A New Step in the Greening of the Right to Life

The ECtHR Judgment on the Land of Fires

Stefano Zirulia

20.02.2025 doi: 10.59704/342ef4175aeeb0bc

In the judgment *Cannavacciuolo and Others v. Italy* of 30 January 2025, the European Court of Human Rights unanimously found a violation of Article 2 ECHR on account of the State's failure to protect the right to life of residents in an area of Southern Italy known as the "Land of Fires" (*Terra dei Fuochi)*. This term, coined in 2003 by an environmental organization, refers to the frequent presence of toxic smoke columns in the agricultural fields of the Naples and Caserta provinces, caused by the clandestine burning of waste. For over thirty years, an illegal waste disposal system, also involving hazardous waste, controlled by organized crime, has existed in these areas, offering low-cost services to industries and businesses, resulting in severe environmental contamination. This is the first judgment linking a violation of the right to life to the *prolonged exposure to pollutants* released into the environment. The decisive element for the applicability of the right to life has been a shift in the Court's approach to the causal link requirement that triggers a violation of Article 2. The *Cannavacciuolo* judgment should therefore be seen as a turning point for climate and environmental justice.

Environmental pollution and the right to life

So far, in the context of environmental litigation, the European Court has applied the right to life in cases of an obvious causal link between the risk factor and the victim's death. For example, the applicability (and the violation) of the right to life was affirmed in the leading case *Öneryildiz and Others v. Turkey*, concerning an explosion at a rubbish tip that buried many persons under a landslide mixed with waste. Ten years later, the Court reached the same conclusion in the case of *Brincat and Others v. Malta*, where the applicants were the heirs of a worker who died of mesothelioma after being exposed to asbestos. The right to life also applies whenever people have been exposed to a serious and imminent risk of death, even if they ultimately survived (see, for example, the cases of *Kolyadenko and Others v. Russia* and *Budayeva and Others v. Russia*, both concerning individuals who survived floods).

The causal link with death (or at least the serious and imminent danger to life) is difficult to prove in cases of environmental *pollution*. This is partly the case because the event does not occur immediately, but only following long exposures. Moreover, pollution-related illnesses are very often multifactorial, and therefore potentially attributable to alternative chains of causation. For these reasons, the Court has so far utilized Article 8, the right to private and family life, when dealing with environmental pollution cases. Since the leading case *López Ostra v. Spain* (concerning toxic emissions from a waste treatment plant), it is well-established case-law that Article 8 encompasses a broad set of interests which can be affected by a polluted environment, such as health, personal tranquility and the enjoyment of one's home. Generally, causation is easier to prove in Article 8 cases than in the context of the right to life. It is sufficient to show that the pollution has caused a decrease in the claimant's well-being and quality of life.

A sufficient causal link

In *Cannavacciuolo* the Italian Government argued that Article 2 could not apply due to the multifactorial nature of the diseases alleged by the applicants and the lack of proof of individual causation between their exposure to waste and each specific pathology (§223-226). However, the Court thought otherwise, on the basis of two sets of arguments. Firstly, the judges emphasized that the pollution originated from crimi-

nal activities consisting in waste trafficking, carried out entirely outside any regulatory framework (§384). The reasoning is not clear as to *why* the Court deemed that such a criminal background was relevant for the purpose of ruling on the applicability of Article 2 instead of Article 8. Perhaps the Court intended to emphasize the greater seriousness of the context, as opposed to contexts where the pollution stems from lawful activities.

Secondly, and more significantly, the Court found that the causal link between waste-related pollution and the increased rate of diseases and premature deaths, as highlighted by epidemiological studies, constituted sufficient evidence to trigger the application of Article 2. The Court took the position that, given epidemiological evidence of a critical health situation, Italy should have reacted promptly, by adopting measures which would have at least mitigated the risks for the exposed population. Such an obligation had existed since the '90s, that is even when evidence of those risks was not yet well-established, as a result of the precautionary principle, which imposes upon authorities the duty to prevent harmful events in context of scientific uncertainty (§388-391).

There are two fundamental differences between the Government's and the Court's position. The first is that the Government approached the issue of causation from an "*ex post*" perspective, asserting that the applicability of Article 2 would have required proof of causation in terms of the "but-for" test. This test is nearly impossible to satisfy in the case of multifactorial diseases. The Court, by contrast, adopted an *ex ante* perspective, asking whether and when the scientific evidence had become sufficiently clear to make the risk of death known to the authorities. The approach adopted by the Court seems more consistent with the assessment of the responsibility of the State under Article 2. To ensure that the protection of this right is practical and effective, the authorities must be required to act diligently from the very moment they are aware of the existence of a danger to people's lives, especially if it is a danger affecting a large number of people.

The Court and the Government further differed in the weight they attributed to epidemiological studies indicating an increased incidence of fatal diseases. While the Government emphasized that these studies cannot prove *individual causation* (i.e. the causal link between toxic exposure and the disease affecting a single person), the Court considered it sufficient that they demonstrated a serious and imminent risk of death *within the population* of exposed individuals. This is a major shift away from the Court's previous approach in cases concerning environmental pollution. Only a few years ago, in *Cordella and Others v. Italy*, the Court had applied Article 8 instead of Article 2, despite epidemiological studies showing an increase in mortality among residents who lived near a steel plant. This shift is to be welcomed because even though it does not weaken the causal requirement, it gives due weight to epidemiology: when there is a causal relationship between a risk factor and the increase of diseases in the exposed population, you should assume that each individual belonging to that population has experienced an increased risk of developing the disease.

