).
23. The concentration in urban and suburban soils of chemicals, biological substances, and biological and microbiological organisms that are potentially dangerous for humans should not exceed the maximum permissible levels set out in the relevant health regulations (Article 21).

A. Health regulations concerning sanitary protection zones enacted by Decree no. 74 of 25 September 2007 of the Chief Environmental Health Officer ("the 2007 Health Regulations")

24. Every polluting undertaking (объекты, являющиеся источниками воздействия на среду обитания и здоровье человека) must create a "sanitary protection zone" around its premises – a buffer area separating sources of pollution from residential areas – which serves to minimise the negative effects of pollution and to ensure the safety of the neighbouring population during the normal operations of the polluting undertaking in question (Rules 1.2. and 2.1.)
25. The actual size of the sanitary protection zone in question will be determined by a proposal that must contain, inter alia, substantiation of its size with data regarding the levels of atmospheric pollution measured on and around the site in question, together with other relevant data (Rule 4.1.).
26. The size of the sanitary protection zone around a cemetery is determined or changed by order of the Russia's Chief Environmental Health Officer (Главный санитарный врач) on the basis of (i) the preliminary conclusions reached by the regional branch of the Consumer Protection Authority; (ii) the relevant health and epidemiological rules; (iii) an expert environmental report provided by an accredited organisation qualified to undertake such work; and (iv) an assessment of health risks (оценки риска здоровью населения) (Rule 4.2.).
27. The Chief Environmental Health Officer may reduce the size of the sanitary protection zone under certain conditions (Rule 4.5.).
28. No residential buildings, including private houses, may be located within the boundaries of a sanitary protection zone (Rule 5.1.).
29. A 500-metre sanitary protection zone should be created around a cemetery whose total area amounts to 20-40 hectares. The total area of a cemetery should not exceed 40 hectares (Rule 7.1.12. § 5, "Class II. Sanitary protection zone – 500 metres").

A. Rules (no. 2.1.2882-11) governing cemeteries and places of burial, which took force under Decree no. 84 of 28 June 2011 issued by the Chief Environmental Health Officer (as in force at the material time and until 1 March 2021)

30. The requirements set out by municipal authorities for the construction, maintenance, and administration of cemeteries should be in compliance with the standards set out in the Rules governing cemeteries and places of burial (Rule 1.3.).
31. Land on which a cemetery is located should slope away from any nearby residential area and any surface and underground sources of water used by local residents for household purposes (Rule 2.4.).
32. The distance between cemeteries where human remains are placed in graves or mausolea and residential buildings is determined by the relevant rules concerning sanitary protection zones (Rule 2.5.).
33. A cemetery's sanitary protection zone should first be conceived and officially demarcated, and then planted with vegetation; it should have a thoroughfare allowing access for transportation and other relevant purposes (Rule 2.9.).

A. Report dated 17 January 2013 prepared by the Ministry for Economic Development concerning the difficulties encountered by business owners and other organisations in complying with the 2007 Health Regulations

34. The Report stated that according to the data received by the Ministry for Economic Development during public consultations with business owners and other organisations, the process of creating a sanitary protection zone – that is to say preparing plans illustrating and substantiating the proposed demarcation of the zone, assessing any health risks, having experts examine the project, taking the necessary measurements, finalising the project, and securing final approval for the project from the Chief Environmental Health Officer – lasted an average of three years (Paragraph 1.4.).
35. The report also noted that it had been determined by the Ministry for Economic Development that since October 2010, the 2007 Health Regulations, had been deemed (when strictly interpreted) to be applicable only to newly-created polluting undertakings. However, some of its provisions had nevertheless been applied to already-existing undertakings, and judicial practice in this respect had been contradictory: some courts had held that no sanitary protection zone had to be created around existing polluting undertakings, whereas other courts had ruled otherwise.

