



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

SECOND SECTION

Application no. 43961/09
Giuseppina SMALTINI
against Italy
lodged on 7 August 2009

STATEMENT OF FACTS

THE FACTS

The applicants are Ms Giuseppina Smaltini, Mr Giuseppe De Lillo, Ms Elisa De Lillo and Mr Luigi De Lillo. They are represented before the Court by the second applicant, Ms Elisa De Lillo, who is a lawyer practising in Parma.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

The second, third and fourth applicants are respectively the husband and two children of the first applicant, who died on 21 December 2012 while the present proceedings were pending.

On 12 September 2006 the first applicant was diagnosed with a form of leukaemia and consequently hospitalized.

On 13 November 2006 she lodged a complaint with the Taranto public prosecutor's office, claiming that the air pollution caused by the steelworks factory named "Ilva", located in the city of Taranto, was the cause of her illness. She stressed that its managers had been already convicted for allowing unlawful emissions and that, due to these, the death rates from various forms of cancer among the resident population of Taranto had increased significantly over the years, becoming alarmingly higher than in other parts of Italy. Consequently, she claimed that the president of the above-mentioned factory had to be considered responsible for the criminal offence of causing serious bodily injuries.

The public prosecutor having decided to dismiss the case, the first applicant filed an objection, requesting that further investigations be carried out. In particular, she contended that the causal link between the factory's

harmful emissions and the development of cancer had been proven by the enquiries of the Taranto section of the “Italian association against leukaemia, lymphoma and myeloma” (hereafter, “AIL”), as well as by the doctors of a regional public hospital, whose chief of the haematology division had repeatedly and publicly asserted that there was a link between the high number of cancer and leukaemia cases among Taranto citizens and the Ilva factory’s emissions.

On 13 April 2008 the pre-trial judge, relying on the documents concerning the high levels of dioxin and other carcinogens in the city of Taranto, the high percentage of deaths from cancer and leukaemia and the existence of a causal link between the latter and environmental pollution, ordered the prosecutor to carry out further investigations in the case. He requested that the first applicant’s medical certificates and the reports and surveys of the Taranto section of the AIL be obtained and that an expert medical report be prepared in order to ascertain a possible causal link between the applicant’s illness and the environmental pollution.

The prosecutor carried out these investigations and appointed a panel of two experts, a forensic medical examiner and a haematologist.

The experts disregarded all the documents lodged by the first applicant, namely reports and surveys done by environmental and medical associations, the report done by the chief of the haematology division of the Taranto hospital, as well as the list of the materials used inside the factory.

Then, having taken into account the official data provided by the Puglia Region with regard to the rate incidence of various forms of cancer in Puglia compared with those of other Italian regions (*Report on the health state of the Puglia population, 2006 edition*), the experts excluded the existence of any causal link between the emissions released by the Ilva factory and the first applicant’s disease. In fact, it appeared that with regard to the age group of the first applicant (35 to 59 year-old women) there was not a higher incidence of leukaemia in Taranto compared to other Italian regions.

The public prosecutor having reiterated his decision to dismiss the case, the first applicant introduced a new objection, arguing that it was proven that there was a causal link between substances such as dioxin, PM 10¹ and PCB² produced by the Ilva factory on one side and the onset of cancer and leukaemia on the other side. She complained that the prosecutor had relied upon a superficial expert report prepared by a forensic medical examiner (rather than by a haematologist), having used obsolete statistical data from a 2004 medical encyclopaedia. She contended that the expert should have been appointed by the prosecutor pursuant to Article 360 of the Code of Criminal Procedure (i.e. as foreseen for unrenovable acts) and the subsequent expert examination carried out according to the adversarial principle. She further highlighted that such an expert had not visited her and that she had been denied by the prosecutor’s assistant a copy of the final expertise. Finally, she reiterated her request to carry out further investigations in the case, i.e. to appoint a haematologist; to examine some

¹ Particulate matter measuring 10 micrometer or less.

² Polychlorinated biphenyls: any of several compounds that are produced by replacing hydrogen atoms in biphenyl with chlorine, have various industrial applications, and are toxic environmental pollutants.

witnesses, among whom the haematology division's chief of the public regional hospital mentioned above and, finally, to collect blood samples from two different groups of Taranto residents (the former composed of persons affected by leukaemia, the latter of healthy people) in order to compare the results and assess whether traces of dioxin or other polluting agents which could be linked to the factory could be found.

On 19 January 2008, the pre-trial judge decided to dismiss the case.

He argued that the prosecutor had appointed a panel of two experts including a haematologist, as requested by the first applicant, and that they had based their assessment on the official data concerning the incidence of diseases and deaths released by the Puglia Region. He considered that the expert report ordered was not an unrenounceable act and that, in view of the experts' conclusions, there was no need to carry out an epidemiology investigation which, together with the other requests for further investigations, appeared pointless. Finally, the judge observed that, even in the light of the further investigations carried out, in the circumstances of the case, the causal link between the first applicant's disease and the pollution produced by the factory could not be shown with a sufficient degree of certainty.

COMPLAINTS

1. Under Article 6 § 1 of the Convention, the applicants complain about the fact that, in appointing the experts, the public prosecutor did not follow the procedure foreseen by Article 360 of the Code of Criminal Procedure and that the expert report had been based on statistical data rather than on the first applicant's health status.

2. They further complain that they were denied a copy of the experts' report, so being deprived of the possibility to submit it to the medical expert of their choosing in order to challenge its findings.

3. Finally, they complain about a violation Article 2 of the Convention, the causal link between the emissions of the factory and the development of cancer being proven.

QUESTIONS

1. What were the scientific and official data at the disposal of the judicial authorities at the time of the facts in order to ascertain the causal link between the first applicant's death and the Ilva factory's emissions?

2. Has the first applicant's right to life, ensured by Article 2 of the Convention been violated in the present case, namely under the substantive limb of the said article?

3. Having regard to the procedural protection of the right to life, was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention?