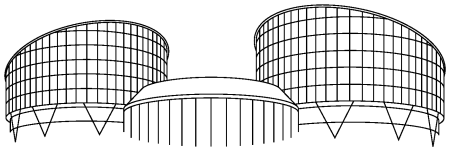

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DZEMYUK v. UKRAINE

(Application no. 42488/02)

JUDGMENT

STRASBOURG

4 September 2014

FINAL

04/12/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dzemyuk v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 1 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 42488/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Sergiy Mykhaylovych Dzemyuk ("the applicant"), on 16 October 2002.

2. The Ukrainian Government ("the Government") were represented by their then Agent, Mr N. Kulchytskyy.

3. The applicant complained under Articles 6 and 8 of the Convention of a breach of his right to respect for his home and private life on account of the construction of a cemetery near his home, and of the authorities' failure to enforce a judgment by which the construction of the cemetery in the vicinity of his house had been prohibited.

4. On 24 March 2005 the President of the Second Section decided to give notice of the application to the Government.

5. On 1 April 2006 the case was assigned to the newly composed Fifth Section (Rule 25 § 1 and Rule 52 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in the village of Tatariv, which forms part of Yaremche, a resort town in the Ivano-Frankivsk Region of Ukraine.

A. Background to the case

7. The applicant owns a house and an adjacent plot of land in Tatariv. The village of Tatariv is situated in a mountainous region and because of its location holds the status of mountainous residential area. It is also known as a resort for "green tourism" in Carpathy region. It is situated on the banks of Prut river.

8. On 10 February 2000 Tatariv Village Council ("Tatariv Council"), having considered four sites on which to construct a new cemetery, chose the land previously occupied by garages belonging to a company called Vorokhtya Lisokombinat ("the VL plot") as it was not occupied, it was located in the village and the cemetery could be constructed at low cost.

9. The VL plot is located near the applicant's house (for further details see paragraphs 14 and 33 below), in which he was residing with his family at the time. Two rivers flow at a distance of 30 and 70 metres from the VL plot. Drinking water for Tatariv comes from wells fed by groundwater; there is no centralised water supply system and the wells are not protected.

10. On 24 May 2000 the All-Ukrainian Bureau of Environmental Investigations informed the Chairman of Yaremche Town Council ("Yaremche Council") that the construction of the cemetery on the VL plot might cause contamination of the river and the wells situated on adjacent plots of land by ptomaine carried by the groundwater flow.

11. The cemetery was opened for use by the Yaremche Council in August 2000. It is being administered by the Yaremche Council.

12. On 6 February 2001 the Yaremche Environmental Health Inspectorate (*санітарно-епідеміологічна станція*) concluded that the cemetery should not have been constructed on the VL plot in view of its proximity to residential buildings and the risk of contamination of the surrounding environment by ptomaine.

13. On 20 August 2002 the Regional Environmental Health Inspectorate of the Ministry of Health refused to approve the construction plan. In particular, it stated that the cemetery should not be situated in the proposed area as its distance from private housing did not comply with the norms and standards of a health protection zone (*санітарно-захисна зона*).

14. On 30 August 2002 and 20 January 2003 the Marzeyev Institute of Hygiene and Medical Ecology, part of the Academy of Medical Sciences, informed the applicant and Yaremche Council that another location would have to be found for the cemetery. It was of the view that constructing the cemetery on the VL plot would breach environmental health laws and regulations and would worsen the living conditions of the residents of adjacent houses. In particular, it would be located less than 300 metres from the nearest residential buildings, which are 38 metres away from the edge of the cemetery (which would not allow for the establishment of the necessary health protection zone). It could lead to contamination of the groundwater reservoir used by the residents of adjacent households for drinking water

and of the nearby rivers with by-products of human decomposition. It further stated that a health protection zone was also intended to reduce psychological pressure on the residents of adjacent houses.

15. The applicant alleges that from 2002 to the present moment he has been receiving treatment for hypertension and various cardio-related diseases. He supplied in this respect sick leave certificates and medical certificates from 2002 and 2006, relating to him and his wife. He has also provided the Court with death certificates for two of his neighbours Mr R.G. and Mr D.B., who also resided in the vicinity of the prohibited cemetery and died at the age of 68 and 43, respectively.

16. On 17 September 2002 the Ivano-Frankivsk Regional Prosecutor's Office informed the applicant that it could not intervene in respect of unauthorised burials taking place on the VL plot: the issue was in the competence of local authorities, including the Yaremche Council, which was responsible for management and maintenance of the cemetery.