I. Municipal Regulations

36. Rule 14.4 of the 2011 City Planning Rules of Vladivostok (Нормативы градостроительного проектирования Владивостокского городского округа, утвержденного постановлением главы г. Владивостока от 10 февраля 2011 № 111) – as in force at the material time and before 8 April 2020 (when they were repealed after new rules were adopted on 30 January 2020) – provided, inter alia, that the expansion of cemeteries had had to be carried out in accordance with the relevant regulations and technical requirements, references to which were made in Appendix 5 of the City Planning Rules (including a reference to the 2007 Health Regulations). The new rules, adopted in

2020 (Местные нормативы градостроительного проектирования Владивостокского городского округа, утверждённые 30 января 2020 Правительством Приморского Края) limit the size of a cemetery to 40 hectares and make a reference to 2017 Urban Construction Rules that provide that the distance between buildings and cemeteries is set at 500, 300 or 100 meters, depending on the size of a cemetery.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that the continued use of the cemetery near his home had led to the contamination of the soil on his plot of land and the pollution of his only source of drinking water, thus preventing him from making normal use of his home and its amenities and negatively affecting his and his family's physical and mental health, in breach of Article 8 of the Convention, which reads as follows:

"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."

A. Admissibility

38. The Government objected to the admissibility of the complaint in general, asserting that it should be rejected under Article 35 § 3 (a) of the Convention, but they provided no specific arguments in that respect, except to assert that no interference with the applicant's rights had taken place. The applicant made no submissions in respect of either the Government's objection or the admissibility of his complaint.
39. In so far as the Government can be understood as alleging that the applicant's complaint was incompatible ratione materiae with the provisions of Article 8, the Court has first to establish whether Article 8 is applicable in the present case and whether the Court has jurisdiction ratione materiae to examine the respective complaint on the merits (see Denisov v. Ukraine [GC], no. 76639/11, § 93, 25 September 2018).
40. The Court has held in previous cases concerning environmental nuisances that in order for an applicant to be able to raise an issue under Article 8, the interference of which the applicant complains must directly affect his home or family or private life and must attain a certain minimum level. The assessment of that minimum is relative and depends on all the circumstances of the case (such as the intensity and duration of the nuisance in question) and its physical or mental effects. The general context of the environment should also be taken into account. There will be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the

environmental hazards inherent in life in every modern city (see Powell and Rayner v. the United Kingdom, 21 February 1990, § 40, Series A no. 172; Guerra and Others v. Italy, 19 February 1998, § 57, Reports of Judgments and Decisions 1998-I; and Fadeyeva v. Russia, no. 55723/00, §§ 69-70, ECHR 2005-IV). The Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers, inter alia, the physical and psychological integrity of a person (see Otgon v. the Republic of Moldova, no. 22743/07, § 15, 25 October 2016, with further references).

41. In the present case there is no direct evidence of any actual damage having been caused to the applicant's health. However, the Court reiterates that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see López Ostra v. Spain, judgment of 9 December 1994, Series A no. 303-C, p. 54, § 51). The Court must therefore establish whether the potential risks to the applicant caused by the use of cemetery in close proximity to his house established a sufficiently close link with the applicant's private life and home as to affect his "quality of life" and to trigger the application of the requirements of Article 8 of the Convention (see Dzemyuk v. Ukraine, no. 42488/02, § 82, 4 September 2014).

42. The Court notes, firstly, that the cemetery has been gradually expanding in the direction of the applicant's house. In particular, in April 2013, when a forensic expert formally measured, presumably for the first time, the distance between the applicant's property and the cemetery's closest point, it was about 70 metres (see paragraph 14 above); by 2019 that gap had reportedly shrunk to 34 metres (see paragraph 46 below), having thus reduced by almost a half in six years. Therefore, since at least 2013, the applicant's house has been situated in the cemetery's presumed sanitary protection zone – a state of affairs that is directly prohibited by the relevant regulations (see paragraphs 14, 28 and 29 above).

