

# **Protection of the environment by the European Courts: comparing Ilva (CJEU) with Cordella (ECtHR)**

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## Why compare Ilva with Cordella?

Two judgments on the **same environmental problem**, Ilva by the CJEU and Cordella by the ECtHR → **significant differences** → allows **interesting comparisons** in terms of their respective:

- Legal basis
- Approach
- Scope
- Impact

Allowing conclusions to be drawn on the **pros and cons of** each approach and their **mutual relationship**.

## The environmental problem in a nutshell:

- Ilva Plant in Taranto: the **largest industrial steelworks in Europe**.
  - Since 1990 identified as being of **high environmental risk** → **decontamination plan** requested.
  - **Causal link** between the plant's **emissions** and **adverse health effects** confirmed by several reports and studies.
  - Since 2012, all **deadlines** for implementing the **environmental plan** have been several times **extended**.
  - In 2011, the **CJEU** ruled that Italy **failed to meet its obligations** under Directive 2008/1/EC on pollution prevention and control (*Commission v. Italy, C-50/10*).
- In short: a never ending **environmental disaster**.

## The proceedings before the European Courts:

- Ilva and Others (25.6.2024, C-626/22): collective action brought by **300,000 residents** seeking protection of their rights to **health and a sustainable environment**.
  - Applicants requested the **closure of the plant's "hot zone"** or **cessation of specific activities** until compliance with environmental standards is achieved.
  - The **Milan District Court** requested a preliminary ruling from the CJEU on the **requirements** which the **operating permit** issued to the Ilva steelworks must meet under **Directive 2010/75 on industrial emissions**.
- Cordella and Others v. Italy (24.1.2019, 54414/13): **180 applicants** complaining under **Articles 8 and 13** of the Convention about failure by Italy:
  - to adopt **legal and statutory measures** to protect their health and the environment
  - to provide them with **information** concerning the pollution and the attendant risks for their health.
  - → **more general** complaint, alleging **failures** as regards the **duty of protection** of the authorities.

## The judgments of the European Courts

### Ilva (25.6.2024):

- **Procedures for granting an operation permit** must take into account a **prior assessment** of the effects of the activity on the **environment** and **human health**.
- Permits must account for **all harmful emissions**, including those not initially assessed.
- **Repeated extensions of compliance deadlines** are prohibited when **significant risks** to health and the environment are identified. Operations must be **suspended** in such cases.

### Cordella (24.1.2019):

- **Violations** of Articles 8 and 13: **failure** by the authorities to take **adequate measures** + to **properly inform** the population
- Indications under **Article 46** concerning the **execution** of the judgment:
  - No **full execution** without **decontamination** of the area
  - as an **urgent priority**
  - → **Committee of Ministers** to remain active until **completion of the decontamination**

## Differences

- Legal basis
- Scope
- Factual findings
- Operative part
- Implementation

→ Conflict, complementarity or duplication of work?



## 1. Legal basis

### Cordella

- **Fundamental rights** → **general** provisions
  - ✓ Articles 8 (private and family life + home)
  - ✓ Article 13 (effective remedy)
  - ✓ Article 46 (execution of judgments)
- Covering the **whole situation**, past, present and future

### Ilva

- **Secondary law** → **detailed** prescriptions
  - ✓ **Directive** 2010/75 on industrial emissions
  - ✓ Read in the light of:
    - Articles 191 and 192 **TFEU** (environment)
    - Articles 35 and 37 **EU-Charter** (health and environment)
- Covering a **particular aspect** of the situation:
  - ✓ Whether the **permit** was validly granted
  - ✓ Whether the **operation** of steelworks should be **suspended**

## 2. Scope of the judgment

### Cordella

- **General**, covering **all aspects** of the situation
  - ✓ **Decontamination** of the site as the **general objective**, which covers **all the causes** of the pollution at stake

### Ilva

- **Specific, focused** on the procedure for granting or reconsidering a **permit to operate** such an installation
  - ✓ Judgment **focused on the future**: conditions for the granting of permits
  - ✓ Including the possibility of a **suspension of the operation**

### 3. Factual findings

#### Cordella

- ECtHR relying in part on **domestic findings** (§ 160)
  - ✓ Notably on the **reports on the causal link** between air pollution and health damages
- But making its **own findings** → making its **own assessment of the causes** of the situation:
  - ✓ Extreme **slowness** of the authorities
  - ✓ Government **interventions** to ensure the continuation of the activity
  - ✓ Administrative and criminal **immunities**
  - ✓ Situation « at an **impasse** »
- → judgment **on the merits** → deciding the case at last instance → **European judicial authority**

#### Ilva

- Preliminary ruling (267 TFEU) → pure **interpretation** of Directive 2010/75 → **no factual findings** by the CJEU
- Instead, **reliance on the referring court**
  - ✓ For the **factual information** (§§ 98, 100, 101, 120, 124)
  - ✓ For the **implementation of the judgment**: “it is for the referring court to **assess** whether the special rules ... had the effect of **excessively deferring** ... the implementation of the measures ...” (§ 131)
- → the CJEU is **not taking a stand** → evaluations on the merits left to **national courts**

## 4. Operative part

### Cordella

- **Indications** under **Article 46** as to how the judgment is to be implemented:
  - ✓ **General objective: decontamination** of the steelworks and the area as an urgent priority
  - ✓ Not for the ECtHR to dictate the **modus operandi**
  - ✓ Rather:
    - under the supervision of the **Committee of Ministers** → flexibility
    - on the basis of the **environmental plan** by the national authorities

### Ilva

- **Detailed prescriptions** on the **relevant criteria** under Directive 2010/75 for **granting or reconsidering a operation permit**
- Application and assessment **left to the referring court**
- Emphasis on the **suspension of the operation** of the steelworks as *ultima ratio*
- **No general decontamination** obligation

→ **Obligation of means** → short-term measure



→ **Obligation of result** → long-term objective

## 5. Implementation

### Cordella

- By the **national authorities** in general
- Always under the **supervision of the Committee of Ministers**
  - + Comprehensive
  - - Not judicial
  - - Slow
  - - No penalties
- **Infringement proceedings** exceptional (Art. 46 § 6 of the Convention)

### Ilva

- By the **referring court**
- **Infringement proceedings** (258-260 TFEU) as a possibility
  - - Not systematic
  - - At the initiative of the European Commission
  - - Limited in scope
  - - Heavy
  - + Judicial in the end (before the CJEU)
  - + Fines and penalties as a possibility

## Conclusion: conflict, complementarity or duplication?

- The **Strasbourg approach** is
  - **more comprehensive** but **less detailed** and **slower**
  - it helps not to lose sight of the **global picture**, i.e. the **global challenge** which environmental pollution represents
- The **Luxembourg approach** is
  - **less comprehensive, more detailed** and **quicker**
  - very helpful for the work of the **Committee of Ministers**, who is referring to the CJEU in its resolutions
- In addition, there is **cross-fertilisation**:
  - Both **European Courts** refer to each other in their respective judgments
  - The **Committee of Ministers** is placing hopes in the implementation of Ilva at domestic level
- Conclusion: neither conflict nor duplication, but **necessary complementarity**: not too much to bring about change!

**Thank you!**

**More information on the interplay between  
the Convention and EU law on:**

**[www.johan-callewaert.eu](http://www.johan-callewaert.eu)**