ENFORCING A RIGHT TO HEALTHY ENVIRONMENT IN THE ECHR SYSTEM: THE "CORDELLA V. ITALY" CASE

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Abstract

Starting from the 90s, European Court of Human Rights has developed an environmental dimension of health protection sustained by the extensive application of art.2 (right to life) and art.8 (right to respect for private and family life). Cordella v.Italy [Joined cases 54414/13 and 54264/15] is a significant decision in the ECHR case-law as it has recognised a right to healthy environment not only remarking the substantial right but, as well, on a procedural point of view by stating the violation of both art.8 and art.13 of the ECHR. Firstly, this paper will investigate the development of environmental rights in the international context and how these have developed in the ECHR system and, therefore, it will evaluate the decision of Cordella v. Italy analysing the context, the previous judgements, the reasoning of the Court and the consequences of this decision.

I. INTRODUCTION

Interpreting the European Convention of Human Rights as a living instrument, the European Court of Human Rights has progressively developed an environmental dimension in it, although this does not provide for it expressly. Through an extensive interpretation of art.2 (right to life) but especially of art.8 (right to respect for private and family life), the Court recognised that «severe environmental pollution may affect individuals well-being and prevent them from enjoying their homes in such way as to affect their private and family life adversely»[1]. The ruling of *Cordella v. Italy*[2], issued on the 24th January 2019, represents the most recent contribution to a complicated patchwork of decisions. In this case, which stemmed from the alleged impressive environmental impact of the ILVA steel factory in Taranto, the Court unanimously stated that Italy violated art.8 and art.13 ECHR. Because of the persistence of a situation of environmental pollution endangering the applicants' health, Court held that national authorities have failed to take all the necessary measures to provide effective protection of their right to private life. The Court also found that applicants did not have available a national effective remedy to complain that no measures were implemented to secure decontamination in the relevant areas.

II. ENVIRONMENTAL SUBSTANTIAL RIGHTS IN EUROPE: "GREENING THE ECHR"

Since the Stockholm Declaration in 1972 a clean environment is perceived as necessary to the enjoyment of basic human rights[3] at international level and there is a trend towards a recognition of a human right to the environment in soft law, which can only provide non-binding guidance to states in their relations to one another and in their internal affairs[4].

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1 ECtHR, *Guerra and others v. Italy*, [14967/89], 1998

2 ECtHR, *Cordella and Others v. Italy*, [Joined 54414/13 and 54264/15], 2019

3 Stockholm Declaration (1972), Principle 1 «Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated».

4 L.J. KOTZE', «In search of a right to a healthy environment in international law: Jus Cogens Norms» in J.KNOX, R.PEJAN (ed.), *The human right to live in a*

For decades, there has been a lively debate among scholars about whether explicit legal recognition of the right to a healthy environment would provide tangible benefits. «There are two pathways through which international recognition of this right can lead to improved environmental outcomes and a decline in adverse effects on human and ecosystem health. Firstly, through the direct application of this human right in cases before international courts and tribunals. Secondly, through the indirect influence of international human rights law on national constitution, environmental and human rights law»[5].

Despite the evolutionary character, human rights treaties (with the exception of the African convention[6]) still do not guarantee a right to a decent or satisfactory environment unrelated to the impact on the rights of specific humans. Instead, it is prevailing a human right perspective that enables the effects of environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general. This approach «may secure higher standards of environmental quality, based on the obligation of states to take measures to control pollution affecting health and private life and it may help to promote the rule of law as governments become directly accountable for their failure to regulate and control environmental nuisances and for facilitating access to justice and enforcing environmental laws»[7]. Lastly, the broadening of economic and social rights to embrace elements of the public interest in environmental protection may bring an advantage in the development of a level playing field in competing social and economic rights[8].

“Greening” of human rights has been also the path chosen by the ECtHR that has consistently refused to recognise any right to a healthy environment as such. In *Kyrtatos v. Greece*[9], the ECtHR addressed this issue refusing to extend the scope of art.8 ECHR to the protection of environment as such, in the absence of proof of interference with the applicant’s private or family life. Court held that the crucial element in order for art.8 to be applicable was the existence of a harmful effect on a person’s private sphere and not only the general deterioration of the environment.

