INSIGHT

CORDELLA ET AL. V. ITALY: INDUSTRIAL EMISSIONS AND ITALIAN OMISSIONS UNDER SCRUTINY

ANDREA LONGO*

ABSTRACT: This *Insight* focuses on the judgment of the European Court of Human Rights of 24 January 2019, *Cordella et al. v. Italy* (joint applications n. 54414/13 and n. 54264/15), marking an important step in the judicial saga of the Ilva steel plant in Taranto. The Court unanimously established Italy's responsibility in failing to adopt the necessary administrative and legal measures to de-pollute the affected area and to provide individuals with an effective domestic remedy to challenge the dangerous and uncertain *status quo*, in violation of Arts 8 and 13 of the European Convention on Human Rights.

KEYWORDS: industrial emissions – environmental plan – right to life – right to private and family life – fair balance – European Court of Human Rights.

I. INTRODUCTION

On 24 January, 2019, the European Court of Human Rights issued its judgment in the case *Cordella at al. v. Italy*.[1] The case relates to the well-known saga of the Ilva steel plant in Southern Italy. 180 citizens from Taranto and its surroundings lodged complaints before the Court with regard to Ilva's toxic emissions that allegedly damaged their health and the environment, in violation of their right to life and to private life (Arts 2 and 8 ECHR). Also, the complaint extended to the alleged unavailability of judicial remedies within the national legal system, in violation of applicants' right to an effective remedy under Art. 13 ECHR.

* Trainee lawyer, ELEXI law firm, longo.andrea2014@gmail.com.

[1] European Court of Human Rights, judgment of 24 January 2019, nos 54414/13 and 54624/15, *Cordella et al. v. Italy*.

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II. Principal facts of the case

The Ilva steel plant has been operational since 1965 and constitutes the largest industrial steelworks complex in Europe. The impact of Ilva's emissions on the local population and on environment has been the subject of a heated debate in the past decades, involving both the political and the judicial spheres.

Already in 1990 the Italian Council of Ministers classified certain municipalities around Taranto as being at "*high environmental risk*".[2] In addition, a number of reports gave scientific evidence of the emissions impact on the local population's health: a document issued by the European Center for Environment and Health of the World Health Organization, in 2002, established a causal link between Ilva's emissions and the mortality rate measured in the area around Taranto. In the same year, the Apulian Regional Agency for Environmental Prevention and Protection (ARPA) found that since the 1970s lung and pleura cancers had increased within the area at high environmental risk. Similar findings were also contained in an epidemiologic study published by the University of Bari in 2009. Likewise, the 2012 report by the Superior Institute of Health (Italian Ministry of Health) established a causal link between the local population's environmental exposition to cancerogenic substances, on the one hand, and the pathologies to lungs, pleura and the cardiocirculatory system, on the other. Finally, the more recent 2017 ARPA report also confirmed the causal link between industrial emissions and health damage in the area at high environmental risk, urging local authorities to adopt the "*best available techniques*" to safeguard people's health.[3]

In response to the numerous recommendations made in the scientific reports above, local and national authorities adopted several measures and decrees foreseeing plans in order to de-pollute and rehabilitate the affected area. Yet, none of them was truly implemented, generating a feeling of unease and uncertainty within the local population. Such feeling was further fuelled in 2012, when the government approved the so-called "*Salva-Ilva Decree*", delaying the deadline to implement the environmental plan to August 2023. Administrative and criminal proceedings were initiated against the latter decree and against Ilva's managers for their failure to prevent the poisoning of food substances, accidents in the workplace, serious ecological damage and air pollution, contributing to the overall uncertainty. Finally, also the Court of Justice of the European Union held Italy accountable for its failure to comply with Directive 2008/1/EC and to fulfil its obligation to prevent and control integrated pollution.[4]

[2] *Ibid.*, para. 15.
[3] *Ibid.*, paras 13-31.
[4] Court of Justice, judgment of 31 March 2011, case C-50/10, *Commission v. Italy*.

