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# The Environmental Disaster and Human Rights Violations of the ILVA steel plant in Italy





# TABLE OF CONTENTS

<b>1. Preface.....</b>	<b>4</b>
<b>2. The history of ILVA’s “unsustainable” development.....</b>	<b>5</b>
<b>3. ILVA’s impact on health and the environment .....</b>	<b>10</b>
<b>4. ILVA: human rights violations within the EU .....</b>	<b>18</b>
<b>5. Human rights protected under international law .....</b>	<b>20</b>
5.1 the right to life.....	20
5.2 the right to health .....	21
5.3 the right to live in a healthy environment.....	22
<b>6. Obligations of the State in relation to industrial activities in the case law of the European Court of Human Rights .....</b>	<b>26</b>
<b>7. The ILVA case .....</b>	<b>28</b>
<b>8. The National Action Plan on business and human rights adopted by Italy—empty promises? ...</b>	<b>33</b>
<b>9. Conclusions.....</b>	<b>35</b>
<b>10. Recommendations.....</b>	<b>36</b>

# 1. PREFACE

In 2011, FIDH, together with its partner organisations Justicia Global and Justicia nos Trilhos, published a report entitled “How much are human rights worth in the Brazilian steel industry?”<sup>1</sup> The report’s study used a community-based human rights impact assessment methodology and documented the human rights violations linked to the steel and pig iron industrial activities of Vale and steel manufacturers in the Region of Açailândia in the north of Brazil.<sup>2</sup>

This study illustrated the consequences of these industrial activities on the right to health and the right to live in a healthy environment of two local communities: the community of Piquiã de Baixo and the community of California.

In 2014, following the publication of the report, three UN Special Rapporteurs and the Working Group on the issue of human rights and transnational corporations and other business enterprises referenced hereafter as the UN Working Group on Business and Human Rights signed a joint letter to the Brazilian government requesting further information regarding the human rights violations documented in the study.<sup>3</sup> Thanks to international pressure and the mobilisation of affected communities and NGOs, the Brazilian government and Vale Foundation signed an agreement with the Piquiã de Baixo community to relocate the 350 Piquiã de Baixo families on pollution-free land.

The Brazilian case documented in 2011 has significant links with the situation of the ILVA steel plant in Taranto, a city in the Apulia Region of Italy.<sup>4</sup> First, the iron ore processed and extracted in Brazil, arrives directly to Taranto by sea on the “Gemma”, one of the largest ships registered in Europe.<sup>5</sup> In addition, like the Açailândia region in Brazil, Taranto and the rest of the Apulia region also experienced a rapid industrialisation process essentially based on the steel industry. Yet behind the promise of boosting the economy by creating jobs and enhancing development, the steel industry has brought about huge environmental pollution and has seriously compromised the health and living conditions of the local population.

Our organisations are publishing this report, seven years after the Brazilian human rights impact assessment study, to highlight the other side of the story illustrated by ILVA in Taranto where the raw material extracted in Brazil is processed and transformed. This brief analysis places the ILVA case, and particularly the responsibility borne by the Italian government, into a larger international framework showing how both the first and last stages of the steel supply chain are linked to the same story; a story of repeated human rights and environmental violations in the name of profit.

Like Brazil, Italy has the obligation to ensure effective protection of the right to life, the right to health and the right to live in a healthy environment, and to ensure that industrial activities carried out within its jurisdiction comply with international, regional and national laws and do not violate fundamental rights of individuals.

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1. <https://www.fidh.org/en/region/americas/brazil/9662-how-much-are-human-rights-worth-in-the-brazilian-mining-and-steel-industry>.

2. The methodology called “community-based human rights impact assessment” is explained in the following webpage: <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/community-based-human-rights-impact-assessments>

3. The letter is available at the following address, [https://spdb.ohchr.org/hrdb/25th/public\\_-\\_AL\\_Brazil\\_09.01.14\\_\(6.2013\).pdf](https://spdb.ohchr.org/hrdb/25th/public_-_AL_Brazil_09.01.14_(6.2013).pdf)

4. This link has been highlighted also by Beatrice Ruscio in her book « Legami di Ferro », Narcissus, 2015.

5. <http://www.gruppollva.com/it/storie/2017-02-10/la-nave-gemma-tra-brasile-e-italia-storia-di-mare-e-minerali>

## 2. THE HISTORY OF ILVA'S “UNSUSTAINABLE” DEVELOPMENT



The ILVA Group, owned by ILVA Spa, is Italy's largest steelworks. It is a multinational steel-producing and processing company; it currently has 15 plants with a total annual production capacity of 8 million tons, generating a revenue of €2.2 billion in 2016. The Group has factories in both France and Italy. Thirteen of them, including Taranto steelworks, are located in Italy, and as the ILVA Group itself affirms, the Taranto plant is Europe's largest steel production facility (surface area: 15 million sq. m.) using what is known as a complete cycle process, i.e. starting with raw materials such as iron ore and coal, which are then processed to obtain the finished product: steel.<sup>6</sup>

In January 2015, ILVA Spa and its subsidiaries were placed under “extraordinary administration”, meaning that the Group is being run by three government-appointed commissioners.<sup>7</sup> The procedure of “special extraordinary administration” was instituted by the DL 247 of 2003 after the Parmalat scandal in order to aid the restructuring of companies of a certain scale.<sup>8</sup>

The Italian region of Puglia (Apulia) in south-eastern Italy where the city of Taranto is located has a rich historical, cultural and artistic heritage dating back to antiquity when it was considered the capital of *Magna Grecia* (Great Greece); it was, and still is, strategically important because of its two ports, one military and one commercial.<sup>9</sup>

6. For more information, see the official company website [www.gruppoILVA.com](http://www.gruppoILVA.com)

7. The Extraordinary Administration has been decided with the Ministerial Decree of the 21 January 2015 [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2015-02-06&atto.codiceRedazionale=15A00629](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2015-02-06&atto.codiceRedazionale=15A00629)

8. More than 500 employee and debts for more than 300 million of euro

9. For the history of the origins and economic development of the city of Taranto see the voice « Taranto » in the historical dictionary Treccani, Edition 2011.





ILVA's Taranto factory (formerly Italsider), was built in 1960 with funds from the Italian government and inaugurated in 1964.<sup>10</sup> It was the fourth-largest Italian steelworks, with five blast furnaces over 40 metres high and 10-15 metres in diameter. Taranto was chosen on the basis of a number of different criteria. To begin with, there was the widespread conviction that locating a steel plant in Taranto would, in the short term, be the best form of investment to promote the positive effects of upstream and downstream economic growth. Moreover, locating a complete cycle steel plant in a coastal town would make it possible to replace imports with national production to satisfy growing domestic demand.

Other considerations were the cost-effectiveness of the location, the availability of qualified labour, a vast expanse of flat land with abundant supplies of lime, and proximity to a port to facilitate the transport and shipping of materials in line with the policy of increasing exports.<sup>11</sup> These economic considerations therefore took precedence over building regulations which had specified as early as 1934 that industrial plants had to be built outside inhabited areas.<sup>12</sup>

In the early stages, Italsider, with 4,500 workers, was able to produce 3 million tons of steel per year. The production capacity increased to 4.5 million tons in 1970 and reached 11.5 million tons in 1975, while the number of workers went up to 43,000 in 1981 (the so-called "doubling"). In the space of 10 years, the factory had multiplied its production capacity nearly four-fold, inevitably worsening pollution in the surrounding area. Unfortunately, the increase in the plant's production capacity was not accompanied by a strategic development plan for the surrounding area, which remained entirely dependent on steelmaking; as a consequence, all the other local companies in a position to promote and enable endogenous development vanished<sup>13</sup>. Revenue from steelmaking went into consumption, not investment. As a result, the steel crisis that began in the 1980s led to an abrupt halt in the city's growth, significant job losses and mass emigration.<sup>14</sup>

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10. A video of the inauguration of the plant is available on the following link : <http://senato.archivioluce.it/senato-luce/scheda/video/IL5000050036/2/Italia-Il-presidente-del-Consiglio-Moro-inaugura-a-Taranto-lacciaiera-del-quarto-centro-siderurgico-dellItalsider.html>

11. See E. Cerrito, *La politica dei poli di sviluppo del Mezzogiorno : elementi per una prospettiva storica*, Banca di Italia, Quaderni di Storia economica, N. 3, 2010.

12. Royal Decree n. 1265/1934, Article n. 216

13. See G. Viesti, "Modelli e percorsi di sviluppo: alcune riflessioni intorno al caso della Puglia", in *Economia Marche*, 3, 1996, p. 359.

14. See E. Cerrito, *La politica dei poli di sviluppo del Mezzogiorno : elementi per una prospettiva storica*, Banca di Italia, Quaderni di Storia economica, N. 3, 2010, p. 13.

In 1995, as part of a widespread drive to privatise state-owned economic assets, the Italian government decided to sell the company to the Riva Group,<sup>15</sup> property of the Riva family, who owned and managed the factory until 2015 when it was placed under extraordinary administration.

As of today, ILVA still employs around 11.000 workers and accounts about 75% of the GDP of Taranto Province and 76% of good handled in the city port. Moreover, many people (about 3.000) work in the ancillary companies.

### **- Recent history**

The environmental issues linked to the industrial activity of ILVA's Taranto plant have been common knowledge for a long time. As early as 1990, the Italian government declared the Taranto province an area "at high risk of an environmental crisis".<sup>16</sup> ILVA's polluting emissions have engendered a number of legal proceedings over the years, – some of them ongoing, – on charges of pollution, an environmental disaster caused deliberately and with negligence, contamination of food products, deliberate failure to warn employees about workplace injuries, aggravated damage to public goods, the pouring and dumping of hazardous substances, and air pollution.

In 2012, the public prosecutor's office of Taranto ordered the arrest of a number of the Group's management and some politicians for having deliberately created high levels of pollution damaging the environment and the health of Taranto's residents. Also in 2012, Taranto's preliminary investigation judge (GIP) Patrizia Todisco ordered the seizure, without right of use, of ILVA's "hot working area" on the grounds that **"ILVA's past and present managers have knowingly and willingly continued their polluting activity for the pursuit of profit, thereby infringing the most basic rules of public health and safety."** The judicial order estimated the cost of the clean-up at 8 billion euros.<sup>17</sup>

In the wake of the seizure, the Italian government adopted a series (10 to date) of extraordinary laws (*Decreto Legge*), commonly referred to as the "Save ILVA" decrees, which enable production to continue despite the findings of the judiciary and despite the evidence of the devastating impact that ILVA has on the population and the local environment. The first of these measures, Decree Law 207/2012, provides that "the Minister of Environment is empowered to authorize the continuation of production at a plant of national strategic interest for a period not exceeding 36 months, even if the seizure of facilities has been ordered by the judiciary in cases of judicial order of attachment".<sup>18</sup>

Subsequently, the public prosecutor raised the question of the constitutionality of the law before the Constitutional Court which ruled, in its judgement No. 85/2013, that the question was inadmissible because "the combination of an administrative act such as the integrated environmental authorisation *Autorizzazione Integrata Ambientale (AIA)* and a legislative provision (Art. 1 of Legislative Decree No. 207 of 2012) determines the conditions and limits of the lawfulness of continuing a productive activity **for a defined period of time**, in all cases in which a plant, – declared, in the manner prescribed in the law, of national strategic interest, – has caused

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15. See M. Affinito, M. De Cecco, *Le privatizzazioni nell'industria manifatturiera italiana*, Donzelli editore, 2010.

