

CASE OF GUERRA AND OTHERS v. ITALY

(116/1996/735/932)

JUDGMENT

STRASBOURG

19 February 1998

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SUMMARY¹

Judgment delivered by a Grand Chamber

Italy – failure to provide local population with information about risk factor and how to proceed in event of an accident at nearby chemical factory

I. ARTICLE 10 OF THE CONVENTION

A. Government's preliminary objection (non-exhaustion of domestic remedies)

First limb – urgent application (Article 700 of the Code of Civil Procedure): would have been a practicable remedy if applicants' complaint had concerned failure to take measures designed to reduce or eliminate pollution; in instant case, however, such an application would probably have resulted in factory's operation being suspended.

Second limb – lodging a criminal complaint: would at most have secured conviction of factory's managers, but certainly not communication of any information.

Conclusion: objection dismissed (nineteen votes to one).

B. Merits of complaint

Right of public to receive information had been recognised by Court on a number of occasions in cases concerning restrictions on freedom of press, as a corollary of specific function of journalists, which was to impart information and ideas on matters of public interest – facts of present case were, however, clearly distinguishable from aforementioned cases since applicants complained of a failure in system set up pursuant to relevant legislation – although prefect had prepared emergency plan on basis of report submitted by factory and plan had been sent to Civil Defence Department on 3 August 1993, applicants had yet to receive relevant information.

Freedom to receive information basically prohibited a government from restricting a person from receiving information that others wished or might be willing to impart to him – that freedom could not be construed as imposing on a State, in circumstances such as those of present case, positive obligations to collect and disseminate information of its own motion.

Conclusion: Article 10 not applicable (eighteen votes to two).

II. ARTICLE 8 OF THE CONVENTION

Direct effect of toxic emissions on applicants' right to respect for their private and family life meant that Article 8 was applicable.

Applicants complained not of an act by State but of its failure to act – object of Article 8 was essentially that of protecting individual against arbitrary interference by public authorities – it did not merely compel State to abstain from such interference: in

addition to that primarily negative undertaking, there might be positive obligations inherent in effective respect for private or family life.

In present case all that had to be ascertained was whether national authorities had taken necessary steps to ensure effective protection of applicants' right to respect for their private and family life.

Ministry for the Environment and Ministry of Health had jointly adopted conclusions on safety report submitted by factory – they had provided prefect with instructions as to emergency plan, which he had drawn up in 1992, and measures required for informing local population – however, District Council concerned had not by 7 December 1995 received any document concerning the conclusions.

Severe environmental pollution might affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely – applicants had waited, right

up until production of fertilisers had ceased in 1994, for essential information that would have enabled them to assess risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in event of an accident at factory.

Respondent State had not fulfilled its obligation to secure applicants' right to respect for their private and family life.

Conclusion: Article 8 applicable and violation (unanimously).

III. ARTICLE 2 OF THE CONVENTION

Conclusion: unnecessary to consider case under Article 2 also (unanimously).

IV. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary damage: not shown.

Non-pecuniary damage: each applicant awarded a specified sum.

B. Costs and expenses

Having regard to its lateness and amount already granted in legal aid, Court dismissed claim.

Conclusion: respondent State to pay each applicant a specified sum (unanimously).

COURT'S CASE-LAW REFERRED TO

9.10.1979, *Airey v. Ireland*; 26.3.1987, *Leander v. Sweden*; 21.2.1990, *Powell and Rayner v. the United Kingdom*; 19.2.1991, *Zanghì v. Italy*; 27.8.1991, *Demicoli v. Malta*; 27.8.1991, *Philis v. Greece*; 26.11.1991, *Observer and Guardian v. the United Kingdom*; 25.6.1992, *Thorgeir Thorgeirson v. Iceland*; 9.12.1994, *López Ostra v. Spain*; 8.6.1995, *Yağcı and Sargun v. Turkey*

In the case of **Guerra** and Others v. Italy²,
The European Court of Human Rights, sitting, in accordance with Rule 53 of Rules of Court B³, as a Grand Chamber composed of the following judges:

Mr R. Bernhardt, *President*,
Mr Thór Vilhjálmsson,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr B. Walsh,
Mr R. Macdonald,
Mr C. Russo,
Mr A. Spielmann,
Mrs E. Palm,
Mr A.N. Loizou,
Sir John Freeland,
Mr M.A. Lopes Rocha,
Mr G. Mifsud Bonnici,
Mr J. Makarczyk,
Mr B. Repik,
Mr P. Jambrek,
Mr P. Kūris,
Mr E. Levits,
Mr J. Casadevall,
Mr P. van Dijk,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,
Having deliberated in private on 28 August 1997 and 27 January 1998,
Delivers the following judgment, which was adopted on the last-mentioned date:
PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 16 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 14967/89) against the Italian Republic lodged with the Commission under Article 25 by forty Italian nationals on 18 October 1988. The names of the applicants are: Ms Anna Maria **Guerra**, Ms Rosa Anna Lombardi, Ms Grazia Santamaria, Ms Addolorata Caterina Adabbo, Ms Anna Maria Virgata, Ms Antonetta Mancini, Ms Michelina Berardinetti, Ms Maria Di Lella, Ms Maria Rosa Porcu, Ms Anna Maria Lanzetta, Ms Grazia Lagattolla, Ms Apollonia Rinaldi, Ms Renata Maria Pilati, Ms Raffaella Ciuffreda, Ms Raffaella Lauriola, Ms Diana Gismondi, Ms Filomena Totaro, Ms Giulia De Feudis, Ms Sipontina Santoro, Ms Maria Lucia Rita Colavelli Tattilo, Ms Irene Principe, Ms Maria De Filippo, Ms Vittoria De Salvia, Ms Anna Totaro, Ms Maria Telera, Ms Grazia Telera, Ms Nicoletta Lupoli, Ms Lisa Schettino, Ms Maria Rosaria Di Vico, Ms Gioia Quitadamo, Ms Elisa Anna Castriotta, Ms Giuseppina Rinaldi, Ms Giovanna Gelsomino, Ms Antonia Iliana Titta, Ms Concetta Trotta, Ms Rosa Anna Giordano, Ms Anna Maria Trufini, Ms Angela Di Tullo, Ms Anna Maria Giordano and Ms Raffaella Rinaldi.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby **Italy** recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

