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

COURT (CHAMBER)

CASE OF LÓPEZ OSTRA v. SPAIN

(Application no. 16798/90)

JUDGMENT

STRASBOURG

09 December 1994

In the case of López Ostra v. Spain[*],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[**], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mrs E. PALM,
Mr J.M. MORENILLA,
Mr F. BIGI,
Mr A.B. BAKA,
Mr M.A. LOPES ROCHA,
Mr G. MIFSUD BONNICI,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 24 June and 23 November 1994,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 8 December 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 16798/90) against the Kingdom of Spain lodged with the Commission under Article 25 (art. 25) by a Spanish national, Mrs Gregoria López Ostra, on 14 May 1990.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Spain recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3 and 8 (art. 3, art. 8) of the Convention.

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[*] The case is numbered 41/1993/436/515. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[**] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30). On 10 January 1994 the lawyer was given leave by the President to use the Spanish language in the proceedings (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr J.M. Morenilla, the elected judge of Spanish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr J. De Meyer, Mrs E. Palm, Mr F. Bigi, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr A. Spielmann, substitute judge, replaced Mr De Meyer, who was unable to take part in the further consideration of the case (Rule 22 paras. 1 and 2 and Rule 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Spanish Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the orders made in consequence, the Registrar received the Government's and the applicant's memorials on 3 and 4 May 1994 respectively. On 16 May the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 10, 17 and 20 June 1994 the Commission supplied various documents which the Registrar had requested on the President's instructions.

5. In accordance with the decision of the President, who had also given the Agent of the Government leave to address the Court in Spanish (Rule 27 para. 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 20 June 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J. BORREGO BORREGO, Head of the Legal Department for Human Rights, Ministry of Justice, *Agent*;

- for the Commission

Mr F. MARTÍNEZ, *Delegate*;

- for the applicant

Mr J.L. MAZÓN COSTA, abogado, *Counsel*.

The Court heard addresses by them and also their replies to questions from two of its members.

On 23 November 1994 it declined to accept observations submitted out of time by counsel for the applicant on 13 October 1994 which related to the reimbursement of his fees in the national proceedings.

AS TO THE FACTS

6. Mrs Gregoria López Ostra, a Spanish national, lives in Lorca (Murcia).

At the material time she and her husband and their two daughters had their home in the district of "Diputación del Rio, el Lugarico", a few hundred metres from the town centre.

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

7. The town of Lorca has a heavy concentration of leather industries. Several tanneries there, all belonging to a limited company called SACURSA, had a plant for the treatment of liquid and solid waste built with a State subsidy on municipal land twelve metres away from the applicant's home.

8. The plant began to operate in July 1988 without the licence (licencia) from the municipal authorities required by Regulation 6 of the 1961 regulations on activities classified as causing nuisance and being unhealthy, noxious and dangerous ("the 1961 regulations"), and without having followed the procedure for obtaining such a licence (see paragraph 28 below).

Owing to a malfunction, its start-up released gas fumes, pestilential smells and contamination, which immediately caused health problems and nuisance to many Lorca people, particularly those living in the applicant's district. The town council evacuated the local residents and rehoused them free of charge in the town centre for the months of July, August and September 1988. In October the applicant and her family returned to their flat and lived there until February 1992 (see paragraph 21 below).

9. On 9 September 1988, following numerous complaints and in the light of reports from the health authorities and the Environment and Nature Agency (Agencia para el Medio Ambiente y la Naturaleza) for the Murcia region, the town council ordered cessation of one of the plant's activities - the settling of chemical and organic residues in water tanks (lagunaje) - while permitting the treatment of waste water contaminated with chromium to continue.

There is disagreement as to what the effects were of this partial shutdown, but it can be seen from the expert opinions and written evidence of 1991, 1992 and 1993, produced before the Commission by the Government and the applicant (see paragraphs 18-20 below), that certain nuisances continue and may endanger the health of those living nearby.

