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THE SUPREME COURT OF CASSATION

JOINED CIVIL DIVISIONS

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		June-December 2016 revised
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Emilio IANNELLO	-	
Antonio SCARPA	-	
Michele CATALDI	- Councillor -	

has issued the following

ORDER

on the appeal registered under no. 13085/2024 R.G. brought by

GREENPEACE O.N.L.U.S., in the person of its acting president Ivano Novelli, RE-COMMON E.T.S. (formerly Recommon A.p.s.), in the person of its acting president Rebecca Rovoletto, ZAZZERA FRANCESCA, LION MARCO, BARTELLE PATRIZIA, CREPALDI GIORGIO, POZZATO LUCIA, DESTRO VANNI and RUFFATO LUCIA,

represented and defended by Matteo Ceruti and Alessandro Gariglio, lawyers, and Raffaele Bifulco, lawyer, who have provided the following certified email addresses:matteo.ceruti@rovigoavvocati.it , avvalessandrogari-glio@puntopec.it andraffaelebifulco@ordineavvocatiroma.org ;

– appellants –

against

ENI S.P.A., in the person of its general attorney Stefano Speroni, represented and defended by lawyers Sara Biglieri, Monica Colombera, Cecilia Carrara, Federico Vanetti and Stefano Parlatore, who have provided the following certified email addresses:sara.biglieri@milano.pecavvocati.it , monica.colombera@pec.legance.it,ceciliacarrara@ordineavvocatiroma.org , federico.vanetti@cert.ordineavvocatimilano.it andstefano.parlatore@avvocato.pe.it ;

– counter-appellant –

and

MINISTRY OF ECONOMY AND FINANCE, in the person of the Minister pro tempore, represented and defended by the Attorney General's Office, which has indicated the following certified email address: ags.rm@mailcert.avvo- caturastato.it;

– counter-appellant –

and

CASSA DEPOSITI E PRESTITI S.P.A., in the person of its managing director p.t. Dario Scannapieco, represented and defended by Prof. Andrea Zoppini, who provided the following certified email address: andreazoppini@ordineavvocatiroma.org;

– counter-respondent –

and

DEPPI GIOVANNA, MARTUCCI NINETTO, CARAVAGLIOS RACHELE, HELFFER NOA and D'ANTONIO MARIA ANTONIETTA, represented and defended by Matteo Ceruti and Alessandro Gariglio, lawyers, and by Prof. Raffaele Bifulco, lawyer, who have indicated the following certified email addresses: matteo.ceruti@rovigoavvocati.it,avvalessandrogariglio@puntopec.it and raffaelebifulco@ordineavvocatiroma.org;

– voluntary interveners –

for preliminary ruling on jurisdiction in the proceedings pending before the Court of Rome, registered under no. 26468/2023 R.G.

Having heard the report made in the Council Chamber on 18 February 2025 by Councillor Guido Mercolino;

Having read the written conclusions of the Public Prosecutor, represented by the Deputy Public Prosecutor

Attorney General Alessandro PEPE, who requested the declaration of jurisdiction of the Italian judicial authority.

FACTS OF THE CASE

1. Greenpeace O.n.l.u.s. and Recommon A.p.s., environmental associations of national and international standing, as well as Francesca Zazzera, Ninnetto Martucci, Rachele Caravaglios, Noa Helffer, Marco Lion, Patrizia Bartelle, Giorgio Crepaldi, Lucia Pozzato, Vanni Destro, Giovanna Deppi, Lucia Ruffato and Maria Antonietta D'Antonio, citizens residing in areas of the national territory particularly exposed to climate change, have brought proceedings before the Court of Rome against ENI S .p.a., the Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.a., to ascertain their non-compliance with the obligations inherent in achieving internationally recognised climate targets and their liability for the pecuniary and non-pecuniary damage caused by climate change, with the consequent order for ENI to limit the aggregate annual volume of CO2 emissions into the atmosphere resulting from its industrial and commercial activities and from the energy transport products it sells, and of the Ministry and Cassa DDPP to adopt an operational *policy* defining and monitoring the climate targets that ENI should set itself, and, in the alternative, ordering the defendants to take the necessary measures to ensure compliance with the scenarios developed by the international scientific community to keep the temperature increase within 1.5 degrees.

Given that anthropogenic climate change has a negative impact on individual and collective human rights, causing consequences ranging from a deterioration in quality of life to the impossibility of living in one's place of residence, the actors referred to a*)* the United Nations Framework Convention on Climate Change, which entered into force on 21 March 1994, with the overall objective of preventing dangerous anthropogenic climate change by stabilising greenhouse gas concentrations in the atmosphere, b*)* the 2009 Copenhagen Agreement, which set the global temperature increase necessary to achieve the above objective at below 2°C, c *)* the 2015 Paris Agreement, which

Cancun in 2016, which recognised the need for deep cuts in global greenhouse gas emissions, *d)* Resolution 10/4 of 2009 of the United Nations Human Rights Council, which recognised that climate change constitutes a threat to human rights for those in vulnerable positions, e*)* the Paris Agreement of 12 December 2015, ratified by Law No. 204 of 4 November 2016, with the objective of keeping global warming well below 2°C and preferably limiting it to 1.5°C, in order to significantly reduce the risks and impacts of climate change, f*)* the commitments made by States at the Conferences of the Parties in Glasgow and Sharm el-Sheikh, g*)* the AR6 summary report of the Intergovernmental Panel on Climate Change of March 2023, which summarises the best scientific knowledge currently available on climate change and highlights the international community's awareness of the need to make every effort to limit the temperature increase to below 1.5°C and to reduce the overall use of fossil fuels.