2. On 4 October 1997 the applicants designated the lawyer who would represent them (Rule 31 of Rules of Court B). The lawyer was given leave by the President of the Chamber to use the Italian language (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 17 September 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, had drawn by lot the names of the other seven members, namely Mr F. Matscher, Mr A. Spielmann, Sir John Freeland,

Mr M.A. Lopes Rocha, Mr J. Makarczyk, Mr J. Casadevall and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Italian Government (“the Government”), the applicants’ lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicants’ memorial on 14 April 1997 and the Government’s memorial on 16 April.

5. On 29 April 1997 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President’s instructions.

6. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 May 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr G. Raimondi, *magistrato*, on secondment to the
Diplomatic Legal Service,
Ministry of Foreign Affairs, *co-Agent*,

Mr G. Sabbeone, *magistrato*, on secondment to the
Legislative Office, Ministry of Justice, *Counsel*;

(b) *for the Commission*

Mr I. Cabral Barreto, *Delegate*;

(c) *for the applicants*

Ms N. Santilli, Lawyer, *Counsel*.

The Court heard addresses by Mr Cabral Barreto, Ms Santilli, Mr Sabbeone and Mr Raimondi.

7. On 3 June 1997 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 53 § 1).

8. The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr Bernhardt, the Vice-President, together with the other members and the four substitutes of the original Chamber, the latter being Mr P. Kūris, Mr G. Mifsud Bonnici, Mr Thór Vilhjálmsson and Mr B. Repik (Rule 53 § 2 (a) and (b)). On 3 July 1997 the President, in the presence of the Registrar, drew by lot the names of the seven additional judges needed to complete the Grand Chamber, namely Mr F. Gölcüklü, Mr B. Walsh, Mr R. Macdonald, Mrs E. Palm, Mr A. N. Loizou, Mr P. Jambrek and Mr E. Levits (Rule 53 § 2 (c)).

9. On 29 July 1997 the President gave the Delegate of the Commission leave to make observations on the applicants’ claims for just satisfaction. The registry received the observations on 19 September 1997.

10. After consulting the Agent of the Government, the applicants’ representative and the Delegate of the Commission, the Grand Chamber had decided on 28 August 1997 that it was unnecessary to hold a new hearing following the relinquishment of jurisdiction by the Chamber (Rule 40 taken together with Rule 53 § 6).

11. As Mr Ryssdal was unable to take part in the deliberations on 27 January 1998, his place as President of the Grand Chamber was taken by Mr Bernhardt (Rule 21 § 6 taken together with Rule 53 § 6).

AS TO THE FACTS

I. The Circumstances of the case

A. The Enichem agricoltura factory

12. The applicants all live in the town of Manfredonia (Foggia). Approximately one kilometre away is the Enichem agricoltura company’s chemical factory, which lies within the municipality of Monte Sant’Angelo.

13. In 1988 the factory, which produced fertilisers and caprolactam (a chemical compound producing, by a process of polycondensation, a polyamide used in the manufacture of synthetic fibres such as nylon), was classified as “high risk” according to the criteria set out in Presidential Decree no. 175 of 18 May 1988 (“DPR 175/88”), which transposed into Italian law Directive 82/501/EEC of the Council of the European Communities (the “Seveso” directive) on the major-accident hazards of certain industrial activities dangerous to the environment and the well-being of the local population.

14. The applicants said that in the course of its production cycle the factory released large quantities of inflammable gas – a process which could have led to explosive chemical reactions, releasing highly toxic

substances – and sulphur dioxide, nitric oxide, sodium, ammonia, metal hydrides, benzoic acid and above all, arsenic trioxide. These assertions have not been disputed by the Government.

15. Accidents due to malfunctioning have already occurred in the past, the most serious one on 26 September 1976 when the scrubbing tower for the ammonia synthesis gases exploded, allowing several tonnes of potassium carbonate and bicarbonate solution, containing arsenic trioxide, to escape. One hundred and fifty people were admitted to hospital with acute arsenic poisoning.

16. In a report of 8 December 1988 a committee of technical experts appointed by Manfredonia District Council established that because of the factory's geographical position, emissions from it into the atmosphere were often channelled towards Manfredonia. It was noted in the report that the factory had refused to allow the committee to carry out an inspection and that the results of a study by the factory itself showed that the emission treatment equipment was inadequate and the environmental-impact assessment incomplete.