17. On 22 April 2003 the Executive Board of Yaremche Council informed the Regional State Administration that Tatariv Council was considering resettling the applicant. He had twice been invited to discuss a proposal for resettlement of his family to another part of the village but no response had been received.

18. On 5 May 2003 the Regional Urban Development and Architecture Department ("the Urban Development Department") informed Yaremche and Tatariv Councils that the area near the applicant's house was not suitable for construction of the cemetery as it did not respect a 300-metre wide health protection zone that would protect the residential buildings and a 50-metre wide water protection zone to protect the Prutets river.

19. On 18 May 2003 the Tatariv Council resolved *inter alia* that the relevant local authorities were prepared to consider the purchase of a house or apartment for the applicant, or to pay him compensation if he refused to reside in the cemetery's vicinity.

20. On 21 April 2004 the issue of the site of the cemetery was examined by officials from the Urban Development Department, the Municipal Housing Department, the environmental health inspectorate and the Land Management Department. They recommended to the Chairman of Tatariv Council that another plot on the outskirts of the village of "Ventarivka" be used as a cemetery.

21. On 22 June 2005 the Regional State Administration informed the applicant that the only way to resolve the issue was to resettle him. They asked him to agree to such a resettlement. They also confirmed that Yaremche Council was willing either to buy a house for the applicant or to provide him with an equivalent plot of land and the funds necessary to construct another house

22. On 18 July 2005 the Chairman of Yaremche Council invited the applicant to inform the authorities whether his family was willing to resettle and, if so, on what conditions.

23. In reply, the applicant sought more information on the proposal, such as, details of the specific land plot, house and facilities to be provided.

24. By letter of 27 July 2005 the Chairman of Yaremche Council, in reply to the applicant's request for specific proposals, invited the applicant to discuss the proposal in person with a view to a possible compromise.

25. On 15 August 2005 the Chairman of Tatariv Council asked the Ukrainian State Urban Planning Institute (*Дніпромісто* – "the Institute") to develop proposals for the site of a cemetery in the village.

26. On 21 December 2005 the Institute informed the applicant that it was not within its competence to decide matters such as the question of where to situate the cemetery. It also mentioned that the local development plan for Tatariv proposed a plot in the Chertizh area for the cemetery. However, this was subject to approval by the local council and environmental health inspectorate. It also informed the applicant that no letter of 15 August 2005 with proposals to investigate possible site of the cemetery (see paragraph 25 above) had been received from Tatariv Council.

27. By letter of 6 March 2006 addressed to the applicant and the Chairman of Tatariv Council, the Urban Development Department stated that it had repeatedly proposed to Tatariv Council that it use an area called Venterivka for the site of the cemetery. However, the council had not taken up that suggestion for unspecified reasons. It also informed the applicant that it was within Tatariv Council's competence to decide on the allocation of a plot of land for a cemetery.

28. On several occasions between August 2006 and June 2008 the applicant and members of his family, who resided together, asked Tatariv Council to grant each of them a plot of land on which to construct a house because they felt that living in the cemetery's vicinity was intolerable. Tatariv Council rejected the requests because of a lack of available plots of land.

29. According to the results of examinations of drinking water from the applicant's well conducted by the Yaremche Environmental Health Inspectorate dated 21 August 2008 and 7 July 2009, the toxicological, chemical and organoleptic indices of the water complied with national standards (no *E. coli* index examination had been made). A conclusion was reached that water could be used for household needs.

30. On 23 August 2008 and 6 July 2009 the Yaremche Environmental Health Inspectorate carried out a bacteriological analysis of the water from the same well. It established, contrary to the results of the examinations held on 21 August 2008 and 7 July 2009 (see paragraph 29 above) that the *E. coli* bacteria index in the water gave a reading of 2,380, whereas the normal reading was 10 (see paragraph 72 below), and concluded that the water could not be used for household needs. It also recommended disinfecting the water supply. The cause of water pollution was not established and would require an additional expert report.

31. On 14 December 2009 in response to a request from the Government, the Yaremche Environmental Health Inspectorate concluded that the reading obtained from the bacteriological analysis which had indicated water contamination did not have any connection to the location of the cemetery, but could also have been caused by other sources.