43. Secondly, the Court notes that the expert reports submitted by the applicant confirm the existence of dangerous environmental risks to the applicant's property. Thus, according to the above-mentioned 2009 expert report prepared by the Regional CPA, the water in the well on the applicant's property had been contaminated by high levels of pathogenic bacteria, and the concentration of chlorides in the soil was above the maximum levels of harmful substances permitted by law (see paragraphs 8, 22 and 23 above). It is relevant in this regard that the well is the only nearby source of water for the applicant (see paragraph 2 above). Furthermore, the above-mentioned report of 13 June 2012 indicated that the soil on the plot of land belonging to the applicant had been polluted to an "extremely dangerous degree" (owing to the presence in it of excessive levels of chemicals, pathogenic bacteria and parasites) and that the cemetery could have been the source of that contamination and that it could have had a harmful impact on the life and health of people residing on the applicant's plot of land (see paragraph 11 above). The above-mentioned report of 25 April 2013 indicated that the applicant's house was located too close to the cemetery, in breach of the relevant regulations, and that the cemetery could have been a source of contamination in respect of the applicant's property. The Court notes that the reports dated 13 June 2012 and 25 April 2013 were both accepted by the Primorsk Regional Court as evidence of the applicant having been exposed to an environmental nuisance (see paragraph 15 above).

44. Therefore, similarly to the case of Dzemyuk (cited above, §§ 80-83), where the Court found that there had been interference with the applicant's rights under Article 8 of the Convention on account

of pollution of his plot of land and water well caused by operation of the cemetery in the vicinity of his home, evidence has been presented in the present case to support the view that the applicant's property where his house is located has been contaminated, and the Lesnoye cemetery located nearby has been named by the domestic authorities and forensic experts as a possible source of that contamination (see paragraphs 8, 11, 14, 15 and 43 above).

45. Considering that the border of the cemetery has gradually shifted close to the applicant's property in breach of the domestic regulations and that the domestic authorities and forensic experts determined that the soil on the applicant's plot of land was contaminated to an "extremely dangerous degree" (see paragraphs 11, 14, 42 and 43 above) and taking into account other above-noted factors (see paragraph 44 above), the Court finds that the prolonged use of the Lesnoye cemetery by the municipal burial service in clear violation of applicable environmental health safety regulations so close to the applicant's house and its consequent impact on the applicant's "quality of life" reached the minimum level required by Article 8. The Court considers that there has been an interference with the applicant's right to respect for his home and private and family life and that that interference attained a sufficient degree of seriousness to trigger the application of Article 8 of the Convention (see Dzemyuk, cited above, §§ 83-84). The Court therefore holds that Article 8 is applicable in the present case and that it has jurisdiction ratione materiae to examine the applicant's complaint under Article 8 regarding the alleged environmental nuisance. It furthermore holds that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

A. Merits

0. The parties' submissions

(a) The applicant's submissions

46. The applicant submitted that, under the judgment of the appellate court, plans substantiating the creation of a sanitary protection zone should have been finalised by 31 December 2014, yet the enforcement proceedings (that is to say the proceedings to enforce the judgment ordering the preparation of such a zone) had only actually started on 27 May 2019, after the Government had been given notice of his application by the Court. He furthermore submitted that burials continued to be conducted in the cemetery, that the distance between the cemetery and his house was 34 metres and that no recent monitoring of soil pollution had been carried out, owing to the fact that a sanitary protection zone (within the boundaries of which those measurements should have been taken) had not been demarcated.

47. The applicant furthermore submitted that the relevant health regulations prohibited the siting of houses within the limits of sanitary protection zones, yet his house had been located within thirty-four metres of the cemetery, which was well within the boundaries of the presumed sanitary protection zone around the cemetery. He was not able either to use his plot of land for gardening or to draw water from his well for drinking and other purposes because he feared being poisoned.

48. The applicant also submitted that he and his wife suffered from insomnia and headaches and had experienced emotional distress caused by the carrying out of burials near their house. Trees that had stood between the cemetery and the applicant's house had been cut down, meaning that the

cemetery was in plain view of the applicant's house. His grandchildren were afraid to visit him because he had "in essence started living in the cemetery". In the applicant's opinion, the Government had not submitted any legitimate argument to justify the use of the cemetery in a manner contravening existing rules.