17. In 1989 the factory restricted its activity to the production of fertilisers, and it was accordingly still classified as a dangerous factory covered by *DPR 175/88*. In 1993 the Ministry for the Environment issued an order jointly with the Ministry of Health prescribing measures to be taken by the factory to improve the safety of the ongoing fertiliser production, and of caprolactam production if that was resumed (see paragraph 27 below).

18. In 1994 the factory permanently stopped producing fertiliser. Only a thermoelectric power station and plant for the treatment of feed and waste water continued to operate.

B. The criminal proceedings

1. Before the Foggia Magistrates' Court

19. On 13 November 1985 420 residents of Manfredonia (including the applicants) applied to the Foggia Magistrates' Court (*pretore*) complaining that the air had been polluted by emissions of unknown chemical composition and toxicity from the factory. Criminal proceedings were brought against seven directors of the impugned company for offences relating to pollution caused by emissions from the factory and to non-compliance with a number of environmental protection regulations.

Judgment was given on 16 July 1991. Most of the defendants escaped a prison sentence, either because the charges were covered by an amnesty or were time-barred, or because they had paid an immediate fine (*oblazione*). Only two directors were sentenced to five months' imprisonment and a fine of two million lire and ordered to pay damages to the civil parties, for having had waste dumps built without prior permission, contrary to the relevant provisions of *DPR 915/82* on waste disposal.

2. In the Bari Court of Appeal

20. On appeals by the two directors who had been convicted and by the Public Electricity Company (*ENEL*) and Manfredonia District Council, which had both joined the proceedings as civil parties claiming damages, the Bari Court of Appeal acquitted the directors on 29 April 1992 on the ground that the offence had not been made out but upheld the remainder of the impugned decision. The court held that the errors which the directors were alleged to have made in the management of the waste were in fact attributable to delays and uncertainties in the adoption and interpretation, particularly by the Region of Apulia, of regulations implementing *DPR 915/82*. Consequently, there was no damage that gave rise to a claim for compensation.

C. The approach of the authorities concerned

21. A joint committee of representatives from the State and the Region of Apulia was set up within the Italian Ministry for the Environment to implement the Seveso directive.

The committee ordered a technical survey, which was carried out by a panel established by an order of the Minister for the Environment of 19 June 1989. The panel had the following remit:

(a) to report on whether the factory conformed to environmental regulations as regards discharge of waste water, treatment of liquid and solid waste, emissions of gases, and noise pollution; to report on safety aspects; and to check what authorisations had been granted to the factory to those ends;

(b) to report on whether the factory site was compatible with its environment, having particular regard to the problems of protecting the health of the local population and the fauna and flora and of making appropriate use of the land;

(c) to suggest what action should be taken to obtain any missing data required to complete the reports under (a) and (b) above and to identify measures to be taken to protect the environment.

22. On 6 July 1989 the factory submitted the safety report required by Article 5 of *DPR 175/88*.

23. On 24 July 1989 the panel presented its report, which was sent to the State/Regional Joint Committee. The latter published its conclusions on 6 July 1990 and fixed 30 December 1990 as the date on which the report required by Article 18 of *DPR 175/88* on the risk of major accidents should be submitted to the Minister for the Environment. It also recommended:

(a) commissioning studies of the factory's safety and compatibility with its environment, additional analyses of disaster scenarios and of the preparation and implementation of emergency procedures;

(b) introducing a number of changes designed to reduce the atmospheric emissions drastically and to improve the treatment of waste water, making radical alterations to the production cycles for urea and nitrogen and carrying out studies on the pollution of the subsoil and on the hydrogeological structure of the factory site. These steps were to be taken within three years. The panel also referred to the need to solve the problems of liquid combustion and the reuse of sodium salts.

The panel further called for a public industrial-pollution monitoring centre, to be set up by 30 December 1990, to carry out periodic checks on the factory's practices in relation to public health and environmental protection and to act as an epidemiological observatory.

24. On 20 June 1989 the problems relating to the operation of the factory were raised in a parliamentary question to the Minister for the Environment. On 7 November 1989, in the European Parliament, a question on the same point was put to the Commission of the European Communities. Replying to the latter question, the relevant Commissioner stated that (1) Enichem had sent the Italian Government the safety report requested pursuant to Article 5 of *DPR 175/88*; (2) on the basis of that report the Government had opened an investigation, as required by Article 18 of *DPR 175/88* to check safety at the factory and, if appropriate, to identify any further safety measures needed; and (3) so far as the application of the Seveso directive was concerned, the Government had taken the requisite measures with regard to the factory.

D. Steps taken to inform the local population

25. Articles 11 and 17 of *DPR 175/88* require the relevant mayor and prefect to inform local inhabitants of the hazards of the industrial activity concerned, the safety measures taken, the plans made for emergencies and the procedure to be followed in the event of an accident.

26. On 2 October 1992 the Coordinating Committee for Industrial Safety Measures gave its opinion on the emergency plan that had been drawn up by the prefect of Foggia, in accordance with Article 17 § 1 of *DPR 175/88*. On 3 August 1993 the plan was sent to the relevant committee of the Civil Defence Department. In a letter of 12 August 1993 the under-secretary of the Civil Defence Department assured the prefect of Foggia that the plan would be submitted promptly to the Coordinating Committee for its opinion and expressed the hope that it could be put into effect as quickly as possible, given the sensitive issues raised by planning for emergencies.