According to the actors, global warming, resulting from the increase in CO_2 concentration in the atmosphere, has serious consequences for ecosystems and human communities across the planet, leading to the disruption of food production and water supply, damage to infrastructure and settlements, and the deterioration of the life, health and well-being of living beings, which in turn can lead to increased migration flows and amplify inequalities between regions and socio-economic environments or between generations, and may constitute sources of conflict or factors exacerbating existing conflicts. Aware of these effects, oil companies have first promoted mass disinformation campaigns aimed at preventing public recognition of them, and then adopted behaviours designed to simulate a commitment to combating climate change by promoting nuclear energy research and projects to offset polluting emissions. Among these is ENI, which is present in 62 countries and active in the exploration, development and extraction of oil and natural gas in 37 countries, including through its subsidiaries, and is responsible for 0.6% of cumulative global industrial emissions.

bales and absolute greenhouse gas emissions equal to 419,000,000 tonnes of CO_2 in 2022, despite having committed itself in its code of ethics to respect human rights and the objectives of the Paris Agreement, has adopted a strategy that is not in line with the recommendations of the scientific community and the IPCC, adopting a decarbonisation plan for 2050 which, in addition to not providing for the total abandonment of fossil fuels, envisages a reduction in emissions of only 35% by 2030, which, however, corresponds to an increase in hydrocarbon production in the short term.

That said, the plaintiffs specified that they were entitled to take action, pursuant to Articles 2043, 2050 and 2051 of the Italian Civil Code and Articles 300 and 313, paragraph seven, of Legislative Decree No. 152 of 3 April 2006, against ENI, as the party responsible for the emissions, for compensation for pecuniary and non-pecuniary damage, distinct from environmental damage, caused by the violation of human rights protected by Articles 2, 9, 32 and 41 of the Constitution, Articles 2 and 8 of the ECHR and Articles 2 and 7 of the CDFUE. In this regard, they argued that international sources on climate change were immediately applicable, as they were comparable to EU law, also referring to the principles of sustainable development and environmental action enshrined in Articles *3-ter and 3-qua- ter* of Legislative Decree No. 152 of 2006, which, by expressly imposing a duty of environmental protection not only on public entities but also on private legal persons, entail the full justiciability of the rights of individuals and associations against business actions conducted in a manner that is inconsistent with these principles and likely to cause environmental/climate damage, in order to obtain the imposition of corporate strategies aimed at ensuring sustainable development and preserving human health and the environment (including ecosystems and biodiversity) from the harmful consequences of climate change. Finally, they affirmed the joint responsibility of the Ministry and Cassa DDPP, as controlling shareholders of ENI, which have made its polluting activities possible and which derive a benefit from them, as they hold sufficient shares to enable them to exercise a dominant influence in the company's shareholders' meeting, the appointment of some of the members of the board of directors, the chairman and the chief executive officer, as well as some of the members of the Sustainability and Scenarios Committee and the Committee with

Control and
risks.

1.1. ENI was established and objected *a)* that the claim was not justiciable, as it was incompatible with its right to freely determine its corporate policy, protected by Article 41 of the Constitution, b*)* the absolute lack of jurisdiction, since the claim concerned the adoption of measures requiring political and legislative assessments, which are the responsibility of Parliament and the Government, c*)* the lack of jurisdiction of the Italian judicial authority, since the plaintiffs had also alleged, in support of their claim, conduct carried out abroad and attributable to foreign companies that were distinct and independent from the defendant, d*)* lack of jurisdiction of the ordinary court, since the Minister for the Environment has exclusive standing to bring an action for compensation for environmental damage, as well as jurisdiction to initiate administrative proceedings to ascertain its existence, and since private individuals can only claim so-called residual damage, i.e. damage directly suffered as a consequence of environmental damage, e*)* the lack of standing and interest of the plaintiffs, in that they do not have a concrete, direct and specific interest, but only a generic interest in the protection of the environment, climate and natural resources, f*)* the limitation period for the right to compensation in relation to damage dating back to a period prior to the five years preceding the filing of the claim, g*)* the absence of unlawful conduct, since the defendant carried out a legitimate business activity of strategic importance in the energy sector, and since there was no violation of Articles 9 and 41 of the Constitution, which are not directly applicable to it, nor of Articles 2 and 8 of the ECHR, applicable to States party to the Convention, nor of the rules of *soft law,* which are merely programmatic in nature.

1.2. The Ministry also appeared and objected to the absolute lack of jurisdiction, arguing that the claim brought would involve an invasion of the sphere reserved to the legislator, to whom the Paris Agreement entrusts the definition of the concrete modalities for its implementation, including with regard to the judicial authority competent to assess compliance by public and private entities resident in Italy, binding the States only to the pursuit of a common result. It added that a review of the

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ENI's activity would result in an assessment of the appropriateness of its future business decisions, in terms of their impact on climate change, which is outside the jurisdiction of the courts. Finally, it objected to the lack of jurisdiction of the Italian courts with regard to ENI's conduct in other countries, pursuant to Article 4(1) paragraph 1, of EU Regulation No. 864/2007 of 11 July 2007 or Article 7 of EU Regulation No. 1215/2012 of 12 December 2012.

1.3. Finally, Cassa DDPP was established, which in turn objected *a)* its lack of standing to be sued, since the dispute concerned conduct attributable to ENI, the sole recipient of the measures requested,

b) the vagueness of the subject matter and title of the claim brought against it, since the plaintiffs had not alleged any specific conduct attributable to it,

c) its absolute lack of jurisdiction, since the dispute concerned- issues of a political and legislative nature that fall outside the scope of judicial power and are within the competence of Parliament and the Executive, pursuant to Article *57-bis* of Legislative Decree No. 152 of 2006 and Article 35 of Legislative Decree No. 30 July 1999, No. 300, *d)* the lack of jurisdiction of the Italian judicial authority with regard to the conduct reported, insofar as it was carried out, at least in part, by companies of the ENI Group operating in other countries, *e)* the lack of standing of the plaintiffs, since they acted to protect a collective interest without attaching the damages individually suffered, f*)* the lack of interest of the plaintiffs, since they sought a measure that would only have effects for the future, by alleging purely hypothetical and potential damage, f*)* the legal impossibility of the protection sought, which is unsuitable for ensuring that the temperature increase is limited to 1.5°C and in any case involves a significant interference in ENI's business activities, in the absence of any legal basis, g*)* the limitation period for the claim brought, concerning damage that occurred in the five years prior to the filing of the application, h*)* the unfounded nature of the claim brought against the defendant, which is not responsible for the conduct independently pursued by ENI, whose management decisions are made exclusively by the board of directors and which is not in a position to influence them by virtue of its mere participation in the capital of ENI, i*)* the lack of

absence of unlawful conduct on the part of ENI, whose strategy does not conflict with the objectives set by the Paris Agreement, which are binding only on States, nor with the right to life or privacy of the actors, nor with Articles 9 and 41 of the Constitution, which are also binding only on the State, *l)* the failure to allege a concrete and actual consequential damage, m*)* the unsuitability of the measure invoked to repair the damage suffered by the plaintiffs and to restore the *status quo ante,* n*)* the absence of the conditions for the granting of an indirect coercive measure, pursuant to Article *614-bis* of the Code of Civil Procedure.

2. By deed notified on 10 June 2024, Greenpeace, Recommon E.t.s. (formerly Recommon A.p.s.), La Zazzera, Il Lion, La Bartelle, Crepaldi, Pozzato, Destro and Ruffato have lodged an appeal for a ruling on jurisdiction, also illustrated in a brief, requesting that jurisdiction be declared to lie with the court seised and, in the alternative, that the question of the constitutional legitimacy of Article 2 of Law No. 204 of 2016 be referred to the Constitutional Court, on the grounds that it conflicts with Articles 2, 9, 24, 41 and 117 of the Constitution, insofar as it does not allow for the incorporation into the state legal system of all the rules necessary to make the provisions of the Paris Agreement immediately applicable to public entities, citizens and businesses. ENI, the Ministry and Cassa DDPP filed counter-appeals, also accompanied by briefs. Deppi, Martucci, Caravaglios, Helffer and D'Antonio intervened in the proceedings, supporting the claims of the other appellants.

REASONS FOR THE DECISION

1. Firstly, the admissibility of the intervention explained in the present proceedings by Giovanna Deppi, Ninetto Martucci, Rachele Caravaglios, Noa Helffer and Maria Antonietta D'Antonio, who, although they did not bring the appeal, cannot be considered third parties with respect to the rules of jurisdiction, as they have an undoubted interest in the resolution of the issue raised by the appellants, together with whom they acted before the Court of Rome, and therefore assume the position of necessary co-defendants, against whom, in the absence of intervention, the integration of the proceedings should have been ordered.

As is well known, the rules of jurisdiction do not constitute an independent procedure with respect to the judgment on the merits, as they are merely instrumental and incidental to the main proceedings, with the consequence that only those who have formally assumed the status of parties in the proceedings *before the court of origin* are entitled to participate (see Cass., Sez. Un., 13/01/2005, n o . 463; 9/08/2000, n o . 558; 10/12/1993, n o . 12167);

since it is intended to remove in advance any doubts as to the identification of the court having jurisdiction over the dispute, it does not allow different questions to be raised, such as those concerning the standing of a third party to participate in the proceedings *at issue* and the existence of the conditions for its intervention: in principle, therefore, the intervention of third parties who are formally unrelated to the proceedings on the merits must be refused, even if they can claim an interest in the resolution of the question of jurisdiction because they are parties to similar proceedings, since in the latter the decision adopted by this Court is destined to take on the value of a mere precedent (see Cass., Sez. Un., 31/05/2016, no. 11387; 21/10/2005, no. 20340; 22/11/

1984, no. 5992). However, the right to intervene cannot be excluded for those parties who, despite being parties (even if not constituted) in the main proceedings, have refrained from bringing proceedings for a ruling on jurisdiction, since a necessary procedural joinder between all the parties can be established (see Court of Cassation, Joint Divisions, 26/03/2014, no. 7179; 9/12/2004, no. 22990), which requires, in the event of failure to establish adversarial proceedings against some of them, the application of Article 331 of the Code of Civil Procedure, also because the decision on jurisdiction is destined to become final also in their regard.

