

## **La CEDU su inquinamento da crisi nella gestione rifiuti in Campania e discarica (CEDU, sez. III, sent. 19 ottobre 2023, ric. n. 35648/10)**

La Corte Edu si pronuncia sul ricorso proposto da 19 residenti nei comuni campani di Caserta e San Nicola La Strada, che hanno denunciato violazioni derivanti dall'inquinamento di tali luoghi di residenza, in particolare a seguito della c.d. 'crisi dei rifiuti', stato di emergenza dichiarato nel 1994 in Campania per far fronte a gravi problemi di smaltimento dei rifiuti solidi urbani, poi proseguito per i successivi 15 anni. Invocando, in particolare, l'art. 8 (diritto al rispetto della vita privata e familiare), i ricorrenti hanno sostenuto che le autorità italiane non erano riuscite a garantire il corretto funzionamento del servizio pubblico di raccolta, trattamento e smaltimento dei rifiuti e di messa in sicurezza e bonifica della discarica di 'Lo Uttaro', causando gravi danni all'ambiente, mettendo in pericolo la loro salute e pregiudicando la loro vita privata.

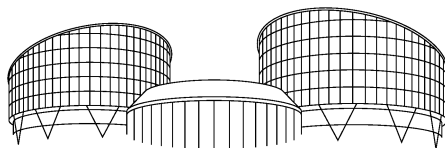
I Giudici di Strasburgo hanno osservato che, in effetti, durante la crisi della gestione dei rifiuti dal 1994 al 2009, i ricorrenti erano stati costretti vivere in un ambiente inquinato dai rifiuti ammassati lungo le strade e dai rifiuti temporanei dei siti di stoccaggio ed hanno ritenuto che tale esposizione ai rifiuti, in violazione delle norme di sicurezza, li avesse resi più vulnerabile a varie malattie,

Le autorità italiane in effetti non erano state in grado di garantire il corretto funzionamento dei servizi di raccolta, trattamento e smaltimento dei rifiuti durante lo stato di emergenza nella regione Campania dall'11 febbraio 1994 al 31 dicembre 2009 e non avevano, quindi, adottato tutte le misure necessarie per l'effettiva tutela del diritto dei ricorrenti al rispetto del proprio domicilio e della propria vita privata, in violazione dell'art. 8 della Cedu. Tuttavia, la Corte ha ritenuto che i ricorrenti non avessero dimostrato se e in quale misura tali circostanze e carenze avessero avuto un impatto diretto sulle loro case e sulla vita privata dopo la fine dello stato di emergenza, a partire dal 1° gennaio 2010, escludendo, conseguentemente, analoga violazione dell'art. 8 a partire da tale data.

Sulla scorta, poi, dei documenti ufficiali forniti dalle parti da cui risultava che il sito di 'Lo Uttaro' aveva causato gravi danni da inquinamento ambientale dovuto a circa 20 anni di smaltimento illegale dei rifiuti, la Corte ha, inoltre, ritenuto che le autorità italiane non avessero adottato le misure necessarie a tutelare il diritto alla vita privata dei ricorrenti dall'inquinamento ambientale causato da tale discarica, in violazione del medesimo art. 8 (aspetto sostanziale). È stata invece esclusa la violazione dell'art. 8 (aspetto procedurale) in relazione alla presunta mancata comunicazione ai ricorrenti di informazioni sull'inquinamento ambientale causato dalla suddetta discarica, trattandosi di situazione di pubblica conoscenza, anche attraverso le inchieste parlamentari svoltesi nel 2007 e nel 2013, le diverse ordinanze emesse dai sindaci di Caserta e San Nicola La Strada ed i comunicati stampa diffusi dalle autorità competenti negli anni dal 2013 al 2019.

Tali accertamenti hanno riguardato, tuttavia, solo 11 ricorrenti, essendo state le denunce degli altri otto dichiarate inammissibili per mancata prova della loro residenza nei comuni interessati.

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EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF XXXXX AND OTHERS v. ITALY**

*(Application no. 35648/10)*

JUDGMENT

STRASBOURG

19 October 2023

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of XXXXX and Others v. Italy,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President,*

Alena Poláčková,

Lətif Hüseyinov,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 35648/10) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nineteen Italian nationals (“the applicants” – see appendix), on 23 June 2010;

the decision to give notice to the Italian Government (“the Government”) of the complaints concerning Articles 2 and 8 of the Convention;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 26 September 2023,

Delivers the following judgment, which was adopted on that date:

**INTRODUCTION**

1. The main issues in the present case are whether (i) the authorities' poor management of the waste collection, treatment and disposal services in the Campania region and (ii) their failure to take protective measures to minimise or eliminate the effects of pollution from a landfill site located between the municipalities of Caserta and San Nicola La Strada violated the applicants' rights under Articles 2 and 8 of the Convention.

## THE FACTS

2. The applicants, whose personal details are set out in the appendix, live in the municipalities of Caserta and San Nicola La Strada (Campania). They were represented by Mr A. Imparato, a lawyer practising in San Prisco.

3. The Government were initially represented by their former co-Agent, Ms P. Accardo, and later by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

4. The facts of the case may be summarised as follows.

### I. WASTE MANAGEMENT IN CAMPANIA AND IN THE MUNICIPALITIES OF CASERTA AND SAN NICOLA LA STRADA

#### A. From 1994 to 2009

5. From 11 February 1994 to 31 December 2009 a state of emergency (*stato di emergenza*) was in place in the Campania region, by decision of the Prime Minister, because of serious problems with municipal solid waste disposal.

6. From 11 February 1994 to 23 May 2008 the management of the crisis was entrusted to deputy commissioners appointed by the Prime Minister, who were assisted by assistant commissioners. Nine senior officials – including the four presidents of the Campania region in office during that time and the head of the civil emergency planning department of the Prime Minister's Office – were appointed deputy commissioners.

7. From 23 May 2008 to 31 December 2009 the management of the crisis was entrusted to an under-secretariat in the Prime Minister's Office under the head of the civil emergency planning department.

8. The main circumstances concerning waste management in Campania from 1994 to 2009 are described in the judgment of *Di Sarno and Others v. Italy* (no. 30765/08, §§ 10-18, 20-34 and 36-51, 10 January 2012).

9. With specific regard to the effects of the waste crisis on the municipalities of Caserta and San Nicola La Strada, several orders of the mayor of Caserta issued between 2 and 9 January 2008 referred to the "serious situation" caused by "huge heaps of waste piling up in the streets" following an interruption in waste collection that had started more than twenty days earlier. They reported that fires had been lit to burn waste, resulting in the release of dioxin. They also stated that the accumulation of a "shocking quantity" (*mole impressionante*) of waste in the streets had impaired pedestrian and vehicular traffic and produced unbearable miasmas spreading throughout the entire municipality. They reported that this situation had led to a public health emergency and resulted in considerable distress and potential danger to citizens' safety. To safeguard public health, the mayor

postponed the resumption of all educational activities, including kindergartens, schools and universities, suspended several local markets and ordered the removal of waste from the streets to temporary storage areas.

10. As to the municipality of San Nicola La Strada, in several orders issued between 6 April 2007 and 12 May 2008 its mayor referred to the “interruption in waste collection caused by the closure of disposal sites” and the subsequent accumulation of waste “on all public roads” constituting a danger to public health. He ordered the temporary closure of a kindergarten and primary school, suspended the municipality’s weekly fair and ordered the removal of waste from the streets to temporary storage areas.

## **B. From 2010 to 2020**

11. Decree-Law no. 195 of 30 December 2009, converted with amendments into Law no. 26 of 26 February 2010, set out urgent measures in relation to the end of the state of emergency. From 1 January 2010 waste management was entrusted to the presidents of the provinces. Moreover, the Decree-Law set out measures aimed at speeding up the construction of power plants fuelled by refuse-derived fuel (*combustibile derivato da rifiuti* – “RDF”) and ensuring the operation of other waste treatment and disposal facilities.