16. The Deliberation of the Council of Ministries of 30 November 1990 puts Taranto between the « areas of high environmental risk » instituted by the Law n. 349 of 8 July 1986. This was also confirmed by the subsequent Deliberation of the Council of Ministries of 11 July 1997.

17. Tribunal of Taranto, Office of the Preliminary Investigation Judge, Preventive Seizure Decree, 22 May 2013, following the recourse n. R.G.N.R. 938/2010

18. Law Decree n. 207/2012 transformed in Law with the Law n. 231/2012, available here : <http://www.gazzettaufficiale.it/eli/id/2012/12/03/012G0234/sg>

environmental pollution to the extent of causing the precautionary intervention of the judicial authorities. The contested legislation does not, in fact, provide for the pure and simple continuation of the activity under the same conditions that necessitated the repressive intervention of the judicial authority; rather, it imposes new conditions, **compliance of which must be continuously monitored**, with all the legal consequences provided for in general by current laws for unlawful conduct that is harmful to health and the environment. The law is therefore motivated by the aim of striking a reasonable balance between the principles of health and employment protection, and not of the total destruction of the former (health)."<sup>19</sup>

The subsequent measures adopted by the government, by means of extraordinary decrees subsequently transposed into law, are the following:

- **Decree n. 61 of 2013: An extraordinary commissioner has been put in charge of managing the various requirements specified in the integrated environmental authorisation** <sup>20</sup>
- **Decree n. 136 of 2013: The extraordinary commissioner has discretionary power to exclude 20% of the improvements from the overall requirements of the integrated environmental authorisation to be complied with by 2016**<sup>21</sup>
- **Decree n. 1 of 2015: The extraordinary commissioner and appointees are granted immunity from prosecution and administrative immunity in relation to measures adopted to implement the environmental plan provided for in the integrated environmental authorisation** <sup>22</sup>
- **Decree n. 98 of 2016: The deadline for the implementation of the environmental plan has been extended by a further 18 months, and the immunity of the managers appointed to implement the plan has been extended to buyers and lessees or their representatives**<sup>23</sup>

On 5 June 2017, the Ministry of Economic Development signed a decree backing an offer for ILVA from AM Investco Italy, the joint venture formed by Arcelor Mittal Italy Holding (51%), Arcelor Mittal SA (31%) and Marcegaglia Carbon Steel Spa (15%).<sup>24</sup> This opens up the negotiation procedure provided for by law between the commissioners and the buyers, based on the binding offer and acceptance. Investco's bid foresees an investment of €1.25 billion to implement the environmental plan<sup>25</sup>, the contents of which were revealed in July<sup>26</sup>. Italian environmental agency ARPA recently criticised the plan as it provides for a delay in the environmental clean-up measures,

19. Italian Constitutional Court, Decision n. 85/2013, available at <http://www.giurcost.org/decisioni/2013/0085s-13.html>

20. Law Decree n. 61/2013

21. Law Decree n. 136/2013

22. Law Decree n. 1/2015

23. Law Decree n. 98/2016

24. The adjudication of ILVA to the new owner is reported in the website of the Ministry of the Economic development at the following link: <http://www.sviluppoeconomico.gov.it/index.php/it/194-comunicati-stampa/2036649-calenda-firma-il-decreto-di-aggiudicazione-del-complesso-industriale-del-gruppo-ILVA-ad-am-investco-italy>

25. Following a tax investigation started in 2012, it emerged that the RIVA family had an account at UBS in Switzerland where they deposited the total amount of 1,3 billions of euro owned by a trust of the same family and registered in Jersey. This sum, that is the result of a tax evasion, could be used for the reparation of the environmental damage of ILVA, however the necessary judicial procedure to transfer the money from Switzerland to Italy is not yet concluded. See more information in the following article: <http://www.ilsole24ore.com/art/notizie/2017-05-27/quel-tesoretto-famiglia-riva-che-non-finira-casse-ILVA-135839.shtml?uid=AEpwXLUB>

26. The environmental plan has been revealed by the local NGO Peacelink and is available here <http://www.peacelink.it/peacelink/a/44616.html>



now postponed to 2023, and lacks substantial technological innovations to modernise the plant that could result, according to the agency, in a violation of EU environmental laws requiring the use of the BAT (Best Available Technology). Lastly, ARPA emphasises the risks posed by the proposal to restart Blast Furnace Five (the facility that produces the most carcinogenic dioxins).<sup>27</sup>

More recently, on 30 September 2017, the Apulia Region and the municipality of Taranto, together with environmental organisations and civil society, went before the Regional Administrative Court claiming the illegality of the Decree of 29 September 2017 extending the deadline for the integrated environmental authorisation to 2023 and asking for the immediate suspension of industrial operations.<sup>28</sup> The government convened a negotiating table dedicated to ILVA<sup>29</sup> and consequently issued a Memorandum of Understanding to strengthen the implementation of the Decree of 29 September 2017 and asking for the approval of the local authorities.<sup>30</sup>

The latter presented a draft containing amendments and additions to the Memorandum of Understanding which were then rejected by the government.<sup>31</sup> The political debate surrounding the ILVA case seems to be destined to increase after the results of the political elections in Italy of 4 March 2018<sup>32</sup>.

Finally, the Court of Appeal of Lecce on the 31 January 2018 published its decision n. 45/2018 ascertaining the right to compensation for damages for citizens living in Taranto who were obliged to leave their homes because of the dust emitted by ILVA.<sup>33</sup>

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27. <https://www.ilfattoquotidiano.it/2017/09/05/ILVA-arpa-demolisce-il-piano-della-nuova-societa-marcia-indietro-su-tecnologie-anche-comune-e-cgil-contro-am-investco/3838640/>

28. <http://www.gazzettaufficiale.it/eli/id/2017/09/30/17A06690/sg>

29. <http://www.comune.taranto.it/images/ILVA/Convocazione.pdf>

30. [http://www.comune.taranto.it/images/ILVA/MISE\\_-\\_schema\\_protocollo\\_dintesa.pdf](http://www.comune.taranto.it/images/ILVA/MISE_-_schema_protocollo_dintesa.pdf)

31. On the 6th March 2018 the Administrative Court of Apulia region declared itself not competent to judge the recourse of the local entities and send the proceeding to the Administrative Court of Lazio Region <https://codacons.it/ilva-tar-si-riserva-decisione-istanza-trasferimento-roma/>.

32. In this scenario, the elections of the 4 March 2018 have seen the rise of the '5 star movement party' that has gained a large majority in the south of the country as well as among ILVA employees. The 5 stars movement has always declared to be in favour of the closure and reconversion of ILVA. <https://www.panorama.it/economia/aziende/ILVA-di-taranto-qual-e-futuro-dopo-la-vittoria-dei-cinque-stelle/> and <https://mobile.nytimes.com/2018/02/27/business/italy-economy-election.html>. Since then, the mayor of Taranto declared to not be interested in the judicial action anymore and has fired a member of the municipal council, Dr. Franco Sebastio, the former judge who decided the seizure of ILVA in 2012.

33. <http://www.corriereditaranto.it/2018/02/04/deprezzamento-case-rione-tamburi-sentenza-corte-dappello-da-ragione-ai-cittadini/>

### 3. ILVA'S IMPACT ON HEALTH AND THE ENVIRONMENT

To have even an overview of the environmental impact which a plant like Taranto's ILVA can generate, picture the following: **190 km** of conveyor belts, **50 km** of roads and **200 km** of railway; a shipping and import fleet made up of 8 barges and 4 towboats, together with 6 docks to moor the ships. The site also includes 8 mineral parks, 2 pits, 10 batteries to produce the coke with which the blast furnaces are fed, 5 blast furnaces, 2 steel plants with LD converters and 5 continuous casts, 2 hot strip mills for the belts, a hot strip mill for metal sheets, a cold rolling mill, 3 galvanising lines and 3 tube production plants. There are 215 industrial chimneys, of which the biggest is **210 metres** high.<sup>34</sup>



Picture illustrating ILVA port and part of the plant

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34. *Rapporto Ambiente e Sicurezza* (Environment and Safety Report) 2011, p. 19.

Every year about 800 ships for ILVA are docked in the port of Taranto. From the port, iron ore is transported up to the site's mineral parks by means of conveyor belts (which are dozens of kilometres long), forming mountains up to 20 metres high which cover a surface approximately as big as 90 football fields.<sup>35</sup> Even today, these mineral parks are open-air, which means enormous quantities of iron dust are scattered into the air whenever there is a slight wind (Taranto is located by the sea and is often windy) or when materials are moved (for instance when they are loaded onto the conveyor belts). This leads to severe pollution in the surrounding areas. Furthermore, the parks were built on the ground without any waterproof protection, which means groundwater can easily be polluted especially when the parks are doused with water to limit the scattering of iron dust.

From this description, it seems clear that the environmental impact of such a plant is potentially devastating and requires specific and expensive interventions in order to reduce the hazard of emissions, to oversee the disposal of toxic waste and avoid the dispersion of polluting dust into the air.<sup>36</sup>

We should also point out that ILVA was built in the middle of the city. The mineral parks and coking plants are located respectively **170 metres** and **730 metres** from the residential area, and the enclosing wall is **135 metres** from the closest house in the Tamburi district (where about 18,000 people live).<sup>37</sup>

A plant of such size and proximity to inhabited areas requires, even in the case of excellent management, considerable efforts to implement efficient prevention and supervision measures in order to mitigate the high risks to health and the surrounding environment.

What is striking about the ILVA case is the conduct of its managers, who – according to the decision of the Italian judge of preliminary investigations (GIP) who sent them to trial – acted with total disregard of environmental protection regulations from 1995 to 2015 (the year the extraordinary administration was put in place). In this decision, the judge also highlights how the company managers (Managing Director, President and Vice President of the Board of Directors, Plant Director) developed **“a criminal conspiracy with the aim of committing several crimes against public safety”**, deliberately overlooking the adoption of suitable risk management measures, as required by law. Furthermore, it appears that, according to the judge issuing this decision, they consciously adopted measures violating several environmental regulations, sometimes with the collusion of people in public office.<sup>38</sup>

Below is a summary outlining some of the charges held against ILVA's managers, identified by the preliminary investigations judge (GIP) in order to authorise the order to seize the hot area and indict the firm's managers:

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35. B.Ruscio, *Legami di ferro* (Iron bonds), quote p. 77.