2. Given that the request for a ruling is justified by the applicant's interest in obtaining an immediate and final decision on jurisdiction, in light of the objections raised in this regard by the defendants and the declaration of inadmissibility of a similar application brought by other parties before the same court, the plaintiffs insist on the admissibility of the application, insofar as it concerns compensation for damage to fundamental rights protected by the Constitution, the ECHR a n d

by the CDFUE, arguing, however, that the jurisdiction regulation is admissible even if the application is inadmissible because it concerns a right not provided for by law or is instrumental, in that it pursues purposes other than those typically associated with it, since this does not affect the substantive aspects of the application, regardless of its merits.

3. That being said, they reiterate the justiciability of the claim brought, referring to the judgment of the European Court of Human Rights of 9 April 2024, *Verein KlimaSeniorinnen Schweiz v. Suisse,* which, in declaring admissible the application of an association under Swiss law and of certain citizens seeking to assert omissions by the state authorities in the field of climate change, recognised the complementarity of judicial intervention with democratic processes, stating that, while it cannot replace the action of the legislative and executive powers, the task of the judiciary is to ensure compliance with legal requirements.

Given that there is now certainty regarding the existence of anthropogenic climate change, which poses a serious threat to the enjoyment of human rights and requires the adoption of urgent measures involving both the public and private sectors in order to limit the temperature increase to 1.5°C, the actors point out that they have called for both preventive and compensatory measures, alleging unlawful conduct punishable under Articles 2043, 2050 and 2051 of the Civil Code, Articles 2 and 8 of the ECHR and Articles 2 and 7 of the EU Charter of Fundamental Rights. They add that the claim is based on the provisions of the Paris Agreement, the transposition of which, as a result of the enforcement order, has led to the introduction into domestic law of all the provisions necessary to implement it, in particular the principle of limiting the temperature increase to no more than 1.5°C, theobligation to undertake rapid reductions in line with the best scientific knowledge and the progressive reduction of climate-changing gas production, with the consequent adaptation of the domestic legal system to that of the agreement, through the creation of unwritten rules necessary to fulfil the obligations assumed by the State at international level and binding on both the State and public and private entities, which it is for the interpreter to identify.

Identify and apply.

They deny that the claim brought before the court involves an invasion of the political sphere, observing that the concept of political act is to be interpreted strictly, since the justiciability of acts of public authority is a fundamental principle of the Constitution, which is also applicable in cases such as the present one, where a public or private activity, although not bound by specific rules, is challenged by a request for a determination of civil liability for unlawful acts infringing fundamental rights. They reiterate that, with regard to this claim, concerning constitutionally protected subjective rights, there is no absolute lack of jurisdiction, which refers to the invasion of the sphere of powers of other State powers or other autonomous legal systems in disputes involving public powers that are not even abstractly capable of giving rise to judicial intervention.

4. With regard to the limitation of freedom to determine company policy, the actors observe that Article 9, paragraph 3, of the Constitution provides for a clause of intergenerational responsibility for environmental protection, which is binding on all public authorities, including the judiciary, allowing for review of compliance with climate obligations, which may also be exercised against public and private enterprises, to which the new wording of Article 41 of the Constitution also applies, according to which economic initiative cannot be carried out in a manner that damages health and the environment. In this regard, reference is also made to Articles *3-ter and 3-quater* of Legislative Decree No. 152 of 2006 and Articles 2 and 9 of the Aarhus Convention, ratified by Law No. 16 of 16 March 2001, No. 108, which provide for the full justiciability of the rights of individuals and associations in relation to economic and business activities conducted in a manner that does not comply with the principles of environmental action.

They add that ENI has committed itself to respecting fundamental rights through its code of ethics, noting, however, that their legitimacy to act to ascertain its liability is based on the violation of Article 8 of the ECHR, which can be classified as an unlawful act giving rise to liability under Article 2043 of the Italian Civil Code. They specify that Article 8 cited above applies both in relations between private individuals and in relations with state authorities, at the expense of the latter.

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which are configurable not only as negative obligations, but also as positive, including that of applying and maintaining an adequate legal framework offering protection against acts of violence committed by private individuals, so that in environmental matters the rule is applicable both where the pollution is caused directly by the State and where the State has shown itself incapable of properly regulating private industry. Compliance with these obligations requires national authorities, including courts, to guarantee citizens and associations the right of access to justice, as provided for in Article 6 of the ECHR, which must be practical and effective and includes not only the right to bring proceedings but also the right to have a decision on the dispute given by a court.

5. Finally, with regard to the lack of jurisdiction of the Italian judicial authority, the applicants refer to Articles 4(1) and 7(2) of EU Regulation No 1215/ 2012, according to which persons may be sued before the courts of the Member State in which they are domiciled and, in matters of civil liability, before the courts of the place where the harmful event occurred, specifying that this place may be identified either as the place where the damage occurred or as the place where the event giving rise to the damage occurred. They argue that in the present case the damage certainly occurred in Italy, regardless of whether the event giving rise to it occurred abroad, referring also to EU case law, according to which jurisdiction lies in the place where the tortious act produced its harmful effects on the victim, and adding that no different conclusion could be reached even on the basis of Article 4(1) of EU Regulation No 864/2007 of 11 July 2007, which, in matters of non-contractual obligations, declares that the law of the country in which the damage occurs is applicable, regardless of the country in which the event giving rise to the damage occurred and the country in which the indirect consequences of the event occur.