32. On 15 December 2009 the Regional Environmental Health Inspectorate informed the applicant that the reasons for the bacterial contamination of the water supply could be established on the basis of a hydrogeological assessment as to whether there were any connections between the drinking water reservoirs and possible sources of contamination. It further stated that according to an analysis of water taken from different parts of the village, the *E. coli* index exceeded the allowed reading established by law, which provided that drinking water should not contain any index of *E. coli* or be less than 1 in that index per 100 cm^3 (see paragraph 72 in relation to the domestic drinking water standards), nevertheless the *E. coli* index ranged from 23 to 2,380.

33. The applicant's house and well are some 38 metres from the nearest boundary of the cemetery.

34. By letters of 10, 15 and 16 December 2009 from the Tarariv Council, Yaremche Executive Committee and the Ivano-Frankivsk Regional State Administration, the authorities informed the Government's agent that the applicant had failed to manifest any interest in being resettled.

B. Proceedings against Tatariv Council

35. On 10 August 2000 the Verkhovyna Court, following the applicant's claim in proceedings against the Tatariv Council, held that the Council's decision to situate the cemetery on the VL plot had been unlawful.

36. At the end of August 2000 residents of Tatariv carried out the first burial at the cemetery.

37. On 1 December 2000 the Yaremche Court, in another set of new proceedings, found that Tatariv Council had failed to follow the proper procedure for the allocation of a plot of land for a cemetery, namely obtaining an environmental health assessment, and ordered it to prohibit burials on the VL plot.

38. On 24 December 2000 the residents of Tatariv were informed of the court's decision to stop the use of the VL plot as a cemetery. Nevertheless, burials continued at the site.

39. On 29 December 2000 Tatariv Council prohibited burials on the VL plot. On 2 February 2001 the State Bailiffs' Service terminated enforcement proceedings in the case, considering that the judgment had been fully complied with by the Tatariv Council.

40. On 2 March 2001 Tatariv Council again decided that the VL plot could be used for the new village cemetery. On 26 March 2001 the applicant lodged a new claim against that decision with the Yaremche Court.

41. In the meantime, on 22 August 2001 the Regional Environmental Health Inspectorate informed the relevant judge of the Yaremche Court, which assumed jurisdiction over the claims lodged on 26 March 2001 (see paragraph 40 above), that the site of the cemetery did not comply with national environmental health laws and regulations on the planning and construction of urban areas. In particular, the location did not comply with the requirement of a health protection zone between the cemetery and the nearest residential buildings.

42. On 16 October 2001 the Yaremche Court declared Tatariv Council's decision of 2 March 2001 unlawful. On 17 April 2002 the Supreme Court upheld that judgment.

43. On 25 December 2001 Tatariv Council cancelled its decision of 2 March 2001 in pursuance of the judgment of 16 October 2001.

44. On 3 July 2003 Tatariv Council approved a new development plan for the village. The plan again authorised the use of the VL plot as a cemetery.

45. On 22 July 2003 the applicant again instituted proceedings against Tatariv Council, seeking to have the approval of the new development plan for the village, insofar as it concerned the location of the cemetery, declared unlawful. He also sought compensation for non-pecuniary damage, court fees and legal expenses.

46. On 22 August 2003 the Verkhovyna Court ordered Tatariv Council to inform the residents of the village that burials at the unauthorised cemetery near the applicant's house were prohibited.

47. By that time, up to seventy burials had been carried out on the VL plot. The distance between the applicant's house and some of the graves was less than 120 metres.

48. The Chairman of Tatariv Council argued before the court that there was no other suitable area for a cemetery in the village. She further submitted that the applicant's allegation of possible contamination of the water supply was unfounded, as the groundwater flowed away from his property.

49. On 26 December 2003 the Verkhovyna Court allowed the applicant's claims and held that the new construction plan was unlawful as regards the location of the cemetery. It found that the VL plot was not suitable for use as a cemetery. In particular, constructing the cemetery on the VL plot had breached the environmental health laws and regulations requiring the establishment of: (a) a health protection zone 300 metres wide separating residential areas from a risk factor; and (b) a water protection zone 50 metres wide separating water supply sources from a risk factor. It observed that those distances could not be reduced. It ordered Tatariv Council to close the cemetery and to pay the applicant 25,000 hryvnias

(UAH)[1] in compensation for non-pecuniary damage and UAH 609.45[2] for costs and expenses.

50. On 28 May 2004 the Ivano-Frankivsk Regional Court of Appeal ("Court of Appeal") upheld the judgment of 26 December 2003 in part. In particular, it decided that no award of non-pecuniary damage should be made to the applicant, and it reduced the award for costs and expenses to UAH 151[3].