36. See the provisions and interventions contained in the Ministry's 2011 *Autorizzazione Integrata Ambientale* (Integrated Environmental Authorisation) and available at <http://aia.minambiente.it/DetailAutorizzazionePub.aspx?id=4822>

37. B.Ruscio, *Legami di ferro* (Iron bonds), Narcissus, 2015, p. 78.

38. Court of Taranto, Examining Judge Office, Preventive Seizure Decree, 22nd May 2013, following appeal R.G.N.R. 938/2010.

- **Emissions of Polycyclic Aromatic Hydrocarbons (PAH), benzopyrene, dioxins, metals and harmful dust from coke ovens, the park area, the built-up area and the steelworks area;**
- **Production and discharge of toxic and hazardous liquid and solid waste without authorisation;**
- **Production and recovery of toxic sludge contaminated by micropollutants and its unsupervised storage without authorisation;**
- **Unauthorised production and recovery of slurry;**
- **Contamination of surrounding agricultural land;**
- **Failure to adopt necessary measures to identify and reduce the industrial risks linked to the plant's activities, as required by both national and European law and domestic contingency plans<sup>39</sup>**

The criminal investigations and proceedings for these crimes, which are only summarised above, are still ongoing. For this reason, and in order not to interfere with judicial proceedings, this report does not pronounce on individual and corporate responsibilities. However, the trial has brought to light data relating to the heavy impact on environmental and human rights of ILVA's activities. These are contained in several official documents annexed to the judicial decision of 2012. Among them, the most relevant and recent ones are two expert reports, one chemical and one epidemiological, commissioned by Taranto's Prosecutor in 2012 and which constituted the basis for the seizure order.

According to the chemical report, ILVA emits substances which are harmful to the health of Taranto's workers and inhabitants: "In 2010, ILVA emitted over 4,000 tons of dust, 11,000 tons of nitrogen dioxide and 11,300 tons of sulphur dioxide, 338,5 kilos of PAH, 52 grams of benzopyrene, 14,9 grams of benzo dioxins and PCDD/F. These substances are both inhaled by people in areas around ILVA and absorbed through contaminated food."<sup>40</sup>

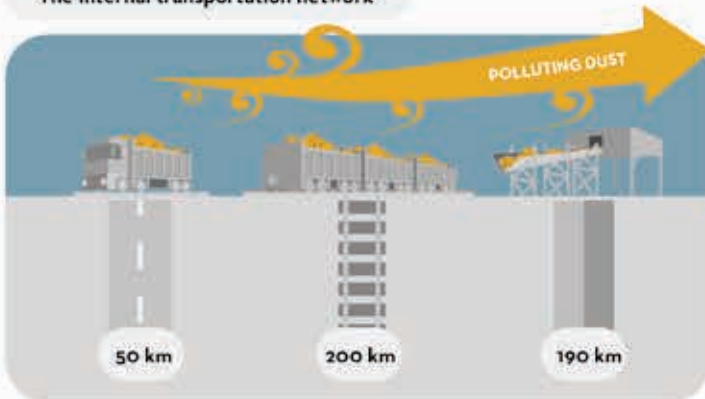
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39. Ibid.

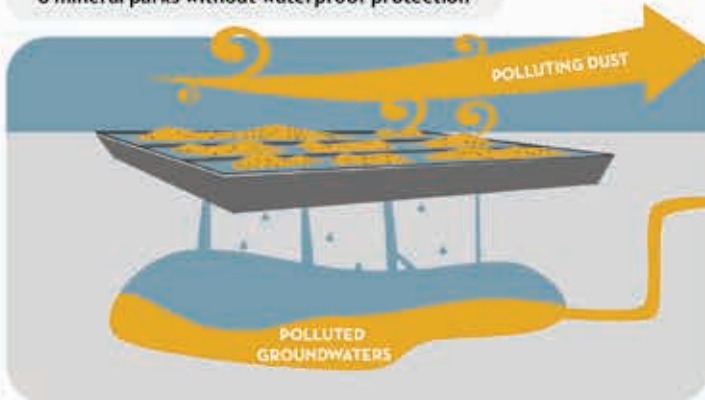
40. <http://www.epiprev.it/materiali/2012/Taranto/Concl-perizia-chimica.pdf>

# The biggest steelworks in Europe: ILVA'S PRODUCTION PROCESS

The internal transportation network



8 mineral parks without waterproof protection



33 plants, 215 industrial chimneys



800 ships per year serving Ilva



2004-2010:

**174 deaths**

2003-2009:

(compared to the average of the province)

**+ 30% of male cancer**

**+ 20% of female cancer**

In 2010 Ilva emitted:

**4,000 tons of dust**

**11,000 tons of nitrogen dioxide**

**11,300 tons of sulphur dioxide**

**338,5 kilos of IPA**

**52 grams of benzopyrene**

**14,9 grams of benzo dioxins  
and PCDD/F**





On the other hand, the epidemiological study highlights mortality rates between 2004 and 2010: “174 deaths were caused by ILVA, 83 of which were due to the exceeding of maximum environmental dust levels (PM10). In surrounding areas, this figure reached 91”. The report also states there is “strong scientific evidence” concerning the link between the plant’s emissions and the rise of heart and respiratory diseases, cancer and leukaemia among inhabitants.<sup>41</sup>

These data were also confirmed by the epidemiological study commissioned by the National Institute of Health, covering the areas and settlements at risk of pollution published in 2010 and 2012 (Studio SENTIERI)<sup>42</sup>. The first study focuses on 1995-2002 and the update on 2003-2009 and highlights for example the Ministry’s data concerning high death rates in the Taranto area).<sup>43</sup> The study namely highlights:

- a 54% increase in cancer in children compared to regional average rates, while the rise in child mortality was 11% compared to mean regional levels. The study attributes this increase to ILVA’s emissions and dumping;
- a 20% increase in cancer in women compared to the provincial average
- a 30% increase in cancer in men compared to the provincial average

The emissions obviously have a particularly strong impact on ILVA’s workers. The epidemiological study commissioned by the Public Prosecutor during the 2012 procedure highlighted the following percentages among ILVA workers:

**+107% stomach cancer**

**+ 71% pleural cancer**

**+ 50% prostate cancer**

**+ 69% bladder cancer**

**Among other types of diseases, a 64% increase in neurological illnesses and a 14% increase in heart diseases have been recorded.<sup>44</sup>**

In particular, high mortality rates have been recorded for pleural and brain tumours (153 % and 111%) among employees who work inside the production area (and therefore are not office workers). Nevertheless, these data have not been updated, and there is still no register of workers exposed to carcinogenic agents, as required by Legislative Decree 155/2007.

Furthermore, mortality rates rise during the days following winds stronger than 7 k/s coming from the north-west for 3 consecutive hours (i.e. “Wind Days”), because the pollutants are scattered more easily.<sup>45</sup> Indeed, some studies highlight the “positive and statistically significant connection between mortality rates and heart, cardiovascular and respiratory conditions in the Tamburi area throughout the 2-3 days following such climatic conditions”. Preventive measures specifically for Taranto during windy days are also recommended by *Arpa Puglia* (Regional Agency for Environmental Prevention and Protection), which gives the *Asl* (local health offices) and the firms subjected to an *AIA* (Integrated Environmental Authorisation) a 48-hour warning, so that they can

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41. <http://www.epiprev.it/materiali/2012/Taranto/Concl-perizia-epidemiol.pdf>

42. Italian National Institute of Health, **S.E.N.T.I.E.R.I (National Epidemiological Study of Territories and Settlements Exposed to Pollution Risks). Assessment of epidemiological evidence, 2010**, <http://www.epiprev.it/pubblicazione/epidemiol-prev-2010-34-5-6-suppl-3>

43. Sentieri, Epidemiological study of Residents in National Priority Contaminated Sites: Mortality, Cancer incidence and hospital discharges, available at [http://www.salute.gov.it/imgs/C\\_17\\_pubblicazioni\\_2147\\_allegato.pdf](http://www.salute.gov.it/imgs/C_17_pubblicazioni_2147_allegato.pdf) and the specific case of Taranto at [http://www.salute.gov.it/imgs/C\\_17\\_pubblicazioni\\_1833\\_allegato.pdf](http://www.salute.gov.it/imgs/C_17_pubblicazioni_1833_allegato.pdf)

44. <http://www.epiprev.it/materiali/2012/Taranto/Concl-perizia-epidemiol.pdf>

45. [http://www.arpa.puglia.it/web/guest/wind\\_days](http://www.arpa.puglia.it/web/guest/wind_days)



adopt necessary measures.<sup>46</sup> The Taranto Asl have issued several warnings to inhabitants of areas surrounding ILVA to adopt some precautionary measures during periods of high pollution levels (closing windows, not performing outdoor activities, etc.).

We also have to bear in mind that there are some primary schools (children aged 6 to 11) close to the ILVA plant.

Following studies and documentation on the ILVA case, the Mayor of Taranto has banned playing in green spaces, burying and exhuming bodies in the cemetery next to the plant, and using groundwater.<sup>47</sup>

However, such precautions cannot be considered sufficient in order to reduce the risks of exposure from such levels of pollution, emissions and contamination.



In August 2016 the *Centro Ambiente e Salute Puglia* (Apulian Environmental and Health Centre), which is funded by the Region of Apulia, published the final report on the study examining the effects of environmental and occupational exposure on the disease and mortality rates of Taranto's inhabitants.<sup>48</sup>

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46. A summary of the suggested precautionary measures for the wind days is available at <https://www.sanita.puglia.it/documents/36057/32591980/Misure+Cautelative+Wind+Day+16.07.2017/94037a67-8e54-4795-918a-453273069a38>

47. <http://www.ilfattoquotidiano.it/2012/08/22/nuova-ordinanza-del-sindaco-di-taranto-off-limits-aree-verdi-al-rione-tamburi/331492/> and <http://www.ilfattoquotidiano.it/2013/04/06/taranto-vietato-seppellire-morti-a-tamburi-linquinamento-ferma-cimitero/553847/>

48. Group study on the effects of environmental and work exposure on illness and death rates of Taranto inhabitants, [https://www.sanita.puglia.it/web/csa/news-in-primo-piano\\_det/-/journal\\_content/56/890301/studio-di-coorte-sugli-effetti-delle-esposizioni-ambientali-ed-occupazionali-sulla-morbosita-e-mortalita-della-popolazione-residente-a-taranto](https://www.sanita.puglia.it/web/csa/news-in-primo-piano_det/-/journal_content/56/890301/studio-di-coorte-sugli-effetti-delle-esposizioni-ambientali-ed-occupazionali-sulla-morbosita-e-mortalita-della-popolazione-residente-a-taranto)

The study covered a total of 321,356 people living in the towns of Taranto, Massafra and Statte from January 1998 and December 2010. These inhabitants were monitored until 31 December 2014 and within this population sample 36,580 people died. Findings confirm the data that had already been reported concerning the direct tumour incidence of higher concentrations of PM10 (particulates with a diameter below 10 mm) and SO<sub>2</sub> (sulphur dioxide), but also put forward new significant data. A noteworthy finding is that a decline in disease incidence was recorded between 2008 and 2010, when industrial activity also decreased due to the crisis. Disease figures then subsequently rose between 2010 and 2012 when the economy recovered, before declining again in 2013-2014. Therefore, the mortality rate curves have reflected production trends.

