

***TESTO INTEGRALE***

THIRD SECTION

**CASE OF GIACOMELLI v. ITALY**

*(Application no. 59909/00)*

JUDGMENT

STRASBOURG

2 November 2006

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Giacomelli v. Italy,**

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 March 2005 and on 12 October 2006,  
Delivers the following judgment, which was adopted on the  
last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 59909/00) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Ms Piera Giacomelli (“the applicant”), on 22 July 1998.

2. The applicant was represented by Mr M. Toma, a lawyer practising in Brescia. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, and their deputy co-Agent, Mr F. Crisafulli.

3. The applicant alleged, in particular, an infringement of her right to respect for her home and private life, as guaranteed by Article 8 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. In a decision of 15 March 2005 the Court (Fourth Section) declared the application admissible and decided to join to the merits the Government's preliminary objection that the application was premature.

8. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

9. The application was subsequently allocated to the Third Section of the Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1935 and lives in Brescia.

11. She has lived since 1950 in a house on the outskirts of Brescia, 30 metres away from a plant for the storage and treatment of “special waste” classified as either hazardous or non-hazardous. A joint-stock company, Ecoservizi, began operating the plant in 1982.

#### A. Ecoservizi's activities and the subsequent contentious proceedings

##### *1. The licence for the “detoxification” of industrial waste*

12. In a decision (*delibera*) of 4 April 1989 the Lombardy Regional Council granted Ecoservizi a licence to operate the plant for a five-year period. The different forms of waste treatment covered by Ecoservizi's licence included, for the first time, the “detoxification” (*inertizzazione*) of hazardous waste, a process involving the treatment of special industrial waste using chemicals.

13. On 30 October 1991 the Regional Council authorised Ecoservizi to increase the annual quantity of waste treated at the plant to a total volume of 192,000 cubic metres. In particular, the quantity of toxic waste authorised for detoxification was raised from 30,000 to 75,000 cubic metres.

14. On 5 August 1993 the Regional Council approved a number of alterations entailing technological improvements to the facility without any increase in the quantity of waste being treated.

15. In a decision of 11 April 1994 the Lombardy Regional Council renewed the operating licence for a five-year period, on condition that Ecoservizi signed a memorandum of understanding with the local authorities in order to limit the plant's environmental impact; that condition was satisfied on 18 November 1994.

16. On 13 December 1994 the Regional Council took note of the signing of the memorandum of understanding and confirmed 30 April 1999 as the expiry date for the operating licence.

## 2. *The first set of contentious proceedings*

17. The applicant lodged three applications with the Lombardy Regional Administrative Court in 1994 and 1995 for judicial review of the Regional Council's decisions of 5 August 1993 and 11 April and 13 December 1994.

She challenged the renewal of the operating licence granted to Ecoservizi and, alleging a breach of Law no. 441/1987, argued that the alterations approved by the Regional Council entailed an increase in activity such as to necessitate a fresh licensing procedure, including an assessment of the plant's environmental impact.

Ecoservizi applied to intervene in the proceedings.

18. The applicant also sought a stay of execution of the decision to renew the licence. The court allowed her request in an order of 18 November 1994, chiefly because the memorandum of understanding had not yet been signed, and suspended the implementation of the decision. Ecoservizi appealed.

19. On 7 April 1995 the *Consiglio di Stato* set aside the Regional Administrative Court's order, holding that the signing of the memorandum of understanding (see paragraph 15 above) had removed the risk of irreparable damage on the basis of which the stay of execution had been ordered.

20. In a judgment of 13 April 1996 the Lombardy Regional Administrative Court, having joined all the applicant's applications, dismissed them. It noted that all her complaints were based on the alleged need for the Regional Council to conduct a fresh licensing procedure. It considered, however, that the size of the facility and its volume of activity had been determined in the Regional Council's decisions of 1989 and 1991, which had never been challenged by the applicant. However, the alterations approved in the impugned decisions of 5 August 1993 and 11 April and 13 December 1994 did not entail an increase in the plant's volume of activity or a change in the types of waste being treated. Accordingly, it was not necessary for the Regional Council to conduct a fresh licensing procedure.

21. The applicant appealed. In a judgment of 6 November 1998 the *Consiglio di Stato* upheld the Regional Administrative Court's conclusions and dismissed the appeal. It also pointed out that a facility should be deemed to be "new" and thus to require a fresh operating licence where there was a change in one of the various stages of waste treatment or in the types of waste being treated.