The premise of this “greening” development rests on the Court’s plea that the Convention is to be interpreted as a living instrument in light of “present day conditions”. In *Fredin v. Sweden*, Court observed that «in today’s society the

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healthy environment, CUP, 2018

5 D. BOYD «Catalyst for change: evaluating 40 years of experience in implementing the right to a healthy environment» in J.KNOX, R.PEJAN (ed.), *The human right to live in a healthy environment*, CUP, 2018

6 African Convention on Human Rights, Article 24 «All peoples shall have the right to a general satisfactory environment favourable to their development»

7 A.BOYLE, «Human rights and the environment: where next» in 23 *European Journal of International Law* 3, 2012, 613

8 D. BOYD, *op.cit*

9 European Court of Human Rights, *Kyrtatos v. Greece*, [n. 41666/98], 2003

protection of environment is an increasingly important consideration»[10]. The Court linked environmental concerns with art.2 ECHR[11] but mostly with art 8 ECHR.

The first important case where the Court found the violation of art.8 was *Lopez-Ostra v. Spain*.[12] The court applied a balancing test between the economic interests of the community as a whole and the interests of the individual. There are negative as well as positive obligation for the state to protect the right of a private and family life. When it comes to environmental decision making, contracting states enjoy a wide degree of discretion. This margin is large as the court is keen stressing that its jurisdiction is that of an international court and it wants to avoid being a merit-based tribunal that reviews policy decisions.

One of the most relevant environmental case before the court is *Hatton*[13] because it was really situated in the heart of the environmental rights discussion. Court had to specify the "substantial part" of art.8 ECHR: it held that only when the pollution is directly caused by the state or the failure of the state to regulate the industry, Art.8 can be invoked, but only if there is sufficient objective individual interest.

«In the most recent jurisprudence, the trends of *Hatton* and earlier judgements have been specified but not changed»[14].

In *Taskin v. Turkey*[15], the Court repeated that the link between the nuisance and the privacy has to be very direct. Furthermore, the Court insists on stressing the wide margin of appreciation authorities have in the balancing of choices of policy, and even in evidence matters. The ECtHR rationale is that national authorities are in a better position to assess the whole situation, as repeated in *Giacomelli v. Italy*[16]. The threshold of Court interference seems to be expected effectiveness of policy choices: this criterion in the balancing test has been introduced in the Russian case *Fadeyeva*[17]. As a consequence of this, the positive obligation of the State under Art.8 can also include regulation of private industry or third-parties' polluting acts.[18]

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10 O.PEDERSEN, «The European Court of Human Rights and International Environmental Law» in in J.KNOX, R.PEJAN (ed.), *The human right to live in a healthy environment*, CUP, 2018

11 ECtHR, *Oneryildiz v. Turkey*, [48939/99],2004

12 ECtHR, *Lopez-Ostra v. Spain*, [16798/90], 1994

13 ECtHR, *Hatton and Others v. United Kingdom*, [36022/97], 2003

14 K. HECTORS, «The Chartering of Environmental Protection: Exploring the Boundaries of Environmental Protection as Human Right», (2008), 17 *European Energy and Environmental Law Review* 3

15 ECtHR, *Taskin v. Turkey*, [46117/99], 2006

16 ECtHR, *Giacomelli v. Italy*, [59909/00], 2000

17 ECtHR, *Fadeyeva v. Russia*, [55723/00], 2006

18 K. HECTORS, *op.cit.*

As will be discussed below, also in *Cordella v. Italy*, the most recent ECtHR case on this field, the environmental issue is not challenged under the ECHR as such, but because it endangers the right to respect of private life of citizens.

Another feature of ECtHR environmental jurisprudence is the use of international law as an interpretative background. In *Taskin v. Turkey*, the Court made explicit reference to 1992 Rio Declaration and 1999 Aarhus Convention: this was remarkable because, on one hand, the former is not in itself a legally binding instrument and, on the other hand, Turkey is not party of the latter. The ECtHR has also made extensive reference to EU law, which for all intent and purposes is international law from the point of view of the Convention system. This is evident in *Tatar v. Romania*[19] where the Court referred to the precautionary principle and even more in *Di Sarno v. Italia*[20] in which the Court relied on EU directives on waste management and CJEU case-law which had found Italy in violation of its obligations under EU law.

III. ENVIRONMENTAL PROCEDURAL RIGHTS: AARHUS CONVENTION AND ECHR

«Procedural environmental rights and obligations entail the observance of certain procedures by States before permitting the conduct of activities that may cause environmental harm»[21]. They ensure that the interests of individuals or groups, in particular of those likely to be affected, are taken into account in national or international procedures of environmental decision-making. Their origin may be found in Art.10 of the Rio Declaration that recognises the right to information, to participation and to a judicial remedy, to and in environmental contexts and matters.