Furthermore, the study clarifies that the deaths are not linked to external risk factors and states that **“the continued exposure to pollutants emitted by the steelworks has caused and causes degenerative phenomena among the population, leading to both illness and death”**.

In August 2016, another study was published by the *Istituto Superiore di Sanità* (Italian National Institute of Health) in cooperation with the Asl of Taranto and the University of Brescia on: “Definition of exposure to types of metal with neurotoxic properties (As, Cd, Hg, Mn and Pb) in fluids and tissues of developing individuals (6-12 years) residing in areas surrounding Taranto, considered as study and control groups, with the purpose of identifying potential exposure discrepancies and assessing possible associations with neuro-behavioural and cognitive deficiencies”.<sup>49</sup> This study highlights **“A potential presence of clinical and preclinical disorders linked to neurological development in the Taranto area, which are not acknowledged and not adequately subjected to preventive, therapeutic and rehabilitative interventions”**.

**Dr Anna Maria Moschetti** – a paediatrician in charge of the *Associazione Culturale Pediatri di Puglia e Basilicata* (Cultural Association of Apulia and Basilicata Paediatricians) for illnesses affecting children and linked to pollution, President of the *Commissione per l'Ambiente dell'Ordine dei Medici di Taranto* (Environmental Commission of the Association of Taranto Doctors) and a member of President Emiliano's regional board of experts, together with the *Commissioni Ambiente, Salute e ILVA* (Environment, Health and ILVA Commissions), – stressed in an interview with the Italian NGO *Mani Tese* as part of the project « *i bambini di Taranto vogliono vivere* » (“Taranto's children want to live”): “*We don't want to experiment when it comes to the effects of toxic substances on the population, because we know that we must stop this exposure immediately. However, in order to prove this, unfortunately scientific studies had to be carried out. Such damage did not need confirming but rather preventing*”.<sup>50</sup>

In 2017, the periodical ‘Ecotoxicology and Environmental Safety’ published a study on the current toxicity levels of dust in Taranto. This report looks at the angiogenic effect produced by several polluting sources through an *in vivo* study on chicken embryos. The results confirm the following: the dust currently present in Taranto contains higher toxicity levels compared to other cities (when taking into account the same mass of dust).<sup>51</sup> This also confirms previous studies (EPIAIR), which documented how the Taranto PM10 are more toxic than the same type of dust in other cities (mortality rates around 2.2 higher), due to the differing “chemical quality of the dust”. Therefore, the legal annual limit for fine particles of 40 micrograms per cubic metre seems to be insufficient in the case of Taranto in order to avoid harmful effects caused by the particles

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49. The study is available at [http://www.iss.it/binary/ILVA/cont/3\\_127\\_222\\_\\_\\_Relazione\\_scientifica\\_CCM\\_Taranto\\_Finale.pdf](http://www.iss.it/binary/ILVA/cont/3_127_222___Relazione_scientifica_CCM_Taranto_Finale.pdf)

50. *Mani Tese*, 2017 <http://www.giustiziambientale.org/i-bambini-di-taranto-vogliono-vivere/>

51. S. Catino et al., Angiogenic activity *in vivo* of the particulate matter (PM10), *Ecotoxicology and Environmental Safety*, Vol. 140, June 2017, pp. 156-161.

and protect citizens' health, and should be modified taking into account Taranto's particular circumstances (we should bear in mind that the limit fixed by the WHO on the other hand is 20 micrograms per cubic metre). In 2016, the 25 micrograms per cubic metre concentration was exceeded for 158 days in the Tamburi area of Taranto.<sup>52</sup>

## **Dioxins**

***The term "dioxins" designates a group of 210 chemical compounds, including highly carcinogenic molecules such as TCDD. Exposure to dioxins is linked to the development of tumours, reproductive disorders, cerebral development anomalies, endocrinopathy, lung disorders, etc. Dioxins are also genotoxic, which means they can damage the genetic information contained in a cell, thereby allowing the transfer of mutations from parents to offspring.***<sup>53</sup>

***Dioxins are produced by the combustion processes of chemical, metallurgical and iron and steel industries. They are released into the atmosphere by one or more sources and can be transported over long distances before settling in water, ground, sediments and pastures. Dioxins are then ingested by animals and enter the food chain, coming into contact with human beings mainly via food ingestion (98%).***

***The European dioxin emission limit is 0,4 nanograms per cubic metre, whereas according to Italian regulations the limit is 100 ng/m<sup>3</sup> for steelworks and 0,1 for incinerators.***<sup>54</sup>

***In 2006, 92% of Italian industrial dioxins recorded by the INES register were produced in Taranto.***<sup>55</sup> ***What is particularly striking is that the dioxin emissions released by the highest ILVA chimney were equal to the total amount emitted by England, Spain, Sweden and Austria (according to the EPER register). Given such data, it is clear that dioxins have been heavily contaminating the ground surrounding ILVA for years now and that the effects have been extended to the food chain through cattle grazing in surrounding fields (food samples were first analysed in 2008 following claims by the environmental association Peacelink).***<sup>56</sup> ***Almost 2,000 head of cattle have been put down because of contamination and free grazing in the areas surrounding ILVA has been forbidden. Taranto's Asl check-ups carried out in 2010 revealed dioxin contamination in milk, meat (5 out of 6 samples), liver (16 out of 16) and breast milk (4 times higher than legal thresholds).***<sup>57</sup>

***Contamination by dioxins has also been recorded in mussels farmed in Mar Piccolo (69% over the authorised threshold). This has led to the issuing of a ban on farming and consumption of Mar Piccolo mussels and a subsequent decline in the part of the city's economy which is not linked to the steelworks.***<sup>58</sup>

52. <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindisp&leg=17&id=1008103>

53. Among other sources, see the WHO page about dioxins: <http://www.who.int/mediacentre/factsheets/fs225/en/> the Italian restrictions have been established by the law n.125 of 6 March 2006 that ratified the Protocol to the Aarhus Convention on air pollution.

54. For a summary on European law about dioxin limits and relevant guidelines, see the Commission's page: [https://ec.europa.eu/food/safety/chemical\\_safety/contaminants/catalogue/dioxins\\_en](https://ec.europa.eu/food/safety/chemical_safety/contaminants/catalogue/dioxins_en)

55. <https://www.tarantosociale.org/tarantosociale/docs/2000.pdf>

56. A comprehensive dossier made by Peacelink on the question of 'dioxines' <https://www.tarantosociale.org/tarantosociale/docs/2458.pdf> and a reportage published on the same topic by the Italian newspaper 'L'Espresso' in 2007 <http://espresso.repubblica.it/palazzo/2007/03/30/news/la-puglia-dei-veleni-1.3096>

57. On contamination by dioxins and the Taranto case in particular, see the publication by the *Fondazione Verde Europea* (Green European Foundation) by A. Bonelli, *Good morning diossina*, Green European Foundation, 2014.

58. <http://webcache.googleusercontent.com/search?q=cache:93SZxwIMLYJ:www.regione.puglia.it/index.php%3Fpage%3Dpressregione%26opz%3Dprintpdf%26id%3D10957+&cd=1&hl=en&ct=clnk&gl=nl&client=ubuntu>

## 4. ILVA: HUMAN RIGHTS VIOLATIONS WITHIN THE EU

Considering the situation described in the previous chapter, and epidemiological and scientific studies by various organisations, both public and private, which have objectively demonstrated the significant impact of ILVA's activity, it is fair to ask what the role of the Italian State is in this dramatic situation.

The current legal framework regarding corporate obligations and liabilities in the case of human rights violations is complex and varied. It is comprised of binding international and national laws and principles of "soft law" which particularly in recent years have been used to define with greater precision the different roles and responsibilities of States and private actors in the context of human rights violations connected with economic activity.

In this scenario it is important to underline that Italy is obliged to protect, respect and fulfil human rights as a result of the signing and ratification of international human rights treaties such as the International Covenant on Civil, Political, Social and Cultural Rights and regional conventions such as the European Convention on Human Rights. A more in-depth analysis of the rights protected by such instruments is detailed below.

These obligations have also been recently recalled in the UN Guiding Principles on Business and Human Rights, unanimously adopted by the UN Human Rights Council in 2011.<sup>59</sup>

In addition to the State's legal obligation to protect human rights, enterprises are responsible for respecting such rights, independently of those befalling government authorities. This responsibility has also recently been reaffirmed by the UN Guiding Principles on Business and Human Rights and by the OECD Guidelines for Multinational Enterprises.<sup>60</sup>

In 2011 the United Nations Human Rights Council unanimously endorsed the Guiding Principles on business and human rights drafted by the Secretary General's Special Representative, Prof John Ruggie.<sup>61</sup> These Principles aim at offering a single framework in the matter of responsibility for human rights abuses committed by economic players, which hitherto was fragmented through a variety of international legal instruments, both binding and not binding. The Principles rest on three pillars, the State's duty to protect human rights, corporate responsibility in respecting human rights and access to remedies. Under the first pillar, the Guiding Principles summarize and organise the **existing obligations under international law** that lie with the States in protecting human rights from abuses committed by business enterprises. In particular, Principle 1 specifies that: "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."

The Principles also suggest that due diligence in the area of human rights is a useful tool for States for the purpose of monitoring effective application of laws by businesses and to foster communication and transparency.<sup>62</sup>

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59. The UN Guiding Principles have been endorsed by the Human Rights Council of the UN with Resolution n. 17/4, 16 Juin 2011. The English text of the UN Guiding Principles on BHR is available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinesHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinesHR_EN.pdf)

60. The OECD Guidelines on Multinational companies are available at <http://www.oecd.org/daf/inv/mne/MNEguidelinesITALIANO.pdf>

61. UN HRC Council, Resolution n. HRC/RES/17/14

62. UNGPs, Commentary Principle 3

Moreover, the UNGPs affirm the existing and independent responsibility of the enterprises to respect human rights and to act with “due diligence”, adopting all necessary measures to identify, monitor, prevent and correct the adverse impacts of their activities on human rights.<sup>63</sup> Corporate responsibility for human rights violations has been reaffirmed subsequently by other international soft law instruments and has precise legal consequences when recognised by national laws with criminal, civil or administrative liability provisions. Different States provide for the criminal liability of legal entities in the case of certain offences.

