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Third party intervention submitted on behalf of *Newcastle Forum for Human Rights & Social Justice (Newcastle University, UK)*, *Newcastle Environmental Regulation Research Group (Newcastle University, UK)*, *Let's Do It! Italy*, and *Legambiente*

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Newcastle Forum for Human Rights and Social Justice



Environmental Regulation Research Group



Research at Newcastle Law School



Introduction

This intervention is submitted on behalf of Newcastle Forum for Human Rights & Social Justice (Newcastle University, U.K.), Newcastle Environmental Regulation Research Group, Let's Do It! Italy, and Legambiente. It focuses on:

- A. the facts relating to the complaints raised in these applications;
- B. the obligation to refrain from interfering with the right to life and the obligation to safeguard life under Article 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR);
- C. the obligation to ensure the practical and effective protection of the guarantees under the ECHR from all risks including from the conduct of private parties;
- D. the positive and negative obligations of States pursuant to Article 8 ECHR relating to the right to private and family life and the right to home;
- E. the obligation to ensure that the risk posed by environmental degradation is assessed in accordance with the legal standards set out in Article 2 and Article 8 ECHR and in light of the principles of international environmental law.

A. Factual assessment of the situation in the so-called “Land of Fires”

1. As acknowledged by the European Court of Human Rights (hereinafter the Court),¹ the term Land of Fires was used for the first time by Legambiente in 2003 to indicate the widespread illicit dumping and burning of waste in some areas of the municipalities of Giugliano, Qualiano and Villaricca in the province of Naples. Today, the term Land of Fires refers to the urban and hazardous waste which, since the late 1980s, is being systematically and illegally burnt and buried in an area of Campania in the south of Italy. From various reports which this intervention refers to, including the Rifiuti report, it becomes evident that from the late 1980s onwards Camorra, a Neapolitan organized criminal group, created joint criminal ventures with a number of industries in northern and central Italy with the aim of transforming the waste management to an illegal waste business which, in the 1990s was worth over 1200 billion lire per year.² According to data gathered, the illicit trafficking of waste was owed to the limited capacity of Italian landfills to dispose urban, industrial and hazardous waste.³ Moreover, according to an investigation carried out by the Office of the Prosecutor in Naples,⁴ by 1994 Camorra had acquired direct total management and control of the collection, transport and disposal of urban, toxic and hazardous waste produced by industrial activities which it then illegally dumped in Campania to avoid the costs related to their disposal. This enabled bypassing the limited capacity of the Italian legal landfills.⁵ Further reports provided by the Italian Ministry of the Environment estimated that by the late 1990s 151.160 tons of hazardous waste were disappearing from the legal circuits of waste disposal every year.⁶

*Translation of document from Italian to English has been carried out by Ms Raffaella D'Antonio.

¹ *Di Caprio et autres contre l'Italie et 3 autres requêtes*, Application no 39742/14, [1-3] ; see also Legambiente, *Rifiuti S.p.a.*, (2003).

² Legambiente, *Rifiuti S.p.a. Pseudo imprenditori, logge massoniche, politici corrotti e criminalità organizzata: una holding dietro i traffici abusivi*, (3 Giugno, 1994), 11.

³ Legambiente, *Rifiutopoli. La Regione Fantasma* (Roma, 18 Novembre 1997), 1.

⁴ Case Avolio, VII Sezione Tribunale Penale di Napoli, (1995).

⁵ *Supra* note 2, 11.

⁶ *Supra* note 3, 3.

2. It has been estimated that the illegal waste business of Camorra has expanded over the years reaching a turnover of 16.7 billion euros in 2013.⁷ In 2015, Legambiente registered 82 judiciary investigations relating to the organized illegal waste business and has estimated that in 25 years 10 million tonnes of hazardous waste had been dumped in legal and illegal landfills, in the countryside and in agricultural land in Campania.⁸ Investigations have also verified the existence of over 800,000 tons of hazardous waste and 57,000 tons of leachate within the municipalities of Giugliano, Villaricca and Parate. According to the Anti-Mafia District, this is a permanent disaster susceptible to pollute the groundwater of the entire Giuglianese in the province of Naples and of the southern part of the province of Caserta.⁹ According to existing evidence as referred to in this intervention, the illegal waste business is a serious and structural problem which concerns not only Campania but many regions of Italy.¹⁰ This has led the Parliamentary Committee of Inquiry on the waste cycle and related illegal activities (hereinafter the Committee) to conclude that the size of the illicit waste traffic has caused over the years 'incalculable damage, which will be borne by future generations. The environmental disaster is destined to progressively amplify its effects in the coming years, with a peak that will be reached in about fifty years.'¹¹