12. Decree-Law no. 2 of 25 January 2012, converted with amendments into Law no. 28 of 24 March 2012, set out additional measures concerning the construction and authorisation of new waste treatment and disposal facilities. It provided that the Ministry of the Environment was to submit an annual report to inform Parliament on waste management results and issues.

13. Decree-Law no. 136 of 10 December 2013, converted with amendments into Law no. 6 of 6 February 2014, set out urgent measures aimed at, *inter alia*, ensuring food safety, as well as enhancing environmental protection and transparency in tender procedures concerning monitoring and land remediation activities in Campania. It provided that investigations were to be carried out in the Campania region in order to map the areas affected by severe environmental pollution owing to illegal spillages and waste disposal, including by combustion (the so-called “*Terra dei Fuochi*” (“Land of Fires”) area).

14. The Ministerial Directive of 23 December 2013 defined the extent of the “*Terra dei Fuochi*” area, listing fifty-seven municipalities in the provinces of Naples and Caserta affected by the phenomenon. This list included the municipality of Caserta.

15. The Interministerial Directive of 16 April 2014 listed other municipalities placed “under observation”, including the municipality of San Nicola La Strada.

16. By Resolution of 16 December 2016 the Campania Regional Council approved an update to the Regional Municipal Waste Management Plan (*Piano Regionale per la Gestione dei Rifiuti Urbani della Regione Campania* – “PRGRU”), which was published in regional Official Gazette (*Bollettino Ufficiale della Regione Campania* – “BURC”) no. 88/2016. The PRGRU set out targets for separate collection and for treatment and disposal capacity in Campania. It also established an emergency action plan for the disposal of baled waste (so-called “*ecobales*” – *ecoballe*) stored in the region.

17. According to a statement by the Campania Regional Council of 6 July 2020, on 24 June 2019 there were still more than 4 million tonnes of “ecobales” in the region. The Regional Council planned to transfer part of that waste to treatment facilities located in other Italian regions or abroad (approximately a third of the total), with the remainder being processed in two new waste treatment plants in Caivano and Giugliano in Campania (province of Naples).

### **C. Judgments of the Court of Justice of the European Union**

18. A summary of the judgments of 26 April 2007 and 4 March 2010 of the Court of Justice of the European Union (“CJEU”) is provided in the judgment of *Di Sarno and Others* (cited above, §§ 52-56).

19. On 16 April and 10 December 2013 the Commission brought two cases before the CJEU under Article 260(2) of the Treaty on the Functioning of the European Union (TFEU), contending that Italy had not taken the necessary measures to comply with the aforementioned judgments.

20. By a judgment of 2 December 2014 (case C-196/13) the CJEU assessed the measures taken by Italy to fulfil the obligations arising from its judgment of 26 April 2007 concerning the existence of numerous illegal landfills in the country. It observed as follows:

“It is common ground that, on expiry of the ... deadline [30 September 2009], cleaning-up works for certain sites were still in progress or had not been started. In respect of other sites, the Italian Republic has not provided any information that would make it possible to establish the date on which the cleaning-up operations, if any, were implemented.”

It also noted that the merely closing down the landfills in question was insufficient for compliance with the obligation to ensure that waste was recovered or disposed of without endangering human health and using processes or methods which could harm the environment.

21. By a judgment of 16 July 2015 (case C-653/13) the CJEU assessed the measures taken by Italy to fulfil the obligations arising from its judgment of 4 March 2010 concerning the national authorities’ failure to establish an integrated and adequate network of waste disposal facilities in the Campania region. The CJEU found that on 15 January 2012, the reference date for assessing whether there had been a failure to fulfil obligations, the authorities had not yet characterised and disposed of approximately 6 million tonnes of “ecobales”, and that this would take about fifteen years from the date on which the necessary infrastructure was built. Moreover, it observed that on the same date, the number of facilities with the necessary capacity to treat municipal waste in Campania was insufficient. In fact, according to the Commission, in 2012 22% of unsorted municipal waste produced in Campania (40% when including organic waste) was sent outside the region for treatment and recovery. It concluded that Italy had not fulfilled the obligations arising from the judgment of 4 March 2010 as it had failed to take the necessary measures to comply with Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.

### **D. Parliamentary commission of inquiry into illegal activities related to the waste cycle**

22. A brief description of the findings of reports by the parliamentary commission of inquiry into illegal activities related to the waste cycle is provided in the judgment *Di Sarno and Others* (cited above, §§ 57-59).

23. In its report of 5 February 2013, the parliamentary commission stated as follows:

“[I]n this precise historical moment, the problem of waste in Campania is not a regional problem anymore ... it is a national problem that exposes Italy to very serious sanctions by the European Union institutions ... The issue of ecobales, which refers to 6 million of tonnes of waste in storage sites that should have been temporary and that ended up being open-air dumps, is emblematic of the extent to which waste issues in the Region are unmanageable. It is not possible to estimate the exact extent to which pollution has moved into the soil, from the soil to food and from food to people. This is an incalculable damage that will affect future generations. The environmental damage is unfortunately destined to produce its effects in an amplified and progressive way in the next years and will reach its peak ... in fifty years.”

#### **E. Scientific studies**

24. On an unspecified date the Italian Government (Civil Protection Department) requested the World Health Organisation (WHO) to conduct a study on the health impact of the waste cycle in the provinces of Naples and Caserta. The results of the first phase of the study (*Studio pilota*), carried out in cooperation with the Italian Health Institute (ISS), the Italian National Research Council (CNR), the Regional Environmental Protection Agency (hereinafter “ARPAC”) and the Campania Regional Epidemiological Observatory (OER), were presented publicly in Naples in 2005 and Rome in 2007. They revealed that the mortality risk associated with tumours of the stomach, liver, kidney, trachea, bronchi and lungs, pleura and bladder, as well as the risk of congenital malformations of the cardiovascular system, urogenital system and limbs, were higher in an area spanning the provinces of Naples and Caserta than in the rest of Campania. This area contained most of the waste disposal sites, but also many other environmental stressors, such as intensive agriculture, widespread industrial activities and a very high population density.

25. In 2007 the results of the second phase of the study (*Correlazione tra rischio ambientale da rifiuti, mortalità e malformazioni congenite*) were published on the website of the Civil Protection Department. They showed that the area with the highest cancer mortality and malformations was the one most affected by the illegal disposal of hazardous waste and the uncontrolled burning of municipal solid waste. This correlation suggested, according to the study, that exposure to waste treatment affected the mortality risk observed in Campania, but that other factors, including family history, nutrition and smoking habits in the area might also influence the mortality rate.

## **II. THE “LO UTTARO” LANDFILL SITE**

### **A. The “Lo Uttaro” area before the reopening of the landfill site**

26. In 1994 the deputy commissioner ordered its technical department to carry out inspections on privately owned waste disposal plants located in the province of Caserta in order to

assess, *inter alia*, the possibility of using them to alleviate the effects of the waste management crisis.

27. The head of the technical department inspected the “Lo Uttaro” area, where, pursuant to decision no. 1366 of 4 March 1989 of the Campania Regional Council, from the late 1980s until the early 1990s a limited liability company, Ecologica Meridionale S.r.l. (hereinafter “Ecologica Meridionale”), had operated a waste disposal plant.

28. On 31 December 2001 the head of the technical department filed a report with the ecological operations unit of the Caserta *carabinieri* stating that the “Lo Uttaro” area was absolutely unsuitable (*assoluta inidoneità*) for a new waste disposal plant. According to the report, the landfill operated by Ecologica Meridionale differed substantially from the project that had been authorised in the late 1980s and did not comply with the precautionary regulations on environment protection set out in the authorisation. Moreover, during its operation it had received significantly larger quantities of waste than had been authorised. According to the expert, the area had been affected by “extremely serious environmental pollution” leading to a “predictable environmental disaster”.