In this regard, they also argue that it is irrelevant that the emissions can be traced back to companies whose shares are not held by ENI, noting that the emissions of fossil fuel companies must be assessed on the basis of the theory of *corporate personhood*, according to which the strategic role of the parent company in defining policies for the entire group

assumes responsibility for the overall greenhouse gas emissions of its activities and products, specifying, however, that strategic decisions contributing to the climate emergency, with consequent violation of human rights, are not attributable to the companies of the ENI Group, but to the parent company, which openly adopts corporate policies contrary to the best available science and the climate objectives set by the international community.

6. That said, it should first be noted that, as repeatedly affirmed by these Joint Divisions, the admissibility of the jurisdiction regulation cannot be excluded on the mere ground that the initiative was taken by the same party that brought the proceedings on the merits, since it must also be considered applicable in such a case, where there are reasonable doubts- there are reasonable doubts as to the external limits of the jurisdiction of the court seised, a concrete and current interest in the definitive and irrevocable resolution of the question by the Joint Divisions of the Court of Cassation, so as to avoid that a decision adopted in this regard by the court of first instance may be subsequently modified in the course of the proceedings, delaying the resolution of the dispute (see Court of Cassation, Joint Divisions, 12/05/2022, no. 15122; 26/02/2021, no. 5513; 18/12/2018, no. 32727).

All the more so, then, the use of the aforementioned instrument must be considered justified in the case in question, given the novelty of the issues (relating not only to jurisdiction but also to the merits) raised by the plaintiffs' claim, for which there are no precedents in the case law of the Court of Cassation, whereas in the proceedings on the merits, the only ruling that is in any way relevant is a judgment of the same court seised by the plaintiffs, handed down in the course of the present proceedings, which, with reference to a similar (but not identical) dispute, declared that there was a total lack of jurisdiction, ruling that the claim could not be heard by any ordinary or special court, due to the absence of a rule of law that was theoretically suitable for protecting the interest claimed in court (see Court of Rome, 26/02/2024, no. 3552). In addition, there were multiple objections of inadmissibility raised by the defendants' defence, which fuelled uncertainty regarding

to the ordinary judge's power to rule on the claim brought by the plaintiffs, contesting its justiciability and suggesting the possible encroachment by the judge on the sphere reserved to Parliament and the Executive, as well as the at least partial referability of the dispute to the jurisdiction of the Italian judicial authority.

7. The procedural nature of the matter, in which this Court is called upon to act as judge of fact, allows for direct examination of the documents in the case, and in particular the writ of summons, from which it appears that the claim brought before the Court of Rome concerns *a)* a declaration that ENI, the Ministry and Cassa DDPP have failed to comply with internationally recognised climate targets aimed at limiting the increase in temperature to 1.5°C, *(*b*)* the consequent declaration of the joint and several liability of the defendants for all pecuniary and non-pecuniary damage suffered and to be suffered by the applicants as a result of climate change, for breach of the combined provisions of Articles 2 and 8 of the ECHR and Articles 2043, 2050 and 2051 of the Italian Civil Code, c*)* the order that ENI limit the aggregate annual volume of all CO2 emissions into the atmosphere to such an extent that by the end of 2030 it is reduced by at least 45% compared to 2020 levels, or to another extent that guarantees compliance with the scenarios developed by the international scientific community, with the setting of a sum of money to be paid in the event of non-compliance or delay in the implementation of the measure, d*)* ordering the Ministry and the Cassa DDPP, pursuant to Article 2058 of the Italian Civil Code and Article *614-bis* of the Italian Code of Civil Procedure, to adopt an operational *policy* defining and monitoring the climate objectives that ENI should adopt, with the setting of a sum of money to be paid in the event of non-compliance or delay in the execution of the measure, e*)* in the alternative, the order that the defendants adopt all necessary measures to ensure compliance with the scenarios developed by the international scientific community to limit the temperature increase to 1.5°C.

The specific reference to Articles 2043, 2050, 2051 and 2058 of the Italian Civil Code makes it clear that, through the claim in question, the plaintiffs intended to assert the defendants' non-contractual liability for the damage caused by the i-

ENI's failure to comply with its obligation to adopt, in the exercise of its activities aimed at industrial and commercial activities carried out either directly or through its subsidiaries, the measures necessary to reduce the volume of CO_2 emissions into the atmosphere to such an extent as to enable the objective set by the international agreements on combating climate change, consisting in limiting the increase in global temperature to 1.5°C above pre-industrial levels. The basis for this responsibility is identified in the violation of the obligations arising from the aforementioned agreements, and in particular from the Paris Agreement of 12 December 2015, considered binding also on private individuals, as a result of the enforcement order issued by Law No. 104 of 2016, and in the consequent violation of the right to life and respect for private and family life, provided for in Articles 2 and 8 of the ECHR, which are in turn considered to give rise to positive and negative obligations not only for the States party to the Convention, but also for private individuals, as well as in the violation of Articles 9, third paragraph, and 41, second and third paragraphs, of the Constitution, as amended by Constitutional Law No. 11 of 11 February 2022,

No. 1, which, in establishing the principle of environmental protection, specify that private economic initiative cannot be carried out in such a way as to cause damage to the environment or to health, and further stipulate that it must be directed and coordinated towards environmental objectives.