(b) The Government's submissions

49. The Government submitted that (i) the terms of reference containing the technical specifications and requirements for the creation of an sanitary protection zone had been prepared; (ii) the municipal burial service (together with urban planning engineers) had been ordered to inspect, by 1 December 2019, the grounds of the Lesnoye cemetery and to establish whether any residential buildings were located within the boundaries of the presumed sanitary protection zone around the cemetery and (iii) the city administration's department for roads and urban development had been instructed to announce, by the end of 2019, an online tender in respect of the task of determining the size of the sanitary protection zone around the cemetery. The Government accordingly contended that since enforcement proceedings were pending, no violation of the applicant's rights under Article 8 had taken place.

1. The Court's assessment

50. In the present case the applicant alleged that the State was directly responsible for the ongoing unlawful use of the Lesnoye cemetery close to his home and for the resulting environmental nuisance to which he was exposed. Having regard to its conclusion concerning the applicability of Article 8 of the Convention (see paragraph 45 above) and given the fact that it is not disputed that the acts or omissions of a municipal undertaking are attributed to the State (see Yershova v. Russia, no. 1387/04, §§ 54-62, 8 April 2010), the Court considers that the use of the cemetery by the municipal burial service has directly interfered with the applicant's rights under Article 8 of the Convention (see Dzemyuk, cited above, § 90). It must therefore be determined whether that interference has been justified in accordance with paragraph 2 of Article 8, that is to say whether it has been in accordance with law, has pursued a legitimate aim and whether it has been necessary in a democratic society.

51. As regards compliance with domestic law the Court notes the following. In 1995 the Lesnoye cemetery was closed, under Decree no. 1206 of the head of the city administration, as having reached its full burial capacity (see paragraph 7 above). In 1996 a federal law was enacted that limited the area occupied by cemeteries to a maximum size of 40 hectares – a standard that was also laid down in the 2007 Health Regulations (see paragraphs 20 and 29 above). It nonetheless appears from the case-file material (and is not disputed by the Government) that burials at the Lesnoye cemetery resumed in 2009, in breach of Decree no. 1206 (which banned any further burials at the cemetery and which was still in force at that time (see paragraphs 7, 9 and 10 above). Furthermore, no explanation was provided by the Government as to how the expansion of the cemetery (which began, illegally, in 2009 and continued after Decree no. 1206 was quashed in July 2010) conformed to the 40-hectare maximum for cemeteries provided by the 1996 Federal Law on Burials and by the 2007 Health Regulations (see paragraphs 20, 21, 29, 30 and 36 above). According to the above-mentioned expert's report, the Lesnoye cemetery sloped downwards towards the well on the

applicant's property and was named as a possible source of contamination of his property, in contravention of the relevant regulations (see paragraphs 14, 22, 23 and 31 above).

52. Furthermore, under the relevant domestic law, cemeteries are considered to be "polluting undertakings" and as such, they should be surrounded by a sanitary protection zone (see paragraphs 24 and 29 above). In 2013-2015 the Regional CPA issued at least three reprimands to the municipal burial service for its failure to create a 500-metre sanitary protection zone around the cemetery, pursuant to the 2007 Health Regulations (see paragraph 12 above); however, it appears that those reprimands were disregarded. It may well have been that the municipal burial service and the city administration considered themselves exempt from the 2007 Health Regulations owing to ambiguous language contained in those regulations and resulting difficulties in interpreting them (see paragraph 35 above). The Court notes, however, that in 2014 the Primorsk Regional Court ordered the municipal burial service and the city administration to prepare a proposal that would determine and substantiate the size of the sanitary protection zone around the Lesnoye cemetery, in order to ensure the compliance of their activities with the 2007 Health Regulations, thus making those Regulations directly applicable to the activities of the municipal administration and its burial service at the Lesnoye cemetery (see paragraph 16 above). The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018), and the Court has no particular reason to question the findings of the Primorsk Regional Court in the present case in respect of the applicability of the 2007 Health Regulations.

