



Italy's prolonged inability to deal with "waste crisis" in Campania breached human rights of 18 people living and working in the region

In today's Chamber judgment in the case [di Sarno and Others v. Italy](#) (application no. 30765/08), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights;

No violation of Article 8 of the Convention concerning the Italian authorities' obligation to provide information on the potential risks facing the applicants; and,

A violation of Article 13 (right to an effective remedy).

The case concerned the state of emergency (from 11 February 1994 to 31 December 2009) in relation to waste collection, treatment and disposal in the Campania region of Italy where the applicants lived and/or worked, including a period of five months in which rubbish piled up in the streets.

Principal facts

The applicants are 18 Italian nationals, 13 of whom live in - and the other five who work in - the municipality of Somma Vesuviana (Campania).

From 11 February 1994 to 31 December 2009 a state of emergency was in place in the region of Campania, declared by the then Prime Minister on account of serious problems with the disposal of urban waste. The management of the state of emergency was initially entrusted to "deputy commissioners".

On 9 June 1997 the President of the Region, acting as deputy commissioner, drew up a regional waste disposal plan which provided for the construction of five incinerators, five principal landfill sites and six secondary landfill sites. He issued an invitation to tender for a ten-year concession to operate the waste treatment and disposal service in the province of Naples. According to the specifications, the successful bidder would be required to ensure the proper reception of the collected waste, its sorting, conversion into refuse-derived fuel (RDF) and incineration. To that end, it was to construct and manage three waste sorting and fuel production facilities and set up an electric power plant using RDF, by 31 December 2000.

The concession was awarded to a consortium of five companies which undertook to build a total of three RDF production facilities and one incinerator.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

On 22 April 1999 the same deputy commissioner launched an invitation to tender for a concession to operate the waste disposal service in Campania. The successful bidder was a consortium which set up the company FIBE Campania S.p.A. The company undertook to build and manage seven RDF production facilities and two incinerators. It was required to ensure the reception, sorting and treatment of waste in the Campania region.

In January 2001 the closure of the Tufino landfill site resulted in the temporary suspension of waste disposal services in the province of Naples. The mayors of the other municipalities in the province authorised the storage of the waste in their respective landfill sites on a temporary basis.

On 22 May 2001 the collection and transport of waste in the municipality of Somma Vesuviana was entrusted to a consortium of several companies. Subsequently, on 26 October 2004, management of the service was handed over to a publicly-owned company.

In 2003 the Naples public prosecutor's office opened a criminal investigation into the management of the waste disposal service in Campania. On 31 July 2007 the public prosecutor requested the committal for trial of the directors and certain employees of the companies operating the concession and of the deputy commissioner who had held office between 2000 and 2004 and several officials from his office, on charges of fraud, failure to perform public contracts, deception, interruption of a public service, abuse of office, misrepresentation of the facts in the performance of public duties and conducting unauthorised waste management operations.

A further crisis erupted at the end of 2007, during which tonnes of waste piled up in the streets of Naples and several other towns and cities in the province. On 11 January 2008 the Prime Minister appointed a senior police official as deputy commissioner, with responsibility for opening landfill sites and identifying new waste storage and disposal sites.

In the meantime, in 2006, another criminal investigation was opened, this time concerning the waste disposal operations carried out during the transitional phase following the termination of the first concession agreements. On 22 May 2008 the judge made compulsory residence orders in respect of the accused, who included directors, managers and employees of the waste disposal and treatment companies, persons in charge of waste recycling centres, managers of landfill sites, representatives of waste transport companies and officials from the office of the deputy commissioner. Those concerned were charged with conspiracy to conduct trafficking in waste, forging official documents, deception, misrepresentation of the facts in the performance of public duties and organised trafficking of waste.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 8 (right to respect for private and family life), the applicants complained that, by omitting to take the necessary measures to ensure the proper functioning of the public waste collection service and by implementing inappropriate legislative and administrative policies, the State had caused serious damage to the environment in their region and placed their lives and health in jeopardy. They criticised the authorities for not informing those concerned of the risks entailed in living in a polluted area.

Relying on Articles 6 (right to a fair hearing) and 13 (right to an effective remedy), the applicants complained that the Italian authorities had taken no initiatives aimed at safeguarding the rights of members of the public, and criticised the Italian courts for delays in prosecuting those responsible.

The application was lodged with the European Court of Human Rights on 9 January 2008.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Italian Government's preliminary objections

The Italian Government argued that the applicants could not claim "victim" status. According to the Court's case-law, the crucial element in determining whether environmental pollution amounted to a violation of one of the rights safeguarded by Article 8 was the existence of a harmful effect on a person's private or family life and not simply the general deterioration of the environment.