III. The decision of the Court

III.1. Preliminary questions

In its decision, the European Court of Human Rights immediately dismissed the charges under Art. 2 of the Convention stating that, in light of applicants' complaints of Italy's failure to adopt legal and administrative measures to protect their health and the environment, it would be more appropriate to examine the case through the lens of Art. 8 ECHR.[5] Yet, before addressing the merits of the dispute, the Court dealt with its admissibility and assessed the objections raised by the Italian government one by one.

First, it evaluated applicants' "victim" *status* and held that 19 out of the 180 applicants in the joint procedures did not qualify as victims. By recalling its past judgment in *Kyrtatos v. Greece*, it stressed that the Convention does not ensure the general protection of the environment as such.[6] On the contrary, in order for it to establish a violation of Art. 8 ECHR related to environmental damages, it must first appreciate whether such damages concretely affected private or family life, creating an "*effet néfaste*" on it.[7] Thus, making an express reference to the numerous scientific reports mentioned above, the Court declared that there was clear evidence for the existence of such an effect exclusively in relation to the "high environmental risk" municipalities, as identified by the Council of Ministers in 1990. Consequently, only 161 applicants living within that area qualified as victims, therefore partially upholding the Italian government's objection.

Second, the Court rejected the government's arguments according to which the applicants had not exhausted domestic remedies before seeking its jurisdiction, as required under Art. 35, para. 1, ECHR. In particular, it drew a substantial difference between the case at hand and all previous administrative, civil and criminal disputes decided by national judicial authorities or currently pending before them. As a matter of fact, differently from those proceedings, applicants in *Cordella* complained about the State's inertia and *de facto* failure to adopt concrete and adequate legal and administrative measures to depollute the area affected by Ilva's toxic emissions.

Third, the Court rejected the government's argument that applicants filed their complaint upon the expiration of the six-month term from the alleged violation as set out in Art. 35, para. 1, ECHR. By contrast, the judges first established the "continuing" character of the violation at hand, upholding applicants' line of reasoning; second, it re-

[5] *Cordella et Autres c. Italie,* cit., § 94.

[6] European Court of Human Rights, judgment of 22 May 2003, no. 41666/98, *Kyrtatos v. Greece*, § 52.

[7] *Cordella et Autres c. Italie,* cit., § 101, recalling European Court of Human Rights, judgment of 9 June 2005, no. 55723/00, *Fadeyeva v. Russia*, § 88.

called its consolidated case-law and stated that, in cases of non-instantaneous acts, the six-month period starts to run only upon the termination of the continuing situation.[8]

Last but not least, the Court rejected the government's argument concerning the lack of a "significant disadvantage" suffered by the applicants, as laid down in Art. 35, para. 3, let. b), ECHR. As a matter of fact, all the above-mentioned scientific evidence of Ilva's emissions impact on health and environment clearly hints that the minimum level of seriousness had been overtaken.[9]

On the above grounds, the Court concluded that the case was admissible in relation to those 161 applicants meeting the victim *status* assessment criteria.

III.2. Merits

Concerning the merits of the dispute, the European Court of Human Rights addressed the violations of Arts 8 and 13 ECHR separately.

The applicants in both proceedings complained that Italian authorities had failed to adopt appropriate legal and administrative measures to limit Ilva's industrial emissions and depollute the contaminated area, ultimately endangering their health and life. The European Court of Human Rights recalled its *Fadeyeva* judgment and held that environment-related harm falls within the scope of Art. 8 only if it attains a "*certain minimum level*", which "*is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects*".[10] In other words, a violation of Art. 8 occurs if the nuisance "*is such as to significantly reduce the capacity of the individual to enjoy her home or her own private or family life*".[11]