From it, draws inspiration the 1998 Aarhus Convention[22] that, together with the Espoo convention on EIA[23], forms the set of key environmental conventions negotiated under the auspices of the UN Economic Commission for Europe[24]. Considered a regional treaty «of global significance potential to

19 ECtHR, *Tatar v. Romania*, [28341/95], 2000

20 ECtHR, *Di Sarno v. Italy*, [30765/08], 2012

21 B.PETERS, «Unpacking the diversity of Procedural Environmental rights: the European Convention of Human Rights and the Aarhus Convention», (2018), 30 *Journal of Environmental Law* 1

22 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed on 25 June 1998, entered into force on 30 October 2001.

23 UNECE Convention on Environmental Impact Assessment in a Transboundary Context, signed in 1991, entered into force in 1997.

24 UNECE is one of the five regional commissions of UN, it has 56 Member states ranging across Europe, Commonwealth of independent States and North America.

serve as a framework for strengthening citizens' environmental rights»[25], it can be defined as a human rights treaty, firstly, because it builds upon the long-established human right of access to justice and on procedural elements that serve to protect the rights to life, health and private life. Furthermore, it confers rights directly on individuals and not simply on States, like in Art.15 that allow members of the public and NGOs to bring complaints before a non-compliance committee. Finally, essential elements of the convention have all been incorporated into ECHR law through the case law and, therefore, they are enforceable in national law and through the Strasbourg Court like any other human right[26].

The Aarhus Convention confers rights falling into three broad pillars: access to information, public participation and access to justice:[27]

- On access to information, Art.4 states that «each party shall ensure that public authorities, in response to a request for environmental information, make such information available to the public». The article specifies the features of this right, such as the time period for providing the information, the fee that may be charged for supplying the information, the grounds on which a request may be refused.
- AC contains three types of public participation right: the right of public participation in decisions of "specific activities" which may have a significant effect on the environment in such way that public concerned shall be informed in an adequate, timely and effective manner. Then, the right of public participation during the preparation of plans and programmes relating to the environment. Finally, Art.8 provides the right of public participation during the preparation of regulations or legislation.
- On access to justice, AC set out a range of requirements which must be satisfied by contracting Parties' legal system, in order to enable environmental public interest litigation in their jurisdiction. Everybody who considers that his request for environmental information has been not dealt with in accordance with the AC provisions must have the access to review the procedure before a court of law. Moreover, Parties have to ensure the right of review of decisions and acts within the scope of public participation on specific activities. Finally, art 9(3) provides the right to challenge acts and omissions made by private parties and public authorities which breach national environmental law.

ECtHR highlights «a unitary perspective on procedural environmental rights manifesting the overreaching influence and importance of the AC, as the Court continuously uses the latter as a reference point to interpret the ECHR in environmental cases»[28]. Not only it has considered procedural

25 UNECE, The Aarhus Convention – an Implementation Guide, (2000)
26 A.BOYLE, *op.cit*.
27 S.KINGSTON et al., *European environmental law*, CUP, 2017, p.168 ss.
28 B.PETERS, *op.cit.*

environmental rights in its case of law on the right to life, on the right to private life and the right to a fair trial but it has also considered these rights as part of the rights of access to information (art 10) and to an effective remedy (art 13).

One of the first cases in which the ECtHR considered the procedural environmental obligations was *Guerra v. Italy*[29], in which the Court held that that art.8 requires environmental information to individuals allowing them to assess properly the health risks of environmental pollution. Afterwards, the Court defined the details of the procedural obligations inherent in Art.8: concerning the obligation to provide access to information in environmental matters, in *Hardy and Maile v. UK*[30] the Court established that public authorities need to provide individuals with relevant and appropriate information, enabling the public to identify and evaluate risks. In *Taskin v. Turkey*, even though the State is not a party to the Aarhus Convention, ECtHR extended that rights in the EC Convention by stating that participation in the decision-making process by those likely to be affected by environmental nuisances will be essential for compliance with art.8 ECHR and art.6 of the AC and it emphasised, on the right to justice in environmental matters, that the individuals concerned must «be able to appeal the courts against any decision, act or omission where they consider that their interests have not been given sufficient weight in the decision-making process».

Even though art.8 includes these procedural rights, ECtHR has explained in various cases that those rights are only incurred *ratione personae* to individuals where a certain minimum level has been surpassed, *i.e.* those for whom environmental projects present a real risk of damage or a significant negative influence or impact on health or private life.