In Italy, environmental law places a precise legal obligation on the company, gives rise to the administrative liability of the entity, as prescribed by the Legislative Decree no. 231/2001 and can lead to significant sanctions, from the confiscation and sequestration of business assets to a ban from business activity, in addition to the individual criminal liability of the directors and employees where this can be established.<sup>64</sup>

This document does not intend to focus on the criminal responsibilities of ILVA Spa and its directors, who are the subjects of an ongoing criminal procedure, the so-called “*Ambiente Svenduto*” case. What we are interested in emphasising, however, is the role of the Italian State in the ILVA affair in the light of the legal European and International human rights framework.

In the case of ILVA, as underlined by data provided above, the situation is particularly serious and has led to several violations of various human rights enshrined as fundamental and inalienable to the individual such as, among others, the right to life, the right to health and the right to live in a healthy environment.

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63. UNGPs, Principles n. 11 - 14 and Chapter IV of the OECD Guidelines.

64. The text of the law is available, in Italian, at <http://www.gazzettaufficiale.it/eli/id/2001/06/19/001G0293/sg>

## 5. HUMAN RIGHTS PROTECTED BY INTERNATIONAL LAW

### 5.1 The right to life

The right to life is the ultimate inalienable fundamental right, without which any other right would be simply “illusory”<sup>65</sup>. This right is protected by all international human rights treaties and by national constitutional laws.

The right to life is explicitly protected by Article 6 of the International Covenant on Civil and Political Rights, which states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Furthermore, at regional level, the right to life is protected by Article 2 of the European Convention on Human Rights and the European Charter of Fundamental Rights.<sup>66</sup>

The right to life is also protected by Article 2 of the Italian Constitution, which states that “The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.” The Italian Constitutional Court has expressly affirmed that the right to life is among the inviolable rights which have a privileged position in the Constitution, since they belong “to the essence of the supreme values upon which the Italian Constitution is founded.”<sup>67</sup>

In this context, States have a dual obligation. On the one hand, there is the negative obligation to refrain from violating this right. On the other, as doctrine and case law have repeatedly pointed out, States have the positive obligation to adopt all reasonable measures to ensure the effective protection and the fulfilment of such a right<sup>68</sup>. This type of positive obligation is composed of two elements, one substantive and the other procedural. From the substantive point of view, the State must adopt all measures, whether regulatory, legislative or administrative, that are necessary to avoid the violation of the right concerned, including from conduct of third parties. From the procedural point of view, on the other hand, the State has an obligation to penalise behaviour which negatively impacts the enjoyment of such a right and to offer access to effective remedy in the event of violations. As we shall see in more detail in the following paragraph, case law of the European Court of Human Rights has repeatedly explained that the duty to protect is measured in a concrete way and that the State must guarantee the effective provision of protection required by law.<sup>69</sup>

Furthermore, the Court has also noted that the positive obligation recognised by Article 2 of the ECHR applies *a fortiori* in cases involving the regulation of dangerous activities, for which the State is required to adopt particularly rigorous and appropriate measures in order to minimise the level of risk to life and health of those exposed to such activity and to provide appropriate information to citizens on the risks relating to their health.<sup>70</sup>

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65. ECtHR, *McCann and others v. the United Kingdom*, 27 September 1995, *Pretty v the United Kingdom*, 29 April 2002

66. European Convention on Human Rights, Art. 2 . European Charter of Fundamental Rights, Art. 2.

67. Italian Constitutional Court, Judgement 53, 1997. Also relevant are judgements no. 54 of 1979 and no. 223 of 1996.

68. ECtHR, *LCB c. UK*, 9 Juin 1998.

69. Among other, see D. Augenstein’s “State Responsibilities to Regulate and Adjudicate Corporate Activities under the European Convention on Human Right, April 2011.

70. ECtHR, *Oneryildiz c. Turkey*, Section 89, 30 November 2004.



The right to life is also protected by Article 2 of the European Charter of Fundamental Rights, which affirms that “Everyone has the right to life, no one shall be condemned to the death penalty, or executed ».71

## 5.2 The right to health



A secondary school in the Tamburi neighborhood nearby ILVA

The right to health is protected by Article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Italy with Law No. 881 of 25 October 1977, which recognises:

“The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the CESCR to achieve the full realization of this right shall include those necessary for:

- a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- b) The improvement of all aspects of environmental and industrial hygiene;
- c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Even though the Covenant does not expressly recognise the right to live in a healthy environment *per se*, paragraph 2b of article 12 has been interpreted as including all the environmental consequences that can affect human health. Moreover, this paragraph is considered **comprehensive** so includes the measures necessary to protect the health and safety of workers, a provision that is also reiterated in the conventions of the International Labour Organization, which are also binding.<sup>72</sup>

The UN Committee on Economic, Social and Cultural Rights, the organ charged with the binding interpretation of the content of the international covenants, has also clarified that Article 12 of

71. [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

72. See B.Toebes, *The Right to Health as a Human Right in International Law*, Intersentia- Hart, 1999.

the Covenant on ESCR should be considered as including factors affecting health, i.e. "access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health".<sup>73</sup> Moreover, in the same document the Committee underlines that a determining factor in the realisation of such a right is the participation of the population in decisions that involve aspects relating to health. It is also important to emphasise that the right to health as recognised in international law includes the obligation of the State to prevent and reduce: "the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health".<sup>74</sup>

*In the European context* the right to health is not specifically mentioned by the European Convention. Nevertheless, it is protected by the Court through the interpretation of Articles 3 and 8 of the Convention. Furthermore, it is specifically identified and protected by Articles 3 and 11 of the European Social Charter of which Italy is part and which upholds the right to safety and hygiene at work and the right to the protection of health.<sup>75</sup>

*At national level* the right to health is upheld by Article 32 of the Italian Constitution which states: "The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent."<sup>76</sup> The protection of the health and the physical and mental well-being of workers is also guaranteed by Article 2087 of the Civil Code, which puts the employer under the obligation to adopt, in managing an enterprise, all necessary measures according to the particular nature of the work, experience and technology, and to protect the physical and mental well-being of workers. Article 2087 not only refers to the measures necessary to guarantee the safety and hygiene of workplaces, but is also interested in all measures appropriate to making the workplace safe and conducive to the well-being of workers.

### **5.3 The right to live in a healthy environment**

While it is not recognised separately in international law, the right to live in a healthy environment is closely connected to the right to health, safeguarded by Article 12 of the International Convention on Economic, Social and Cultural Rights. Over the years, however, increasingly serious environmental problems have led the United Nations to return frequently to this theme and, in 1990, the General Assembly adopted a resolution that recognises the right of all people to live in an environment that is adequate for their health and well-being<sup>77</sup>.

Moreover, environmental protection and the regulation of polluting emissions is governed by other international regulations, including the UN Declaration on Human Environment<sup>78</sup>, the Rio Declaration on Environment and Development<sup>79</sup>, the United Nations Framework Convention on

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73. UN ESCR Committee, General Comment n. 14.

74. Ibid.

75. See the European Social Charter available at <http://www.coe.int/en/web/turin-european-social-charter>

76. Italian Constitution, Art. 32.

77. UN General Assembly, Resolution n. A/RES/45/94

78. <http://www.un-documents.net/unchedec.htm>

79. UN General Assembly, Resolution n. A/CONF.151/26

Climate Change<sup>80</sup> and the subsequent Paris Agreement of 2015<sup>81</sup> and the UN Special Procedure mandate on Human Rights and Environment established in 2012.<sup>82</sup>

More recently the UN Special Rapporteur on Human Rights and Environment, prof. John Knox, has published a report containing 16 “Framework Principles” concerning the interrelation of human rights and environment in International law and calling the UN General Assembly to recognise the right to live in a healthy environment as an international human right.<sup>83</sup>

The European Court of Human Rights has recognised, through its own case law, the right of citizens of member States to live in a healthy environment, as included in and protected by Article 8 of the Convention which enshrines the right of individuals to respect for their private and family life.<sup>84</sup>

The right to live in a healthy environment is also protected by European law on environmental protection. First, provisions in this respect are included in the Treaty of the European Union and in the Treaty on the Functioning of the European Union: Article 3 of the treaty of the European Union affirms “The Union shall [...] work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.” The Environmental policy of the EU is subsequently articulated by Article 11 of the TFUE, which affirms: “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.” Furthermore, Articles 191-193 of the TFUE make the protection of environment, the improvement of its quality, the protection of human health and combating climate change the primary objectives of the EU environmental policy.

Moreover, the regulatory framework is also particularly stringent and is based on two principal Directives: Directive 2010/75/EU on Industrial Emissions (IED Directive), which came into force in 2011, replacing the “Integrated Pollution Prevention and Control Directive” and Directive 2004/35/EC on environmental liability (Environmental Liability Directive).

The IED Directive sets out the requirements that must be met in the case of industrial activity that is potentially harmful to the environment in order to obtain integrated environmental authorisation (AIA) and includes the following provisions:

- The authorisation must be “integrated”; in other words, it must take into account the whole environmental impact of the plant;
- Emission limits set in the AIA must be based on “Best Available Techniques” (BAT), i.e. the best technology available at the time. Such technologies are defined by the Commission together with national experts and environmental organisations in the BAT reference document called the BREF. The Commission’s conclusions on BATs must be the reference for the granting of authorisations based on the Directive;

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80. [http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)

81. [http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf)

82. HRC Resolution n. 19/1 of the 19 April 2012.

83. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement>

84. A. Bonfanti, *Imprese multinazionali, diritti umani e ambiente*, CEDAM, 2012, p. 55.

- Finally, the IED Directive states that the public has the right to participate in the authorisation process and to be informed of its consequences. Information on emission data is also accessible through the European Pollutant Release and Transfer Register (E-PRTR).

The IED Directive has been transposed into Italian law by Legislative Decree no. 46/2014.<sup>85</sup>

On the other hand, Directive 2004/35/EC on environmental liability establishes the legal framework on the prevention and remedying of environmental damage. It is based on the "polluter pays" principle which is also set out in the Treaty on the Functioning of the European Union (TFEU, Article 191(2)) and establishes the strict liability of the operator carrying out dangerous activities in the event that damage and a causal link between the company's activity and the environmental damage are proved. In this case, it is not necessary to prove fault or negligence to invoke liability for environmental damage. According to the Directive, natural or legal persons affected by environmental damage and environmental NGOs have the right to request the competent authorities act against the polluting company.

