



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

SECOND SECTION

Application no. 35648/10
Loredana LOCASCIA and others
against Italy
lodged on 23 June 2010

STATEMENT OF FACTS

1. The 19 applicants, all Italian nationals, live in the municipalities of Caserta and San Nicola La Strada (CE).
A list of the applicants is set out in the appendix.

The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The “Lo Uttaro” area before the reopening of the plant

3. In February 1994 the Prefect of Naples appointed an expert to carry out inspections of the private waste disposal plants located in the Province of Caserta in order to assess, *inter alia*, the possibility of exploiting them in order to alleviate the effects of the waste emergency.

4. The expert also inspected the plant located in the “Lo Uttaro” area which had been operated, pursuant to the decision of the Campania region n° 1366 of 4 March 1989, by a limited liability company (Ecologia Meridionale S.r.l.) from the late 80’s until the beginning of the 90’s, when it was closed.

5. On 31 December 2001, the expert filed a report with the ecological operative unit of the Caserta *carabinieri* in which he highlighted the absolute unfitness of the “Lo Uttaro” area to host a waste disposal plant in the light of a situation of serious environmental degradation and pollution. The expert further stated that although the technical elements which could have prevented such degradation had been known to the public authorities since 1988, the perpetration of illegal conduct had been allowed on the assumption of a never-ending immunity.

6. On 1 April 2005 the Government Commissioner for the reclamation emergencies and for the safeguard of the waters of the Campania region

approved the Regional Plan for the reclamation of the polluted sites of the Campania region (ordinance n° 49 of 1 April 2005), which included the waste disposal plant “Lo Uttaro”.

2. The reopening of the “Lo Uttaro” waste disposal plant

7. On 11 November 2006, during the waste crisis which afflicted the region of Campania (see the judgment in the case *Di Sarno v. Italy*, n° 30765/08, 10 January 2012, §§ 7-64), the President of the Province of Caserta, the Mayor of Caserta and the Delegate Commissioner of the Italian Government for the waste emergency in Campania (hereinafter “Government Commissioner”) signed a memorandum of understanding by which it was decided to reopen the waste disposal plant in the “Lo Uttaro” area (hereinafter “plant” or “Lo Uttaro plant”) located in the proximity of the municipalities of Caserta and San Nicola La Strada where the applicants live.

8. On 12 January 2007 the Government Commissioner ordered the temporary occupation of the plant located in the “Lo Uttaro” area and approved the preliminary draft of the works for its adaptation to the disposal of non-hazardous waste (ordinance n° 3 of 12 January 2007).

9. On 19 April 2007 the Government Commissioner authorised the operation of the plant for the disposal of non-hazardous waste (ordinance n° 103 of 19 April 2007).

10. On 22 April 2007 the consortium ACSA CE 3, to which the management of the plant had been entrusted, began its operation.

3. The civil proceedings before the Naples Tribunal

11. Although the applicants did not institute judicial proceedings to complain about the reopening of the plant, on 20 June 2007 several residents of a village located a few hundred metres from the “Lo Uttaro” plant (*Villaggio Saint Gobain*), filed an urgent application (under Article 700 of the Code of Civil Procedure) with a single judge of the Naples Tribunal seeking the suspension of the operation of the plant, which they claimed caused imminent and irreparable danger to their health.

12. They emphasised that the operation of the plant caused serious nuisance in the form of continuous and massive emissions of dust, noise and evil-smelling fumes to the grave detriment of their health. They further claimed that the choice of the “Lo Uttaro” area for the operation of the plant contradicted the previous decision of the administration to include the site in the Regional Plan for the reclamation of the polluted sites of the Campania region (see § 10) and was based on false data.

13. On 19 July 2007 the Tribunal granted the application and ordered the Government Commissioner and the Consortium ACSA CE 3 to refrain from the utilisation of the plant.

14. The Tribunal found that the Government had failed to adopt all the necessary measures to avoid the waste disposal activities at the “Lo Uttaro” plant causing damage to human health. Furthermore, the decision stressed that the Government’s choice to reopen the plant had been driven only by the necessity of finding urgently a site for the disposal of the municipal

solid waste of the Caserta province, in violation of the specific and complex procedure applicable and to the detriment of people's health.