3. Furthermore, and as recognised by this Court,¹² in addition to the illegal dumping of waste Campania has also suffered from the illegal burning of waste, practice documented for the first time by Legambiente in 2003.¹³ Such burning was owed to 1) the improper management of the urban waste cycle which exacerbated the accumulation of abandoned urban solid waste; and 2) the illegal dumping of industrial waste mostly perpetuated by local steel, textile and tanneries industries.¹⁴ The problem was exacerbated by the failure of many municipalities in Campania to implement Article 3 of regional law n. 20/2013 which established an obligation to create, within each municipality, a register of the areas affected by the abandonment and burning of waste.¹⁵ Statistical data concerning where waste has been abandoned, its quantity as well as quality is essential to understand the dimension of the problem and to prevent the risks associated with its burning. Over the past years, and through the online platform TrashOut,¹⁶ Let's do it Italy! has registered 300 complaints associated with illegal dumping of urban and hazardous waste, and verified that in most cases the waste that is illegally disposed of is subsequently set on fire to make room for new spills in the same area.

⁷ Legambiente, *Rapporto Ecomafia*, (2013).

⁸ Legambiente, *Terra dei Fuochi, a che punto siamo?* (Caserta, 10 Febbraio 2015), 20.

⁹ Legambiente, *Terra dei Fuochi: radiografia di un ecicidio. I numeri, le responsabilità, le conseguenze sulla salute dei cittadini e le proposte di Legambiente*. (Roma, 18 Settembre 2013), 7.

¹⁰ See Legambiente, *Rapporto Ecomafia 1995-1997. Le nuove frontiere dell'ecomafia. L'illegalità ambientale in Italia e il ruolo della criminalità organizzata* (Roma, 29 Gennaio, 1997); see also Scalia, M., Gerardini, F., Specchia, G. (2001). *Relazione Finale al Parlamento. Commissione Parlamentare d'Inchiesta sul ciclo dei Rifiuti e sulle Attività ad esso connesse*, 81 et ss; and Legambiente, *Rifiuti S.p.a., I traffici illegali di rifiuti in Italia. Le storie, i numeri, le rotte e le responsabilità*. (Roma, 30 Gennaio 2003).

¹¹ Legambiente, *Terra dei Fuochi: radiografia di un ecicidio. I numeri, le responsabilità, le conseguenze sulla salute dei cittadini e le proposte di Legambiente*. (Roma, 18 Settembre 2013), 7.

¹² See *Di Caprio et autres contre l'Italie et 3 autres requêtes*, Application no 39742/14.

¹³ Legambiente, *Rapporto Ecomafia*, (2003).

¹⁴ Senato della Repubblica, Commissione Parlamentare d'Inchiesta sul ciclo dei Rifiuti e sulle Attività ad esso connesse. Audizione dell'incaricato del Ministro dell'interno per il fenomeno dei roghi dei rifiuti, Donato Cafagna (21 Ottobre 2015),3

¹⁵ Legambiente, *Rifiuti S.p.a.*, (2003).

¹⁶ TrashOut is an online platform owned by Let's do it Italy where citizens can track abandonment of urban and solid waste. The data is complemented by complains lodged through emails and phone calls.

4. The extent of the problem of the illegal burning of waste can be illustrated from data available on the website Prometeo established by the Ministry of the Interior.¹⁷ Data from 2012 to 2018 register 14,457 burning of waste within the municipalities of Naples and Caserta. These areas are included in Legislative Decree no. 136 of 10 December 2013, known as the Land of Fires Decree, which defines the areas of Campania mostly affected by the illicit combustion and dumping of waste. Moreover, data shows that the practice of illegal burning of waste affects also municipalities not included in the Land of Fires Decree.¹⁸ The interveners submit that the illegal burning of waste has contributed to the environmental degradation of Campania and has led to the dispersion into the atmosphere and subsequent deposition into the soil of toxic pollutants such as dioxins and particulate matter.¹⁹ As evidenced in 2012 by the President of Province of Caserta, the illicit combustion of waste is susceptible to affect citizen's right to health and to live in a healthy environment.²⁰

5. The interveners also wish to draw the Court's attention to the Committee's 2009 report according to which no effective measures had been implemented by the Italian government to tackle a problem of unprecedented severity.²¹ Despite the fact that illegal waste dumping and burning had been going on for many years, and for which the Italian authorities were fully aware of, it was only in 2012 that surveillance and police monitoring were initiated in the areas most affected by the illicit combustion of waste. Even so, funding and staff shortages²² meant that the number of surveillances were not sufficient. For instance, and according to available data,²³ from 2014 to 2016 the Italian Army carried out only 22,111 surveillances (overall 30 surveillances per day) throughout the 90 municipalities included in the Land of Fires Decree. This has left out most of the municipalities without any surveillance. The numbers nevertheless increased in 2017 (15,379 surveillances in one year) which shows an increased awareness of the Italian government of the need to adopt preventive and monitoring measures to tackle the illegal waste burning.²⁴