51. On 9 October 2006 the Supreme Court upheld the ruling of 28 May 2004.

C. Enforcement proceedings

52. On 18 June 2004 the Verkhovyna Court issued two writs of execution ordering Tatariv Council to adopt a decision declaring the new development plan unlawful and to close the cemetery.

53. On 7 July 2004 the State Bailiffs' Service instituted enforcement proceedings in the case.

54. Between July 2004 and February 2005 the State Bailiffs' Service imposed fines on Tatariv Council several times for its refusal to comply with the judgment of 26 December 2003.

55. On 3 March 2005 the Bailiffs terminated the enforcement proceedings, stating that it had been impossible to enforce the decision without the involvement of Tatariv Council, whose members had failed to adopt a decision in pursuance of the judgment of 26 December 2003.

56. In March 2005 the applicant requested the Verkhovyna Court to change the terms of the enforcement of the judgment of 26 December 2003. In particular, he sought to have the Chairman of Tatariv Council ordered to execute the judgment.

57. On 17 October 2005 the Verkhovyna Court rejected the applicant's request. It held that the Chairman had acted only as a representative of Tatariv Council, the respondent in the case. The Chairman had not been involved as a party to the proceedings. On 6 December 2005 the Court of Appeal upheld the ruling of 17 October 2005.

58. In August 2005 the applicant challenged the alleged omissions and inactivity of the Chairman of Tatariv Council as regards the enforcement of the judgment of 26 December 2003 before the Verkhovyna Court.

59. On 8 November 2005 the Verkhovyna Court found no fault on the part of the Chairman and rejected the applicant's claim. On 12 January 2006 the Court of Appeal upheld that decision.

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1. EUR 3,869
2. EUR 94
3. EUR 24

60. On 16 August 2006 Tatariv Council again refused to declare the new development plan unlawful and to close the cemetery.

61. On 28 August 2006 the State Bailiffs' Service informed the applicant that the enforcement proceedings were not subject to renewal.

62. The applicant also unsuccessfully sought to institute criminal proceedings against the Chairman of Tatariv Council for her alleged failure to enforce the judgment of 26 December 2003.

D. Proceedings against private individuals

63. On 7 May 2002 the Yaremche Court, acting upon the applicant's request, refused to institute criminal proceedings against a private individual, K.M., for using the VL plot for a burial. On 16 July 2002 and 21 January 2003 the Court of Appeal and the Supreme Court, respectively, upheld this decision.

64. On 3 October 2002 the Yaremche Court in two separate judgments rejected as unsubstantiated damages claims brought by the applicant and his neighbour, D.B., against K.M. and F.G. (private individuals) concerning the unlawful use of the land near their houses for burial purposes. It found no breach of applicant's rights by the respondents.

65. The judgments were upheld on 24 December 2002 (in two separate rulings) by the Court of Appeal and subsequently on 15 September 2005 and 15 February 2006 by the Supreme Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine, 26 June 1996

66. The relevant provisions of the Constitution read as follows:

Article 16

"To ensure ecological safety and to maintain the ecological balance on the territory of Ukraine, to overcome the consequences of the Chernobyl catastrophe — a catastrophe of global scale, and to preserve the gene pool of the Ukrainian people, is the duty of the State."

Article 50

"Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right ..."

B. Law of Ukraine "On Ensuring the Environmental Health of the Public" of 24 February 1994

67. The relevant extracts from the Law provide as follows:

Article 15. Requirements as to urban planning and construction, development, manufacture and use of new technologies and means of production

"Enterprises, institutions, organisations and citizens shall comply with the requirements of environmental health legislation during ... construction and in urban planning development ...

Building and urban development ... should first and foremost aim at creating the most prosperous conditions for life and maintaining and improving the health of citizens."

Article 18. Requirements concerning the domestic drinking water supply and water consumption areas

"The Government and local self-government authorities shall provide the residents of cities and other residential areas with drinking water, whose quantity and quality must comply with the requirements of environmental health legislation and [with] national standards...

...

Special health protection zones shall be established for domestic water supply systems and their sources."

C. Law of Ukraine "On Burials and Burial Service" of 10 July 2003

68. According to the relevant provisions of that law the State standards relating to planning and construction of burial vicinities shall include the State construction and environmental standards (Article 5 of the Law). Under Article 8 of the Law the local self-government bodies shall be responsible for allocation of land, construction, operation and administration of the cemeteries. Burial, pursuant to Article 12 of the Law, may be effectuated on the basis of a request lodged with the head of the village council or a relevant burial service. According to Article 23 of the Law, the executive bodies of village, town and city councils shall be responsible for planning and organisation of the territories of the burial vicinities, according to the general construction plans of the relevant residential areas and taking into account town planning, environmental and sanitary and hygiene requirements.