B. The application for protection of fundamental rights

1. Proceedings in the Murcia Audiencia Territorial

10. Having attempted in vain to get the municipal authority to find a solution, Mrs López Ostra lodged an application on 13 October 1988 with the Administrative Division of the Murcia Audiencia Territorial, seeking protection of her fundamental rights (section 1 of Law 62/1978 of 26 December 1978 on the protection of fundamental rights ("Law 62/1978") - see paragraphs 24-25 below). She complained, inter alia, of an unlawful interference with her home and her peaceful enjoyment of it, a violation of her right to choose freely her place of residence, attacks on her physical and psychological integrity, and infringements of her liberty and her safety (Articles 15, 17 para. 1, 18 para. 2 and 19 of the Constitution - see paragraph 23 below) on account of the municipal authorities' passive attitude to the nuisance and risks caused by the waste-treatment plant. She requested the court to order temporary or permanent cessation of its activities.

11. The court took evidence from several witnesses offered by the applicant and instructed the regional Environment and Nature Agency to give an opinion on the plant's operating conditions and location. In a report of 19 January 1989 the agency noted that at the time of its expert's visit on 17 January the plant's sole activity was the treatment of waste water contaminated with chromium, but that the remaining waste also flowed through its tanks before being discharged into the river, generating foul smells. It therefore concluded that the plant had not been built in the most suitable location.

Crown Counsel endorsed Mrs López Ostra's application. However, the Audiencia Territorial found against her on 31 January 1989. It held that although the plant's operation could unquestionably cause nuisance because of the smells, fumes and noise, it did not constitute a serious risk to the health of the families living in its vicinity but, rather, impaired their quality of life, though not enough to infringe the fundamental rights claimed. In any case, the municipal authorities, who had taken measures in respect of the plant, could not be held liable. The non-possession of a licence was not an issue to be examined in the special proceedings instituted in this instance, because it concerned a breach of the ordinary law.

2. Proceedings in the Supreme Court

12. On 10 February 1989 Mrs López Ostra lodged an appeal with the Supreme Court (Tribunal Supremo - see paragraph 25 below in fine). She maintained that a number of witnesses and experts had indicated that the plant was a source of polluting fumes, pestilential and irritant smells and repetitive noise that had caused both her daughter and herself health

problems. As regards the municipal authorities' liability, the decision of the Audiencia Territorial appeared to be incompatible with the general supervisory powers conferred on mayors by the 1961 regulations, especially where the activity in question was carried on without a licence (see paragraph 28 below). Regard being had to Article 8 para. 1 (art. 8-1) of the Convention, inter alia, the town council's attitude amounted to unlawful interference with her right to respect for her home and was also an attack on her physical integrity. Lastly, the applicant sought an order suspending the plant's operations.

13. On 23 February 1989 Crown Counsel at the Supreme Court filed pleadings to the effect that the situation complained of amounted to arbitrary and unlawful interference by the public authorities with the applicant's private and family life (Article 18 of the Constitution taken together with Articles 15 and 19 - see paragraph 23 below). The court should accordingly grant her application in view of the nuisance to which she was subjected and the deterioration in the quality of her life, both of which had moreover been acknowledged in the judgment of 31 January. On 13 March Crown Counsel supported the suspension application (see paragraph 12 above and paragraph 25 below).

14. In a judgment of 27 July 1989 the Supreme Court dismissed the appeal. The impugned decision had been consistent with the constitutional provisions relied on, as no public official had entered the applicant's home or attacked her physical integrity. She was in any case free to move elsewhere. The failure to obtain a licence could only be considered in ordinary-law proceedings.

3. Proceedings in the Constitutional Court

15. On 20 October 1989 Mrs López Ostra lodged an appeal (recurso de amparo) with the Constitutional Court, alleging violations of Article 15 (right to physical integrity), Article 18 (right to private life and to inviolability of the family home) and Article 19 (right to choose freely a place of residence) of the Constitution (see paragraph 23 below).

On 26 February 1990 the court ruled that the appeal was inadmissible on the ground that it was manifestly ill-founded. It observed that the complaint based on a violation of the right to respect for private life had not been raised in the ordinary courts as it should have been. For the rest, it held that the presence of fumes, smells and noise did not itself amount to a breach of the right to inviolability of the home; that the refusal to order closure of the plant could not be regarded as degrading treatment, since the applicant's life and physical integrity had not been endangered; and that her right to choose her place of residence had not been infringed as she had not been expelled from her home by any authority.