Despite referring to Aarhus Convention, «standards of procedural environmental rights guaranteed under the ECHR differ greatly. Firstly, the group of beneficiaries able to invoke procedural environmental rights under the AC is significantly larger than under the ECHR and this springs from the inclusion of the general public as rights holder and there is no need for the further violation of a primary human right»[31].

The issue of the acknowledgement of procedural rights in the ECHR is present in *Cordella* as it is recognised the violation of Art.13 for the absence of an effective remedy. Moreover, the Court uses also the restrictive approach considering admissible only the applications made by those that have been recognised as victims.

29 ECtHR, *Guerra and others v. Italy*, [14967/89], 1998
30 ECtHR, *Hardy and Maile v. United Kingdom*, [31965/07], 2012
31 B.PETERS, *op.cit.*

IV. RECENT DEVELOPMENTS IN ECHR'S CASE-LAW: CORDELLA V. ITALY.

1. Facts

ILVA's Taranto plant, inaugurated in 1964, is the largest industrial steelworks complex in Europe. It covers an area of 1500 hectares and has about 11000 employees and it represents a huge amount of the gross domestic product of the Province of Taranto, an area that counts 500 thousand of inhabitants in Apulia. The impact of plant emissions on the environment and on the health of the local population has given rise to several alarming scientific report. In 1990, Italian Council of Ministers identified "high environmental risk" municipalities (including Taranto) and asked the Ministry of the Environment to draw up a decontamination plan for cleaning up the areas concerned. In 2002 ARPA (regional agency for environment) Report showed that there has been an increase of cancer diseases in the "high environmental risk" area starting from the seventies and an increase of polluting substances in the air. 2012 SENTIERI Report presented by the Health Superior Institute by will of the Ministry of Health showed the existence of a causal link between the environmental exposition to polluting substances and the development of cancer and heart diseases in the area.

2. Previous judgements on ILVA steel plant

Constitutional Court judgements: in 2011, ILVA and Ministry of Environment found an agreement[32] (AIA) in order to consent the continuation of the production provided that measures for reducing pollution according to best available techniques were put in place. From the end of 2012 onwards, the Government adopted a number of laws, among the so-called "Salva-Ilva" Legislative Decrees concerning the activity of the ILVA aiming at enhancing the production, defined of strategic national relevance, despite the company was facing economic problems, restructuring procedures and criminal procedures. An issue of constitutionality was raised, challenging the 207/2012 law decree[33], on the grounds of violation of the rights to health and to a safe environment under Art.32 of Italian Constitution. Constitutional Court

32 AIA is an authorisation needed by some companies in order to act in conformity with integrated pollution prevention and control principles (IPPC) established with the 96/61/CE Directive, now entailed in the 2010/75/EU Industrial Emission Directive.

33 Law Decree 3rd December 2012, n. 207 «Urgent provisions for the protection of health, environment and employment, in the case of crisis of industrial factories of national strategic interest».

held, in judgement 85/2013[34], that it was lawful to let ILVA continue the production provided that environmental measures provided by AIA are respected as there has been by the legislator a reasonable balancing test between the right to work and the right to health and safe environment both guaranteed under Italian Constitution. The issue of balancing between constitutional rights have been followed by a most recent case in which the Constitutional Court had to verify the constitutionality of another law decree[35]. In judgement 58/2018[36], it declared the law decree unconstitutional because the public authorities had sustained excessively the continuation of the steel production (right to work) to the detriment of the protection of the right to health and safe environment. Finally, after the prime minister's decree that delayed the execution of the environmental plan for ILVA to 2023, local authorities complained to the Administrative Court this further postponement and, now, another issue of unconstitutionality is still pending to the Constitutional Court on grounds of violation of rights to health and safe environment.