D. Law of Ukraine "On Drinking Water and the Drinking Water Supply" of 10 January 2002

69. The Drinking Water and Water Supply Act of 10 January 2002 (see relevant extracts from the Act below) establishes framework regulations for sanitary and hygiene standards of drinking water and water supply. In particular, Sections 27 – 30 of that Act establish obligatory standards for drinking water and its supply, obligatory for compliance by the State authorities. These standards, according to Section 28 of the Act shall be established by the Cabinet of Ministers and shall be monitored by the Chief

Sanitary Doctor of Ukraine, administering the State Sanitary and Epidemic Service of Ukraine. The relevant extracts from the Law provide as follows:

Article 13. Powers of local self-government bodies concerning drinking water and the drinking water supply

"Local self-government bodies shall be authorised:

to approve urban development projects and other documents relating to town planning, taking into account the requirements of [this Act];

..."

Article 22. Rights and duties of consumers of drinking water

"Consumers of drinking water shall be entitled:

to be provided with drinking water of a quality that complies with national standards..."

Article 36. Limitations on economic and other activities within health protection zones

"...

It is prohibited to place, construct, operate or reconstruct enterprises, installations and other objects for which full compliance with the requirements of the health protection zones [applicable to] projects, building and reconstruction and other projects cannot be guaranteed.

...

Within the second belt of the health protection zone:

it is prohibited to place a cemetery...or other object that [may] create a threat of microbial contamination of water..."

E. The National Environmental Health Regulations establishing "Environmental Health Requirements Concerning the Construction and Maintenance of Cemeteries in Residential Areas of Ukraine" of 1 July 1999

70. The relevant extracts from the Law provide as follows:

1. General Provisions

"...

1.2. The National Environmental Health Regulations are statutory and binding on public officials and citizens. ..."

3. Environmental Health Rules as to the Construction of Cemeteries

"3.2. The location of a cemetery and its size shall be envisaged by the general construction plan of a residential area; the allocation of a plot of land for a cemetery, new cemetery construction plans, and the expansion and reconstruction of operating cemeteries are subject to approval by the local offices of the State Environmental Health Inspectorate.

...

3.5. ... [A] health protection zone between a cemetery for traditional burials or a crematorium and residential or public buildings, recreational areas and allotments shall not be less than 300 metres wide. ...

[The following] cannot be located within a health protection zone:

- residential houses with a household plot, dormitories, hotels, guest houses."

F. The Relevant Domestic Standards Relating to Drinking Water, Construction of Cemeteries and Water Protection Zones

71. According to the Resolution of the Cabinet of Ministers No. 2024 of 18 December 1998 "On the Legal Regime of Sanitary Protection Zones for Water Objects", it is prohibited to place cemeteries and other objects which create a danger of microbic water pollution within the second belt of water protection zone.

72. According to the Appendix No. 1 to the State Sanitary Norms and Rules on Hygiene of Drinking Water for Human Consumption, approved by the Ministry of Health (*ДСанПіН 2.2.4.-171-10*) on 12 May 2010, drinking water should not contain any traces of *E. coli* to be considered safe for human consumption. These regulations replaced the State Sanitary Rules and Norms "On Placement and maintenance of wells and underground captation of water sources used for decentralised household drinking water supply", as approved by the Order No. 384 of the Ministry of Health of Ukraine on 23 December 1996. The 1996 State Sanitary Rules and Norms established that the index of *E. coli* bacteria per 1 cubic dm (*вміст бактерій групи кишкової палички в 1 куб.дм або "Індекс ВГКП"*) should not exceed 10. According to that standard a coliphage content, i.e. a bacteriophage that infects *E. coli*, should equal to "zero".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicant complained of a violation of Article 8 of the Convention. In particular, he submitted that the construction of a cemetery near his house had led to the contamination of his supply of drinking water and water used for private gardening purposes, preventing him from making normal use of his home and its amenities, including the soil of his own plot of land, and negatively affecting his and his family's physical and mental health.

The text of Article 8 reads as follows:

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

74. The Government raised no objection as to the admissibility of this complaint. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Applicability of Article 8

1. The parties' submissions

75. The Government submitted that there was no evidence of any adverse effects on the applicant's health which had resulted from the construction and use of the cemetery in issue. Nevertheless, they agreed that the applicant could have sustained some suffering as a result of the construction of the cemetery in the land plot adjacent to his house.