C. Other proceedings concerning the Lorca waste-treatment plant

1. The proceedings relating to non-possession of a licence

16. In 1990 two sisters-in-law of Mrs López Ostra, who lived in the same building as her, brought proceedings against the municipality of Lorca and SACURSA in the Administrative Division of the Murcia High Court (Tribunal Superior de Justicia), alleging that the plant was operating unlawfully. On 18 September 1991 the court, noting that the nuisance had continued after 9 September 1988 and that the plant did not have the licences required by law, ordered that it should be closed until they were obtained (see paragraph 28 below). However, enforcement of this order was stayed following an appeal by the town council and SACURSA. The case is still pending in the Supreme Court.

2. Complaint of an environmental health offence

17. On 13 November 1991 the applicant's two sisters-in-law lodged a complaint, as a result of which Lorca investigating judge no. 2 instituted criminal proceedings against SACURSA for an environmental health offence (Article 347 bis of the Criminal Code - see paragraph 29 below). The two complainants joined the proceedings as civil parties.

Only two days later, the judge decided to close the plant, but on 25 November the measure was suspended because of an appeal lodged by Crown Counsel on 19 November.

18. The judge ordered a number of expert opinions as to the seriousness of the nuisance caused by the waste-treatment plant and its effects on the health of those living nearby.

An initial report of 13 October 1992 by a scientist from the University of Murcia who had a doctorate in chemistry stated that hydrogen sulphide (a colourless gas, soluble in water, with a characteristic rotten-egg smell) had been detected on the site in concentrations exceeding the permitted levels. The discharge of effluent containing sulphur into a river was said to be unacceptable. These findings were confirmed in a supplementary report of 25 January 1993.

In a report of 27 October 1992 the National Toxicology Institute stated that the levels of the gas probably exceeded the permitted limits but did not pose any danger to the health of people living close to the plant. In a second report of 10 February 1993 the institute stated that it could not be ruled out that being in neighbouring houses twenty-four hours a day constituted a health risk as calculations had been based only on a period of eight hours a day for five days.

Lastly, the regional Environment and Nature Agency, which had been asked to submit an expert opinion by the Lorca municipal authorities, concluded in a report of 29 March 1993 that the level of noise produced by

the plant when in operation did not exceed that measured in other parts of the town.

19. The investigation file contains several medical certificates and expert opinions concerning the effects on the health of those living near the plant. In a certificate dated 12 December 1991 Dr de Ayala Sánchez, a paediatrician, stated that Mrs López Ostra's daughter, Cristina, presented a clinical picture of nausea, vomiting, allergic reactions, anorexia, etc., which could only be explained by the fact that she was living in a highly polluted area. He recommended that the child should be moved from the area.

In an expert report of 16 April 1993 the Ministry of Justice's Institute of Forensic Medicine in Cartagena indicated that gas concentrations in houses near the plant exceeded the permitted limit. It noted that the applicant's daughter and her nephew, Fernando López Gómez, presented typical symptoms of chronic absorption of the gas in question, periodically manifested in the form of acute bronchopulmonary infections. It considered that there was a relationship of cause and effect between this clinical picture and the levels of gas.

20. In addition, it is apparent from the statements of three police officers called to the neighbourhood of the plant by one of the applicant's sisters-in-law on 9 January 1992 that the smells given off were, at the time of their arrival, very strong and induced nausea.

21. On 1 February 1992 Mrs López Ostra and her family were rehoused in a flat in the centre of Lorca, for which the municipality paid the rent.

The inconvenience resulting from this move and from the precariousness of their housing situation prompted the applicant and her husband to purchase a house in a different part of town on 23 February 1993.

22. On 27 October 1993 the judge confirmed the order of 15 November 1991 and the plant was temporarily closed.

II. RELEVANT DOMESTIC LAW

A. The Constitution

23. The relevant Articles of the Constitution provide:

Article 15

"Everyone shall have the right to life and to physical and psychological integrity, without being subjected to torture or inhuman or degrading punishment or treatment under any circumstances. The death penalty shall be abolished except where it is provided for by military criminal law in time of war."

Article 17 para. 1

"Everyone has the right to liberty and security. ..."

Article 18

"1. The right to honour and to private and family life and the right to control use of one's likeness shall be protected.

2. The home shall be inviolable. It may not be entered or searched without the consent of the person who lives there or a judicial decision, except in cases of flagrant offences. ..."