29. On 1 April 2005 the deputy commissioner for emergency land remediation and water protection in the Campania region (*Commissario di Governo per l’Emergenza Bonifiche e Tutela delle Acque nella Regione Campania delegato*) approved the Regional Plan for remediation of the contaminated sites in Campania (*Piano di Bonifica della Regione Campania*, hereinafter “PRB”) (Ordinance no. 49 of 1 April 2005), which included permanent safety measures (*messa in sicurezza permanente*) of the Ecologica Meridionale landfill in the “Lo Uttaro” area.

## **B. Reopening of the landfill site**

30. On 11 November 2006, the deputy commissioner and representatives of the province of Caserta and the municipality of Caserta signed a memorandum of understanding agreeing to open a new waste disposal plant in the “Lo Uttaro” area.

31. On 12 January 2007 the deputy commissioner ordered the temporary occupation of the land concerned and approved the preliminary draft of the work to adapt it to the disposal of non-hazardous waste (Ordinance no. 3 of 12 January 2007).

32. On 19 April 2007 the deputy commissioner authorised the ACSA CE 3 consortium to carry out the disposal of non-hazardous waste at the “Lo Uttaro” landfill site (Ordinance no. 103 of 19 April 2007).

33. On 22 April 2007 the ACSA CE 3 consortium began operating the landfill site.

## **C. Civil proceedings before the Naples District Court**

34. On 20 June 2007 a group of residents of a neighbourhood in Caserta (Villaggio Saint Gobain) lodged an urgent application under Article 700 of the Code of Civil Procedure with the Naples District Court, seeking an injunction to suspend the operation of the waste disposal plant, which they claimed posed an imminent and irreparable danger to their health.

35. On 19 July 2007 a judge of the Naples District Court allowed the application and ordered the deputy commissioner and the ACSA CE 3 consortium to cease operations at the waste disposal plant. The District Court considered that the authorities had failed to put in place all the necessary measures to ensure that the operation of the landfill did not damage public health. No proper

environmental impact assessment had been undertaken. Moreover, at that time the “Lo Uttaro” area was already polluted, as reported by the documents available to the deputy commissioner and also demonstrated by the fact that it was included in the PRB. According to the District Court, the decision to create a new landfill in the “Lo Uttaro” area had been driven by the urgent need to find a site for the disposal of solid waste in the Caserta province, to the detriment of people’s health.

36. On 3 August 2007 the deputy commissioner and the ACSA CE 3 consortium challenged the order of 19 July 2007 before a full bench of the Naples District Court.

37. The court, pending the outcome of the appeal (*reclamo*), allowed the landfill site to operate and appointed an expert to assess, *inter alia*, whether its operation caused harm to human health.

38. In a report filed on 15 October 2007 the expert found that the “Lo Uttaro” area had been a risk to public health since the 1990s, particularly as regards groundwater, which was already contaminated.

The report concluded that the decision to transfer new quantities of waste there was inappropriate as, among other things:

- the choice of site was in violation of the applicable regulations and contrary to the factual findings contained in the documents available to the deputy commissioner;
- any additional waste released into the plant would exacerbate the current risk of damage to the environment and public health, and make any future remediation work more difficult.

39. On 7 November 2007 the mayor of Caserta, having taken note of the expert report and the potential danger to the environment and public health which operation of the plant entailed, ordered its temporary closure until the conclusion of the civil proceedings pending before the Naples District Court.

40. On 13 November 2007 the Naples District Court, sitting in a full bench, dismissed the appeal.

41. According to the information provided by the Government, which has not been disputed by the applicants, following the above-mentioned interim measure no further sets of proceedings were commenced before the civil courts.

#### **D. Criminal proceedings before the Santa Maria Capua Vetere District Court and the seizure of the “Lo Uttaro” landfill**

42. On an unspecified date in 2005 the public prosecutor at the Santa Maria Capua Vetere District Court began an investigation into the management of the “Lo Uttaro” waste disposal plant (RGNR 15618/05) on suspicion that they had, *inter alia*, abusively disposed of hazardous waste and caused an environmental disaster.

43. On 13 November 2007 the preliminary investigations judge (*giudice per le indagini preliminari* – “the GIP”) of the same court allowed the public prosecutor’s request for the preventive seizure of the landfill (GIP Santa Maria Capua Vetere, decree no. 12033/05).

44. The GIP found that the landfill had been operated for the disposal of hazardous waste, in breach of the relevant legislative provisions and the authorisation to operate the waste disposal plant. Certifications had been forged to make hazardous waste appear non-hazardous.



45. Moreover, the decision noted that although the laboratory tests carried out on the groundwater had shown that it was contaminated, the necessary safety measures had not been put in place, in breach of the relevant environmental regulations and the surveillance and control plan set out in the authorisation to operate the waste disposal plant.

46. The GIP found that, according to the inspection reports of the head of the technical department reporting to the deputy commissioner, the “Lo Uttaro” area was absolutely unsuitable for a new waste disposal plant (see paragraph 28 above). The information concerning the size and conditions of the area provided in support of its reopening was false. Furthermore, the current plant had already been used for the disposal of a quantity of waste equal to 4.5 times the volume originally authorised.

47. The GIP also found that the work to adapt the area to the operation of the new plant did not guarantee the securing of the site and was insufficient to repair the current environmental damage.

48. He concluded that “there [was] no doubt that from the overt environmental insecurity of the plant derive[d] its substantial and objective illicitness even in a situation of emergency” and ordered its seizure to prevent the continuation of its abusive operation to the detriment of the environment and public health.

49. Following its transfer to the Naples District Court (RG 26655/08) for reasons of jurisdiction, the part of the case concerning the operation in 2007 of the “Lo Uttaro” landfill site was transferred back to the Santa Maria Capua Vetere District Court (RGNR 58582/08).

50. On 14 March 2016 the court convicted the managing director of the ACSA CE 3 consortium and a deputy commissioner who had been in charge of transferring waste to the “Lo Uttaro” landfill site of illegal trade in waste pursuant to section 260 of Legislative Decree no. 152 of 3 April 2006 (“the Environment Act”). The managing director was also convicted of environmental disaster under Article 434 of the Criminal Code, while the proceedings in relation to the other charges brought against him (unauthorised waste management, forgery and failure to perform his duties of office) were declared time-barred. Forgery charges brought against an officer of ARPAC were also declared time-barred.

51. The judgment held that the groundwater contamination posed a serious danger to public health, regardless of whether it had been exclusively caused by the waste disposal plant. The laboratory carrying out tests on the area had already found in May 2007 that the groundwater was contaminated. According to the operational management plan (*piano gestione operativa*), the managing director should have then suspended the operation of the landfill and implemented safety measures, while ARPAC should have monitored the operation of the waste disposal plant.

52. The Santa Maria Capua Vetere District Court sentenced the managing director to one and a half year’s imprisonment and the deputy commissioner to eight months’ imprisonment imposing on both a temporary ban on holding public office and additional penalties under sections 30, 32 *bis* and 32 *ter* of the Criminal Code, which were all suspended. It awarded damages to the civil parties and ordered remediation of the area.

53. On 9 February 2017 the Naples Court of Appeal acquitted the managing director and the deputy commissioner of all offences because the limitation period had expired, but upheld the remainder of the lower court’s judgment, including the orders awarding damages to the civil parties and for remediation of the area.

54. By a judgment of 2 July 2018 the Court of Cassation quashed the Naples Court of Appeal's judgment and referred the case to it. It stated that, notwithstanding the expiry of the limitation period, the Court of Appeal should have provided adequate reasons for not acquitting defendants on the merits on the basis that they had clearly not committed the offence in question, the facts had never occurred, or the facts did not constitute an offence or did not come under criminal law, under the terms of Article 129 § 2 of the Code of Criminal Procedure. Moreover, the Court of Appeal had not provided reasons for upholding the orders to compensate the civil parties and clean up the area.

55. The parties did not provide information concerning the outcome of referral proceedings before the Naples Court of Appeal.