Furthermore, the Court recalled its consolidated case-law and underlined the State's role to adopt adequate measures to actively protect its citizens and prevent future infringements of their right to respect for private and family life.[12] Indeed, Art. 8 ECHR generates two sets of obligations on the State: on the one hand, a negative obligation, that is, not to arbitrarily interfere with the individual's right to private and family life, home and correspondence; on the other, a positive one, consisting in the adoption of any reasonable and adequate measure to protect individuals from others' arbitrary interference with their right.[13] In particular, concerning the present case, the State is required to find the balance between the interests of the steel plant, on the one hand,

[8] European Court of Human Rights, judgment of 24 January 2006, no. 39437/98, *Ülke v. Turkey*; judgment of 5 September 1994, no. 17864/91, *Çinar v. Turkey*.

[9] European Court of Human Rights, judgment of 18 October 2011, no. 13175/03, *Giusti v. Italy*., para. 34.

[10] *Fadeyeva v. Russia,* cit., § 69.

[11] *Cordella et al. v. Italy*, cit., para. 157 (translation by the author of this *Insight*).

[12] European Court of Human Rights, judgment of 27 January 2009, no. 67021/01, *Tătar v. Romania*; judgment of 10 February 2011, no. 30499/03, *Dubetska et al. v. Ukraine*.

[13] Council of Europe, *Guide on Article 8 of the European Convention on Human Rights*, p. 8, available at www.echr.coe.int.

and those of the citizens living in the neighbourhood, on the other.[14] By doing so, Italy has a margin of appreciation in order to put in place any measure according to the specific dangerous activity at hand.

Finally, the Court applied the above principles to the circumstances of the case at hand and concluded that Italy had violated Art. 8 ECHR. Most strikingly, it grounded its decision on two crucial elements: first, the numerous scientific reports that established the existence of a causal link between Ilva's industrial emissions and the drastic sanitary records of people living in the "high environmental risk" municipalities;[15] second, the uncertainty generated by the political impasse and by the number of administrative and legal acts that consolidated the dangerous *status quo*.[16] According to the Court, Both elements contributed to generate Italy's responsibility. In particular, it noticed that Italian authorities did not object to the findings contained in the scientific reports. Yet, they were not able to put in place adequate measures to ensure the protection of citizens' health and of the environment.

Consequently, the Court concluded that the State had failed to strike a fair balance between the competing industrial and individual interests and to adopt the necessary measures to ensure the effective protection of applicants' right to private life, thus violating Art. 8 ECHR.

Likewise, the European Court of Human Rights found that Italy had also violated Art. 13 ECHR on the right to an effective remedy, which provides that "*everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*". This provision aims to "*increase judicial protection offered to individuals who wish to complain about an alleged violation of their human rights*"[17] and stresses the need for States to foresee effective domestic judicial mechanisms.

In the case at hand, the Court held that Italy had not only violated applicants' right to respect for private and family life, but had also failed to provide applicants with judicial instruments to challenge Italian authorities' administrative flaws and political inertia, thus violating Art. 13 of the Convention. In other words, Italy failed to provide applicants with the means to raise their complaints before national courts and challenge the dangerous and uncertain *status quo*. It is not the first time that Italian authorities are found responsible for a violation of Art. 13 ECHR in cases related to environmental nui-

[14] European Court of Human Rights, judgment of 9 December 1994, no. 16798/90, *López Ostra v. Spain*, para. 51.

[15] *Cordella et al. v. Italy*, cit., paras 164-166.

[16] *Ibid.*, paras 167-172.

[17] M. KUIJER, *Effective Remedies as a Fundamental Right*, Seminar on human rights and access to justice in the EU, 28-29 April 2014, Barcelona, Escuela Judicial Espanola & European Judicial Training Network, available at www.ejtn.eu.

sances.[18] "*Offering substantive protection of human rights has always been the central aim of the Convention system*", and Art. 13 should not be understood as to merely provide individuals with the right of access to courts.[19] On the contrary, the Court's consolidated case law requires States to foresee *effective* national remedies in order "*to enforce the substance of the Convention rights and freedoms*",[20] that is, the envisaged mechanisms "*must be 'effective' in practice as well as in law*".[21] Hence, establishing such a violation underlines Italy's lack of effective judicial means to challenge the state's inertia and ensure the protection of applicants' rights.

