SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
1949 - 2024
CONSEIL DE L'EUROPE

Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 06/11/2024

DH-DD(2024)1284

Meeting: 1514th meeting (December 2024) (DH)

Communication from an NGO (StraLi for Strategic Litigation) (25/10/2024) concerning the group of cases Cordella and Others v. Italy (Application No. 54414/13).

Information made available under Rule 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.

* * * * * * * * * * * *

Réunion : 1514e réunion (décembre 2024) (DH)

Communication d'une ONG (StraLi for Strategic Litigation) (25/10/2024) relative au groupe d'affaires 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.

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

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int
23rd October 2024

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)

1. Introduction

This communication is submitted pursuant to Article 46 of the ECHR and Rule 9.2 of the Rules of the Committee of Ministers and it concerns 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, 4th April 2022, 6th January 2023, 11th August 2023 and 4th October 2024 are ineffective and do not properly and adequately address the violation of Article 13 of the ECHR as ascertained by the ECtHR in the judgment.

This submission addresses issues regarding the lack of valid judiciary remedies in the Italian legal system. 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. Regarding both 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 for Strategic Litigation
c.so Re Umberto 5 bis 10121 Torino

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 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 de-pollution 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 judgement. 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 submissions dated 26th January 2021 have not been addressed by the Italian Government. The Committee itself shared this position and, in its decision dated 9-11th March 2021, 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. This document does not address the lack of an effective remedy.

Afterwards, on 4th April 2022, the Italian Government indicated in its submission potential remedies within the domestic legal system that the Government hopes will

be considered as sufficient. Before demonstrating the reasons why this would not be effective, what follows has to be taken into consideration.
As a general premise, it is important to recall that all of these remedies already existed at the time of the facts in this case. Therefore, it is crucial to assess whether and how these remedies are currently implemented and if they can be considered effective at the present moment.

In its submission dated 19th April 2022, StraLi broadly explained how the remedies in the Italian system are not accessible by individuals, not enforceable or not effective to address pollution-related problems. StraLi focused on both the civil and the administrative procedural rules and demonstrated how they do not meet the requirements specified and mandated by the ECHR. In addition, StraLi already examined the criminal and the constitutional systems as well, explaining the impossibility for citizens to directly hold companies or other individuals accountable and therefore, the absence of general remedies for citizens to protect themselves from environmental pollution.

The Italian Authorities, especially with their submission dated 6th January 2023 (hereafter, the "Italian Authorities' Submission"), have so far failed to demonstrate the existence of a provision within the domestic legal system meeting the requirements set out by the ECtHR, and also have failed to demonstrate how the existing remedies have been enacted. And in fact, no piece of legislation has been enacted in compliance with the Cordella judgment. Moreover, the Italian Government's reasoning induces general assumptions from singled-out cases, whereas the ECtHR request implies a deduction: from the existence of a general remedy, the protection is granted.

The section below explains how the remedies suggested fail in effectiveness, accessibility, efficiency and adequacy. There are not, in fact, adequate remedies capable of guaranteeing fair redress in case of environmental damage and infringement of the related rights of Italian citizens.

2.1 Art. 9 of the Italian Constitution is only a programmatic rule

It is undeniable that the modification of art. 9 and 41 of the Italian Constitution[1] 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, protected and enforced by the Republic. Scholars argue that "Republic" operates on different levels: horizontal, as of the relationship between political institutions' powers and vertical, between national and

[1] 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 a 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

local government (i.e. State and Regions)[2]. The new constitutional principle creates a duty of protection for the Italian institutions yet does not create immediately activatable positions of right for any subject.

Therefore, the mere recognition of fundamental rights to be protected by the institutions cannot be in any way considered a general remedy, nor a necessary measure to ensure citizens' protections from environmental pollution.

In addition, even assuming that new subjective and collective rights have been created, which is hereby denied, the fact remains 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.

2.2 "*Reflex injury to a good of constitutional rank*" and administrative protection

In the initial page of the Italian Authorities' Submission, the Italian Government itself expressly argues that an alleged "*full and independent restore, such as to health*" can be obtained only "*if a reflex injury* (consequential damage, ed.) *to a good of constitutional rank is established*". First and foremost, what the Italian Government is admitting is that the existing remedies are conditioned to the existence of a consequential damage to a fundamental right of individuals. This clearly makes it a non-effective remedy able to guarantee effective, certain and timely environmental protection for all, like decontamination in the case at stake. That's why the burden of proof is extremely difficult to satisfy: one must have a diagnosis or a scientific proof that shows that the damage is caused by the damage of the environment. This is particularly common in case of pollution derived from a big industry, and it is not immediately evident the connection between the harm of the environment and the damage to the health or any other "good of constitutional rank".