- Criminal Proceedings: several challenges have been brought against ILVA's management for serious environmental crimes and for failure to prevent accidents in the workplace and some of these culminated in convictions. Among these, in judgement 38936/2005[37], the Court of Cassation found that the management of the ILVA factory in Taranto was responsible for air pollution, the dumping of hazardous materials and the emissions of particles.
- Procedures before EU institutions: in judgement C-50/10[38], the CJEU held that Italy failed to fulfil its obligations under Directive 2008/1 concerning integrated pollution prevention and control. The Court highlighted the fact that Italy failed to adopt the necessary measures in order to allow public authority to verify if factories, such as ILVA, worked under the system of authorization provided by the Directive itself. Furthermore, in 2014, in an infringement procedure[39] against Italy the European Commission issued a reasoned opinion asking the Italian authorities to remedy the serious pollution problems observed in the steel plant in Taranto. It noted that Italy had failed to fulfil its obligations to guarantee that the steelworks complied with the Industrial Emissions Directive. At the same time, Commission observed that the level of pollution made by the factory was not reduced and that

34 Constitutional Court, 9th May 2013, n.85
35 Law Decree 4th July 2015, n.92 «Urgent provisions for waste management, AIA Authorisation and for the business of strategic interest companies»
36 Constitutional Court, 7th February 2018, n.58
37 Court of Cassation, 24th October 2005, n. 38936
38 Court of Justice of the EU, Seventh Chamber, *European Commission v. Italy* [C 50/10]
39 EUROPEAN COMMISSION, Infringement Procedure, IP/14/1151

tests showed significant air, soil and water pollution that bring serious negative consequences to the environment and the health of local citizens.

- ECHR judgements: in the case *Smaltini v. Italy*[40], the applicant was born and always lived in Taranto and was diagnosed with leukaemia. She first brought criminal proceedings against the management of ILVA, claiming that her illness was caused by the emissions of the plant. Nevertheless, the criminal judge discontinued the proceedings, arguing that no causal link had been established between the harmful emissions and the applicant's condition. Ms Smaltini then brought proceedings before the ECtHR, as, relying on art 2 of the Convention, she complained a violation of her right to life, assuming that the existence of a causal link between the plant emissions and the development of the leukaemia had been fully proved. Court immediately clarified that the applicant did not allege that national authorities had failed to take legislative or administrative measures to protect her right to life, but rather that they had not acknowledged the existence of a causal link between the polluting emissions and the disease. Therefore, only the procedural side of Art.2 was called into question, namely to assess «whether and to what extent the courts may be deemed to have submitted the case to the scrutiny of Art.2, so that the deterrent effect of the judicial system and its role in preventing violations of the right to life are not undermined». Court concluded that, «**based on scientific data available at the time of the events, and without prejudice to the findings of future scientific studies**(emphasis added), the applicant had not demonstrated that domestic authorities had failed in their obligation to protect the procedural aspect of the right to life, therefore, the application was rejected as being manifestly ill-founded»[41].

In *Smaltini v. Italy*, the ECtHR confirms its interpretational results of case-law: firstly, the evidence provided by the applicant in order to demonstrate the existence of the strict link appears to have been gathered and submitted haphazardly and as a settled modus operandi the Court tends to rely on the findings emerged before the national Court.

Furthermore, there is the problem of scientific uncertainty due to the absence of an express recognition of the precautionary principle in the ECHR system[42]. Nevertheless, «the Court emphasizes that the decision is without prejudice to future applications, in the event of new scientific developments, leaving an

40 ECtHR, *Smaltini v. Italy* [43961/09], 2015

41 L.FERRARIS, «Smaltini v. Italy: a missed opportunity to sanction ILVA's Polluting Activity within the ECHR system», [2016], 3 *Journal for European and Environmental Planning Law* 1

42 Even though in *Tatar v. Romania* there is an endorsement of the precautionary approach as the criteria of the strict causal link can be inappropriate to deal with the needs of an industrialised society and therefore to adopt a more precautionary approach.

open door to the possibility of sanctioning ILVA's pollution»[43]. This is what consequently happened in the *Cordella v. Italy*[44] case.

3. The reasoning of the Court

Relying on art.2 (right to life) and art.8 (right to private life), the 180 applicants complained that the State had not adopted legal and statutory measures to protect their health and the environment, and that it had failed to provide them with information concerning the pollution and the attendant risks for health. The Court decided to consider these complaints solely under art.8. Besides, relying on art.13 (right to an effective remedy), the applicants alleged that there had been a violation of their right to an effective remedy.

On preliminary grounds, the Court held that only applicants who lived in the municipalities classified at "high environmental risks" could be granted the victim status and, therefore, bring admissible proceedings. Furthermore, it highlights that this challenge is completely different from the previous *Smaltini* case as the issue here is whether and to what extent the State has not provided measures to protect people's health and environment.

