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Meeting: 1436th meeting (June 2022) (DH)

Communication from an NGO (StraLi for Strategic Litigation) (19/04/2022) in the case of Cordella and Others v. Italy (Application No. 54414/13).

Information made available under Rules 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1436^e réunion (juin 2022) (DH)

Communication d'une ONG (StraLi for Strategic Litigation) (19/04/2022) relative à l'affaire Cordella et autres c. Italie (requête n° 54414/13) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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c.so Re Umberto 5 bis, 10121 Torino

DGI

19 AVR. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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Department for the Execution of Judgments of the ECtHR
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15th April 2022

COMMUNICATION

In accordance with Rule 9.2 of the Rules of the Committee of Ministers
regarding the
supervision of the execution of judgments and of terms of friendly
settlements by
STRALI ETS-ODV (STRALI)

CORDELLA AND OTHERS v. Italy (Application No 54414/13)
(leading repetitive case)

Summary:

1) Introduction

1.1 Strali and its role

2) General Measures – the persistent lack of an effective remedies in the Italian legal system

2.1 D.Lgs 81/2008

2.2 Administrative protection

2.3 Civil protection

2.4 Criminal Law protection

2.5 Constitutional protection

2.6 Training of judges and legal practitioners

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3) Conclusions and recommendations

1. Introduction

Pursuant to Article 46 of the ECHR and Rule 9.2 of the Rules of the Committee of Ministers, we submit this communication regarding the execution of the Cordella and others vs. Italy judgment.

This submission aims to highlight how the measures set out in the Action Plan submitted by the Italian Government on the 18th of January 2021, followed-up by the communications dated 5th July 2021 and 4th April 2022, are ineffective and do not properly and adequately address the violation of Article 13 of the ECHR as ascertained by the ECtHR in the aforementioned judgment.

This submission is mainly aimed to address issues regarding the lack in the Italian legal system of valid judiciary remedies, while the current and future functioning of the ex-ILVA steel plant and the effective implementation of the environmental plan are not included within its scope. In any case, Strali claims that regarding these two issues further measures will be required.

Subsequently, we respectfully ask the Committee of Ministers to continue supervision of the case under enhanced procedure and to request the Italian authorities to implement the appropriate general legal measures, as set out below.

1.1 Strali and its role

Strali is an NGO founded in Italy in 2018 by lawyers and legal practitioners aiming to react to the inequalities of the law and violations of human rights by putting their skills and abilities at the service of society. The association promotes the practice of Strategic Litigation and the respect of human rights through technical-juridical support given to selected cases, raising awareness and education on the matters at issue. Strali also recognizes the crucial role played by environmental law in



StraLi for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

contemporary society and has a dedicated department to enhance the protection of the environment through the enforcement of the rule of law. Hence, we hold that the present case, from its nature as a leading case, constitutes a historical opportunity for the Italian lawmaker to provide the Italian legal system with an adequate, effective and general remedy in the form of a judiciary action that enables the judge to redress the harmful effects of a conduct that damaged the environment by ordering the depollution of a polluted area.

1.2 Case summary

This case concerns the national authorities' failure to take the necessary measures to ensure the applicants' protection from the environmental pollution caused by the ex-ILVA steel plant in Taranto, and the lack of effective remedies enabling them to obtain measures that would secure the depollution of the areas concerned.

In addition to failing to ensure the depollution, the government repeatedly intervened, through special legislative decrees, and ensured the steelworks' continued operation, despite domestic court decisions finding serious risks to human health and the environment (violations of Articles 8 and 13).

The Court highlighted that it would be for the Committee of Ministers to indicate to the respondent State the measures necessary for the execution of the judgment. However, it gave a specific indication under Article 46 that the authorities should implement as rapidly as possible the existing environmental plan setting out the necessary measures to secure environmental and health protection (§§ 181-182).

2. General Measures – the persistent lack of an effective remedy within the Italian legal system

The arguments raised by Strali in its submission dated 26th January 2021 were not addressed by the Italian Government in its submissions. In addition to that, the Committee itself shared our position and, in its decision dated 9-11th March 2021,



StraLi for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

expressed concern about the persistent lack, within the Italian legal system, of an effective remedy to the breach of Article 13 of the Convention. On this ground, the Committee called upon the Italian Government to quickly fill this gap. As a response, the Italian Government submitted a communication dated 5th July 2021 which entirely failed to address the matter at stake. Not a single line of this document is directed at the lack of an effective remedy.

Afterwards, on 4th April 2022, the Italian Government indicated in its submissions several potential remedies within the domestic legal system that the Government hopes will be considered as sufficient. Before demonstrating the reasons why this cannot and will not happen, two crucial facts must be highlighted. Firstly, none of the remedies was drafted as a response to the Cordella ruling. And secondly, to properly assess the latest submission by the authorities, it is critical to interpret it within the relevant context of the case and take a holistic approach. In 2019, the ECtHR ruled that the applicants were entitled to lodge their claim before the Court as no adequate domestic remedy existed. Otherwise, the Court would have dismissed the claim under Art 35§ (1) of the ECHR for non-exhaustion of domestic remedies. The consequence of this consideration is, therefore, that any piece of legislation supposedly providing for a remedy indicated by the authorities that precede the ruling must be disregarded, for it has already been duly assessed as insufficient by the ECtHR. This is the case for the remedies proposed by the authorities under §4 (C) that will be addressed below under §2.3 of this submission.

If the Committee were to accept the authorities' theses, that would inadvertently result in the contradicting of the ECtHR judgement. The Italian Government should have taken fervent action to introduce a remedy securing the rights and freedoms that the ECtHR found violated in the case at hand. This, unfortunately, has to date not occurred and the authorities do not contend this point, as their communication



StraLi for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

only addresses legislation already part of the Italian legal system when the Cordella ruling was delivered.

