A Step Forward in Italian Climate Litigation

Preliminary Remarks on Greenpeace and Others v. ENI and Others

Giorgia Valentini & Chiara Gentile

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Climate litigation is increasingly becoming a hot topic of debate in Italy. This especially concerns the question of jurisdiction of the Italian judiciary and the potential liability of both public and private actors for climate inaction (see here and here). On 18 July 2025, the Joint Sections of the Italian Supreme Court of Cassation ("SCC") delivered an Order on jurisdiction in a climate change-related case brought by citizens and environmental associations seeking to hold a fossil fuel company and its main shareholders liable for damages caused by GHG emissions. For the first time, the SCC remarkably affirmed the jurisdiction of the Italian judiciary and provided guidance on previously unaddressed procedural issues arising in the context of climate litigation, namely whether the Italian judicial authority, precisely the Civil Tribunal, may assert jurisdiction over climate-related damages.

Factual and procedural background of the case

On 9 May 2023, two environmental associations – Greenpeace O.n.l.u.s. and Recommon E.t.s. – and twelve Italian citizens residing in areas particularly exposed to the effects of climate change, filed a lawsuit before the Ordinary Tribunal of Rome ("ToR"). They sued the fossil fuel company ENI S.p.A. and its two majority shareholders, the Italian Ministry of Economy and Finance ("MEF") and Cassa Depositi e Prestiti S.p.A. ("CDP"). CDP is the major actor in Italy for economic development, focusing on long-term investments and serving as the government's arm for carrying out public policy mandates.

The plaintiffs claimed that ENI's decarbonization plan is inconsistent with both the best scientific knowledge available on climate change and the climate objectives set out in the Paris Agreement. They alleged that ENI's actions not only contribute to global warming – bringing with it serious environmental risks and health impacts – but also infringe upon human rights protected by the Italian Constitution as well as EU and international law. They also claimed that the MEF and CDP, as controlling shareholders of ENI, are jointly responsible for not stopping such polluting activities. The shares they hold in the company are large enough for them to be able to exercise considerable influence on ENI.

Based on Italian tort law provisions, the plaintiffs primarily sought to ascertain that the defendants have failed and continue to fail to comply with internationally recognized climate obligations. This is because ENI's activities – operating either directly or through its controlled companies abroad – have released significant amounts of greenhouse gas (GHG) emissions into the atmosphere. They requested the defendants be held liable for present and future pecuniary and non-pecuniary damage resulting from the consequences of climate change, particularly to their health, safety, and property. Consequently, they asked for an order requiring ENI to limit the aggregate annual volume of GHG emissions into the atmosphere by at least 45% at the end of 2030 compared to 2020, or to an extent consistent with internationally established temperature targets. Accordingly, they also asked to order the MEF and CDP to adopt an operational policy that defines and monitors the climate objectives that ENI must pursue consistently with the Paris Agreement and current scientific evidence. In the alternative, they asked the ToR to order the defendants to take all necessary steps to ensure compliance with the scenarios developed by the international scientific community to keep the temperature increase within 1.5 °C.

On procedural grounds, the defendants objected to the ToR's jurisdiction, arguing that the claim

concerns the adoption of measures requiring political and legislative assessments that fall outside the scope of judicial power. They also contended the lack of jurisdiction of the Italian judicial authority, since the plaintiffs alleged, in support of their claim, conduct carried out abroad by ENI's subsidiary companies not party of the case.

On 10 June 2024, the plaintiffs then filed an appeal under Article 41 of the Italian Code of Civil Procedure, seeking a ruling on the question of jurisdiction. This provision allows any party to request the Joint Sections of the SCC to determine whether ordinary courts have jurisdiction, provided the case has not yet been decided on the merits at first instance. Such a ruling is instrumental and incidental to the main proceedings as it aims at removing any doubts as to the identification of the court with jurisdiction over the dispute. Accordingly, the ruling did not decide the merits of the case but solely determined whether the ToR has jurisdiction. What it did address for the first time, however, are some pivotal issues in Italian climate litigation: the legal nature of the defendant, the liability of ENI's major shareholders, and the liability of a parent company for the emission caused by its subsidiaries.

The legal nature of the defendant

The questions raised by the plaintiffs are completely new to the SCC's caselaw, and even lower courts have addressed similar issues just once, in the (in)famous *A Sud* case (also known as *Giudizio Universale* case, see Lattanzi on this blog). In *A Sud* the defendant was a public authority – the Presidency of the Council of Ministers – and the ToR declared the absolute lack of jurisdiction based on the principle of separation of powers on the ground that the claim encroached upon the domaine réservé of "politics" (see Vinken and Mazzotti on this blog).

Conversely, in *Greenpeace et al. v. Eni et al.* ("GP") the claim is brought against a private actor (which is nonetheless partly controlled by the state). *GP* differs from *A Sud* and foreign precedents concerning climate change obligations (such as *Neubauer*, *Urgenda*, and *Notre Affaire à tous*) also because of the different type of judicial assessment required to ascertain the defendant's liability (§ 7.1 of Order No. 20381/2025). As highlighted by the SCC, those cases involved judicial review of the exercise of *state* powers to determine whether adequate measures to meet climate goals had been adopted. By contrast, the claim of the present case seeks to hold fossil fuel companies directly accountable for failing to reduce GHG emissions generated by their activities. In this respect, the claim in GP appears more akin to that in *Milieudefensie et al. v. Royal Dutch Shell plc*.

