ITALIAN REPUBLIC
IN THE NAME OF THE ITALIAN PEOPLE
THE SUPREME COURT OF CASSATION
SECOND CIVIL SECTION

Composed by the Messrs. Magistrates: Dr.
DI VIRGILIO Rosa Maria Dr. GORJAN Sergio - Chairman - -
Dr. BELLINI Ubaldo
Dr. GIANNACCARI Rossana
Dr. OLIVA Stefano
pronounced the following:

ORDER

on the appeal 23925/2019 proposed
by: IL, represented and defended by the lawyer ADRIANO DE LUNA, and domiciled at the registry of the Court of Cassation; - recurring -
versus
MINISTRY OF THE INTERIOR, in the person of the Minister pro tempore, domiciled in ROME, VIA DEI PORTOGHESI n. 12, at the GENERAL ADVOCATURE OF THE STATE, which represents and defends him;
- resistant -
PROSECUTOR GENERAL AT THE COURT OF APPEAL OF ANCONA; - notified -
against the decree of the COURT of ANCONA filed on 12/06/2019; having heard the
report of the case carried out in the Council Chamber of 11/12/2020 by the Director Dr. STEFANO OLIVA.

FACTS OF CAUSE

By decree of 12.6.2019, the Court of Ancona rejected the appeal against the provision with which the Territorial Commission for the Recognition of International Protection had rejected the IL application aimed at the recognition of international or humanitarian protection.
He proposes an appeal for the cassation of this decision IL relying on two reasons.
The Ministry of the Interior, notified, filed a memorandum for the purpose of participating in the hearing.

REASONS FOR THE DECISION

With the first reason, the appellant complains of the omitted examination of the decisive fact, in relation to art. 360 cpc, paragraph 1, n. 5, because the Court would not have considered the environmental disaster situation existing in the Niger delta.
With the second reason, the appellant complains of the violation of Legislative Decree no. 286 of 1998, art. 5, because the trial judge would not have recognized the humanitarian protection, on the basis of the existence of the serious environmental disaster referred to in the first reason.
The two complaints, which due to their intimate connection deserve a joint examination, are well founded.
The Court, with ample motivation, acknowledged the existence, in the Niger delta area, of a serious situation of environmental instability, due to the indiscriminate exploitation of the area by oil companies and the ethnic-political conflicts that have affected it. interested since the nineties of the last century. The trial judge states that several paramilitary groups are active in the area and

that due to sabotage and theft, and in the context of the existing instability, numerous oil spills have occurred, as a result of which large areas have been contaminated. He then recalls international sources, updated to 2018, from which it emerges that the Nigerian government has resolved to contest the interests of the main oil companies in the Delta area, among other things entrenching a dispute before an American federal court. This situation, characterized on the one hand by the considerable poverty of the local population, who does not benefit at all from the proceeds of the main natural resource of the area, and on the other by the insecurity linked to sabotage, damage, kidnapping of public figures and attacks also against police force, however, was not considered sufficient by the Court for the purpose of configuring a condition of generalized violence relevant to the recognition of subsidiary protection pursuant to Legislative Decree no. 251 of 2007, art. 14, lett. c), on the basis of the consideration that the level of generalized violence is not such as to integrate an armed conflict or an equivalent situation. Furthermore, the trial court did not in any way consider the context of environmental instability and widespread insecurity for the purposes of granting humanitarian protection.

On this point, it should be noted that the issue of environmental and climate disaster was addressed, at international level, by the United Nations Committee in the context of the decision of the appeal brought by TI (case no.2727/2016, decision of 24 October 2019) , citizen of Kiribati, for the recognition of the right of political asylum in New Zealand, due to the danger to his and his family's survival caused by climate change which, causing a rise in sea level in the area of the Pacific, had placed the island of Tarawa, in the Republic of Kiribati, in which the applicant lived with his relatives at risk of submersion. The applicant complained, in particular, of the extreme instability and uncertainty of his living conditions, and proposed a comparison between his condition and that of the migrant fleeing the war, given that the sea level rise had eroded the area. habitable of the island, caused an increase in population density per square kilometer, with consequent scarcity of natural resources (first of all, fresh water, due to the infiltration of salt water in the aquifers, and arable land) and therefore created social tensions that were previously non-existent. The UN Committee, referred by T. to the outcome of the exhaustion of the internal appeals under New Zealand law (state in which he had requested asylum), while rejecting the application due to the applicant's failure to demonstrate the actual and imminent danger of submerging the island from which he came, affirmed the principle that states have the obligation to ensure and guarantee the right to life of people, and that this right also extends to reasonably foreseeable threats and potentially lethal situations which can result in the loss of life or in any case a substantial worsening of the conditions of existence, including environmental degradation, climate change and unsustainable development, which constitute some of the most serious and urgent threats to the life of present and future generations (cf. point 9.4 of the decision) and which can adversely affect the well-being of an individual and therefore cause a violation action of his right to life (cf. point 9.5). In particular, the UN Committee considered that the general principle of non-refoulement, which prohibits the repatriation of an asylum seeker in a territorial context in which there is substantial risk of irreparable damage to his personal safety or that of his family members, applies to all conditions of danger, since the individual right to life also includes the right to a dignified existence and to freedom from any act or omission that could cause an unnatural or premature death of the human person. Consequently, States are bound to ensure that individuals have living conditions that make it possible to fully express the right to life, in its broad form, even regardless of the existence of a present danger to survival. Environmental degradation, in the view of the UN Committee, can compromise the effective enjoyment of individual human rights, as well as climate change and the effects caused, in general, by unsustainable development; this occurs when the local government cannot, or does not want to, ensure the conditions necessary to guarantee everyone access to