#### **E. Administrative measures for securing and cleaning up the "Lo Uttaro" landfill site**

56. On 19 May, 9 December and 11 December 2008 ARPAC carried out inspections of the landfill site. It reported that the amount of leachate collected and disposed of was still low compared to the quantity of waste stored at the plant and put considerable pressure on the whole landfill site with the risk of compromising the waterproofing system. According to ARPAC, the landfill had an environmental impact as it caused uncontrolled gaseous emissions and an accumulation and overproduction of leachate. Biogas emissions were estimated at millions of cubic metres per year, which, in the absence of a capture plant, went directly into the atmosphere. It was considered essential to install, even temporarily, a system for capturing and utilising the biogas produced by the landfill.

57. Pursuant to Article 11 of Decree-Law no. 90 of 23 May 2008, converted with amendments into Law no. 123 of 14 July 2008, the Ministry of the Environment was required to support the conclusion of agreements with public or private entities to implement environmental compensation measures aimed at overcoming the waste disposal crisis in Campania. Under this legislative framework, on 18 July 2008 the Ministry of the Environment and the Campania Regional Council agreed on a "Strategic Programme for Environmental Compensation in the Campania Region", which included remediation of the "Lo Uttaro" landfill site.

58. On 4 August 2009 the municipality of Caserta and the Ministry of the Environment signed an operational agreement concerning the measures to be taken to clean up the "Lo Uttaro" area.

59. PRB no. 777 of 25 October 2013, which was approved by the Regional Council and published in BURC no. 30/2013, provided for the determination of an area in the municipality of Caserta, San Marco Evangelista and San Nicola La Strada (known as *Area Vasta "Lo Uttaro"*) where the environmental conditions were particularly compromised owing to the number of contaminated sites, including landfills and waste transfer and temporary waste storage facilities.

60. Between June 2013 and December 2014 Sogesid S.p.A., an in-house company of the Ministry of the Environment (hereinafter "Sogesid"), carried out a first phase of environmental characterisation of the area.

61. According to the test results validated by ARPAC (report no. 22/TF/14), the area was found to be contaminated. In particular, the groundwater was largely contaminated, mainly by manganese, nitrites, iron, arsenic and fluorides. The soil did not have a high enough level of

concentration of elements to consider the industrial area contaminated, with the exception of a temporary storage facility where two samples indicated a concentration of arsenic higher than the legal limit.

62. On 11 April 2014 ARPAC recommended, *inter alia*:

- (i) carrying out a second phase of environmental characterisation of the area, including by testing a wider surface area in order to determine the extent of the contamination;
- (ii) refraining from using the groundwater sourced from the “Lo Uttaro” area for human, agricultural and breeding consumption; and limiting the use of the groundwater sourced within 500 metres from that perimeter, allowing its usage only after analytical tests of the relevant wells;
- (iii) adopting urgent safety measures in respect of the groundwater contamination;
- (iv) urgently removing and disposing of the hazardous waste found in the “Lo Uttaro” landfill site containing asbestos, and immediately adopting measures to avoid any possible airborne release of that substance.

63. On the basis of the results of these investigations, on 8 November 2013 and 3 June 2014 the mayors of Caserta and San Nicola La Strada prohibited the usage of groundwater from wells located in the “Lo Uttaro” area.

64. During a technical meeting on 21 May 2014, Sogesid declared that it did not have the power to carry out the emergency safety measures recommended by ARPAC, particularly as regards the groundwater contamination and the removal and disposal of hazardous waste. The province of Caserta declared that it would request the company Gisec S.p.A. (hereinafter “Gisec”), which was in charge of the managing the waste disposal plant, to carry out the removal and disposal of the hazardous waste. The municipality of Caserta undertook to send a request to the competent authority (*Comitato di Indirizzo e Controllo per la gestione dell’Accordo di Programma*) to have Sogesid authorised to draw up, in cooperation with ARPAC, a feasibility study on the safety measures to be carried out in relation to the groundwater contamination. Sogesid agreed to produce the feasibility study at the end of the second phase of the environmental characterisation.

65. On 6 June 2014 Sogesid filed a project concerning the second phase of the environmental characterisation of the area, which was approved by decree no. 45 of the Campania Regional Council of 13 June 2014. It stated that the work had to begin urgently and be completed within ninety days, excluding the time strictly necessary for tender procedures.

66. On 14 January 2015 Sogesid sent the Campania Regional Council a timetable of further operations, informing it that the activities related to the second phase of the environmental characterisation would begin by the end of January 2015 and that, once these activities had been concluded, the project concerning permanent safety and remediation would be finalised.

67. On 10 March 2016 ARPAC validated the results of the investigations carried out as part of the second phase of the environmental characterisation of the area (report no.7/TF/16). It confirmed that the groundwater was contaminated by, among other things, arsenic, nickel, antimony, iron, manganese, mercury and fluorides.

68. On 16 June 2016 an article in the *Il Mattino* newspaper reported that Gisec had not yet removed the hazardous waste containing asbestos found in the “Lo Uttaro” area in 2014.

69. On 22 July 2016 the same newspaper reported that, although the capping of the landfill was to be completed by 13 March 2017, further investigations were currently suspended.

70. On 24 April 2016 the Campania Regional Council and the Prime Minister's Office entered into the Agreement for Development of the Campania Region (*Patto per lo sviluppo della regione Campania*), which stipulated that the measures set out in the PRB were to be implemented, including the safety measures concerning the groundwater in the *Area Vasta "Lo Uttaro"*.

71. In Resolution n. 510 of 1 August 2017 the Campania Regional Council named the securing of the groundwater in the "Lo Uttaro" area as one of the actions to be carried out with the National Agency for Investment and Business Development (*Agenzia Nazionale per l'attrazione degli Investimenti e lo Sviluppo di Impresa S.p.A. – "Invitalia"*). The Resolution described the level of progress of the securing activities in the "Lo Uttaro" area as "Planning not carried out. Characterisation results available for some sites of the area".

72. On 12 February 2019, following a request by the public prosecutor at the Santa Maria Capua Vetere District Court, twelve wells were seized within the *Area Vasta "Lo Uttaro"* owing to heavy metal contamination. Information on the preventive measure was made public in a press release by the public prosecutor's office.

73. By order no 57 of 28 June 2019, the mayor of Caserta prohibited the owners of wells located in the "Lo Uttaro" area to use the groundwater for human consumption, irrigation, livestock watering and industrial use and imposed a ban on cultivation in the area. Wells located within 500 metres of the area were to be used subject to validation by the competent authorities of test results proving that the water was safe.

74. According to the applicants, up until March 2020 no remediation work had been carried out in the "Lo Uttaro" area. Sogesid had drafted a project for its permanent securing, which had not been implemented, nor had its timing been set.

75. According to the information provided by the Government in the latest observations received by the Court (on 6 July 2020), on 18 March 2019 Invitalia launched a tender procedure concerning the securing of the groundwater in the *Area Vasta "Lo Uttaro"* which was still ongoing. Moreover, according to the Government, on that date the securing of the area by Sogesid was underway.

#### **F. Findings on the "Lo Uttaro" landfill site of the parliamentary commission of inquiry into illegal activities related to the waste cycle**

76. In its report of 19 December 2007, the parliamentary commission observed that the decision to authorise the reopening of the landfill site notwithstanding the fact that the documents held by the deputy commissioner showed that the area was environmentally inadequate demonstrated that the offices of the deputy commissioner were incapable of reading their own documents (*incapacità della struttura commissariale a leggere le proprie stesse carte*). Moreover, ARPAC had reported the environmental criticalities connected to the operation of the plan with an inexcusable delay. The authorities in charge of monitoring functions had proved to be unable to provide truthful information on which legislative and administrative policies could be based.

77. In its report of 5 February 2013, the parliamentary commission reported that during the operation of the landfill in 2007, hazardous waste had been disposed of at the plant, in breach of the relevant authorisation and environmental regulations. It confirmed that the site pollution and illegal management had been established on the basis of the documents available to the offices of the deputy commissioner and other competent authorities, who had therefore failed to monitor the situation and had even certified false information in order to justify the continued operation of the landfill.