## 3. *The second set of contentious proceedings*

22. In a decision of 29 April 1999 the Lombardy Regional Council renewed Ecoservizi's operating licence for a five-year period. The decision was subject to revocation in the light of the findings of the environmental-

impact assessment procedure (*procedura di valutazione di impatto ambientale* – “EIA procedure”) which Ecoservizi had initiated in the meantime (see paragraphs 37-52 below).

23. On 12 July 1999 the applicant applied to the Lombardy Regional Administrative Court for judicial review of the Regional Council's decision of 29 April 1999. The company and the Lombardy Regional Council both applied to intervene in the proceedings.

24. On 20 September 1999 the applicant applied to the Regional Administrative Court for judicial review of a decision of 12 April 1999 in which the Regional Council had authorised Ecoservizi to make an alteration to the facility for processing waste oils.

25. Furthermore, in a decision of 15 October 1999 the Regional Council noted that Ecoservizi had decided not to act on the authorisation granted on 12 April 1999, and confirmed the renewal of the operating licence. The applicant applied for judicial review of that decision.

26. In an order of 18 February 2000 the Regional Administrative Court allowed an application by the applicant for a stay of execution, on the ground that the EIA procedure was still pending. Subsequently, on 11 April 2000, the *Consiglio di Stato* allowed an appeal by Ecoservizi, which had argued that the latest inspections of the plant demonstrated its “observance of the limits set by the existing regulations”, and set aside the stay of execution ordered by the Regional Administrative Court.

27. In a judgment of 29 April 2003, which was deposited with the registry on 9 June 2003, the Lombardy Regional Administrative Court allowed the applicant's applications on the merits and set aside the three impugned decisions (see paragraphs 23-25 above).

The court held, firstly, that the site alterations authorised by the Regional Council on 12 April 1999 in order to allow the processing of waste oils, should have been classified as substantial. Consequently, in accordance with Articles 27 and 28 of Decree no. 22/1997 (see paragraphs 62 and 63 below), the Regional Council should have suspended Ecoservizi's operations and ordered the necessary checks to be carried out before renewing the company's operating licence. The court therefore found that the Lombardy Regional Council's decision of 29 April 1999 had been unlawful.

As to the fact that the company had subsequently decided not to carry out the alterations in question, the court held that the Regional Council should in any event have carried out a thorough examination of the plant's operations and condition, as there had been a number of complaints from private individuals and public authorities about Ecoservizi's activities, giving rise to serious doubts as to their compatibility with environmental standards.

The court referred to the two environmental-impact assessment decrees (“EIA decrees”) issued by the Ministry of the Environment and, holding that the Regional Council had failed to carry out its investigative duties,

ordered the suspension of Ecoservizi's operations pending the final outcome of the EIA procedure.

28. Ecoservizi lodged an appeal with the *Consiglio di Stato*. On 1 July 2003 the *Consiglio di Stato* stayed the execution of the judgment of 9 June 2003 further to a request to that effect by the company.

29. In a judgment of 25 May 2004, which was deposited with the registry on 31 August 2004, the *Consiglio di Stato* dismissed Ecoservizi's appeal. Upholding the Regional Administrative Court's judgment, it held that the Regional Council's decision of 29 April 1999 to renew the operating licence without having carried out any environmental-impact assessment was unlawful and should be set aside.

#### 4. *The third set of contentious proceedings*

30. In the meantime, in a decision of 23 April 2004 the Lombardy Regional Council had renewed the operating licence for the plant for a five-year period. The renewal concerned the treatment of special waste, both hazardous and non-hazardous. Industrial waste intended for detoxification remained outside the scope of the licence pending the conclusion of the EIA procedure being conducted by the Ministry of the Environment.

31. A consultation meeting between the local authorities (*conferenza di servizi*) was held on 31 March 2004 prior to the granting of the licence. At the meeting the Regional Council and the provincial council and district council concerned expressed an opinion in favour of renewing the licence, referring at the same time to the report issued by the Regional Environmental Protection Agency (ARPA) on 28 February 2004.

In the report the ARPA experts indicated what steps had to be taken to avoid any risk of an incident or operational fault at the plant; in addition to these, all the requirements laid down by the Regional Council in its decision of 7 November 2003 (see paragraph 49 below) had to be met.

32. The applicant applied to the Lombardy Regional Administrative Court for judicial review of that decision and sought a stay of its execution.