15. On 3 August 2007 the Government Commissioner and the Consortium ACSA CE 3 appealed against the decision to the Naples Tribunal.

16. The Tribunal, pending the appeal, ordered the provisional stay of the impugned decision and at the hearing held on 22 August 2007 appointed an expert in order to assess, *inter alia*, whether the operation of the plant jeopardized the health of the people residing in its proximity.

17. On 15 October 2007 the expert filed his report concluding, among other things, that:

- a decision to allow the operation of the plant would be inappropriate;
- the choice of the site had been made in violation of the applicable laws;
- the storage of further waste in the plant increased the already high risk of impact on the relevant environmental elements in the area, including public health.

18. 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 the operation of the plant could cause, ordered its closure until the conclusion of the civil proceedings pending before the Naples Tribunal.

19. On 13 November 2007 the Naples Tribunal dismissed the appeals.

4. The preventive seizure of the plant

20. On an unspecified date in 2005 the public prosecutor at the Tribunal of Santa Maria Capua Vetere began an investigation into the "Lo Uttaro" plant (RGNR 15618/05) on suspicion of, *inter alia*, abusive disposal of hazardous waste and causing an environmental disaster in relation to the plant and the groundwater underneath.

21. On 13 November 2007 the judge for the preliminary investigations of Santa Maria Capua Vetere (*giudice per le indagini preliminari - GIP* as per the acronym in Italian), pursuant to a request of the public prosecutor dated 17 September 2007, ordered the preventive seizure of the plant (GIP Santa Maria Capua Vetere, decree n° 12033/07).

22. The GIP found that the investigations carried out by the prosecutor showed that the plant had been operated illegally for the disposal of hazardous waste for which the certifications had been forged to make them appear as non-hazardous ones, regardless of the limit set out in the provisions authorising the operation of the plant (ordinance n° 3 of the Government Commissioner of 12 January 2007).

23. Moreover, the decision noted that although the laboratory tests carried out on the groundwater underneath the plant had shown a level of hydrocarbons exceeding the limits set out by the applicable laws, the operation of the plant had not been suspended.

24. Finally, the GIP stated that "it is not possible to doubt that from the overt environmental insecurity of the plant derives its substantial and objective unlawfulness even in a situation of emergency" and concluded that the preventive seizure of the plant was necessary in order to prevent the

perpetuation of its abusive operation and to avoid further negative consequences on the environment and on public health.

5. The criminal proceedings concerning the waste disposal cycle in the Campania region

25. In 2006, on an unspecified date, the public prosecutor at the Naples Tribunal began a criminal investigation (RGNR n° 40246/06) concerning the waste disposal cycle in the Campania region.

26. On 22 May 2008 pursuant to a request of the prosecutor, the GIP of the Naples Tribunal ordered the house arrest of, among others, several public employees of the Commissariat of the Italian Government for the waste emergency in Campania (hereinafter “Government Commissariat”).

27. In his order the judge cited also the results of the investigations concerning the “Lo Uttaro” plant from which it emerged that hazardous waste had been abusively transported to and treated in the plant and that the contamination of the groundwater underneath the plant, revealed by the laboratory tests, had been concealed with the consequent failure to adopt the necessary measures to deal with the problem.

28. The GIP stressed the leading role played by several members of the Government Commissariat in the perpetration of such criminal conduct.

29. On 29 January 2009 the judge for the preliminary hearing (*Giudice dell’udienza preliminare*) of the Naples Tribunal committed all the accused for trial. The latter began on 26 May 2009 before the Naples Tribunal.

6. The “Lo Uttaro” area after the closure of the plant

30. On 4 August 2009 the Municipality of Caserta and the Ministry of the Environment signed an operative agreement concerning the measures to be taken to reclaim the “Lo Uttaro” area and to carry out its environmental clean-up. The agreement envisaged the allocation of ten million euros in four years for its implementation.

31. At the time the present application was filed the operative agreement had not been implemented.

7. The reports of the Campania Region’s Environmental Protection Agency (ARPAC)

32. Between 22 November 2007 and 17 December 2008 the Campania Region’s Environmental Protection Agency (ARPAC) carried out four inspections at the “Lo Uttaro” plant.