## RELEVANT LEGAL FRAMEWORK

### I. RELEVANT DOMESTIC LAW

78. A summary of the relevant domestic law governing waste treatment is contained in *Di Sarno and Others* (cited above, §§ 65-67).

79. Article 844 of the Civil Code establishes that the owner of a plot of land cannot prevent nuisances from a neighbouring plot of land if they do not exceed a tolerable threshold.

80. Article 2043 of the Civil Code provides that any unlawful act which causes damage to another will render the perpetrator liable in damages under civil law.

81. Under Article 700 of the Code of Civil Procedure, anyone who has cause to fear that their rights may suffer imminent and irreparable damage may file an urgent application for a court order affording them instant protection of their rights.

82. Under Article 133 § 1 (p) and (s) of the Code of Administrative Procedure, the following matters fall within the exclusive jurisdiction of the administrative courts:

- disputes relating to any measure taken by the commissioner in all emergency situations and disputes concerning the waste management cycle; the jurisdiction of the administrative courts extends to constitutional rights;

- disputes relating to any measure taken contrary to the provisions on environmental damage, as well as failure by the Ministry of the Environment to respond to a request for precautionary, preventive or containment measures against environmental damage, and for compensation for damage suffered as a result of the delay in issuing such measures.

### II. EUROPEAN UNION AND INTERNATIONAL LAW

83. A summary of the relevant European Union and international law is contained in *Di Sarno and Others* (cited above, §§ 71-76).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. Relying on Articles 2 and 8 of the Convention, the applicants submitted that in failing to take the requisite measures (i) to guarantee the proper functioning of the waste collection, treatment and disposal services and (ii) to minimise or eliminate the effects of the pollution from the “Lo Uttaro” landfill, the State had caused serious damage to the environment and endangered their lives and

their health and that of the local population in general. They further maintained that the accumulation of large quantities of waste along public roads constituted an illegitimate interference with their right to respect for their home and private and family life. Moreover, they complained that the authorities had neglected to inform the people concerned of the risks of living in the area surrounding the “Lo Uttaro” landfill.

85. The Government disagreed.

86. Since it is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I), the Court considers, regard being had to its case-law on the matter (see *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C; *Guerra and Others*, cited above, § 57; *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII; *Di Sarno and Others*, cited above, § 96; and *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, §§ 93-94, 24 January 2019), that the applicants’ complaints should be examined from the standpoint of the right to respect for one’s home and private life enshrined in Article 8 of the Convention, the relevant provisions of which read as follows:

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

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

### **A. Admissibility**

87. The Government raised two pleas of inadmissibility, arguing that the applicants lacked victim status and that domestic remedies had not been exhausted.

#### *1. The applicants’ victim status*

88. In their additional observations, the Government submitted that several applicants lacked victim status as they did not reside in the municipalities surrounding the landfill.

89. The applicants contested this, referring to the residence certificates they had filed with the Court.

90. The Court sees no need to examine whether the Government are estopped from making the above objection since it finds in any event that it concerns a matter which goes to the Court’s jurisdiction and which it is not prevented from examining of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017).

91. The Court points out that the Convention does not confer on individuals any right to an *actio popularis* (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). According to its established case-law, the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights

safeguarded by Article 8 § 1 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment (see *Di Sarno and Others*, cited above, § 80, and *Cordella and Others*, cited above, § 101). The Court further notes that in a number of cases where it found that Article 8 was applicable, the proximity of the applicants' homes to the sources of pollution was one of the factors taken into account by the Court (see *Pavlov and Others v. Russia*, no. 31612/09, §§ 63 - 71, 11 October 2022).

92. The Court notes that the applicants complained of a situation affecting the entire population of Campania, in so far as they complained of the environmental damage caused by the authorities' poor management of the waste collection, treatment and disposal services and, more specifically, the population living in the municipalities of Caserta and San Nicola La Strada, with regard to the pollution from the nearby "Lo Uttaro" landfill site.

93. The Court observes that the documents provided by the applicants show that Caserta and San Nicola La Strada were both affected by the waste management crisis (*crisi dei rifiuti*) lasting from 11 February 1994 to 31 December 2009. In particular, several orders of the mayor of Caserta issued between 2 and 9 January 2008 referred to the "serious situation" caused by "huge heaps of waste piling up in the streets" following an interruption in waste collection that had started more than twenty days earlier. They stated that this situation had led to a public health emergency and resulted in considerable distress and potential danger to citizens' safety. Similarly, in several orders issued between 6 April 2007 and 12 May 2008 the mayor of San Nicola La Strada referred to the "interruption in waste collection caused by the closure of disposal sites" and the subsequent accumulation of waste "on all public roads" constituting a danger to public health (see paragraphs 9 and 10 above).

94. As to the "Lo Uttaro" landfill site, the documents provided by the parties show, *inter alia*, that in order to protect public health, the local authorities had to repeatedly impose on the population living in Caserta and San Nicola La Strada a ban on the use of groundwater drawn from wells located in the areas surrounding the landfill site (see paragraphs 63, 72 and 73 above). In these circumstances, the Court considers that the environmental damage complained of by the applicants living in those municipalities is likely to have directly affected their personal well-being (see *Di Sarno and Others*, cited above, § 81).

95. The Court notes however that the applicants listed under numbers 2-4, 7 and 15-18 in the appendix did not submit evidence proving that they resided in the affected area. It thus considers that they failed to show that they had been directly affected by the situation complained of (see *Cordella and Others*, cited above, § 108).

96. The Court therefore accepts the Government's objection in respect of the applicants listed under numbers 2-4, 7 and 15-18 in the appendix and rejects it in respect of the other applicants. Any mention of "the applicants" in the remainder of this judgment must be understood as referring to the remaining applicants.

97. Accordingly, in respect of applicants listed under numbers 2-4, 7 and 15-18 this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

## 2. *Non-exhaustion of domestic remedies*

98. The Government also argued that the applicants had not exhausted domestic remedies.

99. Firstly, the Government submitted that it had been possible for the applicants to make an urgent application under Article 700 of the Code of Civil Procedure (see paragraph 81 above). They noted that other residents had sought and obtained a court order under this provision to immediately suspend the operation of the “Lo Uttaro” landfill.

100. The Government also argued that, under Article 133 § 1 (p) of the Code of Administrative Procedure (see paragraph 82 above), the applicants could have challenged the orders issued by the authorities during the state of emergency and, more generally, any decision taken in relation to the management of the waste collection, treatment and disposal services. In this regard, the applicants could have got the administrative courts to annul these decisions, issue orders for the protection of their health and private life and award them compensation.

101. Moreover, under Article 133 § 1 (s) of the Code of Administrative Procedure (see paragraph 82 above), the applicants could have challenged the decisions taken by the authorities in breach of the provisions on environmental damage, as well as the failure of the Minister for the Environment and Land and Sea Protection to respond to their request for precautionary, preventive or containment measures against environmental damage.

102. The applicants could have also brought a claim for damages in the civil courts (see paragraph 80 above).

103. In their additional observations, the Government also relied on Article 844 of the Civil Code (see paragraph 79 above).

104. The applicants contended that the domestic remedies at their disposal had not been adequate and effective as required by Article 35 § 1 of the Convention, since none had been capable of addressing the substance of the relevant Convention complaints and of awarding appropriate relief, especially considering the prolonged and systematic shortcomings of the administrative authorities in managing the waste collection, treatment and disposal services in Campania, and the substantial and unjustified delay in putting in place the permanent securing and remediation of the “Lo Uttaro” landfill site.

105. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. It is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014).

106. The Court further reiterates that, under Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged, while it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of



providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-68, *Reports* 1996-IV).