6. The interveners submit to this effect that the environmental disaster in Campania has been exacerbated by two main factors: a) the lack of an effective legal framework aimed at tackling environmental crimes²⁵ and b) the lack of a precautionary approach in tackling and removing all sources of environmental pollution harmful to human health.²⁶ Already in the 1997s, for instance, Legambiente invited the Ministry of the Environment and the Committee to investigate the disappearance of hazardous waste from the legal circuits of waste disposal, and requested the

¹⁷ Prefettura. Ufficio Territoriale del Governo di Napoli. Website PROMETEO- lotta agli incendi di rifiuti in Campania. Available at http://www.prefettura.it/napoli/contenuti/Prometeo_lotta_agli_incendi_dei_rifiuti_in_campania-17878.htm, accessed 31/08/2019].

¹⁸ The number of burning of waste in the municipalities of Naples increases from n.9446 to n.11770 if municipalities not falling within the Land of Fires Decree are included.

¹⁹ Senato della Repubblica, Commissione Parlamentare d'Inchiesta sul ciclo dei Rifiuti e sulle Attività ad esso connesse, (16 Luglio 2009).

²⁰ Senato della Repubblica, Commissione Parlamentare d'Inchiesta sul ciclo dei Rifiuti e sulle Attività ad esso connesse, (2 Febbraio 2009).

²¹ *Supra* note 19, 195.

²² Legambiente, *Terra dei Fuochi: a che punto siamo?*, 22-23.

²³ Prometeo, Operazione Strade Sicure per le Province di Napoli e Caserta. Interventi Esercito Italiano. Available at http://www.utgnapoli.it/portale/visualizza_dati/vis_esercito/esercito_vis_anno.php [accessed 31/08/2019].

²⁴ *Ibid.*

²⁵ See D. Vagliasindi, A. Lucifora, F. Bianco, European Union Action to Fight Environmental Crime (eds). *Fighting Environmental Crime in Italy: A Country Report*, (January 2015).

²⁶ Senato della Repubblica, Documento Conclusivo Dell'Indagine Conoscitiva sugli Effetti dell'Inquinamento Ambientale e sull'Incidenza di Tumori, delle Malformazioni Feto-Neonatali ed Epigenetica Approvato dalla Commissione. (Doc. XVII, n. 12) (29 Novembre 2017), 84.

introduction of environmental crimes in the Italian Criminal Code.²⁷ Notwithstanding the demands of environmental NGOs and civil society to put in place effective and deterrent legislative framework to tackle environmental crimes, the first related felony was only introduced in 2001 with art 53 Ronchi Decree (now Article 452-quaterdecies Italian Criminal Code), which punished the organized activity of illegal waste trafficking. Another felony was introduced in 2013 with Article 256 Land of Fires Decree, which endorsed for the first time the crime of illicit combustion of waste. Recently, law 68/2015 has introduced new environmental offences and stronger criminal penalties.²⁸

7. The interveners submit to this effect that until recently most environmental crimes in Italy were misdemeanours. Practitioners have underlined that the misdemeanour nature of the vast majority of environmental crimes negatively affected the enforcement of environmental laws. The misdemeanour nature of environmental crimes meant that investigators had limited investigation methods which excluded the use of wiretapping. Moreover, the misdemeanour nature of environmental offences meant the inapplicability of personal precautionary measures; it involved short limitation periods and it entailed the frequent occurrence that the crime was extinguished through the payment of a sum of money (oblazione) or a conditionally suspended sentence.²⁹ The interveners submit, therefore, that the lack of deterrent criminal sanctions in the Italian legal system made the illegal waste business and illegal waste burning particularly appealing to perpetrators. Moreover, it is submitted that in 2015 a study on environmental crimes in Italy has reported that in comparison to other categories of crimes (e.g. drug trafficking) the number of environmental criminal acts reported, investigated, brought to trial and sanctioned was very small. Practitioners affirmed that this was due, among other reasons, to the short limitation period for environmental crimes.³⁰

8. The interveners also submit that evidence demonstrates serious delays in assessing the risk that contaminated sites presented to human health and in reclamation activities of contaminated sites in Campania. For instance, and while in 2013 3,749 sites were identified for the investigation of pollutant traces harmful to human health, formal procedures for risk analysis have not started as yet for 75% of such identified sites, while only 3.5% of these sites have been cleaned up through the presentation and/or implementation of the cleaning up project known as the Regional Cleaning Up Operations Plan (Piano Regionale Bonifica, hereafter PRB).³¹ PRB is the planning tool envisaged by current Italian legislation, through which the Campania Region has identified the sites to be cleaned up in its territory. The number of sites requiring further investigations/or cleaning up has increased between 2013 and 2019. Of the 4,692 sites which have been registered, 3,615 sites, that is 77% of the total number of sites requiring investigation, are still awaiting investigation and risk analysis.³² Moreover, the ARPAC (Campania Region

²⁷ Legambiente, *Rifiuti S.p.a., I traffici illegali di rifiuti in Italia. Le storie, i numeri, le rotte e le responsabilità*. (Roma, 30 Gennaio 2003), [4].