7.1. The plaintiffs' claim is part of the well-known trend, which has been widespread internationally for some time and has recently arrived in Italy, of so-called *climate change litigation*, which, compared to other similar initiatives, is characterised by the fact that it is directed against a private company (as ENI is now considered to all intents and purposes, following the transformation initiated by Article 15 of Decree Law No. 11 of 19 July 1992, converted with amendments by Law No. 359 of 8 August 1992), and two other entities, one of which is a State administration, while the other, despite its transformation into a joint-stock company (provided for by Article 5 of Decree Law No. 269 of 30 September 2003, converted with amendments by Law No. 326 of 24 November 2003), continues to have a rather controversial nature, with some still considering it to be, in substance, an autonomous public administration (see Council of State, Section VI, 12/02/2007,

No. 550; Council of State, Section, Special Committee, 7/11/2012, No. 8178). Beyond these uncertainties, however, what appears decisive for the purposes of resolving the issue in question is the fact that in the proceedings on the merits, both the Ministry and the Fund were sued not in their capacity as public administrators responsible for failing to adopt the measures necessary to achieve the climate objectives set by the sources indicated, but in their capacity as reference shareholders of ENI, which is required to adopt the necessary measures to achieve the climate objectives set by the sources indicated.public administrations responsible for failing to adopt the measures within their respective competences necessary to achieve the climate objectives set by the sources indicated, but as reference shareholders of ENI, whom the plaintiffs accused of failing to exercise or inadequately exercising their powers as shareholders in order to steer the activities of the company in which they held a stake towards compliance with the aforementioned objectives.

In the other case brought before the Court of Rome, which ended with a declaration of absolute lack of jurisdiction, the claim was brought against the Presidency of the Council of Ministers and concerned the determination of the State's non-contractual or qualified social contact liability for failure to fulfil its duties (having the same sources indicated by the plaintiffs) to intervene and protect against the degenerative effects of the climate emergency, in order to protect fundamental human rights, with a request that the defendant be ordered to take all necessary measures to reduce national artificial CO_2 emissions to the extent and within the time limits indicated, and in particular to bring the Integrated National Energy and Climate Plan (PNIEC) into line with the provisions necessary to achieve that objective. From a subjective point of view, this initiative mirrored a model adopted in other countries, where the action was directed against the legislating State or the State administration, with the same aim of directly obtaining an order requiring the adoption of measures to limit climate-changing emissions (see, in the Netherlands, Gerechtshof Den Haag, 9 October 2018, Stichting Urgenda v. Netherlanden), or with the different aim of obtaining a declaration of constitutional illegitimacy of environmental legislation containing measures that are inadequate to achieve the climate objectives set by international sources (see, in Germany, Bundesverfassungsgericht, 24/03/2021, Neubauer et al. v. Deutschland) or the setting of deadlines for the adoption of measures to reduce greenhouse gas emissions into the atmosphere (see in France, Tribunal administratif de Paris, 3/02/2021, Notre Affaire à

Tous et al. v. France).

Unlike the aforementioned cases, the case in question constitutes a common action for damages, based on the allegation of damage consisting of the violation of the right to life and respect for private and family life, the injustice of which is predicated on the one hand on the positive and negative obligations arising from Articles 2 and 8 of the ECHR, and, on the other hand, to the duties to take action provided for by international sources on combating climate change, the binding effectiveness of which is affirmed not only for the States that have acceded to the ECHR and the agreements referred to, but also for individual public and private entities, in particular those operating directly or through other entities in which they participate in the production, transport and marketing of fossil fuels, to which the so-called *attribution science,* which has studied these phenomena in depth, attributes the greatest contribution to CO2 emissions into the atmosphere, responsible for global warming. In this sense, reference should also be made to Articles 2050 and 2051 of the Italian Civil Code, which are considered suitable for establishing strict or presumed liability on the part of the aforementioned entities, given the intrinsic danger of the activity carried out, which requires those who carry it out to take all appropriate measures to prevent it from causing damage to third parties, or in any case the harmful dynamism associated with the nature of the materials processed, which implies a strict obligation to prevent damage to third parties.- activity carried out, which requires those who carry it out to take all appropriate measures to prevent it from causing damage to third parties, or in any case of the harmful dynamism associated with the nature of the materials processed, which implies a duty of care and control on the part of those who have them at their disposal. On the basis of these factual and legal allegations, the court is then asked to ascertain the joint and several liability of ENI, as the direct operator of the aforementioned industrial and commercial activity, and of the other two defendants, as holders of a position of control (in the private law sense) that allows them to intervene indirectly in this activity, with the order that they take appropriate measures to reduce emissions within the limits set by the international sources indicated.

Therefore, the reasoning followed by the Court of Rome in relation to the action brought against the Presidency of the Council of Ministers, according to which 'the claim for compensation linked to the ownership of a subjective right (and considered as such