However, in today's case the Court considered that the environmental damage complained of by the applicants had been such as to directly affect their own well-being. Accordingly, it rejected the Government's preliminary objection concerning the applicants' victim status.

The Government further alleged that the applicants had not exhausted domestic remedies, arguing that they could have brought an action for compensation against the agencies managing the collection, treatment and disposal of waste in order to seek redress for the damage sustained as a result of the malfunctioning of the service, as other inhabitants of the Campania region had done.

As to the possibility for the applicants to bring an action for damages, the Court noted that that might theoretically have resulted in compensation for those concerned but would not have led to the removal of the rubbish from the streets and other public places. The Court further observed that the Government had not produced any civil court decision awarding damages to the residents of the areas concerned, or any administrative court decision awarding compensation for damage. Likewise, the Government had not cited any court rulings establishing that the residents of the areas affected by the "waste crisis" could have been joined as civil parties to criminal proceedings concerning offences against the public service and the environment. Lastly, as to the possibility of requesting the Environment Ministry to bring an action seeking compensation for environmental damage, the Court noted that only the Environment Ministry, and not the applicants themselves, could claim compensation. The only course of action open to the applicants would have been to ask the Ministry to apply to the judicial authorities. That could not be said to constitute an effective remedy for the purposes of Article 35 § 1 of the Convention. Accordingly, the Court rejected the Government's preliminary objection of failure to exhaust domestic remedies.

Article 8

The Court pointed out that States had first and foremost a positive obligation, especially in relation to hazardous activities, to put in place regulations appropriate for the activity

in question, particularly with regard to the level of the potential risk. Article 8 also required that members of the public should be able to receive information enabling them to assess the danger to which they were exposed.

The Court observed that the municipality of Somma Vesuviana, where the applicants lived or worked, had been affected by the "waste crisis". A state of emergency had been in place in Campania from 11 February 1994 to 31 December 2009 and the applicants had been forced, from the end of 2007 until May 2008, to live in an environment polluted by the piling-up of rubbish on the streets.

The Court noted that the applicants had not complained of any medical disorders linked to their exposure to the waste, and that the scientific studies produced by the parties had made conflicting findings as to the existence of a link between exposure to waste and an increased risk of cancer or congenital defects. Although the Court of Justice of the European Union, which had ruled on the issue of waste disposal in Campania, had taken the view that a significant accumulation of waste on public roads or in temporary storage sites was liable to expose the population to a health risk², the applicants' lives and health had not been in danger.

The collection, treatment and disposal of waste were hazardous activities; as such, the State had been under a duty to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a healthy and protected environment.

It was true that the Italian State, from May 2008 onwards, had adopted several measures and launched a series of initiatives which made it possible to lift the state of emergency in Campania on 31 December 2009. However, the Court could not accept the Italian Government's argument that that state of crisis was attributable to *force majeure*. Even if one took the view, as the Government did, that the acute phase of the crisis had lasted only five months – from the end of 2007 until May 2008 – the fact remained that the Italian authorities had for a lengthy period been unable to ensure the proper functioning of the waste collection, treatment and disposal service, resulting in an infringement of the applicants' right to respect for their private lives and their homes. The Court therefore held that there had been a violation of Article 8.

On the other hand, the studies commissioned by the civil emergency planning department had been published by the Italian authorities in 2005 and 2008, in compliance with their obligation to inform the affected population. There had therefore been no violation of Article 8 concerning the provision of information to the public.

Articles 6 and 13

As to the applicants' complaint concerning the opening of criminal proceedings, the Court reiterated that neither Articles 6 and 13 nor any other provision of the Convention guaranteed an applicant a right to secure the prosecution and conviction of a third party or a right to "private revenge".

However, in so far as the complaint related to the absence of effective remedies in the Italian legal system by which to obtain redress for the damage sustained, the Court considered that that complaint fell within the scope of Article 13.

In view of its findings as to the existence of relevant and effective remedies enabling the applicants to raise their complaints with the national authorities, the Court held that there had been a violation of Article 13.

² [Judgment of 4 March 2010](#) by the Court of Justice of the European Union (Case C-297/08).

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that its findings of violations of the Convention constituted sufficient redress for the non-pecuniary damage sustained. It held that Italy was to pay 2,500 euros (EUR) to Mr Errico di Lorenzo in respect of costs and expenses.

Separate opinion

Judge **Sajó** expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.