53. Even though the task of demarcating the proposed sanitary protection zone and substantiating its size around the cemetery should have been completed by the end of 2014, by 5 July 2017 no progress had been made in that regard (see paragraph 18 above), and the proposal process had only entered its very early stages by the end of 2019 (see paragraph 49 above); no reasonable explanation was provided to the Court for that delay in the enforcement proceedings. By contrast, according to a survey conducted by the Russian Ministry for Economic Development, it takes companies an average of three years to comply with all the steps set out by the 2007 Health Regulations as necessary for the determination of the final size of a sanitary protection zone around a polluting undertaking (see paragraphs 25, 26 and 34 above). In the present case, however, for no apparent or cogent reason, the authorities made no efforts to enforce the above-mentioned judgment, and it took them almost five years following the delivery of that judgment merely to start the process of developing said project. In the meantime, burials continued to be conducted, in contravention of the domestic health regulations, and the applicant had to live on his polluted plot of land. The Court also notes that no information was provided by the Government as to whether it might have been feasible to take other measures while the enforcement proceedings were pending, such as temporarily relocating the applicant or carrying out decontamination work on his property by way of offsetting the effects of the absence of a sanitary protection zone. The Court reiterates that it is mindful of the difficulties and delays that are typically encountered by the authorities in finding and allocating relevant technical and logistical resources and securing the necessary funding for public works projects such as the one in the present case (see Yevgeniy Dmitriyev v. Russia, no. 17840/06, § 55, 1 December 2020). However, it considers that the use of the Lesnoye cemetery in blatant breach of the relevant domestic health regulations – together with the unexplained delay in the enforcement

proceedings, which prolonged the illegality of the authorities' actions – deprived the applicant of the effective protection of his rights under Article 8.

54. It therefore follows that the interference at issue was not "in accordance with the law"; this finding alone is sufficient for the Court to hold that there has been a violation of Article 8 of the Convention, without examining whether it also pursued a "legitimate aim" or was "necessary in a democratic society" (see Fadeyeva, cited above, § 95, and M.M. v. the Netherlands, no. 39339/98, §§ 45-46, 8 April 2003).

I. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 1,500,000 Russian roubles (RUB – about 17,000 euros (EUR)) in respect of non-pecuniary damage.

57. The Government found that claim excessive and unreasonable.

58. The Court considers that the effects that the environmental nuisance had on the applicant's right to respect for his private life and his home cannot be compensated for by the mere finding of a violation; however, the sum claimed by him appears to be excessive. Making its assessment on an equitable basis and having regard to the serious impact that the unlawful and prolonged use of the cemetery by the municipal authorities had on the applicant's rights under Article 8, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

A. Costs and expenses

59. The applicant also claimed RUB 1,400,000 (about EUR 16,000) for legal representation before the domestic courts and the Court, to be paid into his representative's bank account, and RUB 115,103 (about EUR 1,300) in experts' fees (see paragraph 14 above) and postal expenses, to be paid into his own bank account.

60. The Government submitted that the costs and expenses incurred by the applicant in the domestic proceedings were irrelevant for examination of his complaint before the Court, his claim for expert fees was not substantiated with relevant documents and his sending his application and case material by international courier service was unnecessary expense.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see Merabishvili v. Georgia [GC], no. 72508/13, § 370, 28 November 2017). In the present case, regard being had to the documents in its possession and the above-noted

criteria, the Court considers it reasonable to award the sum of EUR 6,000 in respect of the costs of the applicant's legal representation in the domestic proceedings and before the Court, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of the applicant's representative, and EUR 1,300 in respect of expert's fees and postal expenses, plus any tax that may be chargeable, to be paid into the applicant's account.

A. Default interest

62. The Court considers it appropriate that the default interest rate 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. Declares the complaint under Article 8 concerning the use of cemetery in breach of the health regulations admissible;
2. Holds that there has been a violation of Article 8 of the Convention;
3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, for legal representation in the domestic proceedings and before the Court, to be paid directly into the account of the applicant's representative Ms Tamara Gavrilovna Akulibaba; and EUR 1,300 (one thousand three hundred euros) in respect of expert's fees and postal expenses, plus any tax that may be chargeable, to be paid into the applicant's account;

(b) 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;

1. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President