The Directive makes it clear that, in the event that environmental damage is confirmed, it falls to the operator to inform the competent authority and 1) to adopt all necessary measures to control, contain, remove or manage the factors that have caused the damage in order to avoid it becoming worse; 2) to adopt all necessary measures to restore the situation to baseline condition and to remove all significant risks to human health. Finally, it falls to the polluting operator to bear the costs of preventive and remedial action.

The Directive on environmental liability has been transposed into Italian law through Legislative Decree no. 152/2006 containing environment protection norms (The Environmental Code).<sup>86</sup>

#### **- The precautionary principle**

It is important to remember that European law, like international environmental law, is based on the precautionary principle. The principle provides that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".<sup>87</sup> This principle is referred to by numerous international instruments and is now considered part of customary international law.<sup>88</sup> The precautionary principle further defines the content of the duty of care and legal obligations imposed on States and requires them to adopt regulatory, administrative and political instruments that guarantee the adequate management of the risk in situations in which, even in the absence of definitive proof, it represents a threat to the environment.

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85. <http://www.gazzettaufficiale.it/eli/id/2014/03/27/14G00058/sg>

86. [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2006-04-14&atto.codiceRedazionale=006G0171](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2006-04-14&atto.codiceRedazionale=006G0171)

87. UN General Assembly, Rio Declaration, 12 August 1992. <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> See also A. Bonfanti, *Imprese multinazionali diritti umani e ambiente*, cit., p. 89.

88. A. Bonfanti, cit., p. 91.

### **- *The right to access information***

An important procedural aspect of the right to live in a healthy environment is contained both in EU environmental law and in the European Human Rights Convention, in particular in Article 8 which, as interpreted by the Court, consists of the right of the population to receive the necessary information on all risks affecting their health and the environment.<sup>89</sup> Such a right consists of the obligation on the part of the State authorities to provide access to the results of enquiries and studies on the environmental impact of industrial activity to all the actors involved so that each individual may make the best decisions for their health and that of their families.

This principle was subsequently codified by the 1998 Aarhus Convention on access to information regarding the environment and ratified by Italy with law no. 108/2001.<sup>90</sup>

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89. ECtHR, *Guerra v. Italy*, 19 February 1998 ; *Giacomelli v. Italy*, 26 March 2007 ; *Fadeyeva v. Russia*, 11 December 1999.

90. [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2001-04-11&atto.codiceRedazionale=001G0141&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2001-04-11&atto.codiceRedazionale=001G0141&elenco30giorni=false)

## 6. OBLIGATIONS OF THE STATE IN RELATION TO INDUSTRIAL ACTIVITIES IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

In view of the rights mentioned above and recognised by international law, States have, as recalled, positive and negative obligations to guarantee the respect, protection and fulfilment of such rights under their jurisdiction. The case law of the European Court of Human Rights has further clarified the content of these obligations in relation to industrial activity taking place on their territory on numerous occasions.

The negative obligation to safeguard the rights of the Convention from violations committed by companies exists when companies are acting as “agents of the State”<sup>91</sup>. The responsibility of the State therefore arises when the State is directly implicated in the offence, i.e. if the company committing the offence is owned, controlled and/or managed by the State. On this subject it is useful to recall that the Court has identified different criteria for determining on a case by case basis when commercial activity can be considered directly attributable to the State.<sup>92</sup>

In the second case, the liability of the State for violating a positive obligation arises from the fact that it has not adopted all the measures necessary to avoid a private company committing a violation of conventional law (for example because it had violated national law and created emissions that were harmful to the health of the individual residents in its own territory)<sup>93</sup>.

From the case law of the Court it is clear that the positive obligation of States demands that they adopt all necessary measures to provide effective protection of individuals’ rights against the behaviour of third parties, including business enterprises. This is a crucial clarification in that the Court reiterates that the assessment of the adequacy of measures adopted to regulate and control industrial activity must be carried out in reality and not just in theory<sup>94</sup> and that it is up to the State to ensure that national regulations are being implemented effectively and that they are being properly respected.

Moreover, the Court noted in the case of *Tatar v. Roumanie* that the assessment of adequacy of the measures adopted should be carried out with regard to the precautionary principle applied to all activities carried out to safeguard health, the environment, and consumer safety.<sup>95</sup>

Furthermore, the Court clarified that the obligation of States to safeguard human rights from violations by third parties is twofold: substantive and procedural. In the first case the State is obliged to regulate and control industrial activity, which includes providing necessary information to individuals on potential health risks in living in proximity to a polluting plant. It is also up to the State to develop and communicate an emergency plan<sup>96</sup>.

When it comes to the procedural component, the State, as we have mentioned, is obliged to ensure the participation of its citizens in decisions and to ascertain that these are taken based

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91. ECtHR, *Fadeyeva c. Russia*, cit.

92. ECtHR, *Fadeyeva v. Russia*, cit.

93. ECtHR, *Lopez Ostra v. Spain*, 14 May 1990.

94. ECtHR, *Lopez Ostra v. Spain*, cit. ; e *Ouranio Toxo v. Greece*, 20 October 2005.

95. ECtHR, *Tatar v. Roumanie*, 17 March 2009.

96. ECtHR, *Guerra v. Italy*, cit. e *Giacomelli v. Italy*, cit. e *Fadeyeva v. Turkey*, cit.



on investigations and environmental impact studies<sup>97</sup>. In numerous cases, moreover, the Court has clarified that it is part of States' positive obligation to guarantee the effective implementation of legislative measures, including: to ensure that they are respected by companies and public authorities, to investigate and sanction behaviour which infringes such measures<sup>98</sup>, to guarantee a fair trial for victims<sup>99</sup> and to ensure the effective implementation of the decisions of the judicial authority<sup>100</sup>.

### **- *The margin of discretion***

In executing their own positive obligations and adopting the legislative and administrative measures necessary to safeguard the rights enshrined in the Convention, the States enjoy a generous margin of discretion as defined by the case law of the Court. This leaves the State to assess the correct balance between the various interests in play, for example between the public interest in economic development and employment on the one side, and the interest to protect human rights such as life, health and private and family life on the other. As a general rule, the Court will only comment on this balance in exceptional circumstances. However, it falls to the State to prove that it has acted with due diligence and has taken into account all the interests of the community as a whole<sup>101</sup>. Where national authorities have breached the regulations and therefore acted illegally, such margins of discretion are reduced<sup>102</sup>.

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97. ECtHR, *Hatton v. UK*, 8 July 2003 ; *Taskin c. Turkey*, 30 March 2005.

98. ECtHR, *Orneyilidz v. Turkey*, cit.

99. ECtHR, *Steel and Morris v. UK*, 15 February 2005.

100. ECtHR, *Fuklev v. Ukraine*, 7 Juin 2006.

101. ECtHR, *Fadeyeva*, cit.

102. ECtHR, *Guerra, Lopez Ostra, Taskin*, cit.

## 7. THE ILVA CASE

In the ILVA case and in light of what has been described above, there can be no doubt as to the danger of the activities carried out or the impact they had and continue to have on the health of the inhabitants of Taranto and on the surrounding environment.

On the basis of what is enshrined in the European Convention on Human Rights and the associated case law, as well as in all the international instruments and principles already mentioned, the Italian State has an obligation to take all the concrete measures necessary to prevent and remedy the violations and punish their perpetrators.

Adopting legislative measures to protect individual rights and the environment is not by itself sufficient; those measures must be applied in practice and any infringements duly investigated and punished.

Italy has a structured legislative and administrative framework in the area of environmental protection that may in theory be considered capable of protecting individuals and guaranteeing the above-mentioned rights: transposition of EU directives, ratification of international treaties, provision for the administrative liability of entities that perpetrate environmental crimes, including new environmental crimes under bill No. 68/2015 (not applicable retroactively)<sup>103</sup>. However, as previously underlined, the suitability of this legislative and administrative framework should be assessed in practice, regarding its capacity to guarantee effective protection to the population of Taranto.

In the ILVA case, the courts have ascertained that for decades the managers of the company, in agreement with local political representatives, knowingly omitted to take any precaution aimed at preventing the activities of the plant from causing damage to health and to the environment and violated regulations with the effect of compounding the already considerable damage produced by the industrial activity.

With respect to the grave violations committed by the company during the decades it was under private management, amply documented by the studies referred to above, and known to the authorities at the latest in the 1990s, the Italian State neglectfully delayed adopting preventive and precautionary measures so as to contain the risks arising from exposure to the pollutants emitted by ILVA. Despite the fact that in 2011 the EU Court of Justice condemned Italy for not issuing emission permits to ILVA as prescribed by the IPPC directive (these were subsequently issued in 2011 and renewed in 2012 and 2013).<sup>104</sup>

Furthermore, in 2013 the European Commission initiated an infringement procedure against Italy for failure to ensure compliance with EU requirements on industrial emissions in the ILVA plant. In particular, the formal notice points to failure by Italy to comply with Directive 2010/75/EU on emissions and Directive 2004/35/EC on environmental liability, which enacts the “polluter pays” principle.<sup>105</sup>

Subsequently, the Commission, in a reasoned opinion under art. 258 TFEU relative to the above mentioned procedure issued on October 16, 2014, underlines:

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103. <http://www.gazzettaufficiale.it/eli/id/2015/05/28/15G00082/sg>

104. ECJ, C. 50/10, available at: <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:62010CJ0050&from=EN>

105. Procedure 2177/2013 See [http://europa.eu/rapid/press-release\\_IP-13-866\\_en.htm](http://europa.eu/rapid/press-release_IP-13-866_en.htm)

“While recognizing that some progress has been achieved since the date the notice was issued, serves notice of infringements of the above-mentioned Directives in the following areas:

- failure to provide roofing over storage sites for minerals and powdery materials;
- failure to implement actions aimed at minimizing gas emissions from gas treatment facilities;
- failure to adopt measures to control emissions of particulate matter with water vapour at the output of the industrial chimneys and to reduce steelworks dust emissions.

