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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

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 Cordella and others vs. Italy and request this letter to be published on the online records of the Council of Ministers.

This submission has a twofold target. On the one hand, it aims to highlight how the Action Plan submitted by the Italian Government on the 18th of January 2021 is ineffective and does not properly and adequately address the violation of Article 13 of the ECHR as ascertained by the ECtHR in the aforementioned judgment; on the other hand, subsequently, we respectfully ask the Committee of Ministers to reject the proposed Action Plan and to request the Italian authorities to implement the appropriate general 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 inequities 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 and an action of sensibilisation 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, for its nature of 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.

2. Case Summary

The case CORDELLA AND OTHERS v. Italy (Application No 54414/13) was brought before the ECtHR by a group of nearly 180 applicants living in the city of Taranto or in the surrounding municipalities asking for measures to de-pollute the area and compensations to victims (or their families) who have suffered health damage in connection with the activity of the steel plant known as "ILVA".

The Court found a breach of art. 8 of the Convention given that national authorities failed to take all the necessary measures in order to protect its citizens and the environment, notwithstanding several scientific reports had showed the danger of Ilva's emissions.

The Court also confirmed the non-existence within the Italian legal system of useful and effective remedies to raise complaints ensuring the clean-up of the areas affected by harmful emissions. This situation has resulted in a breach of art. 13 of the Convention, for it is not guaranteed that parties subject to justice are entitled to obtain, at the national level, redress for violations of their rights.

On this ground, the Court imposed upon Italy to take measures to remedy the damage the applicants have suffered and to provide an adequate judiciary action.

The judgment became final on the 24th of January 2019 and, since then, the Committee of Ministers has been monitoring the implementation of the ruling.

On the 5th of March 2020 the Committee of Ministers asked the Italian authorities to inform on the internal measures to be adopted in order to grant an effective remedy for the aforementioned infringements.

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

On the 18th of January 2021 the Italian Government submitted an Action Plan to the Committee of Ministers, taking a stance on the issues previously addressed by the Committee itself and the complainants. Albeit in the opening paragraph of the submission the Italian Government correctly defined the issue at hand as pertaining to the category of remedies to obtain the de-pollution of areas contaminated by the steel plant harmful emissions, none of the provided examples fit the purpose. Thus, as it will be demonstrated in the following paragraphs, the Action Plan cannot be held to implement the measures required by the ECtHR.

Before displaying the remedies proposed by the Italian Government, it is worth reminding the key findings of the ECtHR.

Concerning Article 13 of the ECHR, the ECtHR held that, at time of the ruling, no effective remedies were available for the applicants enabling them to raise before the national authorities their complaints regarding the impossibility to obtain measures to secure decontamination of the areas affected by toxic emissions.

Still at the present date, in case of pollution of an area, the Italian legal system only enables single citizens to claim compensation for damages. The polluter person cannot be obliged to a positive action directed to decontaminate the affected area.

Under Article 46 (binding force and execution of judgment) the ECthR highlighted that the Committee of Ministers was to indicate to the Italian government the measures that were to be taken to enforce the judgment.

With specific regard to the violation of Article 13, the Committee of Ministers, in his Decision dated 5th of March 2020, acknowledged that Italy had not implemented any measure regarding the lack of effective remedies, capable of redressing the violations ascertained by the ECtHR and asked the authorities to provide information on all of the outstanding questions no later than 30th of June 2020.

Since then, no legal measures attempting to address the points raised by the Cordella Case were issued. In fact, there were just two draft bills concerning the issues arising

out of or in connection with ILVA. Yet, none of them can be considered fitting the required implementation of Article 13.

The draft n. 1380 of 27th of June 2019 (available only in Italian) concerns the duty of transparency set out for the productive activities for which the IEA (integrated environmental authorization) is required. These plants would be obliged to publish all the data concerning their emissions. However, this obligation cannot be considered as a new legal remedy constituted in order to face pollution and dangerous emissions.