76. The applicant maintained his complaints, stating that the continued use of the cemetery had rendered his home virtually uninhabitable and his land unsuitable for use. He submitted that he could not use his plot of land for gardening nor the well on his land for drinking water for fear of being poisoned. The applicant further submitted that he and his family had been disturbed by the burial ceremonies carried out near their house.

2. The Court's assessment

77. As the Court has noted in a number of its judgments, Article 8 has been relied on in various cases in which environmental concerns are raised (see, among many other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 68, ECHR 2005-IV). However, in order to raise an issue under Article 8 the interference about which the applicant complains must directly affect his home, family or private life and must attain a certain minimum level if the complaints are to fall within the scope of Article 8 (see *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C; and *Fadeyeva*, cited above, § 69-70). Therefore, the first point for decision is whether the environmental pollution of which the applicant complains can be regarded as affecting adversely, to a sufficient extent, the enjoyment of the amenities of his home and the quality of his private and family life (see *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 66, 2 December 2010). In this respect, the Court recalls that water pollution was one of the factors which was found to affect the applicants' health and hence their ability to enjoy their home,

private and family life in the case of *Dubetska and Others v. Ukraine* (no. 30499/03, §§ 110 and 113, 10 February 2011).

78. The assessment of the minimum level is relative and depends on all the circumstances of the case, such as, the intensity and duration of the nuisance and its physical or mental effects. The general context of the environment should also be taken into account. The Court recently recalled that there could be no arguable claim under Article 8 if the detriment complained of was negligible when compared to the environmental hazards inherent in life in every modern city (see *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 188, 14 February 2012).

79. As regards health impairment, it is hard to distinguish the effect of environmental hazards from the effects of other relevant factors, such as, age, profession or personal lifestyle. Also, as regards the general context of the environment, there is no doubt that severe water and soil pollution may negatively affect public health in general and worsen the quality of an individual's life, but it may be impossible to quantify its actual effects in each individual case, "quality of life" itself being a subjective characteristic which does not lend itself to a precise definition (see, *mutatis mutandis*, *Ledyayeva and Others v. Russia*, nos. 53157/99, 53247/99, 53695/00 and 56850/00, § 90, 26 October 2006).

80. Taking into consideration the evidentiary difficulties involved, the Court will primarily give regard to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case. As a basis for the analysis it may use, for instance, domestic legal provisions determining unsafe levels of pollution and environmental studies commissioned by the authorities. Special attention will be paid by the Court to individual decisions taken by the authorities with respect to an applicant's particular situation, such as an undertaking to revoke a polluter's operating licence or to resettle a resident away from a polluted area. 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 a situation it has to assess the evidence in its entirety. Further sources of evidence for consideration in addition to the applicant's personal accounts of events, will include, for instance, his medical certificates as well as relevant reports, statements or studies made by private entities (see *Dubetska and Others v. Ukraine*, § 107, cited above, with further references).

81. The Court recalls that Article 8 has been found to apply where the dangerous effects of an activity to which the individuals concerned were likely to be exposed established a sufficiently close link with private and family life for the purposes of Article 8 of the Convention (see *Hardy and Maile v. the United Kingdom*, § 189, cited above). In that case, the Court recognised that the potential risks to the environment caused by the construction and operation of two liquefied natural gas ("LNG") terminals established a sufficiently close link with the applicant's private live and

home for the purposes of Article 8 and thereby triggered the application of that provision (see *Hardy and Maile v. the United Kingdom*, § 192, cited above).

82. As to the present case, the Court accepts that the applicant and his family may have been affected by the water pollution at issue. However, the Court must establish, in the absence of direct evidence of actual damage to the applicant's health, whether the potential risks to the environment caused by the cemetery's location established a close link with the applicant's private life and home sufficient to affect his "quality of life" and to trigger the application of the requirements of Article 8 of the Convention (see paragraphs 78 – 81 above).