107. With regard to compensatory remedies, the Court notes that, on the one hand, they could theoretically have resulted in compensation for the people concerned but not in removal of the waste from public roads or remediation of the "Lo Uttaro" landfill site. Therefore, they could have provided only partial redress for the environmental damage complained of by the applicants. On the other hand, even assuming that compensation constituted an adequate remedy for the alleged violations of the Convention, the Government have not shown that the applicants would have had any chance of success by pursuing that remedy. The domestic decisions relied on by the Government (Court of Cassation judgments nos. 27187/2007 and 22116/14, and Constitutional Court judgments nos. 140/2007 and 167/2011) concerned the issue of the distribution of jurisdiction between the ordinary and administrative courts in matters of environmental damage. The Government did not provide any examples of civil or administrative court decisions actually awarding compensation to inhabitants of areas affected by an accumulation of waste or pollution from a landfill site (see *Di Sarno and Others*, cited above, § 87).

108. In so far as the Government referred to the possibility for the applicants to have requested the administrative courts to annul specific decisions and the civil and administrative courts to order the authorities to put in place measures for the protection of their health and private life, even admitting that these remedies could in theory have been effective, they failed to show that they would in practice have been capable of providing redress in respect of the applicants' complaints.

109. With regard to remedies before the civil courts, the Court notes that, pursuant to Article 700 of the Code of Civil Procedure, the Naples District Court ordered (in a single-judge decision) and confirmed (in a full bench) the suspension of the operation of the waste disposal plant. However, this measure did not prevent the waste already stored in the landfill from continuing to release emissions into the atmosphere and leachate into the groundwater, nor was it capable of securing and cleaning up the area concerned.

110. As to remedies before the administrative courts, the Court observes that the Government relied on two judgments of the Campania Regional Administrative Court. The first (no. 676/2012) ordered the Minister for the Environment and Land and Sea Protection to respond to the applicants' request for precautionary, preventive or containment measures against the environmental damage allegedly caused by a landfill site, it being understood that the authorities were only required to give a substantiated reply and remained free to choose whether to accept or deny the request. The second (no. 3373/2013) rejected the claim filed against the authorities' follow-up decision to deny the request. Therefore, neither of these judgments ordered the authorities to put in place measures for the protection of the applicants' health and private life (see, *mutatis mutandis*, *Di Sarno and Others*, cited above, § 87).

111. Furthermore, the Court notes that, in the specific circumstances of this case, (i) a state of emergency was declared in Campania to tackle a structural crisis that for more than fifteen years affected the entire regional waste management (see paragraphs 5 and 8 above); and (ii) the pollution from the "Lo Uttaro" landfill site had been known to the authorities since at least 2001 and, several

years after they had decided to carry out works to secure the area, implementation of those works was still ongoing without a clear time frame for their end (see paragraphs 28 and 56-75 above).

112. Having regard to the material submitted by the parties, the Government have failed to persuade the Court that in the present case a civil or administrative remedy could have offered reasonable prospects of success.

113. It follows that the Government's preliminary objection as to the non-exhaustion of domestic remedies must be rejected.

114. The Court further notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The applicants**

##### *(i) Management of the waste collection, treatment and disposal services*

115. The applicants submitted that from 1994 to 2009 the municipalities of Caserta and San Nicola La Strada had been hit by the effects of the regional waste management crisis. Waste had periodically piled up in the streets, producing unbearable smells and attracting stray dogs, rats and insects. Uncontrolled fires had been lit to burn waste and had released dioxin. The applicants also relied on several studies on the environmental situation in the provinces of Naples and Caserta (see paragraphs 24 and 25 above) to prove that the authorities' failings in the management of the crisis had caused damage to the environment and put their lives in danger. Moreover, the accumulation of large quantities of waste along public roads had constituted an illegitimate interference with their right to respect for their home and private life, impairing free movement and resulting in the temporary closure of schools and local markets.

116. They claimed that the alleged violation had continued in the period following the end of the state of emergency. They relied, *inter alia*, on the findings of the CJEU (see judgment C-653/13, cited in paragraph 21 above).

##### *(ii) The "Lo Uttaro" landfill site*

117. The applicants argued that, even though the authorities had been aware since 2001 that the "Lo Uttaro" landfill had posed a serious environmental hazard, in 2007 the deputy commissioner authorised the reopening of the waste disposal plant. Moreover, still in March 2020 (when the applicants' latest observations were received by the Court) the securing and remediation of the area had not yet been carried out. Relying on the findings of the criminal courts and the parliamentary commission, they maintained that the prolonged illegal management of the waste disposal plant and the authorities' failure to take protective measures to minimise or eliminate the effects of pollution stemming from the area had caused damage to the environment and endangered their health. According to them, the respondent State had also failed to discharge

its obligation to inform the people concerned of the risks of living in the area surrounding the landfill.

## **(b) The Government**

### *(i) Management of the waste collection, treatment and disposal services*

118. The Government acknowledged that the Court had already assessed the situation complained of by the applicants in the judgment of *Di Sarno and Others* (cited above), but contended that, following that judgment, the management of the waste collection, treatment and disposal services in Campania had significantly improved. They relied on several legislative and administrative measures aimed at achieving more efficient management of the waste life cycle, the development of selective waste collection and the rationalisation and upgrading of the existing structure (see paragraphs 11, 12, 16 and 17 above). With regard to the effects of the waste management crisis on health, the Government submitted that they had taken appropriate legislative and administrative measures to safeguard the environment and the healthiness of food and agricultural products and to clean up contaminated sites (see paragraphs 13-15 above).

### *(ii) The “Lo Uttaro” landfill site*

119. The Government submitted that the authorities had taken adequate measures to minimise the effects on the environment caused by the “Lo Uttaro” landfill site. First of all, since the waste disposal plant had ceased to operate in 2007, any environmental damage was limited to low levels of biogas emissions. Moreover, the environmental situation of the area was constantly monitored by ARPAC and other competent authorities. Permanent securing operations were ongoing. Meanwhile, the orders issued by the judicial and local authorities to prohibit the use of groundwater from wells located in the “Lo Uttaro” area guaranteed effective protection of residents’ health.

## *2. The Court’s assessment*

### **(a) General principles**

120. The Court reiterates that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (see *López Ostra*, § 51; *Guerra and Others*, § 60; and *Di Sarno and Others*, § 104, all cited above).

121. The Court further points out that the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects (see *Cordella and Others*, cited above, § 157).

122. It is often impossible to quantify the effects of serious industrial pollution in each individual case and to distinguish them from the influence of other relevant factors such as age, profession or personal lifestyle. The same concerns possible worsening of the quality of life caused by industrial pollution. “Quality of life” is a subjective characteristic which hardly lends itself to a precise definition (see *Kotov and Others v. Russia*, nos. 6142/18 and 12 others, § 101, 11 October 2022). It

follows that, taking into consideration the evidentiary difficulties involved, the Court will have regard primarily, although not exclusively, to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case (see *Jugheli and Others v. Georgia*, no. 38342/05, § 63, 13 July 2017; *Cordella and Others*, cited above, § 160; and *Pavlov and Others*, cited above §§ 66 - 71).

123. Furthermore, Article 8 does not merely compel the State to abstain from arbitrary interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life. In any event, whether the question is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under Article 8 § 1 or in terms of an "interference by a public authority" to be justified in accordance with Article 8 § 2, the applicable principles are broadly similar (see *López Ostra*, § 51; *Guerra and Others*, § 58; and *Cordella and Others*, § 158, all cited above).

124. In the context of dangerous activities in particular, States have an obligation to set in place regulations geared to the special features of the activity in question, particularly with regard to the level of risk potentially involved. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 90, ECHR 2004-XII; *Di Sarno and Others*, cited above, § 106; and *Cordella and Others*, cited above, § 159).

125. As to the procedural obligations under Article 8, the Court reiterates that it attaches particular importance to access to information by the public that enables them to assess the risks to which they are exposed (see *Guerra and Others*, § 60, and *Di Sarno and Others*, § 107, both cited above). In assessing compliance with the right to access to information under Article 8 the Court may take into consideration the obligations stemming from other relevant international instruments, such as the Aarhus Convention, which Italy has ratified. Its Article 5 § 1 (c) in particular requires each Party to ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected" (see paragraph 83 above and *Di Sarno and Others*, cited above, §§ 76 and 107).