Secondly, the Italian Government insists on the jurisdiction of the administrative judge and specifies "*only if the damage or danger of damage derives from an action or omission of the public administration*".

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 Italian administrative court ("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.

[2] The Italian Government itself refers to the vertical division of competences: "*following the reform of Title V, that the "protection of the environment and of the ecosystem", set in Article 117, second paragraph, letter s), falls within the exclusive competence of the State (Constitutional Court ruling 126 of 2016)*.

However, there are indications for further – and decisive – criticism: ***only the acts of the public 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.. This point also shows why the action against the inertia of the Public Administration is ineffective. On top of that, this action is also a subsidiary remedy as it requires inertia of the public administration which, in turn, inevitably clashes with the required celerity.

2.3 Legislative Decree no. 152 of 2006

The Legislative Decree no. 152 of 2006 cannot in any way be considered as a law that establishes an effective remedy, as requested by the ECtHR.

First of all, as acknowledged by the Italian Government itself in the Italian Authorities' Submission, according to that law the possibility to sue for compensation for environmental damage is granted primarily to the Ministry of the Environment, and only residually to citizens and associations. The latter are allowed to sue only for 'reflex damages', resulting from damage to the integrity of the environment.

However, this shall not be considered as an effective judicial remedy. Private individuals and local authorities are allowed to claim compensation of reflex damages only when the environmental damage has already taken place, so *ex post* (in fact, it is used the word 'compensation of damages').

Neither the action pursuant to Article 309 of Legislative Decree 152/2006 can be considered as an effective and efficient remedy as prescribed by the ECtHR. In the first place, a long period of time always passes from the request made by individuals and organisations to the Ministry of the Environment to intervene in a given case of pollution to the moment when the Ministry takes action. During this time, the action producing environmental damage has already occurred.

In any case, the request for intervention as established in Article 309(1) of Legislative Decree 152/2006 does not provide for a judicial remedy. Indeed, the Italian Government itself admits that the remedy is an action against the inertia of the Ministry of the Environment when the same has not intervened within 90 days from the formal request. However, this remedy is completely inadequate. In fact, it is self-explanatory that 90 days is a very long time, during which the event giving rise to environmental damage may occur and continue. Moreover, the remedy is not intended to repair or avoid the environmental damage, but to ascertain the inertia (and therefore a kind of liability) of the Ministry of the Environment.

In cases of environmental damage or pollution a timely response is particularly crucial. That is because a single action may irreparably compromise a habitat and its integrity, and consequently violate the fundamental right to a healthy environment, as granted by the Constitution.

And in fact, all case law about the Ministry of the environment inaction and silence mentioned by the Italian Government are referring to situations *ex post,* where compensation for the environmental damage was requested, and therefore where the damage had already occurred. Moreover, all the case law cited show how long and inefficient these proceedings are, taking years to obtain a definitive decision about the measures to take in order to intervene in pollution related matters, without the right to request a suspension order during the proceedings.

The current system does not set up a right to request a suspension order of the damaging activity while proceedings are pending before the court: it is not in fact possible to request the authority to order the suspension of the activity harmful to the environment and health while it examines the case and decides whether to intervene.

2.4 Civil Law protection

The Italian Government suggests the administrative courts would have the same powers of the civil courts but the ECtHR has already dismissed in che Cordella ruling at § 123 as non-viable the options available in Italian private law, such as article 844 of the Civil Code and article 700 of the Civil Code of Procedure. 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*".

2.5 Criminal Law protection

The Italian Government did not bring forward arguments to support the adequacy of the Italian criminal remedies.

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. Strali underlines the urgent need of effective jurisdictional tools to address it.

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

1. Continue monitoring the execution of this judgement under enhanced procedure;
2. Schedule the case again for debate at the first date available;
3. 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, including adopting an effective remedy to secure de-pollution of affected areas in the case at hand;
4. Urge the competent Italian authorities to introduce and effectively implement new general remedies securing the rights and freedoms that the ECtHR found violated in the case at hand; in particular, these shall be (i) affordable in economic terms, (ii) timely, (iii) fair in terms of burden of proof

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

for the individuals, and (iv) and shall include the power (if not the duty) for the competent court to order the suspension of the damaging activity during the time of the proceedings, and accessible to ordinary citizens.

Torino, 23rd October 2024

For StraLi – For Strategic Litigation

Benedetta Perego, President