scrutinizable by the ordinary court), as formulated, is specifically aimed at requesting, as *a* substantive *claim*, that the court review the manner in which the state powers provided for by the Constitution are exercised, since the determination of the conditions for the offence 'cannot be separated from a review of *when and how* public powers were exercised (which also takes into account scientific evidence) and the claim for compensation is only the possible consequence of that determination'; nor does the statement contained in the same judgment appear relevant, according to which 'the interest for which compensation is sought under Articles 2043 and 2051 of the Civil Code does not fall within the category of legally protected subjective interests, since decisions relating to the methods and timing of managing anthropogenic climate change — which involve discretionary assessments of a socio-economic nature and in terms of costs and benefits in the most varied sectors of human society — fall within the sphere of competence of political bodies and cannot be sanctioned in the present case'. In the present case, the plaintiffs do not assert the liability of the legislating State for 'acts, measures and conduct manifestly expressive of the political function of determining the fundamental lines of development of the State's legal system and policy in the delicate and complex, undoubtedly urgent, matter of anthropogenic climate change', but rather the responsibility of the defendants, as entities operating directly or indirectly in the production and distribution of fossil fuels, for failing to adopt the measures necessary to reduce the climate-changing emissions produced by their business activities: the task entrusted to the Court is therefore only to verify whether the international and constitutional sources invoked (or other rules, possibly identified by the trial judge, in accordance with the principle *of jura novit curia)* are suitable for imposing a duty of intervention directly on the defendants, such as to establish their non-contractual liability and therefore justify their conviction to pay compensation in specific form, pursuant to Article 2058 of the Italian Civil Code.

7.2. In this regard, it must first be ruled out that the review requested from the trial judge involves an encroachment on the sphere reserved to the legislative power, which could otherwise be considered, as repeatedly stated by these

Joint Divisions, only when the ordinary or special judge has not applied an existing rule, but a rule created by him, thereby exercising a legislative function that does not fall within his competence (see Cass., Joint Divisions, 26/12/2024, no. 34499; 9/07/2024, n o . 18722; 26/11/2021,
No. 36899), and not even when it has been called upon to rule on a joint action for damages, even if based on the allegation of the failure to exercise or the unlawful exercise of legislative power, which does not give rise to an absolute lack of jurisdiction, even in relation to the political nature of the legislative act, where only the harmfulness of the resulting regulation has been alleged (see Cass., Sez. Un., 24/11/2021, no. 36373).

Furthermore, the lack of justiciability of the claim brought cannot be invoked in this case, since it can only be invoked if it is impossible to identify in the legal system an abstract rulesuitable for protecting the interest asserted in court, does not give rise to a question of jurisdiction, which can be raised by means of the instrument referred to in Article 41 of the Code of Civil Procedure, but to a question of merit, the solution of which is referred to the court seised (see Court of Cassation, Joint Divisions, 27/03/2023, no. 8675; 16/01/2015, no. 647; 4/08/2010, no. 18052).

In the present case, the examination of this question presupposes, inter alia, verification of the binding nature, vis-à-vis individual public or private entities, of the obligations arising from the international agreements invoked and from the ECHR, also in light of the transposition of Articles 2 and 8 of that Convention by Articles 2 and 7 of the CDFUE, as well as the recent ruling of the ECtHR, which, in view of the causal link between the actions and/or omissions of the State in relation to the adoption of appropriate measures to prevent global warming and damage or the risk of damage to individuals, found that the failure of the State authorities to adopt the aforementioned measures constituted a violation of Article 8 cited above, considering that the right to life and to respect for private and family life includes the right of individuals to effective protection against the serious effects of climate change on their life, health, well-being and quality of life (see ECHR, judgment of 9 April 2024, Verein Klimaseniorinnen Schweitz et al. v. Switzerland). However, this is also a matter that falls outside the objective scope of the regulation.

jurisdiction, which concerns exclusively the [illegible] judge with jurisdiction to decide the dispute, with the consequent inadmissibility, in this court, of questions of compatibility with European Union law or questions of constitutional legitimacy, including for violation of Article 117, first paragraph, of the Constitution, concerning the merits of the dispute (see Cass., Sez. Un., 14/01/2022, no. 1083).

For the same reasons, the possibility of raising issues in the present proceedings concerning the existence of individual, actual and specific damage on the basis of the factual allegations made by the applicants must be ruled out, or on the standing of the associations bringing the action, recognised for the purposes of bringing the application before the ECtHR on the basis of the criterion of victim *status*, interpreted in a manner that is not rigid and mechanical but evolutionary and flexible, in the light of the interests at stake and the conditions of contemporary society, and contested in the domestic legal system by the defence of the respondents, on the basis of a restrictive interpretation of Article 310 of Legislative Decree No 152 of 2006, which, in the event of a delay by the Minister for the Environment and Land Protection in taking precautionary, preventive or damage limitation measures, recognises the standing to bring an action for damages, inter alia, natural or legal persons who are or may be affected by the environmental damage or who have an interest such as to justify their participation in the proceedings relating to the adoption of the aforementioned measures.

8. Finally, with regard to the lack of jurisdiction of the Italian court, raised by the defendants in relation to the claim for compensation for damage caused abroad, it should be noted that, as can be seen from a comprehensive reading of the writ of summons, which is not entirely clear on this point, in support of this claim, the plaintiffs did not intend to assert the liability of the companies controlled by ENI with their registered offices in other countries and operating outside Italian territory, but rather the liability of the parent company for the activities carried out by the entire group headed by it, linked to the failure to adopt an industrial and commercial strategy suitable for ensuring the reduction of CO2 emissions into the atmosphere within the specified quantitative and temporal limits, in order to contribute to limiting the increase in

the global temperature as predicted by the sources cited. Il danno

The event resulting from the aforementioned omission was then identified as a violation of the right to life, health and well-being of the same actors, as well as, from the intergenerational perspective that characterises the initiative in question, like others on the subject of *climate change litigation*, the damage to the environment to the detriment of future generations.