33. On 30 April 2004 the Regional Council, having taken note of the EIA decree of 28 April 2004 approving the treatment by Ecoservizi of all types of waste, incorporated its latest decision to renew the operating licence into a provisional licence for the detoxification of industrial waste, valid until 22 June 2004, pending completion of the full licensing procedure.

34. In a decision of 28 June 2004 the Regional Council extended the licence until 31 December 2004 to allow Ecoservizi to submit its plans for adapting the plant to meet the requirements set out in the EIA decree.

35. In an order of 23 July 2004 the Lombardy Regional Administrative Court dismissed an application by the applicant for a stay of execution, holding that the decision of 23 April 2004 had been given in accordance with the favourable opinion by the local authorities and had taken into

account all factors constituting a potential risk to the properties in the vicinity of the plant. The court further noted that the decision in question had laid down a number of requirements aimed at eliminating the disturbance suffered by the applicant.

36. The proceedings on the merits are still pending before the Lombardy Regional Administrative Court.

### **B. Environmental-impact assessment procedures conducted by the Ministry of the Environment**

37. In a decision of 13 December 1996 the Lombardy Regional Council ordered Ecoservizi to initiate an EIA procedure in respect of the detoxification activities at the plant.

On 11 May 1998 the company submitted its application to the Ministry of the Environment in accordance with section 6 of Law no. 349/1986.

Brescia District Council and the applicant took part in the procedure, together with the local authorities of Borgosatollo and Castenedolo, two villages situated within several hundred metres of the plant.

38. On 24 May 2000 the Ministry of the Environment issued an EIA decree.

The Ministry noted that the plant was built on agricultural land, near the river Garza and a sand quarry, the exploitation of which had gradually eroded the soil. Because of the permeability of the ground in particular, there was a significant risk that the toxic chemical residue generated by the detoxification operations at the plant might contaminate the ground water, a source of drinking water for the inhabitants of the neighbouring villages.

The Ministry considered that the operation of the plant was incompatible with environmental regulations. However, Ecoservizi was allowed to continue its activities until the expiry on 29 April 2004 of the most recent operating licence granted by the Regional Council, provided that it complied with certain requirements.

39. Ecoservizi applied to the Lazio Regional Administrative Court for judicial review of the decision and sought a stay of its execution.

40. In an order of 31 August 2000 the Regional Administrative Court suspended the implementation of the decision and ordered the Ministry to carry out a fresh environmental-impact assessment. The Ministry appealed. On 8 May 2001 the *Consiglio di Stato* declared the appeal inadmissible.

41. In the meantime, on 30 April 2001 the Ministry had issued a further EIA decree confirming that the operation of the plant was incompatible with environmental regulations.

42. Ecoservizi applied to the Lazio Regional Administrative Court for judicial review of the new decree issued by the Ministry.

43. On 11 July 2001 the court allowed the application by Ecoservizi and ordered the Ministry to carry out a fresh environmental-impact assessment.

44. In an order of 11 December 2001 the *Consiglio di Stato* dismissed an appeal by the Ministry of the Environment against the above-mentioned order of the Lazio Regional Administrative Court.

45. In a decision of 4 November 2002 the Lombardy Regional Council notified Ecoservizi of the conditions for operating the plant, as laid down in the decrees issued by the Ministry of the Environment.

46. In the meantime, on 4 October 2002, in the course of the fresh EIA procedure ordered by the Regional Administrative Court, Ecoservizi had submitted a plan for altering the facility.

The plan envisaged, among other things, making the ground surface impermeable, building soundproofing devices, raising the site's perimeter wall so as to avoid any risk of flooding, and improving the system for monitoring hazardous emissions.

47. On 17 October 2003 the local health authority (*azienda sanitaria locale* – ASL) submitted its opinion to the Lombardy Regional Council on the compatibility of Ecoservizi's activities with environmental regulations. It stated that, according to the results of technical analyses carried out between 2000 and 2003, which had noted, among other things, the presence of abnormal concentrations of carbon and other organic substances in the atmosphere, the continuation of the plant's operation could cause health problems for those living nearby. The ASL added that it had not been shown that the precautions envisaged by Ecoservizi were sufficient to protect public health.

48. On 7 November 2003 the Lombardy Regional Council approved the continuation of the plant's operation, provided that the company implemented a number of requirements.