Practical implications of the right to life vs. the right to private life

The *Cannavacciuolo* judgment choice to apply article 2 instead of article 8 has practical consequences.

Article 8's protections are relatively flexible, with the State being allowed to restrict the right according to the usual proportionality test, including for economic interests (Article 8, para. 2). As a result, when states define the regulatory framework governing polluting activities, they enjoy broad discretion in balancing all interest at stake, including the above-mentioned interests inherent to people's "well-being". Conversely, the right to life receives quasi-absolute protection under the Convention. Its deprivation is only permitted under very limited circumstances (self-defense, lawful arrests, quelling of riots), which do not apply in environmental matters. It only grants States discretion regarding the choice of measures to protect life, within the framework of the traditional "margin of

appreciation" that characterizes the fulfillment of positive obligations.

In the *Cannavacciuolo* case, the European Court condemns the inaction of the Italian authorities. Information regarding the illicit trafficking of waste first emerged some 40 years ago. But the government has failed to adopt any measures. It has neither conducted any risk assessment such as the identification of polluted areas and verification of pollution levels in air, water, and soil. Nor has it undertaken any risk management, such as the imposition of bans on the use of contaminated areas and implementation of remediation measures. Furthermore, the authorities did not launch an information campaign capable of adequately informing the population about the ongoing dangers. Given the seriousness of the State's omissions, it is likely that the Court would have come to the same conclusions under the angle of Article 8. However, the recognition of the violation of the right to life carries greater weight by reason of its higher rank in the system outlined by the Convention. It heightens the State's responsibility for the violation and grants the victims a right to higher compensation.

Second, compared to Article 8, Article 2 imposes significantly stricter and more pervasive positive obligations on the State regarding criminalization of right-infringing conduct. Article 8 only mandates the criminalization of intentional assaults, in conjunction with Article 3 (see e.g. *Y v. Bulgaria*, concerning sexual abuse and *Buturuga v. Romania*, concerning domestic violence). Under Article 2, the same obligation has been extended to include assaults that occur as a result of serious negligence and recklessness. These are frequent forms of *mens rea* in environmental pollution cases (see, in this regard, the above mentioned leading case *Öneryildiz*). To fulfill its criminalization obligations, the State must first establish an effective legal framework, including criminal offenses with penalties proportionate to the importance of the violated right. Furthermore, the State must ensure that criminal provisions are effectively enforced through an efficient procedural system, equipped with adequate investigative tools. Finally, the State must ensure limitation periods commensurate with the complexity of investigations and avoid the introduction of grounds for exemption from liability.

With respect to these obligations as well, the Court criticized Italy's conduct, noting that, until 2015, the country lacked a framework of environmental crimes capable of effectively addressing offenses of the severity that had occurred in the "Land of Fires".

Cannavacciuolo and the future of environmental litigation

The case of "Land of Fires" has one a significant peculiarity: the pollution originates from criminal activities related to waste trafficking, carried out entirely outside any regulatory framework. The Court itself highlights this element and emphasizes that it "bore it in mind" in assessing the applicability of Article 2. This raises the question whether this peculiarity reduces the case's precedential value for future environmental litigation. It could provide a reason to preclude the extension of its principles to cases concerning hazardous human activities that are polluting but nonetheless authorized and regulated. However, as long as the key element for making Article 2 applicable is the existence of a serious and immediate danger to human life, then it shouldn't matter whether such danger arises from an unlawful or lawful activity that occasionally exceeds the permissible risk threshold. In both cases, the State remains subject to the positive obligations normally deriving from Article 2. What might change are the ways in which the obligation is fulfilled, e.g. with regard to the penalties. These may be of different severity depending on whether the polluting activity is completely unlawful or only contrary to certain provisions, or whether it is intentional or merely negligent.

Conclusion

Article 2's applicability to environmental pollution is of paramount importance for the future of environmental and climate litigation. Many Member States of the Council of Europe remain reluctant to pass reforms capable of addressing the threats that the current model of growth poses to human health and life. Human rights litigation therefore appears, at present,

the most effective way for restoring a proper balance among all the interests at stake. In this respect, ensuring that the right to a safe and clean environment, which is not formally provided by the Convention, is rooted (also) in Article 2, would represent the strongest possible safeguard against any decision of economic and productive nature which could jeopardize people's life.

ABOUT THE AUTHOR

Stefano Zirulia

Stefano Zirulia is an associate professor of criminal law at the University of Milan. His main area of research is in the relationship between criminal law and fundamental rights, with a special focus on immigration criminal law and environmental criminal law.

SUGGESTED CITATION

Zirulia, Stefano: A New Step in the Greening of the Right to Life: The ECtHR Judgment on the Land of Fires, Verfassungsblog, 20.02.2025, doi: 10.59704/342ef4175aeeb0bc.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250221-001114-0.