

# DIRITTI COMPARATI

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## THE EUROPEAN COURT OF HUMAN RIGHTS IN LOCASCIA AND OTHERS V. ITALY: NOTHING NEW UNDER THE SUN?

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### **Background**

The waste management crisis affecting the Campania region from the late 1980s to the early 2010s represents one of the most severe environmental hazards ever experienced in Italy and Europe. The chronic accumulation of legal and illegal waste for almost twenty years in the provinces of Naples and Caserta contaminated an area inhabited by almost 3 million people. The heavy pollution of soil, groundwater, and atmosphere caused enormous damage to the local economy and, most of all, a massive public health crisis. An increasing number of studies demonstrated the nexus between waste exposure and the high incidence of cancer, respiratory illnesses, and genetic malformations in the region. The reasons for this environmental disaster are relatable to the incapacity of the national and regional administrations to organize an integrated waste management system and to the large-scale illegal disposal of toxic waste carried out by local criminal organizations, such as Camorra. The crisis was faced by the Italian government by declaring a prolonged state of emergency in the Campania region from 11 February 1994 to 31 December 2009. However, the emergency measures did not cope

effectively with the crisis, and waste management remained a problematic issue in the region in the years following the formal ending of the emergency on 31 December 2009. Numerous legislative and administrative acts have been adopted since 2010 to implement effective land remediation and waste treatment, as well as to ensure food safety, environmental protection, and administrative transparency ([Decree-Law n. 195 of 30 December 2009](#); [Decree-Law no. 2 of 25 January 2012](#); [Decree-Law no. 136 of 10 December 2013](#)). The heavy legacy of the crisis, however, is still there. On 6 July 2020, a Campania Regional Council's statement reported that more than 4 million tons of baled waste accumulated at the peak of the crisis (the so-called "ecobales") yet awaited disposal in 2019 despite the [urgency measures](#) adopted by the regional administration.

### **Previous case law**

At the European Union (EU) level, the waste crisis gave rise to a long and complex judicial saga. On [26 April 2007](#), the Court of Justice of the European Union (CJEU) held that the large number of illegal and unsupervised landfill sites in Italy (at least 700) represented a clear violation of the EU rules on waste management. The CJEU confirmed Italy's non-compliance with EU law on [4 March 2010](#), as it found that Campania lacked an integrated waste infrastructure and no adequate measures had been undertaken to prevent the environmental and health risks related to waste exposure. Some years later, the Commission sued Italy again before the CJEU, as it had failed to fulfill the obligations arising from the two previous judgments. The Court confirmed that the measures adopted to clean up the numerous illegal landfills in the country ([case C-196/13](#)) and to establish an adequate waste infrastructure ([case C-653/13](#)) were insufficient.

Italy's failures to face the Campania waste crisis have been already subject to the European Court of Human Rights (ECtHR)'s scrutiny too. In [Di Sarno and Others v. Italy](#) (10 January 2012), the Court held that Italy did not fulfill the positive obligations arising from Article 8 ECHR, as it had failed to remove the large amount of litter accumulated along the streets during the emergency. The positive obligations under Article 8 refer to the duty

to enable through regulation and enforcement the effective conditions to respect private and family life. Positive obligations are particularly relevant when it comes to preventing the risks related to waste management, as acknowledged by a consolidated strand of ECtHR cases. In [Brânduse v. Romania](#), the Court held that the Romanian authorities infringed Article 8, as they had failed to solve the problem of offensive smells created by a tip situated about 20 meters away from the prison where the applicant was detained. Similarly, in [Kotov and Others v. Russia](#), the Court held that the Russian authorities failed to comply with the relevant regulations in the management of a quarry, thus causing offensive smells, air pollution, and groundwater contamination in violation of Article 8.

### **The case**

Eleven years after *Di Sarno and Others*, [Locascia and Others v. Italy](#) adds up another important step in the protection of human rights in the context of the Campania waste crisis. The application, brought to the Court by 19 Italian citizens living in the municipalities of Caserta and San Nicola la Strada (Campania, Italy), concerns the violation of Articles 2 and 8 committed by the Italian authorities during the state of emergency and after its end in 2010. Since then, the Italian authorities have failed to dispose of the tons of “ecobales” accumulated during the waste crisis, thus causing persisting environmental nuisance and public health risks. Another complaint brought by the applicants concerns a specific landfill site near their hometowns, the “Lo Uttaro” area, as the mismanagement of this site caused heavy pollution of the groundwater and atmosphere in the surrounding areas.

The Court focused on the violations of the positive obligations related to the right to private life under Article 8. As already held in *Di Sarno and Others*, the Court found the Italian authorities had violated the right to respect the homes and private lives of the applicants, as they did not ensure the proper functioning of the waste management in Caserta and San Nicola La Strada during the state of emergency (period 1994-2009) (§§ 126-134). By contrast, the Court found no violation of Article 8 in the period following the end of the state of emergency (period 2010-2020).