2.1 D.Lgs. 81/2008

The Legislative Decree 81/2008 (“D.Lgs. 81/2008”) sets out rigorous health and safety standards for the workplace, however, it does not contain a judiciary remedy that is easily accessible by the people and enforceable by a court to order a positive action, i.e., the depollution of a contaminated area. Title IX of the D.Lgs. 81/2008, referenced by the Italian Government, merely addresses prevention in the workplace and does not set out a judiciary remedy. Thus, this Decree does not meet the requirements specified and mandated by the ECHR.

2.2 Administrative protection

As clarified by the Committee in its Recommendation Rec (2004)6,¹ the domestic remedy must be effective in law as well as in practice. This is not the case for the explanation proposed by the authorities under §4 (A), where a number of potential remedies before the Italian administrative court (“T.A.R.”) are outlined. There are two main reasons why these alleged remedies would be ineffective in similar situations as in the Cordella case. Firstly, any action before the T.A.R. is subject to the strict deadline of 60 days from the notification or publication of the concerned public administration’s act. This timeframe is clearly not effective to address pollution-related problems which might surface years after the polluting actual event has occurred, just like it happened in the Cordella case. The first objection is enough to dismiss the suggestion that this remedy could be effective. However, there are indications for further – and decisive – criticism: ***only the acts of the public***

¹ Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies (adopted by the Committee of Ministers on 12 May 2004, at its 114th Session) available at: Result details (coe.int)



StraLi for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

administration are subject to the TAR's scrutiny. In other words, it is not possible to bring a lawsuit against another person – be it an individual or a private company – before the T.A.R.

2.3 Civil protection

The Italian Government suggests that article 844 of the Civil Code and article 700 of the Civil Code of Procedure may constitute a suitable remedy. This suggestion completely ignores the fact that the ECtHR has already dismissed this option as viable in the Cordella ruling at § 123. Moreover, §123 broadly acknowledges that “no attempt, whether of criminal, civil or administrative nature may meet the target [the decontamination] in the case at stake”.

2.4 Criminal Law protection

The Italian Government refers to a chapter of the Penal Code which aims to address environmental crimes. Even if the introduction of these crimes at first sight may be considered as a proper way to protect the environment, some observations must be made. First and foremost, the Chapter of the Italian Penal Code concerning environmental crimes was introduced in 2015 meaning that it was already fully functional at the time when the Cordella judgement was delivered. If the Committee had considered it as an effective remedy as stated by Art. 13 of the Convention, then the entire meaning of the judgement itself would have been compromised.

Moreover, the environmental crimes in the Italian Penal Code cannot be considered an effective remedy to obtain the adoption of the measures required to decontaminate areas affected by industrial pollution. In the first place, this category of crimes does not punish conduct that merely endangers the environment (and consequently human's health), but only conduct that effectively cause an irreversible alteration or a substantial and measurable deterioration of the environment. Both



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c.so Re Umberto 5 bis 10121 Torino

human and environmental health can be damaged before an irreversible alteration, or a substantial and measurable deterioration occurs.

The Italian Government also mentions the remedy of confiscation as set out in art. 452 of the Penal Code. However, neither confiscation nor the remedy of restoration of the polluted areas in art. 452 can lead to obtaining a measure to decontaminate areas affected by industrial pollution. In fact, the judge can order confiscation and restoration only in the final ruling which usually occurs years after the polluting activities began. Thus, the eventual intervention of de-pollution is rendered too late and consequently ineffective.

2.5 Constitutional protection

It is undeniable that the modification of art. 9 and 41 of the Italian Constitution² issued by the law approved in February 2022 is an improvement of the fundamental rights recognized and guaranteed by the Constitution. However, the Constitution only bears general rights that need to be recognized and enforced by specific laws issued by Government and Parliament. Therefore, the mere extension of fundamental rights cannot be in any way considered a general remedy, nor a necessary measure to ensure citizens protect from environmental pollution. In addition, it should be noted that in the Italian legal system only a judge can address the Constitutional Court claiming that a law is breaching a fundamental right, while citizens are not entitled to do so.

2.6 Training of judges and legal practitioners

² This modification added a new paragraph in art. 9 stating that the Italian Republic shall protect the environment, the biodiversity and ecosystems, also in the interest of future generations; moreover, the law shall establish way of protection of animals. A new sentence was added also in the art. 41, that concerns the right of private economic enterprise, establishing that this right cannot be carried out in such a manner that could cause damages to human health or to the environment.



StraLi for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

We acknowledge the effort by the Italian Government to promote a more comprehensive environmental protection in this regard. Nonetheless, the training of judges can in no way be considered tantamount to a judiciary remedy.

3. Conclusions and recommendations

The leading case at hand has illustrated and continues to illustrate the existence of a systematic problem gravely affecting thousands of people in the polluted area and Strali underlines the urgent need of effective jurisdictional tools to address it.

More than one year after the Committee's decision delivered on 9-11th March 2021, the Government has been undisputedly and unacceptably passive.

In the light of the above, we respectfully ask the Committee of Ministers to:

1. Continue monitoring the execution of this judgment under enhanced procedure;
2. Schedule the case again for debate at the first date available;
3. Require the authorities to disclose all the documents in their possession showing compliance with the judgement Cordella and Other v. Italy – Application N. 54414/13;
4. Urge the competent authorities to further effective measures regarding the current and future appropriate functioning of the steel plant and the proper implementation of the environmental plan, and
5. Urge the competent authorities to most pressingly adopt an effective remedy to secure depollution of affected areas.

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For StraLi

President

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8

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