IV. Conclusion

It is not the first time that the European Court of Human Rights exerts its jurisdiction over disputes dealing with environmental pollution. In past cases the Court addressed such matter not only through the lens of Art. 8 ECHR,[22] but also in relation to the right to life (Art. 2 ECHR)[23] and to a fair trial (Art. 6 ECHR).[24]

With regard to the application of Art. 8 ECHR, as outlined above, its decision in *Cordella* comes as no surprise, since the Court upheld its case-law on the State's margin of appreciation to adopt adequate measures to protect citizens' right and prevent future infringements of their right to respect for private and family life. By contrast, the Court strikingly attributed key relevance to scientific reports: first, they served as tool for the judges to rule on the admissibility of the proceedings before its jurisdiction; second, coupled with the State's failure to challenge the political impasse, they served as evidence to establish the causal link between Ilva's toxic emissions and the prejudice to applicants' right. Even though it is not the first time that the European Court of Human Rights assesses epidemiological evidence to establish the causal link between the conduct and the prejudice suffered, it should be noticed that in previous cases the judges had always excluded it.[25] Thus, the present judgment potentially paves the way to new Court's decisions enhancing the value of technical studies and scientific evidence.

[18] European Court of Human Rights, judgment of 10 January 2012, no. 30765/08, *Di Sarno v. Italy*.

[19] J. Gerards and L. Glass, *Access to Justice in the European Convention on Human Rights System*, in *Netherlands Quarterly of Human Rights*, 2017, p. 11 *et seq*.

[20] European Court of Human Rights, judgment of 4 May 2000, no. 28341/95, §67. *Rotaru v. Romania*.

[21] European Court of Human Rights, judgment of 28 October 1999, no. 28396/95, *Wille v. Liechtenstein* [GC], para. 75.

[22] European Court of Human Rights, judgment of 10 November 2004, no. 46117/99, *Taskin et al. v. Turkey*; judgment of 2 November 2006, no. 59909/00, *Giacomelli v. Italy*.

[23] European Court of Human Rights, judgment of 30 November 2004, no. 48939/99, *Öneryildiz v. Turkey*. See also European Court of Human Rights, judgment of 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, *Budayeva and Others v. Russia*.

[24] European Court of Human Rights, judgment of 14 October 1992, no. 14282/88, *Zander v. Sweden*.

[25] European Court of Human Rights, judgment of 9 June 1998, no. 23413/94 *L.C.B. v. United Kingdom*. See also *Tătar v. Romania*, cit., para. 106.

In addition, the judges in *Cordella* held that Italy was not only responsible for the violation of Art. 8 ECHR, but it also failed to provide applicants with a means to raise their complaints before national courts, violating their right to an effective remedy. As already outlined in the *Di Sarno v. Italy* judgment, such a violation underlines Italy's lack of effective judicial means to contrast political inertia and clearly jeopardises the substantial enforcement of the rights under the Convention.

Hence, the Court in *Cordella* seems to have merely applied its case-law in a consistent way and, arguably, missed the opportunity to enhance the binding character of its decision. Indeed, the judges expressly excluded the application of the pivotal judgment procedure under Art. 46 ECHR due to the technical difficulties of the measures necessary to depollute the affected area.[26] Yet, the technical and scientific expertise was particularly relevant to assess the causal link between the State's conduct and the prejudice suffered by the applicants. This leaves the doors opened for further decisions on analogous cases involving the assessment of the causal link on the basis of scientific evidence.

[26] *Cordella et al. v.. Italy*, cit., paras 177-182.