Article 19

"Spanish citizens shall have the right to choose freely their place of residence and to move around the national territory ..."

Article 45

"1. Everyone shall have the right to enjoy an environment suitable for personal development and the duty to preserve it.

2. The public authorities, relying on the necessary public solidarity, shall ensure that all natural resources are used rationally, with a view to safeguarding and improving the quality of life and protecting and restoring the environment.

3. Anyone who infringes the above provisions shall be liable to criminal or, where applicable, administrative penalties as prescribed by law and shall be required to make good any damage caused."

B. The 1978 Law on the protection of fundamental rights

24. Law 62/1978 provides that certain fundamental rights shall be safeguarded by the ordinary courts. The rights protected in this way include inviolability of the home and freedom to choose one's place of residence (section 1(2)). However, under transitional provision 2(2) of the Law on the Constitutional Court of 3 October 1979, its application is extended to the other rights secured in Articles 14 to 29 of the Constitution (Article 53 of the Constitution).

25. Complaints against decisions of administrative authorities affecting the rights of the individual may be lodged with the administrative division of the appropriate ordinary court (section 6), without its first being necessary to exhaust the administrative remedies (section 7(1)). The procedure followed is an expedited one with shorter time-limits and exemption from certain procedural steps (sections 8 and 10).

In the writ the individual may apply to have the impugned decision stayed, and the court rules on such applications by means of a separate, summary procedure (section 7).

An appeal lies to the Supreme Court (section 9), which hears such appeals in expedited proceedings.

C. Environmental protection provisions

26. In the field of environmental protection the State and the autonomous communities have enacted many provisions of different ranks in law: Article 45 of the Constitution (see paragraph 23 above); Law 20/1986 of 14 May 1986 on toxic and dangerous waste; Royal Legislative Decree 1302/1986 of 28 June 1986 on environmental impact assessment and Law 38/1972 of 22 December 1972 on atmospheric pollution control.

27. The provisions most frequently relied on in the instant case are the 1961 regulations on activities classified as causing nuisance and being unhealthy, noxious and dangerous approved in Decree 2414/1961 of 30 November.

The purpose of this decree is to prevent plant, factories, activities, industries or warehouses, whether public or private, from causing nuisance, impairing normal environmental health and hygiene or damaging public or private property or entailing serious risks to persons or property (Regulation 1). Regulation 3 extends the scope of the regulations to cover noise, vibrations, fumes, gases, smells, etc.

Siting of the activities in question is governed by municipal by-laws and local development plans. At all events, factories deemed to be dangerous or unhealthy cannot in principle be built less than 2,000 metres from the nearest housing (Regulation 4).

28. The local mayor is empowered to issue licences for carrying on these activities, to supervise the application of the aforementioned provisions and to impose penalties where necessary (Regulation 6).

The procedure for obtaining such licences has several stages, including mandatory consultation of a provincial committee as to the suitability of the safety systems proposed by the applicant in his description of the project. Before the premises are brought into use they must undergo a compulsory inspection by a local-authority technician (Regulations 29-34).

An appeal lies to the ordinary courts against decisions to grant or refuse licences (Regulation 42).

When a nuisance occurs, the mayor may order the party responsible for it to take steps to eliminate it. If these are not taken within the time specified in the regulations, the mayor may, in the light of the expert opinions obtained and after hearing the person concerned, either impose a fine or temporarily or permanently withdraw the licence (Regulation 38).

D. The Criminal Code

29. Article 347 bis was added on 25 June 1983 by the Law making urgent reforms to part of the Criminal Code (8/1983). It provides:

> "Anyone who, in breach of environmental protection legislation or regulations, causes to be released or directly or indirectly releases into the atmosphere, the soil or ... waters emissions or discharges of any kind that are likely seriously to endanger human health or seriously to interfere with the conditions of animal life, forests, natural sites or cultivated areas, shall be liable to a sentence of between one and six months' imprisonment (arresto mayor) and a fine of 50,000 to 1,000,000 pesetas.
>
> A more severe penalty (six months' to six years' imprisonment) shall be imposed where an industrial plant is operating illegally, without having obtained the necessary administrative authorisations, or where express orders of the administrative authorities requiring modification or cessation of the polluting activities have not been complied with or where untrue information has been given about the activities' environmental impact, or where an inspection by the administrative authorities has been obstructed.
>
> ...
>
> In all the cases referred to in this Article, temporary or permanent closure of the establishment may be ordered ..."