27. On 14 September 1993 the Ministry for the Environment and the Ministry of Health jointly adopted conclusions on the factory's safety report of July 1989, as required by Article 19 of *DPR 175/88*. Those conclusions prescribed a number of improvements to be made to the installations, both in relation to fertiliser production and in the event of resumed caprolactam production (see paragraph 17 above) and provided the prefect with instructions as to the emergency plan for which he was responsible and the measures required for informing the local population under Article 17 of *DPR 175/88*.

In a letter of 7 December 1995 to the European Commission of Human Rights, however, the mayor of Monte Sant'Angelo indicated that the investigation for the purpose of drawing up conclusions under Article 19 was still continuing and that he had not received any documents relating to them. He pointed out that the District Council was still awaiting direction from the Civil Defence Department before deciding what safety measures should be taken and what procedures should be followed in the event of an accident and communicated to the public. He said that if the factory resumed production, the measures for informing the public would be taken as soon as the conclusions based on the investigation were available.

II. Relevant domestic law

28. As regards the obligation to inform the public on matters of environmental and public safety, Article 5 of *DPR 175/88* provides that any undertaking carrying on dangerous activities must submit a report to the Ministry for the Environment and the Ministry of Health giving details of, among other things, its activities, emergency procedures in the event of a major accident, the persons responsible for carrying these procedures out, and the measures taken by the undertaking to reduce the risks to the environment and public health. Article 21 of *DPR 175/88* provides that anyone in charge of an undertaking who fails to submit the report required by Article 5 may be sentenced to up to one year's imprisonment.

29. At the material time Article 11 § 3 of *DPR 175/88* provided that mayors were under a duty to inform the public of

- (a) the nature of the production process;
- (b) the nature and quantities of the substances involved;
- (c) the potential risks to employees and workers in the factory, members of the public and the environment;
- (d) the conclusions on the safety reports submitted by the factory pursuant to Article 5 and on any additional measures referred to in Article 19; and
- (e) the safety measures and procedures to be followed in the event of an accident.

Article 11 § 2 provided that, in order to protect industrial secrets, any person responsible for examining reports or information from the undertakings concerned was forbidden to disclose any information that he had thereby obtained.

30. Article 11 § 1 provided that data and information on industrial activities obtained pursuant to *DPR 175/88* could be used only for the purposes for which they had been requested.

That provision was partly amended by Legislative Decree no. 461 of 8 November 1995. Paragraph 2 of that decree provides for an exception to the ban on disclosure of industrial secrets in the case of certain information, namely that contained in an information sheet which the undertaking must complete and send to the Ministry for the Environment and the regional or inter-regional technical committee. Mayors' duties with regard to informing the public are unchanged and now appear in paragraph 4.

31. Article 17 of *DPR 175/88* also lays certain obligations on the prefect in the matter of providing information. In particular, paragraph 1 of that provision (now paragraph 1 *bis*) requires the prefect to draw up an emergency plan based on the information supplied by the factory and the Coordinating Committee for Industrial Safety Measures. That plan must be sent to the Ministry of the Interior and the Civil Defence Department. Paragraph 2 goes on to provide that, after drawing up the emergency plan, the prefect must adequately inform the population concerned of the hazards of the activities, the safety measures taken to prevent a major accident, the emergency procedures planned for the area outside the factory should a major accident occur and the procedures to be followed in the event of an accident. The amendments made to this Article in the aforementioned legislative decree include a new paragraph 1, to the effect that the Civil Defence Department must establish reference criteria for emergency planning and the adoption of measures for the supply of information to the public by the prefect, and repeal of paragraph 3, which provided that the information referred to in paragraph 2 had to be sent to the Ministry for the Environment, the Ministry of Health and the regional authorities concerned.

32. Section 14(3) of Law no. 349 of 8 July 1986, by which the Ministry for the Environment in **Italy** was created and the first legal provisions on environmental damage introduced, provides that everyone has a right of access to the information on the state of the environment which is, in accordance with the law, available at the offices of the administrative authorities and may obtain a copy on defrayment of the authorities' costs.

33. In a judgment (no. 476) of 21 November 1991 the Council of Administrative Law for Sicily (*Consiglio di Giustizia amministrativa per la Regione siciliana* – which in Sicily replaces the Supreme Administrative Court) held that the concept of “information on the state of the environment” included any information about human beings’ physical surroundings and concerning matters of some interest to the community. On the basis of those criteria, the Council of Administrative Law held that a district council was not justified in refusing to allow a private individual to obtain a copy of analyses of the fitness of water in the district in question for use as drinking water.

III. work by the Council of Europe

34. Of particular relevance among the various Council of Europe documents in the field under consideration in the present case is Parliamentary Assembly Resolution 1087 (1996) on the consequences of the Chernobyl disaster, which was adopted on 26 April 1996 (at the 16th Sitting). Referring not only to the risks associated with the production and use of nuclear energy in the civil sector but also to other matters, it states “public access to clear and full information ... must be viewed as a basic human right”.

PROCEEDINGS BEFORE THE COMMISSION

35. The applicants applied to the Commission on 18 October 1988. Relying on Article 2 of the Convention, they submitted that the lack of practical measures, in particular to reduce pollution levels and major-accident hazards arising out of the factory’s operation, infringed their right to respect for their lives and physical integrity. They also complained that the relevant authorities’ failure to inform the public about the hazards and about the procedures to be followed in the event of a major accident, as required in particular by Article 11 § 3 and Article 17 § 2 of Presidential Decree no. 175/88, infringed their right to freedom of information as guaranteed by Article 10.