The second draft regards an amendment to the Italian Constitution (Article 9), by adding a paragraph concerning the safeguard of the environment. However, this modification would not affect the internal remedies system, for constitutional norms are only aimed to establish general principles and it would not be directly enforceable in court lacking an adequate judiciary action. Furthermore, the proposal is only referred to intergenerational equity and sustainable development.

Strali underlines that, while at present day, the Italian Government has started to address the points raised by the Court concerning the violation of Article 8 (although no valuable result has been reached so far, as reported by the applicants with Communication DD(2020)950 dated 26th of October 2020), measures regarding the problem of the lack of effective remedies, whether of a civil, administrative, criminal or constitutional nature, capable of redressing the ascertained violations have not even been discussed yet.

In conclusion, the Action Plan submitted by the Italian Government fails to address the complaint at stake by wrongly referencing the two inadequate remedies set out in the following sub-paragraphs.

3.1. The Constitutional Court ruling No. 641/1987

The Italian Government invokes the aforementioned ruling as if it expressly sets forth a judiciary remedy available to the citizens. The Italian Government itself, though, draws the conclusion that the remedy would consist in a claim for damages, which is inherently and radically different from a specific remedy aiming to a concrete and positive action, such as the de-pollution of an identified area.
Furthermore, we respectfully draw the Committee's attention to the nature and role of the Constitutional Court within the Italian legal system: first and foremost, the Court has no power to create *ex novo* judicial remedies. Secondly, the Court function is to answer to "not clearly unsubstantiated" doubts of constitutional legitimacy of laws. Without further inquiring, it will suffice to point out that the Court cannot be directly addressed by every citizen, for its intervention may only be required by a judge in the course of a trial. The ECtHR displayed complete awareness of these circumstance, as clearly stated in §125 of the case Cordella ruling, despite the efforts of the Italian government to disguise the decision and its content as a substantial environmental remedy.

3.2. Ruling adopted in February 2020 by Tribunale di Milano (Tribunal of Milan)

The burden of the proof about the adoption and implementation of judiciary remedies lies with the Italian Government. It is inadmissible that such burden may be considered as satisfied by generically referencing a ruling, without indicating the protocol and/or register number and the date, thus disallowing the opportunity for observations and remarks. On this ground, we respectfully ask the Committee of Ministers to formally request the Italian Government to grant Strali a full discovery on this ruling.

Notwithstanding the above, which in itself shall constitute ground for rejection of the

Action Plan, we want to emphasize how the remedy indicated by the Italian Government is by no means adequate and fitting the purpose of the Cordella ruling. Based upon the little background explanation received, we are able to infer that Milan Court of First Instance admitted two citizens to the opposition in bankruptcy proceedings, which that Court itself considered to be a reparatory remedy.

In fact, the sentence issued by the Tribunal of Milan, tenth section, recognizes, on the basis of art. 844 Civil Code, only the compensation for the damage connected with the exposure to the emissions produced by the plant, intervening to restore *ex post* the damage deriving from the polluting substances.

Strali points out that the aforementioned remedies do not guarantee effective measures aimed at depolluting, as requested by the Court, since they intervene, by their nature, when harmful effects have already been produced. On the other hand, there is no remedy in the Italian legal system which would allow to raise grievances relating to the impossibility of obtaining measures to ensure the depollution of the areas affected by harmful emissions of the Ilva plant.

There shall be no further need to highlight the strategy of the Italian Government: being incapable of providing a specific remedy, the Italian Government attempts to shift the focus to a different remedy, it is to say a monetary indemnification.

4. Conclusions and recommendations

The leading case at hand shows 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 cope with it.
In the light of the above, we respectfully ask the Committee of Ministers to:

1. reject the Action Plan submitted by the Respondent State on the 18th January 2021; and
2. to urge the competent authorities to most pressingly adopt the entirety of the measures set out in the judgment held by European Court of Human Rights.

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For Strali

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