83. The Court notes that the domestic environmental health and sanitary regulations clearly prohibited placing the cemetery in close proximity to residential buildings and water sources (see paragraphs 67 to 72 above). It appears that the nearest boundary of the cemetery is situated 38 metres away from the applicant's house (see paragraph 33 above). This cannot be regarded as a minor irregularity but as a rather serious breach of domestic regulations given that the actual distance is just over one tenth of the minimum distance permissible by those rules. Furthermore, the cemetery is a continuous source of possible health hazards and the potential damage caused by such is not easily reversible or preventable. Such environmental dangers have been acknowledged by the authorities on numerous occasions, including, by prohibiting the use of the illegal cemetery for burials and by the offer to resettle the applicant (see paragraphs 20 – 25 and 49 above). It further notes that the domestic authorities established that the construction of a cemetery at the said location placed the applicant at risk of contamination of the soil and of the drinking and irrigation water sources because of emanations from decomposing bodies like ptomaine (see paragraph 10 above). The Court has particular regard to the fact that there was no centralised water supply in the Tatariv village and villagers used their own wells (see paragraph 9 above). It also appears that the high level of *E. coli* found in the drinking water of the applicant's well was far in excess of permitted levels and may have emanated from the cemetery (see paragraphs 12, 18 and 30 above), although the technical reports came to no definitive or unanimous conclusion as to the true source of *E. coli* contamination (see paragraph 31 above). In any event, the high level of *E. coli*, regardless of its origin, coupled with clear and blatant violation of environmental health safety regulations confirmed the existence of environmental risks, in particular, of serious water pollution, to which the applicant was exposed.

84. Under such circumstances, the Court concludes that the construction and use of the cemetery so close to the applicant's house with the consequent impact on the environment and the applicant's "quality of life" reached the minimum level required by Article 8 and constituted an interference with the applicant's right to respect for his home and private

and family life. It also considers that the interference, being potentially harmful, attained a sufficient degree of seriousness to trigger the application of Article 8 of the Convention.

C. Compliance with Article 8

1. Submissions by the parties

85. The Government maintained that the cemetery had been built in the interests of the villagers of Tatariv, as there had been absolutely no other place in the mountainous region near the village that could be used for a cemetery. They further stated that while it was true that the cemetery had been built in breach of environmental health laws and regulations as it had lacked the health protection zone required by law, the authorities had done all they could to prohibit burials and to provide the applicant with an opportunity to be re-housed, even though such an obligation to resettle had not existed in law. According to them, he had continuously rejected such proposals. In this respect they supplied letters of 10, 15 and 16 December 2009 from Tarariv Council and the Ivano-Frankivsk Regional State Administration, in which the municipal authorities stated that the applicant was not interested in resettlement (see paragraph 34 above). The Government accepted that the fact that the cemetery was placed on the VL plot engaged State's positive obligations under Article 8 of the Convention.

86. The applicant maintained his complaints and submitted that the decision to construct the cemetery in the vicinity of his house had been taken in breach of domestic regulations and that the Ukrainian authorities' measures to remedy the situation had been insufficient and inadequate. In particular, he stated that the authorities had done nothing to close the illegal cemetery, had failed to discontinue burials or to redress the situation by providing him with an alternative. The applicant submitted that he did not have anywhere to move to and he did not have enough money to build a new house. He mentioned that, despite his requests, no detailed and specific resettlement proposal had ever been made by the authorities.

2. The Court's assessment

87. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life and home (see, with further references, *Moreno Gómez v. Spain*, no. 4143/02, § 55, ECHR 2004-X).

88. 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. The Court notes that the allegations of environmental harm in the instant case do not, as such, relate to the State's involvement in

industrial pollution (see, in the context of serious industrial pollution, *Dubetska and Others v. Ukraine*, § 73, cited above). However, they concern allegations of health hazards arising from the local authority's decision to locate a cemetery just 38 meters from the applicant's home in breach of domestic regulations plus the State's failure to act in securing compliance with the domestic environmental standards. The allegations also concern the State's failure to regulate the activities of the municipality in line with such standards. The Court's task in such a situation is to assess whether the State took all reasonable measures to secure the protection of the applicant's rights under Article 8 of the Convention. In making such an assessment factors, including compliance with the domestic environmental regulations and judicial decisions, must be analysed in the context of a given case (see, *mutatis mutandis*, *Dubetska and Others v. Ukraine*, cited above, § 141). In particular, where domestic environmental regulations exist, a breach of Article 8 may be established where there is a failure to comply with such regulations (see *Moreno Gómez v. Spain*, cited above, §§ 56 and 61).