36. On 6 July 1995 the Commission declared the application (no. 14967/89) admissible as to the complaint under Article 10 and inadmissible as to the remainder. In its report of 29 June 1996 (Article 31), it expressed the opinion by twenty-one votes to eight that there had been a breach of that Article. The full text of the Commission’s opinion and of the three dissenting opinions contained in the report is reproduced as an annex to this judgment⁴.

FINAL SUBMISSIONS TO THE COURT

37. The Government concluded their memorial by inviting the Court, as their primary submission, to dismiss the application for failure to exhaust domestic remedies and, in the alternative, to hold that there had been no violation of Article 10 of the Convention.

38. At the hearing the applicants’ counsel asked the Court to hold that there had been a violation of Articles 10, 8 and 2 of the Convention and to award her clients just satisfaction.
as to the law

I. scope of the case

39. Before the Commission the applicants made two complaints. Firstly, the authorities had not taken appropriate action to reduce the risk of pollution by the Enichem agricoltura chemical factory at Manfredonia (“the factory”) and to avoid the risk of major accidents; that situation, they asserted, infringed their right to life and physical integrity as guaranteed by Article 2 of the Convention. Secondly, the Italian State had failed to take steps to provide information about the risks and how to proceed in the event of a major accident, as they were required to do by Articles 11 § 3 and 17 § 2 of Presidential Decree no. 175/88 (“DPR 175/88”); as a result the applicants considered that there had been a breach of their right to freedom of information laid down in Article 10 of the Convention.

40. On 6 July 1995 the Commission, by a majority vote, upheld the Government’s preliminary objection that domestic remedies had not been exhausted in respect of the first issue and declared the remainder of the application admissible, “without prejudging the merits”.

In its report of 25 June 1996 it considered the case under Article 10 of the Convention and decided that that provision was applicable and had been breached since, at least during the period between the issue of DPR 175/88 in May 1988 and the cessation of fertiliser production in 1994, the relevant authorities were under an obligation to take the necessary steps so that the applicants, who were living in a high-risk area, could “receive adequate information on issues concerning the protection of their environment”. Eight members of the Commission expressed their disagreement in three dissenting opinions, two of which pointed to the possibility of a different approach to the case, on the basis that Article 8 of the Convention was applicable to the complaint declared admissible.

41. In their memorial to the Court and at the hearing the applicants relied also on Articles 8 and 2 of the Convention, contending that the failure to provide them with the relevant information had infringed their right to respect for their private and family life and their right to life.

42. Before the Court the Delegate of the Commission merely reiterated the conclusion set out in the report (that there had been a violation of Article 10), whereas the Government argued that the complaints under Articles 8 and 2 fell outside the compass of the case as delimited by the decision on admissibility. It is therefore necessary to determine as a preliminary issue the extent of the Court's jurisdiction *ratione materiae*.

43. The Court observes, firstly, that its jurisdiction "extend[s] to all cases concerning the interpretation and application of [the] Convention which are referred to it in accordance with Article 48" (see Article 45 of the Convention as amended in respect of States which have ratified Protocol No. 9) and that "In the event of dispute as to whether the Court has jurisdiction, the matter [is] settled by the decision of the Court" (Article 49).

44. Secondly, it reiterates that since the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant, a government or the Commission. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it and even under a provision in respect of which the Commission had declared the complaint to be inadmissible while declaring it admissible under a different one. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 13, § 29).

The Court has full jurisdiction only within the scope of the "case", which is determined by the decision on the admissibility of the application. Within the compass thus delimited, the Court may deal with any issue of fact or law that arises during the proceedings before it (see, among many other authorities, the Philis v. Greece judgment of 27 August 1991, Series A no. 209, p. 19, § 56).

45. In the instant case the grounds based on Articles 8 and 2 were not expressly set out in the application or the applicants' initial memorials lodged in the proceedings before the Commission. Clearly, however, those grounds were closely connected with the one pleaded, namely that giving information to the applicants, all of whom lived barely a kilometre from the factory, could have had a bearing on their private and family life and their physical integrity.

46. Having regard to the foregoing and to the Commission's decision on admissibility, the Court holds that it has jurisdiction to consider the case under Articles 8 and 2 of the Convention as well as under Article 10.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

47. The applicants alleged that they were the victims of a violation of Article 10 of the Convention, which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The alleged breach resulted from the authorities' failure to take steps to ensure that the public were informed of the risks and of what was to be done in the event of an accident connected with the factory's operation.

A. The Government's preliminary objection

48. As they had done before the Commission, the Government raised a preliminary objection of failure to exhaust domestic remedies, to which there were two limbs.

In the first limb the Government argued that it was possible to make an urgent application under Article 700 of the Code of Civil Procedure. If the applicants had feared imminent danger in connection with the operation of the factory, they could and should have sought a court order affording them instant protection of their rights. The Government acknowledged their failure to provide examples of similar cases in which Article 700 had been applied, but said that, regardless of whether that provision could be used against a public body, it could certainly be used against a factory which, as in the present case, had not produced a safety report as required by Article 5 of DPR 175/88 (see paragraph 28 above).

The second limb concerned the fact that the applicants had not complained to a criminal court about the lack of relevant information from, in particular, the factory, whereas such omissions constituted an offence under Article 21 of *DPR 175/88*.