The Commission furthermore notifies failure to update the integrated environmental authorisation (AIA) in 2013 and lack of measures relating to the final closure of the plant as well as provisions for the protection of the soil and groundwater”.<sup>106</sup>

In January 2016, the Commission furthermore initiated an in-depth investigation to establish whether or not the support given by the Italian State to the ILVA steelworks was consistent with EU regulations on State aid.<sup>107</sup> The Commission makes it clear that such a decision does not prevent the Italian State from adopting the measures needed to contain and limit the risks arising from emissions by ILVA, providing the costs incurred for these measures are subsequently charged along with interest to the party responsible for the pollution, once identified, in abidance with the “polluter pays” principle enacted in the Union’s pollution law by Directive 2004/35/EC. However, it appears unlikely that the State will be able to recover the amount effectively needed to upgrade and secure the plant, which the criminal court assessed to be 8 billion euros. Finally on July 2016 a delegation of the ENVI Committee visited Taranto and concluded that “beside the improvement achieved the full respect of the environmental legislation is still far to reach. The final goal should be to combine the protection of the health of the population with socioeconomic development of the area. This will be possible only with the full compliance of the environmental legislation by the ILVA plant”.<sup>108</sup>



Protection installed to limit the diffusion of polluting dust

106. [http://europa.eu/rapid/press-release\\_IP-14-1151\\_it.htm](http://europa.eu/rapid/press-release_IP-14-1151_it.htm) See also the audition in the Lower Chamber of the Italian Parliament of the Ministry of the Environment, Mr. Gian Luca Galletti, on the state and consequences of the EU infringement procedures on environment, No. 33, 1 March 2016

107. [http://europa.eu/rapid/press-release\\_IP-16-115\\_it.htm](http://europa.eu/rapid/press-release_IP-16-115_it.htm)

108. Mission report following the visit of the ENVI Committee to ILVA, Taranto 13-15 July 2016 – PE587.681v01-00 See also the PETI fact finding mission to Taranto 17-19 July 2017 available at <http://www.europarl.europa.eu/cmsdata/123280/Background%20Document%20PE571.403EN.pdf>

Furthermore, following the seizure ordered by the Taranto Gip (preliminary investigating judge) in 2012, and confirmed by the *Tribunale di Riesame* (Court of review), the Italian government adopted a series of legal provisions which *de facto* blocked the action of the judiciary and further slowed down the fulfilment of EU legal requirements aimed at containing and limiting the damage caused. In spite of the dramatic situation described above, ILVA's management was granted a series of time extensions for completing the AIA up to 2023, the option of choosing a 20% share of the production that would be exempted from the environmental authorisation, and immunity from prosecution and administrative liability for the present managers and future purchasers for the activities conducted in compliance with the environmental plan.

Finally, it is noteworthy that the inhabitants of Taranto were never informed of how serious the pollution situation was in the areas surrounding ILVA, or of the impact of the industrial activities on health. For instance, prior to April 2005 there was no announcement about the presence of dioxin. It was the environmentalist association Peacelink which reported the presence of dioxin in cheese and in animals, to the Taranto authorities. Furthermore, the study carried out by the institute for workplace prevention and safety under the title "Impact on Health of Some Environmental Conditions" was not published until Peacelink exerted pressure. Amongst other things, this study reported that on March 4, 2004 an alarming peak in benzopyrene of 67ng/m<sup>3</sup> was recorded.<sup>109</sup> More recently, Peacelink was once again behind the dissemination of the ARPA Puglia document on the state of decontamination and pollution of the waters.<sup>110</sup> It is therefore obvious that the population was not given adequate information by the authorities and hence was not in a position to make a realistic assessment of the risks it ran by continuing to live and work in the area adjacent to ILVA. Finally, it should be noted that in the Tamburi neighbourhood there are still several primary schools. It is unacceptable that in the light of the studies conducted and referred to herein no steps have been taken to move the schools to a safer area so as to guarantee the possibility of a healthy life and normal growth to the children attending them.

There is a stark contrast between the Italian State's above mentioned behaviour and the positive obligation of a State to guarantee effective, concrete protection of the fundamental rights of individuals such as the right to life, to health and to family and private life against violations committed by undertakings as set out in the ECHR and by international law. While it is true that the State enjoys broad powers of discretion as to the measures they adopt, it is equally true that the case law of the Court clearly asserts that this freedom of appraisal by the State must be reduced in cases where the public authorities have acted in violation of domestic law. In the case of ILVA, the initiation of an infringements procedure by the Commission arouses more than just doubts about the compliance of the behaviour of the Italian authorities with national legal provisions that implement EU directives.

The Italian Constitutional Court, in the decision that ruled the issue of the constitutional legality of the first of the "Salva ILVA" legislative provisions to be inadmissible, states that operating the trade-off between the various interests at play lies within the powers of the executive, based on the principle of reasonableness. It went on to consider the decision allowing activities to proceed for a specified, limited period of time (36 months) in spite of not holding the integrated authorisation to be "reasonable". However, this criterion of reasonableness fails when one considers that the deadlines for obtaining the authorisation were extended several times in succession (currently the deadline is 2023) and in spite of the fact that there was no indication that any substantial measures have been taken to reduce the risks connected with ILVA's emissions or to deal with the grave situation faced by the people living in Taranto.

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109. ARPA Apulia, technical relation, 16 September 2008, p. 6.

110. ARPA Apulia, relation on the water pollution available at <https://www.peacelink.it/ecologia/docs/5095.pdf>

### **- ILVA under the control of State's commissioners**

Starting in 2015, ILVA was under the management of three government-appointed commissioners, and can therefore be considered, according to the criteria adopted by the European Court of Human Rights in its case law, a state-controlled undertaking. In this case the State not only has a positive obligation to adopt all the measures necessary to prevent, stop and punish the infringement, but also a negative obligation to safeguard protected rights against infringements by undertakings considered to be "agents of the State". In the latter case, the State might be held directly responsible for any infringements that occurred during the period of management by commissioners (*Fadeyeva v. Russia*). As indeed already demonstrated hereinabove, the data on the pollution by ILVA and its impact on the right to health, life and a healthy environment continued to be of concern in the period following the appointment of the commissioners. On this topic, it is useful to recall that criminal proceedings were instituted in 2014 for infringements committed by the Special Commissioner.<sup>111</sup> The court dismissed the case precisely on the grounds of the existence of the 2015 decree that exempts the special Commissioner from criminal and administrative liability for activities implemented to fulfil the plan set out in the AIA.

It is manifest that the combination of the time extensions for producing the environmental plan and the guarantee of immunity from criminal and administrative liability for the current and future managers of the plant is utterly incompatible not only with the system for protecting rights as set out by the European Convention but also with the obligations that lie with the State according to international law as well as on the basis of the United Nations Guiding Principles and the OECD Guidelines.

The outcome of those measures, which undoubtedly were aimed at preserving the company's productive capacity and the rate of employment, as well as probably attracting potential purchasers that would enable the plant to continue to operate, is that not only productive activity continues, so does pollution and its impact on health and the surrounding environment (as shown by the recently collected data referred to above) whereas the operations necessary to reclaim the badly damaged territory are not just incomplete but in certain cases (see roofing of minerals storage areas i.e. the first point of the AIA granted to ILVA in 2012)<sup>112</sup> have not even begun.

Is exactly following this reasoning that the Italian Constitutional Court, in its decision n. 58/2018 deposited on the 23 march 2018, just before the publication of this report, declared article 3 of the Law Decree n. 92/2015 which authorized again the prosecution of industrial activities, despite the existence of a seizure decision by the judicial authorities, to be unconstitutional. In its recent decision the Court affirms that "the legislator has favored in an excessive way the interested of the industrial production, neglecting Constitutional inviolable rights such as the protection of life and health, which are inextricably connected with the right to work in a safe environment (art. 4 and 35 of the Italian Constitution). The sacrifice of these fundamental values, protected by the Constitution, makes the Court affirm that the contested norm does not respect the limits that the Italian Constitution put on the industrial activity in its article 41, according to which it needs to be exercised in a way that does not damage safety, freedom and human dignity".<sup>113</sup>

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111. Taranto Office of Prosecutor, Procedure N.RNR 9693/14

112. The 1st of February the construction for the cove of the mineral park officially started, it is a giant work that is supposed to be concluded in 2020, an idea of this work is available at the following link : <https://www.youtube.com/watch?v=NoMvu9SpAnA>

113. Italian Constitutiona Court, decision n. 58/2018 available at : <http://www.giurcost.org/decisioni/2018/0058s-18.html>

The Court therefore reaffirms decisively that the trade-off between economic and labour interests and safeguarding fundamental rights cannot be accomplished solely to the detriment of the latter. A State governed by the rule of law, that has ratified international human rights treaties and is a party to the European Convention on Human and Citizens' Rights is responsible for and has a duty to implement all measures appropriate for protecting, respecting and fulfilling those rights effectively.<sup>114</sup>

At present, three collective claims are pending before the Court relating to infringements of Articles 2, 8 and 13 of the Convention by Italy in the ILVA case. This time, the Court is called upon to rule on the proper fulfilment, by the Italian government, of its positive obligations, both substantial and procedural, to protect the right to life and the right to private and family life. The Court itself seems to attribute a particular importance to such cases, as certified by the fact that it has granted them priority. Moreover, the Court has already inserted the ILVA case into its *environmental factsheet* published on the website, indicating that it could be a fundamental case for the affirmation of principles related to health and environmental protection in the face of polluting industrial activities.<sup>115</sup>

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114. <https://hudoc.echr.coe.int/eng-press>

115. [http://www.echr.coe.int/Documents/FS\\_Environment\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Environment_ENG.pdf)



## 8. THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS ADOPTED BY ITALY—EMPTY PROMISES?

In the wake of the adoption of the UN Guiding Principles on business and human rights, States began to draft “National Action Plans” to implement them domestically. Italy adopted its National Action Plan for business enterprises and human rights in December 2016.<sup>116</sup>

With the adoption of this plan, Italy “is committed to the promotion and implementation of key actions aimed – within the legislative, institutional and operational frameworks that regulate economic activities – at **giving human rights priority status** so as to avoid and minimise potentially negative impact from business activity in this area.”<sup>117</sup> As well as “promoting among businesses, including with reference to the updating exercise of the National Strategy for Sustainable Development, in keeping with the commitments undertaken in the framework of the 2030 Development Agenda.” Under the Plan, in keeping with what is stated by the Guiding Principles, the Italian government requires enterprises to define their own policy for respecting human rights and adopt due diligence procedures for identifying, preventing and remedying potential human rights risks associated with their activity. It is worthwhile remembering that ILVA never performed or published any due diligence process in the area of human rights relating to its own activity, whether during the period it was privately owned or the period it came under commissioner management after the National Plan was adopted.

In particular, in the part concerning the duty of States to protect human rights, the Italian government specifies that: “Economic activity must be carried out in abidance with international instruments in the area of human rights, that make up international human rights law, the principal ILO Conventions, the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines”, and emphasises that: **“In the field of environment protection, the promotion of high environmental standards by enterprises beyond National and EU legislation is an essential contribution to the respect, promotion and fulfilment of human rights”**.<sup>118</sup> On a general level, the Italian government undertakes to promote sustainable development and to encourage businesses to adopt due diligence procedures, including by future legislative reforms if necessary.<sup>119</sup> Finally, the government undertakes to apply and oversee the implementation of the European Directive on non-financial reporting<sup>120</sup>, that sets out that large public companies must provide an annual report on the social and environmental consequences of their activities. If, as we believe, the new ILVA is listed on the stock exchange, it will be subject to this obligation and hence will have to communicate in a transparent manner every year about the environmental and social impacts of its activities. It should however be kept in mind that no provisions have been made to punish failure to comply with this standard and that undertakings may justify their failure to publish this data on business-related grounds. Under these circumstances, the oversight role of public authorities and their ability to bring pressure to bear, as well as the role of civil society and of victims, are essential.