Since this is a harmful event that occurred, at least in part, outside the national territory but is attributed to a person established in our country, the provisions of Articles 4(1) and 7(2) of EU Regulation No 1215/2012 apply, which, in general, provide that 'persons domiciled in the territory of a Member State shall, whatever their nationality, be sued in the courts of that Member State', provide for special and exclusive jurisdiction in matters of civil wrongs, whether intentional or negligent, establishing that in such cases a person domiciled in a Member State may be sued

"before the courts of the place where the harmful event occurred or may occur": this last criterion has been consistently interpreted by this Court, in accordance with the established case law of the European Union (see Court of Justice of the European Union, 11 January 1990, in Case C-220/88, Dumez France and Tracoba; 16 July 2009, in Case C-189/08, Zuid-Chemie BV), in the sense of attributing to the injured party a choice between two special, concurrent and alternative courts, consisting respectively of the place where the damage occurred and the place where the event giving rise to the damage occurred (see Court of Justice of the European Union, 9/07/2020, in case C-343/19, Verein für Konsumenteninformation; Cass., Sez. Un., 17/12/2021, no. 40548; 9/02/2021, no. 3125; 15/12/2020, no. 28675). The case law

The European Court of Justice has also stated that the rule on special jurisdiction laid down in Article 7(2) of Regulation No 1215/2012 must be interpreted autonomously and restrictively, as it constitutes a derogation from the general rule laid down in Article 4(1), according to which jurisdiction lies with the courts of the Member State in which the defendant is domiciled (see EU Court of Justice, 12/09/2018, in case C-304/17, Löber): it was therefore clarified that the expression 'place where the harmful event occurred'

cannot be interpreted broadly to include any place where the harmful consequences of an act that caused damage actually occurring in another place can be felt, specifying that, while the place where the event giving rise to the damage occurred is identified as the place where the harmful conduct took place, in order to determine the place where the damage occurred, regard must be had to the
'initial damage', and not to the negative consequences of damage occurring elsewhere (see Court of Justice of the European Union, 4 July 2024, in Case C-425-22, La MOL Magyar Olaj-és Gázipari Nyrt.; 12/05/2021, in case C-709/19, Vereniging van Effectenbezitters; 29/07/2019, in case C-451/18, Tibor-Trans; in the same sense, Cass., Sez. Un., 17/05/2023, no. 13504).

8.1. For the purposes of applying the aforementioned connecting factors, it must also be considered that climate-changing emissions, despite originating in the place where fossil fuels are produced, transported and marketed, have a naturally diffusive scope, extending their effects to the entire Earth's atmosphere, within which the increase in global temperature that causes climate change is determined; the violation of the right to life and to private and family life alleged in support of the claim occurs, on the other hand, in the place where the applicants reside, where the impairment of life expectancy, health conditions and overall quality of life, which constitutes the ultimate effect of the causal sequence triggered by climate change, is destined to occur, and where the applicants have identified the individual, concrete and actual damage they have suffered. On the basis of these considerations, in the present case, the place where the event giving rise to the damage occurred must be identified as the place (or all the places, having regard to the plurality of places and States in which ENI's activity is directly or indirectly carried out) where the climate-changing emissions are produced, while the place where the damage claimed by the applicants is actualised must be identified as the place where they reside: the application of the latter criterion therefore allows us to affirm that jurisdiction over the claim for compensation brought by the plaintiffs lies with the Italian judicial authority, while the use of the former would lead to the identification of a plurality of competent courts, identifiable as those of each of the countries (including

including Italy) where CO_2 emissions are produced. In this regard, it should also be noted that, in reconstructing the causal sequence leading to the alleged damage, the plaintiffs identified its origin in ENI's industrial and commercial strategy, the development of which is ultimately the responsibility of the company's governing bodies, which operate in the place where it has its registered office and operations, allowing the harmful conduct to be located within the national territory, with the consequence that, also from this point of view, jurisdiction must be assigned to the Italian judicial authority.

On the contrary, the circumstance asserted by the defendants that some (presumably the majority) of the emissions complained of by the plaintiffs are produced by entities which, although belonging to the group of companies headed by ENI, are not legally identified with the latter, as they have a distinct and autonomous legal personality and are established in countries other than Italy, where they carry out more or less exclusively their activities: these entities are not parties to the main proceedings, in which ENI is the sole defendant, in its capacity as parent company responsible for developing and approving the industrial and commercial strategy of the entire group, which the plaintiffs consider to be the reason why the subsidiaries failed to adopt the necessary measures to reduce climate-changing emissions- constituting the event giving rise to the damage they claim. The determination of ENI's liability for the emissions produced by the aforementioned companies, in relation to the distinct legal personality of the latter and the autonomy they enjoy in making their respective business decisions, is a matter unrelated to the subject matter of the present proceedings, as it concerns the identification not of the court with jurisdiction over the claim for compensation, but of the person responsible for the damage alleged in support of the claim, which relates to the substance of the dispute.

9. In conclusion, it must be stated that jurisdiction over the claim brought by the plaintiffs lies with the Italian judicial authorities, with the parties being referred back to the Court of Rome, before which the proceedings must continue, including for the settlement of the costs relating to the present stage.

present
stage.

P.Q.M.

declares the jurisdiction of the Italian judicial authority and refers the parties to the Court of Rome, before which the proceedings shall be resumed in accordance with the law.

So decided in Rome on 18/02/2025

The First President f.f.