49. The Court considers that neither remedy would have enabled the applicants to achieve their aim.

Even though the Government were unable to prove that an urgent application would have been effective as environmental cases had still not given rise to any authoritative judicial decision in the relevant area, Article 700 of the Code of Civil Procedure would have been a practicable remedy if the applicants' complaint had concerned a failure to take measures designed to reduce or eliminate pollution; indeed, that was the Commission's conclusion when it ruled on the admissibility of the application (see paragraph 40 above). In reality, the complaint in the instant case was that information about the risks and about what to do in the event of an accident had not been provided, whereas an urgent application would probably have resulted in the factory's operation being suspended.

As to instituting criminal proceedings, the safety report was submitted by the factory on 6 July 1989 (see paragraph 22 above) and if the applicants had lodged a criminal complaint they would at most have secured the conviction of the factory's managers, but certainly not the communication of any information.

The objection must therefore be dismissed.

B. Merits of the complaint

50. It remains to be determined whether Article 10 of the Convention is applicable and, if so, whether it has been infringed.

51. In the Government's submission, that provision merely guaranteed freedom to receive information without hindrance by States; it did not impose any positive obligation. That was shown by the fact that Resolution 1087 (1996) of the Council of Europe's Parliamentary Assembly and Directive 90/313/EEC of the Council of the European Communities on freedom of access to information on the environment spoke merely of access, not a right, to information. If a positive obligation to provide information existed, it would be "extremely difficult to implement" because of the need to determine how and when the information was to be disclosed, which authorities were responsible for disclosing it and who was to receive it.

52. Like the applicants, the Commission was of the opinion that the provision of information to the public was now one of the essential means of protecting the well-being and health of the local population in situations in which the environment was at risk. Consequently, the words "This right shall include freedom ... to receive ... information..." in paragraph 1 of Article 10 had to be construed as conferring an actual right to receive information, in particular from the relevant authorities, on members of local populations who had been or might be affected by an industrial or other activity representing a threat to the environment.

Article 10 imposed on States not just a duty to make available information to the public on environmental matters, a requirement with which Italian law already appeared to comply, by virtue of section 14(3) of Law no. 349 in particular, but also a positive obligation to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public. The protection afforded by Article 10 therefore had a preventive function with respect to potential violations of the Convention in the event of serious damage to the environment and Article 10 came into play even before any direct infringement of other fundamental rights, such as the right to life or to respect for private and family life, occurred.

53. The Court does not subscribe to that view. In cases concerning restrictions on freedom of the press it has on a number of occasions recognised that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest (see, among other authorities, the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, p. 30, § 59 (b), and the *Thorgeir Thorgeirson v. Iceland* judgment of 25 June 1992, Series A no. 239, p. 27, § 63). The facts of the present case are, however, clearly distinguishable from those of the aforementioned cases since the applicants complained of a failure in the system set up pursuant to *DPR 175/88*, which had transposed into Italian law Directive 82/501/EEC of the Council of the European Communities (the "Seveso" directive) on the major-accident hazards of certain industrial

activities dangerous to the environment and the well-being of the local population. Although the prefect of Foggia prepared the emergency plan on the basis of the report submitted by the factory and the plan was sent to the Civil Defence Department on 3 August 1993, the applicants have yet to receive the relevant information (see paragraphs 26 and 27 above).

The Court reiterates that freedom to receive information, referred to in paragraph 2 of Article 10 of the Convention, “basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him” (see the *Leander v. Sweden* judgment of 26 March 1987, Series A no. 116, p. 29, § 74). That freedom cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion.

54. In conclusion, Article 10 is not applicable in the instant case.

55. In the light of what was said in paragraph 45 above, the case falls to be considered under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicants, relying on the same facts, maintained before the Court that they had been the victims of a violation of Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

57. The Court’s task is to determine whether Article 8 is applicable and, if so, whether it has been infringed.

The Court notes, firstly, that all the applicants live at Manfredonia, approximately a kilometre away from the factory, which, owing to its production of fertilisers and caprolactam, was classified as being high-risk in 1988, pursuant to the criteria laid down in *DPR 175/88*.

In the course of its production cycle the factory released large quantities of inflammable gas and other toxic substances, including arsenic trioxide. Moreover, in 1976, following the explosion of the scrubbing tower for the ammonia synthesis gases, several tonnes of potassium carbonate and bicarbonate solution, containing arsenic trioxide, escaped and 150 people had to be hospitalised on account of acute arsenic poisoning.

In addition, in its report of 8 December 1988, a committee of technical experts appointed by the Manfredonia District Council said in particular that because of the factory’s geographical position, emissions from it into the atmosphere were often channelled towards Manfredonia (see paragraphs 14–16 above).

The direct effect of the toxic emissions on the applicants’ right to respect for their private and family life means that Article 8 is applicable.

58. The Court considers that **Italy** cannot be said to have “interfered” with the applicants’ private or family life; they complained not of an act by the State but of its failure to act. However, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, p. 17, § 32).

In the present case it need only be ascertained whether the national authorities took the necessary steps to ensure effective protection of the applicants’ right to respect for their private and family life as guaranteed by Article 8 (see the *López Ostra v. Spain* judgment of 9 December 1994, Series A no. 303-C, p. 55, § 55).