The applicants had not proven if and how much the missed disposal of the ecobales had a direct impact on their homes and private lives, “Although the presence of large quantities of “ecobales” shows the persistence of a general deterioration of the environment in Campania” (§ 136).

The Court moved on to assess the alleged violations of Article 8 in the management of the “Lo Uttaro” area, a landfill site located between Caserta, San Nicola La Strada, and San Marco Evangelista. The site, active from the late 1980s to the early 1990s, was reopened in 2007 to cope with the emergency, although it was evaluated as “absolutely unsuitable for a new waste disposal plant” in 2001 (§ 28). Actions brought before the Italian civil and criminal courts obtained the cessation of the operations in the site and the acknowledgment of environmental crimes and forgery related to the reopening. Moreover, although public inspections revealed large quantities of hazardous waste illegally stored on the site, the Italian authorities did not provide sufficient measures to clean up Lo Uttaro and decontaminate the area.

The Court held that Article 8 had been violated by the Italian authorities (§§ 140-151). The Court confirmed that the landfill site had been used from the 1980s to 2001 beyond the limits of its capacity and for the illegal disposal of hazardous waste (§ 141). Lo Uttaro kept polluting the groundwater and the atmosphere even after its seizure by the Italian courts, as the Italian authorities had not taken urgent measures to halt water contamination and secure the areas permanently. By contrast, no violation of the procedural aspect of Article 8 was recognized. According to the Court, there was no failure to provide the applicants with information on the risks to which they were exposed, as there were public parliamentary inquiries held in 2007 and 2013, as well as various orders issued by the mayors of Caserta and San Nicola La Strada and press releases published by the prosecuting authorities in the years 2013 to 2019.

### **The ways forward**

After *Di Sarno*, the Court had another chance to assess Italy’s violations in the Campania waste crisis over a longer period and based on more

articulated judicial and scientific evidence. Despite this, the final decision seems to leave unresolved several questions regarding Italy's violations in the years following the crisis (2010-2020). The Court ascertained Italy's inertia to dispose of the huge amount of "ecobales" piled up during the crisis (§ 136). However, the applicants failed to demonstrate the link between the missed disposal of the ecobales and the harm for their right to private life. No violation was therefore recognized in the years following the crisis, despite the persistent failures of the Italian authorities to recover from the consequences of the crisis.

This part of the decision is particularly problematic because it does not shed light on the most serious implications of Italy's inertia following the waste crisis. The application and the final decision did not touch upon an important piece of the story regarding the missed decontamination of the so-called "Terra dei Fuochi" (§ 137). The wording "[Terra dei Fuochi](#)" (Land of Fires) is used to refer to a vast area between the provinces of Caserta and Naples affected by illegal waste dumping and disposal carried out by local criminal organizations over the last thirty years. On 23 December 2013, a [Ministerial Directive](#) mapped fifty-seven municipalities affected by illegal waste disposal and severe environmental pollution, and the Interministerial Directive of 16 April 2014 placed other municipalities "under observation". Despite the severity and large scale of this phenomenon, the Italian authorities failed to detect and prevent the phenomenon and, subsequently, to provide effective remedies. A recent application focusing on this phenomenon, [Di Caprio and Others v. Italy](#), will probably help recognize the human rights violations related to the Italian authorities' inertia in the last decade.

Another unresolved question regards the recognition of a causal link between extensive exposure to waste and public health risks. In *Di Sarno and Others*, the Court refused to acknowledge this causal link because the applicants did not bring any evidence of how their health had been endangered by waste exposure. This decision, following *Kotov v. Russia* (§ 107), recognized the applicants' *increased vulnerability* to several illnesses based on the evidence provided by CJEU's findings and parliamentary reports, although no pathology was alleged by the applicants (§ 130).

However, in general, the [ECtHR case law](#) refuses to adopt a probabilistic approach to prove a direct causal link between an illness and a source of pollution (see [Tătar v. Romania](#), §§ 102-106). Here, for example, increased vulnerability contributed to demonstrate the violation of Article 8, but only as a co-argument with other forms of nuisance of private life. This restrictive approach can bring about some distortions when applied to a waste crisis. The irregular distribution of the stored waste and the high variety of pollutants make it hard to find certain causal links between exposure and illnesses. Still, several studies demonstrate that it is much more *probable* to contract cancer or respiratory illnesses there than anywhere else in Italy. How should one take account of this higher probability? One more time, the recent *Di Caprio and Others* application will perhaps help move forward, as it is fully centered on the public health damages related to the illegal waste storage in the “Terra dei Fuochi”.