PROCEEDINGS BEFORE THE COMMISSION

30. Mrs López Ostra applied to the Commission on 14 May 1990. She complained of the Lorca municipal authorities' inactivity in respect of the nuisance caused by a waste-treatment plant situated a few metres away from her home. Relying on Articles 8 para. 1 and 3 (art. 8-1, art. 3) of the Convention, she asserted that she was the victim of a violation of the right to respect for her home that made her private and family life impossible and the victim also of degrading treatment.

31. On 8 July 1992 the Commission declared the application (no. 16798/90) admissible. In its report of 31 August 1993 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 8 (art. 8) but not of Article 3 (art. 3). The full text of the Commission's opinion is reproduced as an annex to this judgment[*].

[*] Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 303-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

32. The Government requested the Court to allow their preliminary objections or, failing this, to find that the Kingdom of Spain had not breached its obligations under the Convention.

33. At the hearing the applicant's lawyer requested the Court to rule that in the instant case Spain had not fulfilled its obligations under Articles 8 and 3 (art. 8, art. 3) of the Convention.

AS TO THE LAW

34. The applicant alleged that there had been a violation of Articles 8 and 3 (art. 8, art. 3) of the Convention on account of the smells, noise and polluting fumes caused by a plant for the treatment of liquid and solid waste sited a few metres away from her home. She held the Spanish authorities responsible, alleging that they had adopted a passive attitude.

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The objection based on failure to exhaust domestic remedies

35. The Government contended, as they had done before the Commission, that Mrs López Ostra had not exhausted domestic remedies. The special application for protection of fundamental rights she had chosen to make (see paragraphs 10-15 and 24-25 above) was not the appropriate means of raising questions of compliance with the ordinary law or disputes of a scientific nature over the effects of a waste-treatment plant. This procedure was a shortened, rapid one intended to remedy overt infringements of fundamental rights, and the taking of evidence under it was curtailed.

The applicant should, on the other hand, have instituted both criminal proceedings and ordinary administrative proceedings, which had proved to be effective under similar circumstances. In respect of the same facts, for instance, her sisters-in-law had brought ordinary administrative proceedings in April 1990 and had then lodged a criminal complaint on 13 November 1991. The relevant judicial authorities had ordered closure of the plant on 18 September and 15 November 1991 respectively, but enforcement of those orders had been stayed on account of appeals lodged by the municipal authorities and Crown Counsel (see paragraphs 16 and 17 above). On 27 October 1993 the plant had been closed by order of the judge in the criminal proceedings but both sets of proceedings were still pending in the Spanish

courts. If the Court determined the present case on the basis of the documents produced by the parties relating to those proceedings, as the Commission did in its report, its decision would prejudge their outcome.

36. Like the Commission and the applicant, the Court considers that on the contrary the special application for protection of fundamental rights lodged by the applicant with the Murcia Audiencia Territorial (see paragraph 10 above) was an effective, rapid means of obtaining redress in the case of her complaints relating to her right to respect for her home and for her physical integrity, especially since that application could have had the outcome she desired, namely closure of the waste-treatment plant. Moreover, in both courts that dealt with the merits of the case (the Murcia Audiencia Territorial and the Supreme Court - see paragraphs 11 and 13 above) Crown Counsel had submitted that the application should be allowed.

37. As to the need to wait for the outcome of the two sets of proceedings brought by Mrs López Ostra's sisters-in-law in the ordinary (administrative and criminal) courts, the Court notes, like the Commission, that the applicant is not a party to those proceedings. Their subject-matter is, moreover, not exactly the same as that of the application for protection of fundamental rights, and thus of the application to Strasbourg, even if they might have the desired result. The ordinary administrative proceedings relate in particular to another question, the failure to obtain the municipal authorities' permission to build and operate the plant. The issue of whether SACURSA might be criminally liable for any environmental health offence is likewise different from that of the town's or other competent national authorities' inaction with regard to the nuisance caused by the plant.