59. On 14 September 1993, pursuant to Article 19 of *DPR 175/88*, the Ministry for the Environment and the Ministry of Health jointly adopted conclusions on the safety report submitted by the factory in July 1989. Those conclusions prescribed improvements to be made to the installations, both in relation to current fertiliser production and in the event of resumed caprolactam production, and provided the prefect with instructions as to the emergency plan – that he had drawn up in 1992 – and the measures required for informing the local population under Article 17 of *DPR 175/88*.

In a letter of 7 December 1995 to the European Commission of Human Rights, however, the mayor of Monte Sant'Angelo indicated that the investigation for the purpose of drawing up conclusions under Article 19 was still continuing and that he had not received any documents relating to them. He pointed out that the District Council was still awaiting direction from the Civil Defence Department before deciding what safety measures should be taken and what procedures should be followed in the event of an accident and communicated to the public. He said that if the factory resumed production, the measures for informing the public would be taken as soon as the conclusions based on the investigation were available (see paragraph 27 above).

60. The Court reiterates that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (see, *mutatis mutandis*, the López Ostra judgment cited above, p. 54, § 51). In the instant case the applicants waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in the event of an accident at the factory.

The Court holds, therefore, that the respondent State did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8 of the Convention.

There has consequently been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. Referring to the fact that workers from the factory had died of cancer, the applicants also argued that the failure to provide the information in issue had infringed their right to life as guaranteed by Article 2 of the Convention, which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

62. Having regard to its conclusion that there has been a violation of Article 8, the Court finds it unnecessary to consider the case under Article 2 also.

V. application of article 50 of the convention

63. Article 50 of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

64. The applicants sought compensation for "biological" damage; they claimed 20,000,000,000 Italian lire (ITL).

65. In the Government's submission, the applicants had not shown that they had sustained any damage and had not even described it in detail. If the Court were to hold that there had been non-pecuniary damage, a finding of a violation would constitute sufficient just satisfaction for it.

66. The Delegate of the Commission invited the Court to award the applicants compensation that was adequate and proportionate to the considerable damage they had suffered. He suggested a sum of ITL 100,000,000 for each applicant.

67. The Court considers that the applicants did not show that they had sustained any pecuniary damage as a result of the lack of information of which they complained. As to the rest, it holds that the applicants undoubtedly suffered non-pecuniary damage and awards them ITL 10,000,000 each.

B. Costs and expenses

68. The applicants were granted legal aid for the proceedings before the Court in the amount of 16,304 French francs; however, at the end of the hearing their counsel lodged an application with the registry for an additional sum in respect of her fees.

69. Neither the Government nor the Delegate of the Commission expressed a view on the matter.

70. Having regard to the amount already granted in legal aid and the lateness of the application (see Rules 39 § 1 and 52 § 1 of Rules of Court B), the Court dismisses the claim.

C. Other claims

71. Lastly, the applicants sought an order from the Court requiring the respondent State to decontaminate the entire industrial estate concerned, to carry out an epidemiological study of the area and the local population and to undertake an inquiry to identify the possible serious effects on residents most exposed to substances believed to be carcinogenic.

72. The Government submitted that those claims were inadmissible.

73. The Delegate of the Commission expressed the view that a thorough and efficient inquiry by the national authorities together with the publication and communication to the applicants of a full, accurate report on all the relevant aspects of the factory's operation over the period in question, including the harm actually caused to the environment and people's health, in addition to the payment of just satisfaction, would meet the obligation laid down in Article 53 of the Convention.

74. The Court notes that the Convention does not empower it to accede to such a request. It reiterates that it is for the State to choose the means to be used in its domestic legal system in order to comply with the provisions of the Convention or to redress the situation that has given rise to the violation of the Convention (see, *mutatis mutandis*, the following judgments: *Zanghì v. Italy* of 19 February 1991, Series A no. 194-C, p. 48, § 26, *Demicoli v. Malta* of 27 August 1991, Series A no. 210, p. 19, § 45, and *Yağcı and Sargın v. Turkey* of 8 June 1995, Series A no. 319-A, p. 24, § 81).

D. Default interest

75. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 5% per annum.

for these reasons, the court

1. *Dismisses* by nineteen votes to one the Government's preliminary objection;
2. *Holds* by eighteen votes to two that Article 10 of the Convention is not applicable in the instant case;
3. *Holds* unanimously that Article 8 of the Convention is applicable and has been violated;
4. *Holds* unanimously that it is unnecessary to consider the case under Article 2 of the Convention also;
5. *Holds* unanimously
 - (a) that the respondent State is to pay each of the applicants, within three months, 10,000,000 (ten million) Italian lire in respect of non-pecuniary damage; and
 - (b) that simple interest at an annual rate of 5% shall be payable on that sum from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1998.

Signed: Rudolf Bernhardt
President

Signed: Herbert Petzold
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Walsh;
- (b) concurring opinion of Mrs Palm, joined by Mr Bernhardt, Mr Russo, Mr Macdonald, Mr Makarczyk and Mr van Dijk;
- (c) concurring opinion of Mr Jambrek;
- (d) partly concurring and partly dissenting opinion of Mr Thór Vilhjálmsson;
- (e) partly dissenting and partly concurring opinion of Mr Mifsud Bonnici.

Initialled: R. B.