33. In the report concerning the inspection of 17 December 2008 the experts of the agency stated that the plant represented a “biological engine with an undisputed environmental impact”. They stressed that the current state of the plant entailed problems concerning the uncontrollable emissions of gas [produced by the waste] and the accumulation and overproduction of leachate [originated by the percolating of water through the waste]. In relation to the latter the report noted that only a minimum part of the leachate accumulated in the “Lo Uttaro” plant had been removed and transferred to the appropriate treatment plants.

8. The Parliamentary Commission's inquiries

34. Between 1997 and 2008 three Parliamentary Commissions of Inquiry on the cycle of waste and the related illicit activities were established pursuant to Laws n° 97 of 10 April 1997, n° 399 of 31 October 2001 and n° 271 of 20 October 2006.

35. In its report on Campania dated 13 June 2007, the third Commission stated that “the situation of the cycle of waste shows the signs of a dangerous regression which caused the operational collapse of the service in question and serious risks to the health of the population”.

36. In a report dated 19 December 2007, the same Commission, while expressing its feeling that the emergency in the region had escalated to a disaster, passed an “unconditional negative judgment” on the Government Commissariat management of the waste emergency and stressed that its structural deficiencies were of such a magnitude as to prejudice irreversibly its effectiveness. Moreover, the report cited the numerous criminal conducts perpetrated by some of the leading figures of the Government Commissariat.

37. The “Lo Uttaro” plant was referred to by the Commission as emblematic of the collusive incapacity of the Administration which had proved unable “to read its own documents” which already in 2001 showed the environmental inadequacy of the chosen site to host a waste treatment plant.

9. The scientific studies

38. Several scientific studies have investigated possible health effects of the waste cycle in Campania.

39. The World Health Organization (WHO) was requested by the Department of Civil Defence of the Italian Government to conduct an epidemiological study on the health impact of the waste cycle in Campania. To this end a working group comprising the WHO, the National Research Council (CNR), the Superior Institute of Health (*Istituto Superiore di Sanita'* – *ISS* as per the acronym in Italian), Campania Regional Authority Epidemiologic Observatory (OER) and Campania Region Environmental Protection Agency (ARPAC) was appointed.

40. The results of the study, presented in March 2007, showed that the cancer mortality rate in the Provinces of Naples and Caserta was significantly higher than in the rest of the Campania region. As far as the Province of Caserta is concerned, the study showed that the cancer mortality profile was characterised by an excess estimated at 16% for men and 11% for women with peaks of 19.3% for men and 18.2% for women in relation to stomach cancer. Furthermore, in the southern part of the Province of Caserta frequent excesses for congenital malformations overall and for the group of urogenital malformations were identified.

41. The World Health Organization concluded that the findings of the study “indicate the presence of an area characterised by elevated cancer mortality rates and by elevated occurrence of birth defects, corresponding with that area where most waste disposal sites are concentrated...these preliminary findings are consistent with a possible contributory role of waste-related exposures in determining ill health in the area over time”.

42. Such conclusion was shared by a study, whose results were presented in 2007, conducted by the *ISS* on the impact on human health of waste disposal in Campania. The study, conducted on 196 municipalities, among which Caserta and San Nicola La Strada where the applicants reside, showed that excesses in mortality and malformations tended to be concentrated in areas in which the presence of waste disposal sites was more intense.

43. The concentration of risk excesses in areas where the environmental stress caused by waste was higher suggested that exposure to waste disposal was responsible for a higher rate of mortality and malformations. The study concluded that the data collected showed numerous positive and statistically significant (therefore not attributable to chance) associations between waste and health.

COMPLAINTS

44. Invoking Articles 2 and 8 of the Convention, the applicants complain about the danger to their health and the interference with their private life and home caused by the operation of the plant and by the failure of the authorities to secure, clean-up and reclaim the area after the closure of the plant.

45. Invoking Article 14 together with Articles 2 and 8 of the Convention the applicants claim that as residents in the Campania region they are afforded a lower level of protection of the invoked Convention rights than people residing elsewhere.

46. Invoking Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, the applicants complain about the lack of an effective remedy to obtain the restitution of the tax they paid for the collection and disposal of municipal solid waste.