49. In particular, the company was to:

“draw up a memorandum of understanding with the local authorities for monitoring the waste being treated, with a view to reducing the likelihood of an operational fault at the site ...;

ensure the buffering of the detoxification facilities ...;

close the open-top chambers used in the chemical and biological process and develop an exhaust ventilation and purification system ...;

build a mobile, soundproof structure to cover the macerator ...;

alter the internal sewerage system so as to separate atmospheric water from water produced by the facility;

set up a system for monitoring the quality and quantity of water produced by the plant that flows into the Garza ... and into public sewers;

devise and implement a plan for making the ground impermeable at the site ...;

monitor the site in order to obtain a precise assessment of the presence of any pollutants in the subsoil, the hydrogeological structure of the land and the danger levels for the nearby ground-water supplies used as drinking water ...;



... raise the facility's perimeter wall to a minimum height of 123 metres above sea level ...”

The Regional Council further directed:

“the close proximity of residential dwellings means that the plant's operations must be permanently monitored as regards the dust released into the atmosphere, VOCs (volatile organic compounds) and noise disturbance. Accordingly, a unit should be set up between the site and the dwellings to measure dust emissions and the noise generated by the facility. As regards VOC quantities, the monitoring device should be installed near the facility with the agreement of the relevant authorities;

the company should also carry out periodic reviews of noise emissions.”

The Regional Council decided that the plant's implementation of the above requirements should be verified when the time came to renew its operating licence, due to expire on 30 April 2004.

50. On 28 April 2004 the EIA procedure ordered by the Regional Administrative Court was completed and the Ministry of the Environment issued a new EIA decree.

The Ministry noted, firstly, that Ecoservizi processed 27% of the waste generated in northern Italy and 23% nationwide. It subsequently stated that the requirements laid down by the Regional Council should significantly improve the conditions for operating and monitoring the plant and expressed an opinion in favour of Ecoservizi's continued operation of the plant, provided that it complied with those requirements.

51. The applicant applied to the Lazio Regional Administrative Court for judicial review of the EIA decree, at the same time seeking a stay of its execution.

52. In an order of 24 July 2004 the Regional Administrative Court refused the request for a stay of execution, on the ground that the applicant had not notified the Ministry of the Environment of her application.

### **C. Complaints about Ecoservizi's activities, and inspections by the relevant authorities**

53. Following numerous complaints by the applicant and other inhabitants of the area surrounding the plant, the Brescia ASL's Public and Environmental Health Office and the ARPA produced a number of reports on Ecoservizi's activities.

54. In particular, on 21 September 1993 experts from the ASL conducted analyses of the emissions produced at the plant and found that the statutory limits had been exceeded for certain substances, such as nickel, lead, nitrogen and sulphates. The report drawn up by the ASL indicates that the judicial authorities were informed of the findings of the analyses.

55. On 8 March 1995 experts from the ASL inspected the plant. They noted that a deposit of white dust had formed inside and outside the facility following an accident while a silo was being filled with slaked lime.

During the same inspection the experts observed that a number of containers intended for toxic waste were present on the site without having been neutralised after use. In a note dated 27 April 1995 the ASL instructed the company to move the containers in order to avoid any risk of contaminating the ground, particularly as the surface had not been made impermeable. It appears from the report that the ASL lodged a complaint with the appropriate judicial authorities.

56. In a report issued on 31 July 1997 the NAS (special branch of the *carabinieri* dealing with health issues) informed Brescia Provincial Council that a complaint had been lodged against Ecoservizi's legal representative for failure to comply with the conditions laid down in the licences for operating the plant.

57. On several occasions between 1999 and 2003 Brescia District Council asked the Lombardy Regional Council to intervene with a view to moving the facility to a safer site better suited to the plant's growing production needs.

58. On 28 December 2002 Brescia District Council temporarily rehoused the Giacomelli family free of charge pending the outcome of the judicial dispute with Ecoservizi in order to alleviate the disturbance caused to the applicant by the plant.

59. On 15 May 2002 the ARPA issued a technical report on Ecoservizi further to a request by the applicant and her neighbours for an emergency inspection of the site. The experts found a high level of ammonia in the atmosphere, indicating a fault in the detoxification process. They concluded that the company had omitted to activate the necessary devices for ensuring that the waste to be detoxified was compatible with the facility's specifications. There were also structural deficiencies at the site that could potentially lead to operational faults generating emissions of fumes and gases.