38. Lastly, it remains to be determined whether, in order to exhaust domestic remedies, it was necessary for the applicant herself to institute either of the two types of proceedings in question. Here too the Court agrees with the Commission. Having had recourse to a remedy that was effective and appropriate in relation to the infringement of which she had complained, the applicant was under no obligation also to bring other proceedings that were slower.

The applicant therefore provided the national courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 26 (art. 26) of the Convention, namely the opportunity of putting right the violations alleged against them (see, inter alia, the De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 29, para. 50, and the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 27, para. 72).

39. It follows that the objection must be dismissed.

B. The objection that the applicant was not a victim

40. The Government raised a second objection already advanced before the Commission. They acknowledged that Mrs López Ostra - like, for that matter, the other residents of Lorca - had been caused serious nuisance by the plant until 9 September 1988, when part of its activities ceased (see paragraph 9 above). However, even supposing that smells or noise - which would not have been excessive - had continued after that date, the applicant had in the meantime ceased to be a victim. From February 1992 the López Ostra family were rehoused in a flat in the town centre at the municipality's expense, and in February 1993 they moved into a house they had purchased (see paragraph 21 above). In any case, the closure of the plant in October 1993 brought all nuisance to an end, with the result that neither the applicant nor her family now suffered the alleged undesirable effects of its operation.

41. At the hearing the Delegate of the Commission pointed out that the investigating judge's decision of 27 October 1993 (see paragraph 22 above) did not mean that someone who had been forced by environmental conditions to abandon her home and subsequently to buy another house had ceased to be a victim.

42. The Court shares this opinion. Neither Mrs López Ostra's move nor the waste-treatment plant's closure, which was moreover temporary (see paragraph 22 above), alters the fact that the applicant and her family lived for years only twelve metres away from a source of smells, noise and fumes.

At all events, if the applicant could now return to her former home following the decision to close the plant, this would be a factor to be taken into account in assessing the damage she sustained but would not mean that she ceased to be a victim (see, among many other authorities, the Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, pp. 13-14, para. 27, and the Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 16, para. 32).

43. The objection is therefore unfounded.

II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

44. Mrs López Ostra first contended that there had been a violation of Article 8 (art. 8) of the Convention, which provides:

> "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."

The Commission subscribed to this view, while the Government contested it.

45. The Government said that the complaint made to the Commission and declared admissible by it (see paragraphs 30 and 31 above) was not the same as the one that the Spanish courts had considered in the application for protection of fundamental rights since it appeared to be based on statements, medical reports and technical experts' opinions of later date than that application and wholly unconnected with it.

46. This argument does not persuade the Court. The applicant had complained of a situation which had been prolonged by the municipality's and the relevant authorities' failure to act. This inaction was one of the fundamental points both in the complaints made to the Commission and in the application to the Murcia Audiencia Territorial (see paragraph 10 above). The fact that it continued after the application to the Commission and the decision on admissibility cannot be held against the applicant. Where a situation under consideration is a persisting one, the Court may take into account facts occurring after the application has been lodged and even after the decision on admissibility has been adopted (see, as the earliest authority, the Neumeister v. Austria judgment of 27 June 1968, Series A no. 8, p. 21, para. 28, and p. 38, para. 7).

47. Mrs López Ostra maintained that, despite its partial shutdown on 9 September 1988, the plant continued to emit fumes, repetitive noise and strong smells, which made her family's living conditions unbearable and caused both her and them serious health problems. She alleged in this connection that her right to respect for her home had been infringed.

48. The Government disputed that the situation was really as described and as serious (see paragraph 40 above).

49. On the basis of medical reports and expert opinions produced by the Government or the applicant (see paragraphs 18-19 above), the Commission noted, inter alia, that hydrogen sulphide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby and that there could be a causal link between those emissions and the applicant's daughter's ailments.

50. In the Court's opinion, these findings merely confirm the first expert report submitted to the Audiencia Territorial on 19 January 1989 by the regional Environment and Nature Agency in connection with Mrs López Ostra's application for protection of fundamental rights. Crown Counsel supported this application both at first instance and on appeal (see paragraphs 11 and 13 above). The Audiencia Territorial itself accepted that, without constituting a grave health risk, the nuisances in issue impaired the quality of life of those living in the plant's vicinity, but it held that this impairment was not serious enough to infringe the fundamental rights recognised in the Constitution (see paragraph 11 above).