89. Moreover, the principles applicable to an assessment of the State's responsibility under Article 8 of the Convention in environmental cases are broadly similar, regardless of whether the case is to be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under Article 8 § 1 of the Convention or in terms of an "interference by a public authority" to be justified in accordance with Article 8 § 2. Furthermore, the procedural safeguards available to the applicant under Article 8 may be rendered inoperative and the State may be found liable under the Convention where a judicial decision, prescribing certain conduct to the authorities on environmental issues, is ignored by the authorities or remains unenforced for an important period of time (see, *mutatis mutandis*, *Taşkın and Others v. Turkey*, no. 46117/99, §§ 124-25, ECHR 2004-X).

90. Given that the applicant complains about direct Government responsibility for the placement of the cemetery in close proximity to his home and the pollution flowing therefrom, the Court will consider the case as one of direct interference with the applicant's rights under Article 8 (see paragraph 84 above).

91. As to the assessment of compliance with the requirement of lawfulness under Article 8 of the Convention, combined with the requirements of compliance with the domestic regulations, the Court notes the following:

(i) Tatariv Council's decision to situate the cemetery on the VL plot was taken in breach of the National Environmental Health Regulations and in particular the 300 metres "health protection zone" requirement (see paragraph 71 and 72 above). There was no lawfully approved construction plan, in contravention of the Laws of Ukraine "On Burials and Burial Service" (see paragraph 68 above) and "On Drinking Water and the Drinking Water Supply". In particular, the latter Act in its Sections 27 – 30

established obligatory sanitary and hygiene standards of drinking water and water supply, envisaging no *E. coli* content in drinking water (see paragraph 72 above);

(ii) The unlawfulness of the placement of the cemetery and the non-compliance with health and water protection zones were signalled on numerous occasions by the environmental health authorities and were acknowledged in the decisions of the domestic courts on at least six occasions (see paragraphs 12 - 14, 18, 35, 37, 42, 46 and 49 - 51 above);

(iii) The domestic authorities, responsible for the administration and maintenance of the cemetery under the law, failed to respect and to give full effect to the final and binding judgment of 26 December 2003 given by the Verkhovyna Court, confirmed by the appeal court and the Supreme Court, by which Tatariv Council was obliged to close the cemetery (see paragraph 49 above). This judgment remains unenforced to this day (see paragraph 61 above) and members of Tatariv Council, on several occasions, have refused to adopt a decision in compliance with that judgment;

(iv). The domestic authorities continued to disrespect the domestic environmental regulations as well as the final and binding judicial decisions confirming that they acted illegally and the decision of 26 December 2003 confirming that the cemetery should have been closed.

92. The Court notes that the Government have not disputed that the cemetery was built and used in breach of the domestic regulations (see paragraph 85 above). It further appreciates the difficulties and possible costs in tackling environmental concerns associated with water pollution in mountainous regions. At the same time, it notes that the siting and use of the cemetery were illegal in a number of ways: environmental regulations were breached; the conclusions of the environmental authorities were disregarded; final and binding judicial decisions were never enforced and the health and environment dangers inherent in water pollution were not acted upon (see paragraph 91 above). The Court finds that the interference with the applicant's right to respect for his home and private and family life was not "in accordance with the law" within the meaning of Article 8 of the Convention. There has consequently been a violation of that provision in the present case. The Court considers, in view of its findings of illegality of the authorities' actions, that it is unnecessary to rule on the remaining aspects of the alleged breach of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

93. The applicant complained that the failure of the domestic authorities and private individuals to comply with the final judgment prohibiting the use of the VL plot situated near his house for burial purposes had amounted to a breach of Article 6 § 1 of the Convention.

94. The Government contested that argument.

95. The Court finds that this complaint is linked to those examined above and must therefore likewise be declared admissible. Having regard to the finding relating to Article 8 (see paragraph 92 above), the Court considers that it is not necessary to examine the issue separately under Article 6 § 1 (see, *mutatis mutandis*, *W. v. the United Kingdom*, 8 July 1987, § 84, Series A no. 121, and *Mihailova v. Bulgaria*, no. 35978/02, § 107, 12 January 2006).

III. OTHER COMPLAINTS

96. The applicant complained under Article 6 § 1 that the proceedings concerning his dispute with Tatariv Council had been unfair and excessively lengthy.

97. In the light of the materials in its possession, the Court finds that the applicant's complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

98. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed UAH 1,000,000 (EUR 163,125) in respect of non-pecuniary damage.

101. The Government contested this claim.

102. The Court notes that the applicant must have sustained non-pecuniary damage as the result of the violation found. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

103. The applicant did not submit any claim for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

104. 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 complaints of a violation of Article 6 § 1 on account of the lengthy non-enforcement of the judgment of 26 December 2003 and of a violation of Article 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;

4. *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, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President