## II. RELEVANT DOMESTIC LAW

60. Section 6 of the Environment Act (Law no. 349/1986), which was enacted in accordance with European Directive 85/337/EEC, provides that any project which is likely to have significant effects on the environment

“must be submitted, prior to its approval, to the Ministry of the Environment, the Ministry of Cultural and Environmental Heritage and the authorities of the region concerned, for an environmental-impact assessment ('EIA'). The application must state the location of the installation and give details of the liquid and solid waste and the pollutants and noise disturbance which it will generate. It must also outline the measures intended to prevent environmental damage and the environmental protection and monitoring arrangements. Notice of the application shall be published at the applicant's expense in the newspaper with the largest circulation in the region concerned and in a national newspaper.

The Ministry of the Environment shall, together with the Ministry of Cultural and Environmental Heritage, after consulting the authorities of the region concerned, give a decision within ninety days as to the project's compatibility with environmental regulations.

Where the Ministry of the Environment observes any conduct that is contrary to the decision on compatibility with environmental regulations or is likely to endanger the environmental and ecological balance, it shall order the suspension of operations and shall refer the matter to the Council of Ministers.”

61. Article 1 of Prime Ministerial Decree no. 377/1988 lists the types of project that are subject to the assessment procedure provided for in Law no. 349/1986. Point (f) of the Article refers to

“facilities for the treatment of toxic and harmful waste by means of a ... chemical process”.

62. Law no. 441/1987, amended by Legislative Decree no. 22/1997, contains provisions on waste treatment and environmental protection.

Article 27 of the Decree governs the licensing of waste-treatment facilities. The regional council conducts a preliminary examination of proposed new facilities for the treatment and storage of urban, special, toxic and harmful waste by means of consultations (*conferenze*) in which representatives of the region and the other local authorities concerned take part.

If the planned facility examined by the regional council has to undergo a prior environmental-impact assessment within the meaning of Law no. 349/1986, the licensing procedure is suspended pending the decision by the Ministry of the Environment.

63. Once the examination of the project is complete, the regional council awards an operating licence for the facility in an administrative decision laying down the necessary environmental-protection conditions and requirements for the operator to observe. The licence is valid for five years and is renewable.

Where it emerges from inspections of the site that the conditions laid down by the authorities are not being met, the operation of the facility is suspended for up to twelve months. Subsequently, if the facility's operations have not been brought into line with the requirements set out in the licence, the licence is revoked (Article 28 of Decree no. 22/1997).

64. By section 21 of Law no. 1034/1971, anyone who has cause to fear that his or her rights may suffer imminent and irreparable damage as a result of the implementation of an administrative measure which he or she has challenged or of the authorities' conduct may ask the administrative courts to take urgent action to ensure, depending on the circumstances, that the decision on the merits can provisionally take effect.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

65. The Government submitted that the application was premature in that the latest proceedings instituted by the applicant were still pending in the Regional Administrative Court. Asserting that an application to the administrative courts for judicial review was an effective and accessible remedy, the Government submitted that the applicant should be required to await the outcome of those proceedings.

66. The applicant disputed the Government's reasoning. She submitted that since 1994 she had asked the administrative courts on several occasions to halt the plant's operation. However, although her requests for stays of execution had been granted and the environmental-impact assessment concerning the plant had been negative, its activities had never been stopped.

67. The Court observes that in its decision of 15 March 2005 on the admissibility of the application it held that the Government's objection that the application was premature should be joined to the examination of the merits of the case. Having regard to the substance of the applicant's complaint, it can only confirm that conclusion.

### II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicant complained that the persistent noise and harmful emissions from the plant, which was only 30 metres away from her house, entailed severe disturbance to her environment and a permanent risk to her health and home, in breach of Article 8 of the Convention, which provides:

#### **Article 8**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### **A. The parties' submissions**

##### *1. The applicant*

69. The applicant submitted that the plant operated by Ecoservizi had considerably expanded since being opened in 1982, having spread to barely 30 metres from the house where she had already been living for several

years before that date, and having reached an annual production capacity of some 200,000 cubic metres of harmful waste.

70. Since 1991 in particular, the plant's operations had increasingly been characterised by the continuous emission of noise and odours, preventing the applicant from being able to rest and live in adequate conditions, and had entailed a constant danger to the health and well-being of all those living in the vicinity. The applicant submitted that such a state of affairs was wholly incompatible with her right to respect for her private life and home and her right to health, and contended that the measures taken by the company were not sufficient to eliminate the disturbance produced by the plant and the risk resulting from its operation.