essential natural resources, such as arable land and drinking water, with a consequent compromise of the individual right to life.
It follows from the foregoing that if, as in the present case, the trial judge finds, in a specific area, a situation suitable for integrating an environmental disaster, or in any case a context of serious compromise of natural resources which is accompanied by the exclusion of entire segments of the population from their enjoyment, the assessment of the widespread dangerous condition existing in the applicant's country of origin, for the purpose of recognizing humanitarian protection, must be conducted with specific reference to the particular risk for the right to life and dignified existence deriving environmental degradation, climate change or unsustainable development of the area. The danger to the individual life that is detected for the purposes of the recognition of protection, in fact, does not necessarily have to derive from an armed conflict, but can depend on socio-environmental conditions that can in any case be referred to human action, provided that the context it is created in a specific area is, in practice, such as to seriously jeopardize the very survival of the individual and his relatives. In this perspective, war, or armed conflict in general, represents the most striking manifestation of man's self-destructive action, but does not exhaust the range of behaviors capable of compromising the dignified living conditions of the individual. This compromise, in fact, is configured in every hypothesis in which the socio-environmental context is so degraded as to expose the individual to the risk of seeing his fundamental rights to life, freedom and self-determination canceled, or in any case of seeing them reduced to below the threshold of their essential and unavoidable core. From this point of view, it should be specified that the concept of "ineliminable core constitutive of the statute of personal dignity" affirmed by this Court with reference to the scrutiny that the trial judge must conduct in order to ascertain the risk deriving from repatriation, and the consequent vulnerability of the individual that legitimizes the recognition of humanitarian protection (see Cass. Section 1, Sentence no. 4455 of 23/02/2018, Rv. 647298; Cass. Section U., Sentence no. 29459 of 13/11/2019, Rv. 656062-02; Cass. Section 1, Ordinance n. 17130 of 08/14/2020, Rv. 658471) constitutes the essential level, below which decent living conditions are not recognizable and, therefore, no the fundamental right to life of the individual is ensured. It follows that the trial court is required to verify the effective assurance of this minimum limit not only in relation to situations that can be framed in the context of the armed conflict, but also with reference to conditions of social, environmental or climatic degradation, or contexts of unsustainable exploitation of natural resources, which pose a serious risk to the survival of the individual. In other words, the assessment of the danger should not be conducted solely with reference to the limit hypothesis of armed conflict, but - more generally - with regard to the existence, in practice, of a suitable condition for reducing the fundamental rights to life, freedom and self-determination of the individual below the minimum unavoidable threshold referred to above.
In the present case, this specific verification was lacking, as the Court of Ancona ascertained the existence, in the Niger delta area, of a context substantially suitable for integrating the extremes of the environmental disaster, by which it must be understood, alternatively, according to the definition provided in national law by art. 452-quater of the Criminal Code, the "irreversible alteration of the equilibrium of an ecosystem", or the "alteration of the equilibrium of an ecosystem whose elimination is particularly onerous and achievable only with exceptional measures", or "the offense to public safety by reason of the relevance of the fact for the extent of the impairment or its harmful effects or for the number of people offended or exposed to danger". Despite having recognized the existence of a condition of environmental disaster, the judge from the Marches has erroneously limited the assessment of the existence of the condition of generalized danger to the sole existence of an armed conflict, without considering, neither in relation to the application for recognition of subsidiary protection, nor to that of granting humanitarian protection, the risk of

compromising the minimum unavoidable threshold of the fundamental rights of the individual specifically linked to the recognized existence of the context of environmental disaster.
From this point of view, the appeal must be accepted, with cassation of the contested decision and referral of the case, also for the costs of the present legitimacy judgment, to the Court of Ancona, in different composition, which will take care to comply with the following principle of law: "For the purposes of the recognition, or denial, of the humanitarian protection provided for by Legislative Decree no. 286 of 1998, art. 19, paragraphs 1 and 1.1, the concept of" essential constituent core of the statute of personal dignity "identified by the jurisprudence of this Court (see Cass. Section 1, Sentence n. 4455 of 23/02/2018, Rv. 647298; Cass. Section U., Sentence n. 29459 of 13/11/2019, Rv. 656062-02; Cass. Section 1, Ordinance n. 17130 of 08/14/2020, Rv. 658471) constitutes the minimum essential limit below which the individual right to life and dignified existence is not respected. by the trial judge not only with specific reference to the existence of a situation and of armed conflict, but with regard to any context that is, in practice, suitable for exposing the fundamental rights to life, freedom and self-determination of the individual to the risk of zeroing or reduction below the aforementioned minimum threshold, expressly included therein - if its existence is actually recognized in a specific geographical area - the cases of environmental disaster, defined by art. 452-quater of the Criminal Code, of climate change and the unsustainable exploitation of natural resources ".

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the Court accepts the appeal, casts the contested decree and refers the case, also for the expenses of the present legitimacy judgment, to the Court of Ancona, in different composition.
So decided in Rome, in the Council Chamber of the Second Civil Section, on 12 November 2020.

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