APPENDIX

1.	Guido ANTUONO	10/10/1951	1951	Italian	CASERTA	A. IMPARATO
2.	Tiziana ANTUONO	16/02/1949	1949	Italian	CASERTA	A. IMPARATO
3.	Laura BALDELLI	28/01/1945	1945	Italian	CASERTA	A. IMPARATO
4.	Mariano DE MATTEIS	19/06/1947	1947	Italian	SAN NICOLA LA STRADA (CE)	A. IMPARATO
5.	Anna Maria DI LILLO	15/03/1947	1947	Italian	SAN NICOLA LA STRADA	A. IMPARATO
6.	Rosa GUERRIERO	25/02/1947	1947	Italian	Caserta	A. IMPARATO
7.	Alfredo IMPARATO	09/07/1971	1971	Italian	SAN NICOLA LA STRADA (CE)	A. IMPARATO
8.	Vincenzo LAVORETANO	02/03/1953	1953	Italian	SAN NICOLA LA STRADA (CE)	A. IMPARATO
9.	Renato LOCASCIA	16/01/1947	1947	Italian	CASERTA	A. IMPARATO
10.	Loredana LOCASCIA	01/11/1972	1972	Italian	SAN NICOLA LA STRADA	A. IMPARATO
11.	Michele ORLANDO	23/03/1972	1972	Italian	SAN NICOLA LA STRADA	A. IMPARATO
12.	Francesco Antonio ORLANDO	23/02/1943	1943	Italian	SAN NICOLA LA STRADA	A. IMPARATO
13.	Vincenzo ORLANDO	11/08/1982	1982	Italian	SAN NICOLA LA STRADA	A. IMPARATO
14.	Daniele ORLANDO	11/08/1982	1982	Italian	SAN NICOLA LA STRADA	A. IMPARATO
15.	Cinzia PANARO	14/09/1955	1955	Italian	CASERTA	A. IMPARATO
16.	Giuseppe PETRELLA	02/09/1943	1943	Italian	CASERTA	A. IMPARATO
17.	Pasquale PETRELLA	08/04/1941	1941	Italian	CASERTA	A. IMPARATO
18.	Francesco SCOLASTICO	21/06/1948	1948	Italian	CASERTA	A. IMPARATO
19.	Domenico TAGLIAFIERRO	24/07/1970	1970	Italian	CASERTA	A. IMPARATO

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, was there an effective remedy available to the applicants within the meaning of this provision in respect of their complaints under Articles 2 and 8 of the Convention?

2. Has there been an interference with the right to life of the applicants protected by Article 2 of the Convention? Specifically, has the operation of the plant, also in the light of its abusive treatment of hazardous waste, had a negative impact on the health of the people living in its proximity? What is the current state of the “Lo Uttaro” area and has it adverse effects on the health of the people residing in its proximity? Have the Government taken reasonable and appropriate measures to secure the applicants’ rights under Article 2 of the Convention before, during and after the reopening of the plant?

3. Has there been an interference with the applicants’ right to respect for their private life and home within the meaning of Article 8 § 1? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

4. Is the level of detriment suffered by the applicants in view of the location of their homes in the proximity of the “Lo Uttaro area” such as to raise an issue of a positive obligation of the State under Article 8? If so, have the Government taken reasonable and appropriate measures to secure the applicants’ rights under paragraph 1 of Article 8 in relation to the decision-making process leading to the reopening of the plant as well as in relation to its operation? Was the decision to reopen the plant preceded by adequate studies and reports such as an environmental-impact assessment?

5. The Government are invited to indicate whether, following its closure ordered by the Mayor of Caserta at the end of 2007, the plant has been operated again as well as whether the operative agreement (signed on 4 August 2009) concerning the measures to be taken to reclaim the “Lo Uttaro” area and to carry out its environmental clean-up has been implemented.

6. The Government are invited to indicate which developments have occurred since the introduction of the present application in the two sets of criminal proceedings before the Tribunal of Santa Maria Capua Vetere (RGNR 15618/05) and before the Naples Tribunal (RGNR 40246/06) which concerned, *inter alia*, the “Lo Uttaro” plant and also whether there are any other criminal proceedings (either pending or concluded) which concern the “Lo Uttaro” area and its plant.

7. The Government are invited to indicate whether the urgent proceedings, instituted before the Naples Tribunal under Article 700 of the Code of Civil Procedure by the residents of a village nearby the plant, have been followed by the introduction of proceedings on the merits, and to provide information on the current status of these proceedings.