71. The applicant further submitted that the environmental-impact assessment procedure, which according to the law should have been an essential prerequisite for the plant's operation, had not been initiated until several years after Ecoservizi had begun its activities. Furthermore, the company and the authorities had never complied with the decrees in which the plant's operation had been deemed incompatible with environmental regulations, and had disregarded the instructions issued by the Ministry of the Environment. The treatment of toxic and harmful waste could not be said to be in the public interest in such conditions.

## 2. *The Government*

72. The Government did not dispute that there had been interference with the applicant's right to respect for her home and private life. They contended, however, that the interference had been justified under the second paragraph of Article 8 of the Convention.

The Government asserted that the administrative decisions in which Ecoservizi had been granted operating licences had been taken in accordance with the law and had pursued the aims of protecting public health and preserving the region's economic well-being. The company, they pointed out, processed almost all of the region's industrial waste, thereby ensuring the development of the region's industry and protecting the community's health.

73. In the Government's submission, the instant case differed from that of *Guerra and Others v. Italy* (judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 227, § 57) for two reasons. Firstly, Ecoservizi's operations respected the fundamental right to public health, and secondly, it had not been proved that the facility in the instant case was dangerous, whereas in *Guerra and Others* it had not been disputed that the emissions from the chemical factory entailed risks for the inhabitants of the town of Manfredonia. The Government also pointed out the difference between the instant case and *López Ostra v. Spain* (judgment of 9 December 1994, Series A no. 303-C), in which the operation of the waste-treatment plant had not been indispensable to the local community. Emphasising the

public-interest value of Ecoservizi's activities, they observed that regard had to be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole, and that there was a clear body of case-law in which the Court had allowed States a wide margin of appreciation in environmental matters.

74. The Government also drew the Court's attention to the latest decisions by the domestic authorities.

They pointed out, firstly, that on 23 July 2004 the Lombardy Regional Administrative Court, after considering all the relevant evidence in the case, had dismissed an application by the applicant for a stay of execution of the most recent decision to grant Ecoservizi an operating licence. They further noted that the most recent EIA procedure had ended on 28 April 2004 with a positive assessment by the Ministry of the Environment.

This proved that the relevant authorities had assessed the plant's operations as a whole and, while ordering the company to comply with certain requirements, had found that they were compatible with environmental regulations and did not entail a danger to human health.

75. The Government further pointed out that Ecoservizi, a company that was very familiar to the public, not least because of the judicial proceedings and complaints brought by Ms Giacomelli, had frequently undergone inspections by the relevant authorities, so that any risk to the applicant's health could be ruled out. The applicant, whose sole purpose was to secure the closure or relocation of the plant, had simply alleged a violation of her right to health, without taking into account the efforts made by the appropriate authorities to improve the situation and without giving details or proof of any adverse effects on her health.

## **B. The Court's assessment**

76. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

77. Thus in *Powell and Rayner v. the United Kingdom* (judgment of 21 February 1990, Series A no. 172, p. 18, § 40) the Court declared Article 8 applicable because “[i]n each case, albeit to greatly differing

degrees, the quality of the applicant's private life and the scope for enjoying the amenities of his home ha[d] been adversely affected by the noise generated by aircraft using Heathrow Airport". In *López Ostra* (cited above, pp. 54-55, § 51), which concerned the pollution caused by the noise and odours generated by a waste-treatment plant, the Court stated that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health". In *Guerra and Others* (cited above, p. 227, § 57), the Court observed: "The direct effect of the toxic emissions on the applicants' right to respect for their private and family life means that Article 8 is applicable." Lastly, in *Surugiu v. Romania* (no. 48995/99, 20 April 2004), which concerned various acts of harassment by third parties who entered the applicant's yard and dumped several cartloads of manure in front of the door and under the windows of the house, the Court found that the acts constituted repeated interference with the applicant's right to respect for his home and that Article 8 of the Convention was applicable.

78. Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private-sector activities properly. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 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 both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Powell and Rayner*, p. 18, § 41, and *López Ostra*, pp. 54-55, § 51, both cited above).

79. The Court considers that in a case such as the present one, which involves government decisions affecting environmental issues, there are two aspects to the examination which it may carry out. Firstly, it may assess the substantive merits of the government's decision, to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual (see *Taşkın and Others v. Turkey*, no. 46117/99, § 115, ECHR 2004-X).