## **(b) Application of the above principles to the instant case**

*(i) Management of the waste collection, treatment and disposal services*

**(α)** From 11 February 1994 to 31 December 2009, the end of the state of emergency

126. The Court has already noted (see paragraph 93 above) that the municipalities of Caserta and San Nicola La Strada, where the applicants live, were affected by the waste management crisis. The applicants complained that this situation had endangered their lives and health and constituted an illegitimate interference with their right to respect for their home and private life.

127. The applicants have not alleged that they were affected by any pathologies linked to exposure to waste. However, they relied on several studies on the environmental situation in the provinces of Naples and Caserta (see paragraphs 24 and 25). According to these studies, whose findings the Government did not contest, the mortality risk associated with a number of tumours and other health conditions was higher in an area of those provinces – which includes the municipalities of Caserta and San Nicola La Strada – than in the rest of Campania. The Court sees no reason to question that, as suggested by the abovementioned studies, a causal link existed between exposure to waste treatment and an increased risk of developing pathologies such as cancer or congenital malformations, even though other factors such as family history, nutrition and smoking habits in the area might also have influenced the mortality rate.

128. The existence of a risk to human health as a consequence of the waste management crisis was recognised by the CJEU. When examining the waste disposal situation in Campania, it considered that the accumulation of large quantities of waste along public roads and in temporary storage areas exposed the health of the local inhabitants to certain danger (see judgment C-297/08, cited in *Di Sarno and Others*, cited above, §§ 55-56).

129. Moreover, in its report of 5 February 2013 the parliamentary commission considered that, although it was impossible to estimate the exact extent to which the pollution from the waste management crisis had affected human health, such incalculable damage did exist and would affect future generations, reaching its peak in fifty years from then (see paragraph 23 above).

130. The Court considers that even though it cannot be said, owing to the lack of medical evidence, that the pollution from the waste management crisis necessarily caused damage to the applicants' health, it is possible to establish, taking into account the official reports and available evidence, that living in the area marked by extensive exposure to waste in breach of the applicable safety standards made the applicants more vulnerable to various illnesses (see, for similar reasoning, *Kotov and Others*, cited above, § 107).

131. Moreover, the Court also reiterates that severe environmental pollution may affect individuals' well-being in such a way as to adversely affect their private life, without, however, seriously endangering their health (see *López Ostra*, cited above, § 51). In the present case, the applicants were forced to live for several months in an environment polluted by waste left in the streets and by waste disposed of in temporary storage sites urgently created to cope with the prolonged unavailability of sufficient waste treatment and disposal facilities. The waste collection services in the municipalities of Caserta and San Nicola La Strada were repeatedly interrupted from the end of 2007 to May 2008. The accumulation of large quantities of waste along public roads led the local authorities to issue emergency measures including the temporary closure of kindergartens, schools, universities and local markets and the creation of temporary storage areas in the municipalities.

132. Even assuming that the acute phase of the crisis lasted only five months – from the end of 2007 to May 2008 – (see paragraphs 9 and 10 above), the Court considers that the environmental nuisance that the applicants experienced in the course of their everyday life affected, adversely and to a sufficient extent, their private life during the entire period under consideration (see *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 188, 14 February 2012, and, for a similar reasoning, *Kotov and Others*, cited above, § 109, with further references).

133. The Court also finds that, given the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal services, and in spite of the margin of appreciation left to the respondent State, the authorities failed in their positive obligation to take all the necessary measures to ensure the effective protection of the applicants' right to respect for their home and private life (see *Cordella and Others*, cited above, § 173; and *Di Sarno and Others*, cited above, § 112).

134. There has therefore been a violation of Article 8 of the Convention in this regard for the period from 11 February 1994 to 31 December 2009.

(β) From 1 January 2010, after the end of the state of emergency

135. As to the period from 1 January 2010, following the end of the state of emergency, the Court observes that the documents filed by the parties shed light on several shortcomings in the management of waste treatment and disposal services in Campania. Notwithstanding the legislative and policy measures put in place since May 2008, the CJEU (see judgment C-653/13, cited in paragraph 21 above) found that on 15 January 2012 the authorities still had to examine and dispose of approximately 6 million tonnes of "ecobales", and that this would take about fifteen years from the date when the necessary infrastructure was built. A statement of the Campania Regional Council of 6 July 2020 reported that on 24 June 2019 there were still more than 4 million tonnes of "ecobales" in the region (paragraph 17 above).

136. The Court reiterates that it is not for it to rule *in abstracto* on the quality of the Campania waste collection, treatment and disposal services or on the adequacy of its waste treatment and disposal infrastructure, but to ascertain *in concreto* what effect these activities had on the applicants' right to respect for their home and private life under Article 8 of the Convention. In this regard, it observes that the applicants have not demonstrated whether and to what extent the shortcomings in the management of waste treatment and disposal services in Campania in the period following the end of the state of emergency had a direct impact on their home and private life. Although the presence of large quantities of "ecobales" shows the persistence of a general deterioration of the environment in Campania, this is not in itself sufficient to establish that the situation specifically affected the population of the municipalities of Caserta and San Nicola La Strada and, if so, the extent of the interference with the applicants' right to respect for their home and private life.

137. In reaching this conclusion, the Court points out that the applicants' claim specifically concerns the poor management by the national authorities of the waste collection, treatment and disposal services and does not include different – although related – phenomena such as the general situation of illegal dumping and disposal of waste known as "*Terra dei fuochi*" (see paragraphs 14 and 15 above), which therefore falls outside the scope of the present case.

138. In view of the scope of the claim as established above, the Court cannot conclude that the applicants showed to have personally suffered a severe impact of the waste pollution from 1 January 2010 following the end of the state of emergency. Accordingly, there has been no violation of Article 8 in this regard.

(ii) *The "Lo Uttaro" landfill site*

139. The applicants complained that the authorities had failed to take the requisite measures to protect their health and the environment and neglected to inform the people concerned of the risks of living in the area surrounding the “Lo Uttaro” landfill.

(α) Substantive aspect of Article 8

140. The Court notes that it is not its task to determine what exactly should have been done in the present case to address and possibly reduce the pollution in a more efficient way. However, it is certainly within its jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests. In this regard, the Court reiterates that the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community. Looking at the present case from this perspective, the Court notes the following points (see *Fadeyeva v. Russia*, no. 55723/00, § 128, ECHR 2005-IV, and *Cordella and Others*, cited above, § 161).

141. The documents provided by the parties show the existence of serious environmental pollution from the “Lo Uttaro” landfill site as a result of approximately twenty years of illegal waste disposal. From the late 1980s until the plant definitively ceased to operate in 2007, the landfill site was operated – in breach of the relevant legislative provisions and administrative authorisations – beyond the boundaries of the quarry, beyond the limits of its capacity and for the illegal disposal of hazardous waste. Since at least 2001 the authorities had been aware that the landfill posed a serious environmental hazard. Despite the environmental situation of the area and its inclusion in the PBR since 2005, the deputy commissioner authorised the reopening of the waste disposal plant, creating the conditions for worsening the environmental damage. The reports of the parliamentary commission and the findings of national courts from 2007 onwards describe a long pattern of problems in managerial and monitoring activities and considered the “Lo Uttaro” area a risk to public health, particularly as regards groundwater (see paragraphs 34 - 40 and 76-77 above).

142. Following its seizure by the criminal courts in November 2007, the inspections carried out by ARPAC in 2008 showed that the “Lo Uttaro” landfill site, by then no longer in operation, continued to cause environmental damage to the groundwater and atmosphere.

143. The Court notes that, despite the authorities’ attempts to secure the area concerned, on the date of the latest observations received by the Court (6 July 2020) the projects put in place were not fully implemented yet, nor had the related works being carried out according to a clear time frame. First of all, the Court observes that, despite the securing and remediation of the area being proposed in the framework agreement between the Ministry of the Environment and the Campania Regional Council dated 18 July 2008 and in the subsequent operational agreement between the Ministry of the Environment and the municipality of Caserta of 4 August 2009, implementation of the first phase of the environmental characterisation of the area only took place in the years 2013 to 2014.