51. Naturally, 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.

Whether the question is analysed in terms of a positive duty on the State - to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 (art. 8-1) -, as the applicant wishes in her case, or in terms of an "interference by a public authority" to be justified in accordance with paragraph 2 (art. 8-2), the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoys a certain margin of appreciation. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8 (art. 8-1), in striking the required balance the aims mentioned in the second paragraph (art. 8-2) may be of a certain relevance (see, in particular, the Rees v. the United Kingdom judgment of 17 October 1986, Series A no. 106, p. 15, para. 37, and the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41).

52. It appears from the evidence that the waste-treatment plant in issue was built by SACURSA in July 1988 to solve a serious pollution problem in Lorca due to the concentration of tanneries. Yet as soon as it started up, the plant caused nuisance and health problems to many local people (see paragraphs 7 and 8 above).

Admittedly, the Spanish authorities, and in particular the Lorca municipality, were theoretically not directly responsible for the emissions in question. However, as the Commission pointed out, the town allowed the plant to be built on its land and the State subsidised the plant's construction (see paragraph 7 above).

53. The town council reacted promptly by rehousing the residents affected, free of charge, in the town centre for the months of July, August and September 1988 and then by stopping one of the plant's activities from 9 September (see paragraphs 8 and 9 above). However, the council's members could not be unaware that the environmental problems continued after this partial shutdown (see paragraphs 9 and 11 above). This was, moreover, confirmed as early as 19 January 1989 by the regional Environment and Nature Agency's report and then by expert opinions in 1991, 1992 and 1993 (see paragraphs 11 and 18 above).

54. Mrs López Ostra submitted that by virtue of the general supervisory powers conferred on the municipality by the 1961 regulations the municipality had a duty to act. In addition, the plant did not satisfy the legal requirements, in particular as regards its location and the failure to obtain a municipal licence (see paragraphs 8, 27 and 28 above).

55. On this issue the Court points out that the question of the lawfulness of the building and operation of the plant has been pending in the Supreme Court since 1991 (see paragraph 16 above). The Court has consistently held that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, inter alia, the Casado Coca v. Spain judgment of 24 February 1994, Series A no. 285-A, p. 18, para. 43).

At all events, the Court considers that in the present case, even supposing that the municipality did fulfil the functions assigned to it by domestic law (see paragraphs 27 and 28 above), it need only establish whether the national authorities took the measures necessary for protecting the applicant's right to respect for her home and for her private and family life under Article 8 (art. 8) (see, among other authorities and mutatis mutandis, the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, para. 23).

56. It has to be noted that the municipality not only failed to take steps to that end after 9 September 1988 but also resisted judicial decisions to that effect. In the ordinary administrative proceedings instituted by Mrs López Ostra's sisters-in-law it appealed against the Murcia High Court's decision of 18 September 1991 ordering temporary closure of the plant, and that measure was suspended as a result (see paragraph 16 above).

Other State authorities also contributed to prolonging the situation. On 19 November 1991 Crown Counsel appealed against the Lorca investigating judge's decision of 15 November temporarily to close the plant in the prosecution for an environmental health offence (see paragraph 17 above), with the result that the order was not enforced until 27 October 1993 (see paragraph 22 above).

57. The Government drew attention to the fact that the town had borne the expense of renting a flat in the centre of Lorca, in which the applicant and her family lived from 1 February 1992 to February 1993 (see paragraph 21 above).

The Court notes, however, that the family had to bear the nuisance caused by the plant for over three years before moving house with all the attendant inconveniences. They moved only when it became apparent that the situation could continue indefinitely and when Mrs López Ostra's daughter's paediatrician recommended that they do so (see paragraphs 16, 17 and 19 above). Under these circumstances, the municipality's offer could not afford complete redress for the nuisance and inconveniences to which they had been subjected.

58. Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the town's economic well-being - that of having a waste-treatment plant - and the applicant's effective enjoyment of her right to respect for her home and her private and family life.

There has accordingly been a violation of Article 8 (art. 8).

III. ALLEGED VIOLATION OF ARTICLE 3 (art. 3) OF THE CONVENTION

59. Mrs López Ostra submitted that the matters for which the respondent State was criticised were of such seriousness and had caused her such distress that they could reasonably be regarded as amounting to degrading treatment prohibited by Article 3 (art. 3) of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government and the Commission took the view that there had been no breach of this Article (art. 3).