Finally, regarding state-controlled enterprises, in Italy’s National Action Plan: “companies (are)

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116. The Italian National Action Plan has been published at [http://www.cidu.esteri.it/resource/2016/12/49118\\_f\\_PANBHRTAFINALE15122016.pdf](http://www.cidu.esteri.it/resource/2016/12/49118_f_PANBHRTAFINALE15122016.pdf)

117. Italian NAP, Introduction, p. 5.

118. Italian NAP Italy, p. 18.

119. Italian NAP, p. 17

120. EU Directive n. 2014/95/EU <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

to ensure that undertakings i) that are controlled by the State or in which it has a stake; ii) that receive aid or substantial subsidies from government agencies; iii) that enter into contracts or commercial transactions with the state, **operate in full compliance with human rights as enshrined in domestic law and set out by international law and soft law instruments.**"

ILVA, as of 2015 and prior to 1995, was fully controlled by the State. It furthermore received substantial State aid and subsidies so that it could survive the economic crises, to the extent that the European Commission initiated an inquiry to assess whether standards relating to State aid (see above) had been infringed. This is why, in the ILVA case, the Italian government's commitments under the National Action Plan are particularly stringent. It is not a matter only of ensuring that the enterprise met the environmental standards set out by Italian law, or to oversee that it operated in accordance with national laws created *ad hoc* to deal with the particular circumstances of ILVA. The Plan clearly states that enterprises are required to operate in full compliance with human rights as set out by international law and soft law instruments.

The commitments undertaken by Italy in the context of the National Action Plan to promote respect for human rights by enterprises are extremely significant and ambitious.

Assuming these commitments carry some weight, one can reasonably expect the government to be consistent in relation to them, which in the case of ILVA, means taking immediate action aimed at reducing and mitigating the negative impact this undertaking had and continues to have on the health of the population living in the surroundings, and in general in the city of Taranto. The assessment of the State's compliance with its own international duty to protect, respect and implement human rights therefore necessarily implies making sure that commitments contained in the National Action Plan are fulfilled.

## 9. CONCLUSIONS

The case of ILVA reminds us just how easily, even in democratic States governed by the Rule of Law, economic interests can take priority over the protection of human rights. This occurs notwithstanding the existence of an advanced legislative and administrative system which is designed to protect individual rights, and the adoption of a National Action Plan on the implementation of the UNGPs.

In January 2016, following the criminal proceedings (“Ambiente Svenduto”) which began in 2010, the criminal judge indicted 47 former managers of ILVA and other companies for crimes against the environment and the health of the population perpetrated by those managing the plant with the knowledge and support of the ownership of ILVA Spa. 1484 claimants have joined the criminal proceedings. In the Italian judicial system, an indictment is the first step of a criminal proceeding, and the start of the assessment of the merits of the case. While, it is an important step in the right direction, it took nearly seven years to reach this point. It is therefore reasonable to think that by the time the proceedings end, the court will no longer have jurisdiction over the crimes investigated as they are likely to be subject to a statute of limitations.<sup>121</sup> In this context a feeling of powerlessness and mistrust on the public institutions is spreading among the population of Taranto

**“At that time we were not aware of the problems we were creating for the city and for ourselves. I discovered that we used such big quantities of toxic products and disposed of them in an irregular way. When I got sick I understood that the situation was not sustainable anymore for me and for the place where I was living and the effects have been broadly felt, from the unemployment of young people to diseases and tumours”** <sup>122</sup>

The case of ILVA thus illustrates the need to adopt an international binding instrument that regulates companies’ behaviour towards human rights. Such an instrument should clarify the State’s duty to: i) protect, respect and fulfil human rights in relation with business activities; ii) provide access to a complementary international mechanism to monitor the implementation of its provisions and; iii) monitor the implementation of the provisions set out in the States’ National Action Plans.

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121. <http://www.ilsole24ore.com/art/impresa-e-territori/2017-05-13/ILVA-oggi-e-domani-processo-ambiente-svenduto-entra-vivo-205609.shtml?uuid=AER3h3LB>

122. Interview with Mr. Giuseppe Roberto, former employee of ILVA, realised by the NGO Mani Tese and the journalist Rosy Battaglia for the network *Cittadini Reattivi* in relation with the reportage “*I bambini di Taranto vogliono vivere*”(Taranto’s children want to live), published on [www.giustiziaambientale.org](http://www.giustiziaambientale.org) on 28 July 2017, <http://www.giustiziaambientale.org/i-bambini-di-taranto-vogliono-vivere/>

## 10. RECOMMENDATIONS

### To the Italian government:

- Comply with its duty to protect, respect and fulfil human rights, even when violations or abuses are committed by third parties;
- Adopt without further delay all the necessary measures to limit the environmental pollution caused by the activities of ILVA, as well as to limit the damages to the health and well-being of the population of Taranto, with particular attention to the protection of the most vulnerable categories of people, such as women and children and ILVA employees;
- Prepare, without further delay, a plan for the reclamation of the lands where the industrial plant is situated and of the surrounding area.
- Respect the obligations articulated in the National Action Plan on business and human rights and especially: i) to ensure that all companies registered in Italy and in particular those that are controlled by the State, respect human rights and the principles contained in national and international law and in soft law instruments; ii) request that Italian companies adopt human rights due diligence mechanisms; iii) enforce the European Directive on non-financial reporting;
- Inform the population of Taranto and of the areas surrounding ILVA of the health risks linked to industrial activities and request the company to publish a registry of its workers;
- Adopt urgent measures to protect children's health and in particular:
  - provide detailed information to parents on the negative impacts of the industrial activities of ILVA on the health and well-being of children and enable them to take the best decisions in the interest of protecting the well-being of their family;
  - consider the possibility of relocating the primary schools located in the most polluted areas of the "Tamburi" neighbourhood and provide free transportation for the students ;
- Support economic activities aiming at the reconversion of polluted lands;
- Support and encourage alternative economic activities thus promoting the economic development of the area independent of the steel industry;
- Encourage the production and labelling of "dioxin free "food products;
- Support the process at the UN leading towards the negotiation of an international binding instrument on transnational companies and other business entities and human rights;

### **To the future owners and managers of ILVA:**

- Respect human rights as established by national and international norms and by international soft law Principles and Guidelines;
- Adopt all measures necessary to identify, monitor, prevent and remedy the negative human rights and environmental impacts linked to the industrial activities of the ILVA plant of Taranto within the time frame set by the Integrated Authorisation of 2014;
- Comply with the European non-financial reporting directive for public companies with more than 500 employees and thus communicate and publish an annual report on the social and environmental impacts of the company's activities;
- Prioritise, in the implementation of the industrial plan, the remediation of the polluted lands and of the areas surrounding the ILVA plant as well as providing covering for the mineral parks, and provide the necessary resources;
- Comply with the principles of "best available technologies" in order to avoid further pollution and damages related to the industrial production of ILVA;
  - Operate in transparency and provide civil society and the population living in Taranto and in the surrounding areas with all the necessary information regarding the negative impacts of the activities of ILVA and the steps taken to mitigate them;
  - Develop a business model centred on respect of the environment and human rights and invest the human and financial resources required to reduce and prevent the negative impacts of the steel industry on people and the environment.

### **To European and International Institutions:**

- Enforce European and international laws on human rights and environmental protection in the area of Taranto;
- Follow up on the implementation of commitments made by the Italian government in the National Action Plan on business and human rights;
- Monitor the situation of ILVA and require that the new owners comply with all the existing national, European and international obligations on industrial emissions, human rights protection and reporting;
- Adopt a European law on mandatory human rights due diligence for all supply chains in European companies operating in Europe and abroad, that contains binding and effective sanctions for non-compliance.



**Peacelink** is a no-profit organisation with a focus on information that, since 1992, offers an alternative to the messages proposed by big media. Peacelink works together with volunteers, teachers and civil society organisations to promote peace, non violence, human rights, international cooperation, environment protection, civil rights, freedom of expression and pluralism of information. It aims at link 'active citizenship' with 'scientific citizenship'. It is currently civil part in the criminal proceeding against ILVA. It has several projects of 'active citizenship' by underlying before the European Commission and the European Parliament the violation in Italy of european Directives, with a particular focus on the activities of ILVA.

Contact : [associazione.peacelink@pec.it](mailto:associazione.peacelink@pec.it)



The **Unione forense per la tutela dei diritti umani (UFDU)** is a lawyer association founded in 1968 by, among others, Giovanni Conso, Giuliano Vassalli and Maria Lana, with the objective of raising awareness about national and international human rights law and of promoting their concrete and effective enforcement. It is member of the International Federation for Human Rights (FIDH° and the current President of the association is Anton Giulio Lana. The association operates in many italian regions thanks to the work of its regional branches.

Contact persons : Alessio Sangiorgi, [a.sangiorgi@unionedirittiumani.it](mailto:a.sangiorgi@unionedirittiumani.it) and Gioia Silvagni, [g.silvagni@unionedirittiumani.it](mailto:g.silvagni@unionedirittiumani.it)



**Human Rights International Corner (HRIC)** is an innovative legal network of professionals, researchers and experts in Human Rights, engaged in supporting and promoting fundamental rights and principles worldwide by the means of both publications and the organization of workshops, lectures and seminars, as well as by consulting activities and legal representation. HRIC covers all human rights related areas: from the right to a fair trial to detainee rights, from the right to private and family life to immigration law, from labour law to non-discrimination, from the right to a healthy environment to corporate accountability.

Contact person : Marta Bordignon, [bordignon.hric@gmail.com](mailto:bordignon.hric@gmail.com)



# Keep your eyes open

**fidh**

**Director of publications:**

Dimitris Christopoulos

**Editor:**

Marceau Sivieude

**Author:**

Maddalena Neglia with the contribution of Alessio Sangiorgi, Marta Bordignon and Alessandro Marescotti

**Coordination:**

Maddalena Neglia

**Design:**

FIDH

**Photographs:**

FIDH

**Establishing the facts** - Investigative and trial observation missions

**Supporting civil society** - Training and exchange

**Mobilising the international community** - Advocacy before intergovernmental bodies

**Informing and reporting** - Mobilising public opinion

**For FIDH, transforming societies relies on the work of local actors.**

The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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## CONTACT US

FIDH

17, passage de la Main d'Or  
75011 Paris

Tel: (33-1) 43 55 25 18

[www.fidh.org](http://www.fidh.org)

Twitter: @fidh\_en / fidh\_fr / fidh\_es

Facebook:

<https://www.facebook.com/FIDH.HumanRights/>



FIDH is an international  
human rights NGO federating  
184 organizations  
from 112 countries.

**fidh**

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

[www.fidh.org](http://www.fidh.org)