80. In relation to the substantive aspect, the Court has held on a number of occasions that in cases involving environmental issues the State must be allowed a wide margin of appreciation (see *Hatton and Others*, cited above,

§ 100; *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports* 1996-IV, pp. 1291-93, §§ 74-77; and *Taşkın and Others*, cited above, § 116).

It is for the national authorities to make the initial assessment of the “necessity” for an interference. They are in principle better placed than an international court to assess the requirements relating to the treatment of industrial waste in a particular local context and to determine the most appropriate environmental policies and individual measures while taking into account the needs of the local community.

81. To justify the award of the operating licence for the plant to Ecoservizi and the subsequent decisions to renew it, the Government referred to the economic interests of the region and the country as a whole and the need to protect the citizens' health.

82. However, the Court must ensure that the interests of the community are balanced against the individual's right to respect for his or her home and private life. It reiterates that it has consistently held that although Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and must afford due respect to the interests safeguarded to the individual by Article 8 (see, *mutatis mutandis*, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 55, § 87).

It is therefore necessary to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available (see *Hatton and Others*, cited above, § 104). However, this does not mean that the authorities can take decisions only if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.

83. A governmental decision-making process concerning complex issues of environmental and economic policy must in the first place involve appropriate investigations and studies so that the effects of activities that might damage the environment and infringe individuals' rights may be predicted and evaluated in advance and a fair balance may accordingly be struck between the various conflicting interests at stake (see *Hatton and Others*, cited above, § 128). The importance of public access to the conclusions of such studies and to information enabling members of the public to assess the danger to which they are exposed is beyond question (see, *mutatis mutandis*, *Guerra and Others*, cited above, p. 223, § 60, and *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1362, § 97). Lastly, the individuals concerned must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process (see, *mutatis mutandis*,



*Hatton and Others*, cited above, § 128, and *Taşkın and Others*, cited above, §§ 118-19).

84. In determining the scope of the margin of appreciation allowed to the respondent State, the Court must therefore examine whether due weight was given to the applicant's interests and whether sufficient procedural safeguards were available to her.

85. The Lombardy Regional Council first granted Ecoservizi an operating licence for the plant in question in 1982. The facility was initially designed for the storage and treatment of hazardous and non-hazardous waste. In 1989 the company was authorised to treat harmful and toxic waste by means of “detoxification”, a process involving the use of chemicals potentially entailing significant risks to the environment and human health. Subsequently, in 1991, authorisation was given for an increase in the quantity of waste being treated at the plant, and the facility was consequently adapted to meet the new production requirements until it reached its current size.

86. The Court notes at the outset that neither the decision to grant Ecoservizi an operating licence for the plant nor the decision to authorise it to treat industrial waste by means of detoxification was preceded by an appropriate investigation or study conducted in accordance with the statutory provisions applicable in such matters.

87. The Court observes that section 6 of Law no. 349/1986 provides that the Ministry of the Environment must carry out a prior environmental-impact assessment (EIA) for any facility whose operation might have an adverse effect on the environment; among such facilities are those designed for the treatment of toxic and harmful waste using chemicals (see paragraphs 60 and 61 above).

88. However, it should be noted that Ecoservizi was not asked to undertake such a study until 1996, seven years after commencing its activities involving the detoxification of industrial waste.

89. The Court further notes that during the EIA procedure, which was not concluded until a final opinion was given on 28 April 2004, the Ministry of the Environment found on two occasions, in decrees of 24 May 2000 and 30 April 2001 (see paragraphs 38 and 41 above), that the plant's operation was incompatible with environmental regulations on account of its unsuitable geographical location and that there was a specific risk to the health of the local residents.

90. As to whether the applicant had the opportunity to apply to the judicial authorities and to submit comments, the Court observes that between 1994 and 2004 she lodged five applications with the Regional Administrative Court for judicial review of decisions by the Regional Council authorising the company's activities; three sets of judicial proceedings ensued, the last of which is still pending. In accordance with domestic law, she also had the opportunity to request the suspension of the

plant's activities by applying for a stay of execution of the decisions in issue.

91. The first set of proceedings instituted by the applicant ended in 1998 when the administrative courts dismissed her complaints, finding among other things that she had failed to challenge the decisions in which the Regional Council had authorised an increase in Ecoservizi's volume of activity (see paragraph 20 above).