The compensation for damages sought in this case is grounded in the alleged violation of the plaintiffs' fundamental rights, to life, health, property, private life, as well as the rights of future generations, as protected by the Italian Constitution (Articles 2, 9, 32, 41), the EUCFR (Articles 2 and 7), and the ECHR (Articles 2 and 8) in light of *KlimaSeniorinnen*. The plaintiffs invoke specific provisions of the Italian Civil Code – Articles 2043, 2050 and 2051– which demand, among other things, appropriate measures to prevent harm in case of dangerous activities, and establish liability for damage caused by things or materials under the custody or control of the defendant. The plaintiffs claim thatthose provisions, read in conjunction with constitutional and international human rights protection and climate objectives, impose a duty of care on private companies to curb climate change. According to the SCC, such a judicial assessment does not entail any encroachment upon the political sphere and is thus irrelevant for the purposes of jurisdiction. More precisely, plaintiffs are not asserting the liability of the state legislator for acts, measures, and conduct that are manifest expressions of the political sphere; rather, they are alleging the liability of the defendants, as entities operating directly or indirectly in the fossil fuel production and distribution sector, for damages caused by their failure to adopt the necessary measures to reduce the climate-altering emissions generated by their business activities. While not delving deeply into the matter, the SCC relies on this reasoning to distinguish *GP* from the *A Sud* case, the former being a tort action against a private company

and the latter an action seeking to affirm the liability of the state (§ 7.1).

The liability of majority shareholders

While the MEF is undisputedly a public actor, the nature of CDP remains controversial (see here). Ever since its transformation from public entity to joint-stock company in 2003, many still debate its substantial public nature. However, in *GP* both parties are involved not in their capacity as public administrators but rather in their position as *majority shareholders* accused of failing to use their controlling power to align ENI's activities with climate obligations. Accordingly, the liability allegedly attached to the MEF and CDP derives from their position within the private company instead of their role as authorities performing acts belonging to the political sphere. The task entrusted to the judicial authority is therefore only to verify whether the international and constitutional sources invoked are suitable for imposing a duty of intervention directly on the defendants, such as to establish their tort liability and therefore justify their obligation to a specific performance, pursuant to Article 2058 of the Italian Civil Code (§ 7.1).

While substantive liability will be addressed in the merits by the ToR, the SCC clarifies that public actors can be summoned to court and tried for joint responsibility for damages resulting from climate change due to their failure to reduce GHG emissions (§ 7.2). This may greatly impact public administrations such as the MEF, the institutional body holding most of the public shareholdings in private companies.

Jurisdiction and parent company liability

The defendants challenged the jurisdiction of Italian courts over damages caused abroad, namely those produced by subsidiary companies controlled by ENI. The SCC addresses three main issues (§ 8). First, the plaintiff did not target the liability of ENI's foreign subsidiaries, but solely that of the parent company for the activities carried out by the entire group under its control. ENI, the parent company, is alleged to have caused harm to the plaintiffs' life, health, and well-being, as well environmental damage to the detriment of future generations.

Second, with regard to the criteria to determine territorial jurisdiction, the SCC refers to EU Regulation 1215/2012, specifically to Articles 4(1) and 7(2). These provisions have been interpreted by the European Court of Justice as granting plaintiffs the option to choose between two f*ora*: the place where the event giving rise to the damage occurred – i.e. where the harmful conduct took place – and the place where the damage itself occurred. The latter has been interpreted restrictively, as referring to the "initial damage", and not to the negative consequences of damage occurring elsewhere (see *C-452/22, MOL Magyar Olaj*; *C-709/19, Vereniging van Effectenbezitters*; *C-451/18, Tibor-Trans*; for a different conclusion, see the German case *Lliyua v. RWE*, commented on this blog by *Grimm and Schirmer*). In *GP*, Italian jurisdiction can be affirmed on the basis of either of the two criteria: the harmful conduct – namely, the GHG emissions – occurred in places where ENI and its subsidiary companies are domiciled, including Italy (where ENI is headquartered), whereas the alleged damage occurred in Italy. Accordingly, a sufficient territorial link with Italy is established under both criteria, and Italian jurisdiction is affirmed.

Third, the SCC rejects the defendants' objection that certain GHG emissions originate from companies that are legally distinct from ENI and therefore cannot be attributed to it. The Supreme Court clarifies that the question of ENI's potential liability for those emissions falls outside the scope of the ruling on jurisdictions, as it pertains to the merits of the case.

The road ahead for Italian climate litigation

Even though we have to wait for the ToR's judgment on the merits of the case, the SCC's ruling answers important questions on jurisdiction and liability in the field of climate litigation against fossil fuel companies.

First, ordinary courts may assert jurisdiction over cases addressing damages caused by climate-altering activities led by private actors. Second, public administrations as major shareholders in private companies may be held liable for failure to control such compa-

nies' industrial and commercial strategies. Third, a parent company can be sued in the jurisdiction of its legal seat, even if the harm caused to fundamental rights stems from GHG emissions produced by all entities of the group. Fourth, and related to the latter, a territorial link is necessary for establishing jurisdiction of the Italian judiciary over damages caused by climate change. A potentially relevant issue in future Italian climate litigation, although not addressed in *GP*, concerns the extraterritorial responsibility of fossil fuel companies, i.e. persons residing abroad and claiming ENI's liability for damages caused by its climate altering activities to their fundamental rights.

Ultimately, *GP* appears to be a trailblazer for the development of climate caselaw in Italy, being the first recognition of Italian jurisdiction in climate change-related cases.

ABOUT THE AUTHORS

Giorgia Valentini
Giorgia Valentini is PhD student in Constitutional Law at Sant'Anna School of Advanced Studies in Pisa.
Chiara Gentile
Chiara Gentile is a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law.Chiara Gentile is a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law.

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