Initialled: H. P.

concurring opinion of Judge Walsh

While bearing in mind that a breach of the Convention can frequently have implications for Articles other than the Article claimed to have been violated, I am fully in agreement that on the particular facts of this case Article 8 is the more appropriate Article to examine than Article 10. The Convention and its Articles must be construed harmoniously. While the Court in its judgment has briefly mentioned Article 2, but has not ruled on it, I am of the opinion that this provision has also been violated.

In my view Article 2 also guarantees the protection of the bodily integrity of the applicants. The wording of Article 3 also clearly indicates that the Convention extends to the protection of bodily integrity. In my opinion there was a violation of Article 2 in the present case and in the circumstances it is not necessary to go beyond this provision in finding a violation.

concurring opinion of Judge Palm,
joined by judges Bernhardt, Russo, Macdonald, Makarczyk and van Dijk

I have voted with the majority in favour of holding that Article 10 of the Convention is not applicable in the present case. In doing so I have put strong emphasis on the factual situation at hand not excluding that under different circumstances the State may have a positive obligation to make available information to the public and to disseminate such information which by its nature could not otherwise come to the knowledge of the public. This view is not inconsistent with what is stated in paragraph 53 of the judgment.

CONCURRING OPINION OF JUDGE JAMBREK

In their memorial the applicants also expressly complained of a violation of Article 2 of the Convention. The Court held that it was not necessary to consider the case under that Article given that it had found a violation of Article 8. I wish, nevertheless, to make some observations on the possible applicability of Article 2 in this case.

Article 2 states that “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save...” The protection of health and physical integrity is, in my view, as closely associated with the “right to life” as with the “respect for private and family life”. An analogy may be made with the Court’s case-law on Article 3 concerning the existence of “foreseeable consequences”; where – *mutatis mutandis* – substantial grounds can be shown for believing that the person(s) concerned face a real risk of being subjected to circumstances which endanger their health and physical integrity, and thereby put at serious risk their right to life, protected by law. If information is withheld by a government about circumstances which foreseeably, and on substantial grounds, present a real risk of danger to health and physical integrity, then such a situation may also be protected by Article 2 of the Convention: “No one shall be deprived of his life intentionally.”

It may therefore be time for the Court’s case-law on Article 2 (the right to life) to start evolving, to develop the respective implied rights, articulate situations of real and serious risk to life, or different aspects of the right to life. Article 2 also appears relevant and applicable to the facts of the instant case in that 150 people were taken to hospital with severe arsenic poisoning. Through the release of harmful substances into the atmosphere, the activity carried on at the factory thus constituted a “major-accident hazard dangerous to the environment”.

As to the applicability of Article 10, I am of the opinion that it could be considered applicable in the present case subject to a specific condition. This Article stipulates that “Everyone has the right ... to receive ... information and ideas without interference by public authority... The exercise of [this right] ... may be subject to [certain] restrictions...” In my view, the wording of Article 10, and the natural meaning of the words used, does not allow the inference to be drawn that a State has positive obligations to provide information, save when a person of his/her own will demands/requests information which is at the disposal of the government at the material time.

I am therefore of the opinion that such a positive obligation should be considered as dependent upon the following condition: that those who are potential victims of the industrial hazard have requested that specific information, evidence, tests, etc., be made public and be communicated to them by a specific government agency. If a government did not comply with such a request, and gave no good reasons for not complying, then such a failure should be considered equivalent to an act of interference by the government, proscribed by Article 10 of the Convention.

partly concurring and partly dissenting opinion of judge Thór Vilhjálmsson

In principle, I agree with the conclusion and the arguments of the majority of the Commission in this case. The Court is of another opinion. Even though I would have preferred the case to be dealt with under Article 10 of the Convention, it is also possible for the Court to approach the questions raised by applying Article 8. I therefore voted with the majority as concerns that Article as well as Article 2 and Article 50 of the Convention.

PARTLY DISSENTING AND PARTLY CONCURRING OPINION OF JUDGE MIFSUD BONNICI

1. In paragraph 49 of the judgment the Court rejects the Government's preliminary plea that the applicants had not exhausted the domestic remedies at their disposal, as they were obliged to do by Article 26 of the Convention.

2. The second sub-paragraph of that paragraph of the judgment contains the following passage:

“In reality, the complaint in the instant case was that information about the risks and about what to do in the event of an accident had not been provided, whereas *an urgent application would probably have resulted in the factory's operation being suspended.*”(emphasis added)

3. Since the probable result of recourse to this domestic remedy would have been the suspension of the factory's operation, I cannot envisage a more effectual remedy for the violations which the applicants claimed to have suffered, inasmuch as the lack of information by the authorities would have resulted in the suspension of the factory's operation. During the trial all the necessary information would have had to be supplied in court and, of course, the violations of Article 8 would also have been remedied.

4. As to the criminal action, this too, if successful, could have led to a civil action for damages which the Italian legal order places at the disposal of every person who has been a victim of an offence (*delitto*) of any shape or form.

5. It is clear therefore not only that the applicants had at their disposal a number of actions at law according to the Italian legal order but also that, unfortunately, they did not have recourse to any of those actions. I am therefore of the opinion that the Government's preliminary objection should have been allowed.

6. Since the great majority of my colleagues held otherwise, I had no option but to join them in the other operative parts of the judgment.

1. This summary by the registry does not bind the Court.

Notes by the Registrar

2. The case is numbered 116/1996/735/932. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

3. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

4. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is available from the registry.

GUERRA AND OTHERS JUDGMENT OF 19 FEBRUARY 1998

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