On the violation of art.8, at the outset, the Court makes reference to his case-law and to the recognition of a healthy environment as a condition to abide by the right to private life under the Convention and that States have a positive obligation of adopting measures to ensure this right to his citizens.
In the present case, the Court noted that, since 1970s, scientific studies had shown the polluting effects of the emissions from the ILVA factory in Taranto on the environment and on public health. Among data, the 2012 SENTIERI report confirmed the existence of a causal link between environmental exposure to polluting substances produced by the plant and the development of cancer and heart diseases in persons living in the affected areas. Court noted that in spite of the national authorities' attempts to achieve decontamination of the region, few was concretely put in place. Measures recommended from 2012 onwards were never introduced and this failure had been at the origin of an infringement procedure before EU's entities. The deadline for implementing the environmental plan approved in 2014 had been postponed to 2023. Meanwhile, the Government had intervened on numerous occasions to guarantee the production, despite the finding by the judicial authorities that there existed serious risks to health and to the environment, and to grant administrative and criminal immunity to the persons responsible for ensuring compliance with environmental requirements.

43 L.FERRARIS, *op.cit.*
44 ECtHR, *Cordella and Others v. Italy*, [Joined 54414/13 and 54264/15], 2019

For these reasons, the Court considered that the persistence of a situation of environmental pollution endangered the health of the applicants and that of the entire population living in the area at risk, who remained without information as to progress in the clean-up operation for the territory concerned, particularly with regard to timeframe.

Besides, «national authorities had failed to take all the necessary measures to provide effective protection of the applicants right to respect for their private life»[45]. Thus, the fair balance between the applicants' interests in not being subjected to severe environmental pollution that could affect their well-being and their private life and, on the other hand, the interests of society as a whole had not been struck.[46] Hence, there had been a breach of art.8 ECHR.

On the violation of the right to an effective remedy, the ECtHR has, primarily, made reference to the general principle enshrined in this article to obtain a judicial national remedy to complain of a fact that is in detriment or threat to be in detriment of a right guaranteed under the Convention itself.
The Court held that, in this case, «the applicants had not had available an effective remedy enabling them to raise with national authorities their complaints concerning the impossibility to obtain measures to secure decontamination of the areas affected by toxic emissions from the ILVA factory»[47]. There has been, therefore, a violation of art.13 ECHR.

4. **Consequences**

As a result of these violations, some of the applicants asked for the application of a pilot-judgement procedure to obtain the execution of the judgement. The pilot-judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against countries and imposing an obligation on States to address those problems. In a pilot-judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it. In this case, the Court considered unnecessary to apply it and, instead, it reiterated that it was for the Committee of Ministers to indicate to the Italian Government the measures that, in practical terms, should be taken to ensure that the Court's judgement is enforced. However, it stressed that cleaning up the factory and the region affected by toxic emissions was essential and urgent. Thus, the

45 ECtHR, *Cordella v. Italy,* Press release

46 On how the Italian Government has approached the balance between rights see A.LAI, R. STACCHEZZINI, S. PANFILO, «The government of corporate (un)sustainability: the case of ILVA steel plant in Taranto» in [2019], 23 *Journal of management and governance* 1, 67

47 ECtHR, *id.*

environmental plan approved by the national authorities, which indicated the necessary measures and actions to provide environmental and health protection to the population, ought to be implemented as rapidly as possible.

V. CONCLUSION

Cordella v. Italy is a remarkable judgement for two reasons: firstly, because it follows an established trend of cases that are shaping and developing the environmental rights in Europe. In this case, on one hand, the Court confirms that the environmental issue must endanger the rights to life and to respect of private life to be challenged under the ECHR. At the same time, it confirms the existence of a positive obligation of the State to safeguard the rights enshrined in the ECHR and, therefore, to put in place action to eliminate and reduce the effect of pollution. On the other hand, this case shows also that environmental procedural rights are also recognised under the ECHR but, in spite of under the Aarhus Convention, they are not guaranteed to the public but only to those affected directly by the environmental harm. Indeed, the Court declared inadmissible the applications made by those citizens that did not live in the "high environmental risk" municipalities and, hence, they did not have victim status.
This case is also fundamental because it highlights one of the biggest cases of non-compliance with EU environmental law and human rights in the EU. Following this decision, the Italian government has the obligation to address the consequences of ILVA activities and to prevent future damages. The Committee of Ministers of the Council of Europe will monitor that the Italian government urgently start the decontamination of the plant and neighbouring territories affected by environmental pollution.
In the continent that claim to be the defender of human rights across the world it should be unacceptable that half a million of Europeans still have to tolerate significant amount of pollution, environmental harm and health diseases to maintain and safeguard their jobs and the regional economy.

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