60. The Court is of the same opinion. The conditions in which the applicant and her family lived for a number of years were certainly very difficult but did not amount to degrading treatment within the meaning of Article 3 (art. 3).

IV. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

61. Under Article 50 (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Mrs López Ostra claimed compensation for damage and reimbursement of costs and expenses.

A. Damage

62. The applicant asserted that the building and operation of a waste-treatment plant next to her home forced her to make radical changes to her way of life. She consequently sought the following sums in reparation of the damage sustained:

(a) 12,180,000 pesetas (ESP) for the distress she suffered from 1 October 1988 to 31 January 1992 while living in her former home;

(b) ESP 3,000,000 for the anxiety caused by her daughter’s serious illness;

(c) ESP 2,535,000 for the inconvenience caused from 1 February 1992 by her undesired move;

(d) ESP 7,000,000 for the cost of the new house she was obliged to buy in February 1993 because of the uncertainty of the accommodation provided by the Lorca municipal authorities;

(e) ESP 295,000 for expenses incurred in settling into the new house.

63. The Government considered that these claims were exaggerated. They pointed out that the Lorca municipal authorities had paid the rent for the flat occupied by Mrs López Ostra and her family in the town centre from 1 February 1992 until she moved into her new house.

64. The Delegate of the Commission found the total sum sought excessive. As regards the pecuniary damage, he considered that while the applicant had theoretically been entitled to claim a new home, she was bound to give her former one in exchange, due allowance being made for any differences in size and characteristics.

65. The Court accepts that Mrs López Ostra sustained some damage on account of the violation of Article 8 (art. 8) (see paragraph 58 above). Her old flat must have depreciated and the obligation to move must have entailed expense and inconvenience. On the other hand, there is no reason to award her the cost of her new house since she has kept her former home. Account must be taken of the fact that for a year the municipal authorities paid the rent of the flat occupied by the applicant and her family in the centre of Lorca and that the waste-treatment plant was temporarily closed by the investigating judge on 27 October 1993 (see paragraph 22 above).

The applicant, moreover, undeniably sustained non-pecuniary damage. In addition to the nuisance caused by the gas fumes, noise and smells from the plant, she felt distress and anxiety as she saw the situation persisting and her daughter's health deteriorating.

The heads of damage accepted do not lend themselves to precise quantification. Making an assessment on an equitable basis in accordance with Article 50 (art. 50), the Court awards Mrs López Ostra ESP 4,000,000.

B. Costs and expenses

1. In the domestic courts

66. The applicant claimed a total of ESP 850,000 for costs and expenses incurred in the domestic courts.

67. The Government and the Delegate of the Commission pointed out that Mrs López Ostra had received free legal aid in Spain, so that she did not have to pay her lawyer, whose fees should be paid by the State.

68. The Court likewise finds that the applicant did not incur expenses in this respect and accordingly dismisses the claim in question. Mr Mazón Costa cannot rely on Article 50 (art. 50) to claim just satisfaction on his own account as he accepted the terms of the legal aid granted to his client (see,

among other authorities, the Delta v. France judgment of 19 December 1990, Series A no. 191-A, p. 18, para. 47).

2. Before the Convention institutions

69. Mrs López Ostra claimed ESP 2,250,000 for her lawyer's fees in the proceedings before the Commission and the Court, less the sums paid as legal aid by the Council of Europe.

70. The Government and the Delegate of the Commission considered this amount excessive.

71. In the light of the criteria laid down in its case-law, the Court considers it equitable to award the applicant ESP 1,500,000 under this head, less the 9,700 French francs paid by the Council of Europe.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objections;

2. Holds that there has been a breach of Article 8 (art. 8) of the Convention;

3. Holds that there has been no breach of Article 3 (art. 3) of the Convention;

4. Holds that the respondent State is to pay the applicant, within three months, 4,000,000 (four million) pesetas for damage and 1,500,000 (one million five hundred thousand) pesetas, less 9,700 (nine thousand seven hundred) French francs to be converted into pesetas at the exchange rate applicable on the date of delivery of this judgment, for costs and expenses;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 December 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar