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Putting Out Fires: New ECtHR Case on the Right to Life and Environmental Pollution

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On 30 January 2025, the European Court of Human Rights ('**ECtHR**') handed down its judgment in Cannavacciuolo and Others v. Italy ("**Cannavacciuolo**", nos. 51567/14 et al. 30 January 2025). The case is the first time that the ECtHR has found a violation of Article 2 of the European Convention on Human Rights ('ECHR') in a case concerning environmental pollution.

Although the facts of the case are striking, the ECtHR's judgment provides insight into how the Court is developing its jurisprudence in the context of environmental harms. This blog provides a case summary and analysis of key aspects of the judgment. Unless otherwise indicated. Paragraph references are to those in the ECtHR's judgment.

Facts and background

Since the 1980s large volumes of waste, often hazardous, have been illegally dumped, buried, and incinerated in the Campania region of Italy. Much of this illegal 'disposal' of waste has been carried out by criminal gangs which traffic the waste from the north of Italy to the south (para. 17). The problem of illegally incinerating waste had become so widespread that the area became known as early as 2003 as the "*Terra dei Fuochi*" which translates to the "Land of Fires" (para. 5). In January 2018, a report by the Italian Senate indicated that the *Terra dei Fuochi* zone comprised of 90 municipalities, affecting approximately 2.9 million people (paras. 5-8).

This practice of illegally trafficking, dumping, burying, and incinerating waste had been known to the Italian Government as early as the late 1990s. Indeed, the first Parliamentary Commission addressing the waste cycle and illegal dumping of waste in the region reported in 1997 (para. 10). Despite this, the Italian State had taken limited action to address the issue. This lack of action led to several rounds of infringement proceedings brought by the European Commission against Italy for non-compliance with obligations on waste, hazardous waste and landfill waste (paras. 22, 26, 29, 31, 44). Links to the cases are here, here, and here.

In 2013, the Italian Chamber of Deputies declassified certain information relating to the *Terra dei Fuochi* which was largely publicised in the Italian media. Around the same time the Italian Government took more targeted action in response to the *Terra dei Fuochi* (paras. 37-43). It was not long after this that the

applicants lodged their case with the ECtHR.

The case was brought by 41 individual applicants, and 5 associations, all of which lodged their applications before the ECtHR in 2014 alleging violations of Article 2 and 8 of the Convention. Amongst the individual applicants, there was a mix of applications brought by individuals on behalf of themselves ('direct victims'), all of whom had cancer, and applications brought on behalf of family members who had died ('indirect victims'). Whilst the rest of this blog post will discuss the jurisprudential developments of the Court, the tragic reality of the individuals involved in the case is a sobering reminder of the devastation that environmental pollution can cause.

Admissibility

The judgment

The ECtHR split the question of standing into different groups; the only group of victims that were ultimately found to have standing were the direct victims, i.e. those who are still alive and are suffering a health condition associated with the environmental pollution. This was on the basis that the *Terra dei Fuochi* is a continuing situation for which there is no effective domestic remedy. Of most interest, however, is the approach of the Court to the applicant associations.

Whilst recognising the role that the applicant associations had played in generating awareness, and acting as a public watchdog, the Court declined to grant the associations standing. In doing so, the Court applied its conventional jurisprudence that Article 2 is a right which, "by its nature, [is] not susceptible of being exercised by an association, but only by its members", and an association is "in principle not in a position to rely on health consideration to allege a violation of Article 8" (paras. 216-217).

The majority directly engaged with the question of whether it should grant standing to the applicant associations, applying the approach taken in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* ([GC], no. 53600/20, 9 April 2024) (paras. 220-221). The majority, however, found that as stated in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, an expansion of the standing rules in that case was justified by the "specific considerations of climate change" and the "special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context" (see *Verein KlimaSeniorinnen Schweiz and Others paras*. 498-99). The Court did not find that these considerations were applicable to the present case (paras. 220-221). For a discussion of *Verein KlimaSeniorinnen Schweiz and Others*, see this blog post by Claire Nevin.

Analysis

The engagement with the expansion of standing rules for associations in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is notable for two reasons.

First, the reiteration that the expansion of standing rules for associations is limited to the specific circumstances of climate change, perhaps allays concerns that *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* was the first step in a more general move to expand standing rules in cases concerning environmental harm.

Second, and perhaps on the other side of the coin, the two separate opinions of Judge Krenc and Judge Serghides highlight the difficulties that the expansion of standing rules for associations in V*erein KlimaSeniorinnen Schweiz and Others v. Switzerland* may pose for ensuring a coherent body of case law in the future. Judge Krenc expressed a "certain bewilderment" at the majority's approach, questioning whether the "climate and environment [are] so distinct and hermetical as to justify two fundamentally

different approaches as regards the locus standi of associations" (para. 6 of Judge Krenc's concurring opinion). Judge Serghides similarly suggested that the present case had "special features" that warranted the application of the standing rules for associations in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. In particular, he noted that the large-scale nature of the pollution meant its effects were likely to be multi-generational and that waste is "intrinsically linked to the triple planetary crisis of climate change, pollution and biodiversity loss" (para. 2(a) of the Partly Concurring, Partly Dissenting Opinion of Judge Serghides).

There are numerous areas of environmental harm, such as micro-plastics and PFAS, that one can foresee as coming within the logic of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. These separate opinions demonstrate how from both outside and within the ECtHR, there may be pressure to break down the distinction between climate change and other forms of environmental harm that have wide-reaching ramifications.

Article 2: Applicability

The judgment

The Court analysed the case from the perspective of the positive obligation under Article 2 of the Convention that requires States to take all appropriate steps to safeguard the lives of those within their jurisdiction.

This obligation applies in the context of activities which may pose a risk to human life due to their inherently hazardous nature. To apply, there must be a "real and imminent" risk to life. There is no general rule, but "real" indicates existence of a serious, genuine and sufficiently ascertainable threat to life while "imminence" requires an element of physical proximity of the threat and its temporal proximity (paras. 375-378).

Before applying these tests to the facts, the Court noted that the case differed from other environmental cases. Rather than concerning a "single, identified, circumscribed source of pollution", the complaints arose from a "particularly complex and widespread form of pollution occurring primarily, but not exclusively, on private land" (para. 384). Moreover, the case did not concern a set of dangerous activities, such as industrial activities, that are carried out against the backdrop of an existing regulatory framework, but activities carried out by private parties, largely criminal groups, that exist beyond the bounds of any form of legal regulation (ibid.)
In applying the principles set out above to the facts, the Court noted the agreement between the parties of the seriousness of the potential for human health stemming from the activities of the criminal groups, which affect all environmental elements, such as soil, water, and air. The Italian Government, however, disputed the existence of a "scientifically proven causal relationship between exposure to the pollution at issue and the onset of a specific disease with respect to individual applicants or their deceased relatives" (para. 386).

In dealing with this argument, the Court's approach was to refer to the number of domestic Parliamentary Commission inquiries and reports which indicated that the Italian Government not only knew about the practice of dumping, burning and burying of hazardous waste, but also the increase in the rates of cancer in the region of Campania (para. 387). Whilst accepting that "these initial studies did not disclose a definite, direct correlation between exposure to the pollution generated by illegal waste disposal practices and the onset of certain diseases, [the Court considered that] they raised credible prima facie concerns about serious, potentially life-threatening health implications for the affected citizens, individually and collectively, into which further research was urged as a matter of priority" (para. 388). On the basis of this, the Court accepted the existence of a "sufficiently serious, genuine and ascertainable"

risk to life which engaged Article 2 of the Convention and triggered a duty to act on the authorities' part (para. 390).

Satisfied that the applicants were exposed to this risk, the Court added that it did not "consider it necessary or appropriate to require that the applicants demonstrate a proven link between the exposure to an identifiable type of pollution or even harmful substance and the onset of a specific life-threatening illness or death as a result of it" (para. 390).

In justifying this approach, the Court also had regard to the "precautionary approach". It highlighted that the risk to life had been known for a long time. In light of this it held that the fact that there was no scientific certainty as to the "precise effects the pollution may have had on the health of a particular applicant cannot negate the existence of a protective duty, where one of the most important aspects of that duty is the need to investigate, identify and assess the nature and level of the risk (see, *mutatis mutandis, Kurt v. Austria* [GC], no. 62903/15, § 159, 15 June 2021; also see paragraph 395 below)" (para. 391).

Analysis

The ECtHR's approach to the applicability of Article 2 is noteworthy for two reasons. First, for not requiring the individual applicants to demonstrate specific causation. Second, the use of the precautionary approach to justify this approach.

On the approach to causation, the Court has taken the position that so long as there is sufficient evidence available to demonstrate a general connection between health impacts and the pollution, it is unnecessary for an individual to demonstrate that their *specific* illness has been caused by the *specific* pollution. This is a pragmatic response to the difficulties in establishing specific causal mechanisms for certain diseases.

Adapting the approach to causation in circumstances of scientific uncertainty is not unknown to domestic courts. In the context of asbestos exposure and the onset of mesothelioma, the UKHL, over a series of cases dealing with the tort of negligence, tailored the causation rules to take into account the difficulty in proving 'but for' causation. For instance, in Fairchild v Glenhaven Funeral Services Ltd & Ors [2002] UKHL 22 the UKHL held it was sufficient for a Claimant to demonstrate that the "breach of duty materially increased the risk of the onset of the disease from which he suffers" (para. 111, per Lord Hutton).

The second point of interest is the invocation of the precautionary approach. The "precautionary principle" finds expression in numerous international agreements and texts. For instance, Article 191 TFEU, referred to by the Court (para. 183), provides that "a lack of certainty regarding the available scientific and technical data cannot justify States delaying the adoption of effective and proportionate measures to prevent a risk of serious and irreversible damage to the environment". The Court takes the essence of this principle, i.e. that lack of full scientific certainty cannot justify a failure to act, and applies it to its approach to causation. What seems to be critical in the Court's analysis is that part of the positive duty under Article 2 entails a duty to investigate, identify and assess the level of risk (para. 391). This positive duty required the Italian State to investigate the very causal mechanisms that it was seeking to deny. Consequently, the Court has adopted a position that requires States to investigate risks of dangerous environmental activities, including those carried out by private actors, and take steps to determine the relevant causal mechanisms of how harm is caused.

Article 2: the Italian Government's compliance with the obligations under Article 2

Once satisfied that Article 2 was engaged, the Court assessed whether, in the circumstances of the case,

the Italian State did all that could have been required of it to prevent the applicants' lives from being avoidably put at risk (para. 379).

The Court first set out four obligations it considered arose in the circumstances of the case. First, the authorities were under a duty to "undertake a comprehensive assessment of the pollution phenomenon at issue, namely by identifying the affected areas and the nature and extent of the contamination in question, and then to take action in order to manage any risk revealed" (para. 395). Second, they were "expected to investigate the impact of this pollution phenomenon on the health of individuals living in areas affected by it" (ibid.). Third, the authorities were required to take action to combat the conduct giving rise to the pollution phenomenon, namely the illegal dumping, burying and incineration of waste (ibid.). Fourth, the authorities were "under an obligation to provide individuals living in areas affected by the pollution phenomenon with timely information enabling them to assess risks to their health and lives" (ibid.).

Addressing the obligations to undertake a comprehensive assessment of the pollution phenomenon at issue and its health impacts, the Court concluded that despite the Italian Government pointing to a range of inchoate measures addressing the *Terra dei Fuochi*, there was a lack of a "systematic, coordinated and comprehensive" response to identifying the land where pollution was being dumped, buried and incinerated (para. 410), and to monitor the health and ensure epidemiological surveillance of the population living in the affected area (para. 429).

With regard to the requirement to combat the conduct giving rise to the pollution, the Court highlighted a number of domestic reports that indicated domestic criminal tools had not been an effective means of combatting the illegal dumping, burying and incineration of waste (para. 421). Whilst recognising that some progress had been made, particularly following the introduction of new criminal offences in 2015, the Court was not satisfied that the State had taken the necessary measures to protect the residents of the *Terra dei Fuochi*.

Finally, regarding the requirement of providing information, the Court considered it necessary to take into account the large-scale nature of *Terra dei Fuochi*, both in terms of geographical extent, but also in terms of how the pollution affects every aspect of the environment (air, soil, water) (para.456). Consequently, the Court concluded that a "pollution phenomenon of such magnitude, complexity, and seriousness required, as a response on the authorities' part, a comprehensive and accessible communication strategy, in order to inform the public proactively about the potential or actual health risks, and about the action being taken to manage these risks" (para. 457).

In addition, the Court made the following general observations. First, the Court found that the majority of action took place post-2013. In view of the fact that the Parliament had been aware of the problem since at least 1997, the extent of the pollution problem and the risks it involved, the Court found this delay to be "unacceptable" (para. 461). Second, although an action plan was developed in 2016, and a new implementation strategy for the action plan was deemed necessary in 2018, the Court highlighted that this was over two decades after the initial recognition of the problem, and from the information available it was difficult for the Court to identify the extent to which the measures in the Action Plan were coordinated.

Accordingly, the Court considered that the Italian Government had not demonstrated that they approached the Terra dei Fuochi with the diligence warranted by the seriousness of the situation and that the State had not demonstrated that it did all that could have been required to protect the applicants' lives (para. 465).

Article 46 and the pilot judgment procedure

The final aspect of the judgment to note is the Court's decision to use the pilot judgment procedure. This procedure is used where a human rights violation stems from a systemic issue within the State and the Court has a number of similar cases pending before the Court (this factsheet provides a helpful summary of the pilot procedure's use). The pilot procedure enables the Court to specify in more detail the steps that it considers necessary to rectify the situation. It has not been used in environmental pollution cases before making this case novel for yet another reason.

The measures identified in the judgment included, a 'comprehensive strategy drawing together existing or envisaged measures'; 'independent monitoring mechanism' and an 'information platform' (paras. 493-500).

Conclusion

It is worth reflecting on the impact of the case both in terms of the future of ECtHR case law and at home.

Although the judgment appears to be driven by the largely undisputed evidence of both the existence of the *Terra dei Fuochi* and its impact on the health of the surrounding population, it provides key insights into the ECtHR's willingness to engage with complexity of environmental issues and cases. On the one hand, the Court seems to restrain itself and confirm that the exceptional approach taken to the standing of associations in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* will be limited to climate change cases. At the same time, the ECtHR develops the case law by finding a violation under Article 2 in a pollution case, as opposed to the more commonly used Article 8, and by taking a pragmatic approach to analysing causation, and invoking well-known international principles such as the precautionary principle to justify its approach.

In terms of the impact at home, it is unclear that this case will compel the High Court to change its approach to be more willing to side with claimants in environmental human rights claims. One can consider this issue by reference to the recent pollution case of *R (Richards) v Environment Agency* [2022] EWCA Civ 26. In this case, the High Court issued a declaration with steps that the Environment Agency was required to take to comply with its obligations in relation to a landfill site in Newcastle. This was reversed on appeal by the Court of Appeal. Blog posts on the High Court decision and Court of Appeal judgment by Esther Drabkin-Reiter and Michael Feeney can be found here and here respectively. Three points can be made about the impact, or not, that *Cannavacciuolo* might have in this context.

First, despite the recognised information gap in *Richards* as regards "human health implications of long-term (chronic) exposure to low concentration hydrogen sulphide, especially in relation to children" (para. 14 of High Court decision), nothing turned on this in the decision in *Richards*. This is because with the assistance of expert evidence the High Court was satisfied that the exposure of the Claimant, a 5 year old boy born prematurely, to hydrogen sulphide emissions was contributing to the Claimant's condition, i.e. causation was satisfied (para. 45 of the High Court judgment). There was no appeal on this point (paras. 49-50 of the Court of Appeal judgment). Accordingly, the shift in approach to causation at the ECtHR would have been unlikely to affect the Court's approach.

Second, as explained by Michael Feeney in his blog post, the Court of Appeal found that there had been no breach of Article 2 and 8 in *Richards* as the claim was essentially brought prematurely, before the Environment Agency had had the time to consider Public Health England's advice. This contrasts to *Cannavacciuolo* where the Italian State failed to act despite knowing of the health risks. If anything, this shows the importance of a factual matrix on determining the case.

Third, the use of the pilot-judgment procedure in *Cannavacciuolo* does show a willingness of the ECtHR to

be more prescriptive in the steps that must be taken by a State to comply with its obligations in the environmental pollution context. This may indicate that the approach of the High Court in *Richards* to engage more directly with the steps to take to comply with human rights obligations will come to be expected. However, it is unlikely that *Cannavacciuolo* will encourage domestic courts to be, in general, more prescriptive given the uniqueness of the pilot judgment procedure.

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