92. However, in the second set of contentious proceedings the Lombardy Regional Administrative Court and the *Consiglio di Stato*, in decisions of 29 April 2003 and 25 May 2004 respectively, held that the plant's operation had no legal basis and should therefore be suspended with immediate effect (see paragraphs 27 and 29 above).

In accordance with the legislation in force, the plant's operation should have been suspended so that the company could bring it into line with environmental-protection regulations and hence obtain a positive assessment from the Ministry of the Environment.

However, the administrative authorities did not at any time order the closure of the facility.

93. The Court considers that the State authorities failed to comply with domestic legislation on environmental matters and subsequently refused, in the context of the second set of administrative proceedings, to enforce judicial decisions in which the activities in issue had been found to be unlawful, thereby rendering inoperative the procedural safeguards previously available to the applicant and breaching the principle of the rule of law (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V).

94. It considers that the procedural machinery provided for in domestic law for the protection of individual rights, in particular the obligation to conduct an environmental-impact assessment prior to any project with potentially harmful environmental consequences and the possibility for any citizens concerned to participate in the licensing procedure and to submit their own observations to the judicial authorities and, where appropriate, obtain an order for the suspension of a dangerous activity, were deprived of useful effect in the instant case for a very long period.

95. Nor can the Court accept the Government's argument that the decree of 28 April 2004, in which the Ministry of the Environment authorised the continuation of the plant's operation, and the decision of 23 July 2004, in which the Lombardy Regional Administrative Court refused the most recent request by the applicant for a stay of execution, serve as proof of the lack of danger entailed by the activities carried out at the site and of the efforts made by the domestic authorities to strike a fair balance between her interests and those of the community.

96. In the Court's opinion, even supposing that, following the EIA decree of 28 April 2004, the measures and requirements indicated in the

decree have been implemented by the relevant authorities and the necessary steps have been taken to protect the applicant's rights, the fact remains that for several years her right to respect for her home was seriously impaired by the dangerous activities carried out at the plant built thirty metres away from her house.

97. Having regard to the foregoing, and notwithstanding 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 community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life.

98. The Court therefore dismisses the Government's preliminary objection and finds that there has been a violation of Article 8 of the Convention.

### III. 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 the sum of 1,500,000 euros (EUR) for pecuniary damage and sought a similar award for non-pecuniary damage.

She added that she was prepared to forgo part of the sums claimed if Ecoservizi's operations were immediately stopped or if the facility was moved to another site.

101. The Government submitted that the sums claimed were excessive and that the finding of a violation would constitute sufficient just satisfaction.

102. As to the specific measures requested by the applicant, the Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see, among other authorities, *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

103. As regards pecuniary damage, the Court observes that the applicant failed to substantiate her claim and did not indicate any causal link between the violation found and the pecuniary damage she had allegedly sustained.

104. The Court considers, however, that the violation of the Convention has indisputably caused the applicant substantial non-pecuniary damage. She felt distress and anxiety as she saw the situation persisting for years. In addition, she had to institute several sets of judicial proceedings in respect of the unlawful decisions authorising the plant's operation. Such damage does not lend itself to precise quantification. Making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 12,000.

### **B. Costs and expenses**

105. The applicant sought the reimbursement of the costs and expenses incurred before the domestic authorities and the Court. In her bills of costs she quantified her domestic costs at EUR 19,365 and the costs incurred before the Court at EUR 3,598.

106. The Government left the matter to the Court's discretion.

107. According to the Court's settled case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among many other authorities, *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49, and *Sardinias Albo v. Italy*, no. 56271/00, § 110, 17 February 2005).

108. The Court considers that part of the applicant's costs in the domestic courts were incurred in order to remedy the violation it has found and should be reimbursed (contrast *Serre v. France*, no. 29718/96, § 29, 29 September 1999). It is therefore appropriate to award her EUR 5,000 under that head. The Court also considers it reasonable to award her the sum claimed in respect of the proceedings before it. Accordingly, making its assessment on an equitable basis, it decides to award the applicant the sum of EUR 8,598.

### **C. Default interest**

109. The Court considers it appropriate that the default interest 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. *Joins to the merits* the Government's preliminary objection and *dismisses it* after considering the merits;
2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

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

(i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;

(ii) EUR 8,598 (eight thousand five hundred and ninety-eight euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President