144. Moreover, although on 11 April 2014, on the basis of the data collected, ARPAC recommended taking several actions including (i) urgent safety measures in respect of the groundwater contamination and (ii) the immediate removal and disposal of the hazardous waste containing asbestos, these urgent measures were not put in place (see paragraphs 64 - 75 above).

145. The Court further notes that the second phase of the environmental characterisation, which was approved in June 2014 and whose activities were expected to begin immediately after and to

last no more than ninety days, had not yet started on 14 January 2015. Its results were only validated by ARPAC on 10 March 2016.

146. As to the permanent securing of the area, the Resolution of the Campania Regional Council of 1 August 2017 reported that the necessary measures had not yet been planned. According to the information provided by the Government in the latest observations received by the Court (on 6 July 2020), the securing of the groundwater in the *Area Vasta "Lo Uttaro"* were still ongoing on that date with no clear time-limits for their conclusion.

147. On the basis of the above information, the Court observes that the mere closure of the landfill site did not prevent the waste from continuing to harm the environment and endanger human health (see the judgment of the CJEU, C-196/13, cited in paragraph 21 above). Moreover, the procedure aimed at securing and cleaning up the area appears to have been rather inconclusive (see, *mutatis mutandis*, *Cordella and Others*, cited above, § 168). Meanwhile, the concentration of a number of toxic substances in the groundwater near the landfill site led the judicial and administrative authorities – repeatedly from 2013 to 2019 – to prohibit the use of groundwater and impose a ban on cultivation in the area, also by means of seizure orders on the wells (see paragraphs 63, 72 and 73 above).

148. While the Court cannot conclude to what extent the applicants' lives or health were specifically threatened by the pollution from the "Lo Uttaro" landfill site, the Court considers that the documents filed by the parties demonstrate that a situation of environmental pollution in the municipalities of Caserta and San Nicola La Strada was continuing and endangering their health.

149. In the light of the foregoing, the Court finds that the national authorities failed to take all the measures necessary to ensure the effective protection of the right of the people concerned to respect for their private life.

150. Thus, the fair balance to be struck between, on the one hand, the applicants' interest in not suffering serious environmental harm which might affect their well-being and private life and, on the other, the interest of society as a whole, was upset in the present case.

151. Therefore, there has been a violation of Article 8 of the Convention in its substantive aspect.

#### (β) Procedural aspect of Article 8

152. As to the procedural aspect of Article 8 and the complaint concerning the alleged failure to provide information that would have enabled the applicants to assess the risk they ran, the Court notes that the Civil Protection Department published studies on the health impact of the waste cycle in the provinces of Naples and Caserta in 2005 and 2008. Moreover, the environmental situation of the "Lo Uttaro" landfill site was made public by the parliamentary commission in 2007 and 2013. Information on the test results carried out as part of the characterisation of the "Lo Uttaro" area was contained in the orders by the mayors of Caserta and San Nicola La Strada and in the press release by the public prosecutor at the Santa Maria Capua a Vetere District Court in the years 2013 to 2019. The Court accordingly considers that the Italian authorities discharged their duty to inform the people concerned, including the applicants, of the potential risks to which they exposed themselves by continuing to live in Caserta and San Nicola La Strada (see *Di Sarno*



and *Others*, § 113, and *Guerra and Others*, § 60, both cited above). There has therefore been no violation of Article 8 of the Convention in this regard.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

### A. Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in conjunction with Article 13 of the Convention

153. The applicants further complained of a lack of effective remedies to obtain full restitution of the taxes they had paid for the collection and disposal of their municipal solid waste. According to them, the State's failure to guarantee adequate waste collection, treatment and disposal services in Campania made them entitled to full restitution of the taxes they had paid in relation to those services. They relied on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

#### Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

#### Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

#### Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

154. As regards Article 6 § 1, the Court reiterates that merely showing that a dispute is pecuniary in nature is not in itself sufficient to attract the applicability of this provision under its civil head. Tax matters still form part of the hard core of public authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant. Thus, tax disputes fall outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produce for the taxpayer (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001 - VII, and, more recently, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 66, 3 November 2022).

155. Accordingly, the complaint under Article 6 § 1 is incompatible *ratione materiae* with the provisions of the Convention.

156. As to the claim under Article 1 of Protocol No. 1, the Court reiterates that the rule contained in the second paragraph explicitly reserves the right of Contracting States to pass such laws as they may deem necessary to secure the payment of taxes.

157. Having regard to the applicants' submission that under domestic law they could have requested restitution of up to 60% of the amounts they had paid even though, according to them, they should have been entitled to full restitution of those amounts, the Court observes that a property interest in obtaining full restitution of those amounts did not exist as such under national law. Therefore, this complaint would in principle be incompatible *ratione materiae* with Article 1 of Protocol No. 1 (*Zhigalev v. Russia*, no. 54891/00, § 131, 6 July 2006). However, even assuming that this provision would apply, the complaint is in any event inadmissible as being manifestly ill-founded, on the grounds that the matter falls within the wide margin of appreciation that Contracting States enjoy when it comes to framing and implementing policy in the area of taxation (see *Stere and Others v. Romania*, no. 25632/02, § 51, 23 February 2006, and "*Bulves*" *AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009; see also the case-law cited in paragraph 154 above).

158. The complaint under Article 1 of Protocol No. 1 is therefore inadmissible under Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4 thereof.

159. Lastly, the Court reiterates that Article 13 does not apply if there is no arguable claim (see *Balsamo v. San Marino*, nos. 20319/17 and 21414/17, § 77, 8 October 2019 and the case-law cited therein). As it has found above, the complaints under Article 6 § 1 and Article 1 of Protocol No. 1 were inadmissible *ratione materiae* and manifestly ill-founded respectively. Consequently, the applicants have no arguable claim under the Convention, and in the present case Article 13 is not applicable in conjunction with the above-mentioned provisions.

160. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

## **B. Remaining complaints**

161. Relying on Article 14 together with Articles 2 and 8 of the Convention, the applicants complained that as residents in the Campania region, they had been afforded a lower level of protection of the aforementioned Convention rights than people residing elsewhere.

162. The Court notes that the complaint is unsubstantiated and not supported by any evidence and is therefore manifestly ill-founded.

## **C. Conclusion**

163. Consequently, the remainder of the application must be rejected as being inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## **III. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

164. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### **A. Damage**

165. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

166. The Government objected.

167. In the circumstances of the present case, the Court considers that the violations of the Convention it has found constitute sufficient just satisfaction for any non-pecuniary damage.

#### **B. Costs and expenses**

168. The applicants also claimed EUR 28,492.95 for the costs and expenses incurred before the Court.

169. The Government contested the claim.

170. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants, jointly, the sum of EUR 5,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

#### **FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the application inadmissible in respect of the applicants listed under numbers 2-4, 7 and 15-18 in the appendix;
2. *Declares* the remaining applicants' complaints concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention as regards management of the waste collection, treatment and disposal services in the period from 11 February 1994 to 31 December 2009;
4. *Holds* that there has been no violation of Article 8 of the Convention as regards management of the waste collection, treatment and disposal services in the period from 1 January 2010;
5. *Holds* that there has been a violation of Article 8 of the Convention in its substantive aspect as regards the Italian authorities' failure to take the requisite measures to protect the applicants' right to private life in connection with the environmental pollution caused by "Lo Uttaro" landfill site;
6. *Holds* that there has been no violation of Article 8 of the Convention in its procedural aspect as regards the Italian authorities' alleged failure to provide the applicants with information as to the environmental pollution caused by "Lo Uttaro" landfill site;

7. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
8. *Holds*
  - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) to the applicants, jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Marko Bošnjak  
President

#### **APPENDIX**

List of applicants:

OMISSIS