²⁸ See Law 68/2015 introduced section VIbis which defines the crimes of : Environmental pollution (art. 452-bis); Environmental disaster (art. 452-quater); Trafficking and neglect of highly radioactive material (art. 452-sexies); Failure to carry out remediation (art. 452-terdecies).

²⁹ See *Supra* note 25,13.

³⁰ *Ibid*, 9.

³¹ ARPAC, [Aggiornamento PRB 2018 \(Delibera di G.R. n. 35 del 29/01/2019, pubblicato sul BURC n. 15 del 22/03/2019\)](http://www.arpacampania.it/web/guest/536); available at <http://www.arpacampania.it/web/guest/536> [accessed 29/08/19],121.

³² *Ibid*, 20.

Environmental Agency) data available shows that municipalities not included in the Land of Fires Decree have been effectively or potentially affected by contamination of environmental matrices.³³

9. The interveners acknowledge that the environmental situation of the Land of Fires is extremely peculiar and complex. The presence of contaminated sites, the practices of illegal waste disposal and the uncontrolled combustion of illegal spills make the identification of the population exposed to environmental pollution extremely difficult. Nevertheless, the interveners submit that scientific literature is increasingly demonstrating a statistic link between the environmental disaster of Campania and the increased incidence of malformation and cancer mortality in Campania. In its Communication *Di Caprio v. Italy* this Court has itself relied upon studies carried out by the Lancet Oncology, the World Health Organization and the Istituto Superiore Sanità (Studio *Sentieri*, 2015).³⁴ Accordingly, in 2007 it was established an increase of mortality of 19% and 43% for men in the municipalities of the provinces of Naples and Caserta, whilst for women the increase was 23% and 47%.³⁵ Moreover, these studies confirmed increases in mortality, cancer and hospitalization for several diseases that include among their ascertained or suspected risk factors exposure to environmental contaminants that can be emitted or released by uncontrolled hazardous waste dumping sites and combustion of both urban and hazardous waste. The latest study *Sentieri* also acknowledged increases of certain pathologies which may be due to exposure of hazardous waste and combustion of waste.³⁶

10. Nevertheless, these studies also acknowledge difficulties in establishing an express causal link between the environmental pollution of Campania and detrimental impact upon health. To this effect, the interveners submit that in light of the complexity of the case, the extensiveness of the environmental pollution in Campania and the wider legal ramifications that the findings of this case will have, the determination of whether Italy has (or has not) observed its obligations under Article 2 and Article 8 ECHR should be made considering the most recent developments of international human rights and environment law with regards to States' obligations relating to a healthy and balanced environment. The legal analysis that follows aims to demonstrate the negative and positive obligations of States pursuant to Article 2 and Article 8 ECHR as they apply in the cases under consideration.

B. The obligation to refrain from interfering with the right to life and the obligation to safeguard life under Article 2 of the European Convention on Human Rights

11. It is well-established jurisprudence of the Court that Article 2 ECHR which guarantees the right to life is 'one of the most fundamental provisions of the Convention' and 'one of the basic values of the democratic societies making up the Council of Europe'.³⁷ The right to life is central to human rights protection since without it all other rights become devoid of meaning. It is also recognised as 'supreme' in its own right because of the significance that it has for the individual

³³ See for instance the municipalities of Torre del Greco and Torre Annunziata in [Tabella 4Bis.2 - CSPC Ex SIN Litorale Vesuviano](#); available at <http://www.arpacampania.it/web/guest/536> [accessed 29/08/19].

³⁴ *Di Caprio et autres contre l'Italie et 3 autres requêtes*, Application no 39742/14, [26-36].

³⁵ Organizzazione Mondiale della Sanità, Istituto Superiore di Sanità, Consiglio Nazionale delle Ricerche e Regione Campania. *Rapporto Trattamento dei rifiuti in Campania: impatto sulla salute umana*, (2007).

³⁶ Studio Epidemiologico Nazionale dei Territori e degli Insediamenti Esposti a Rischio Inquinamento. *Studio Sentieri Quinto Rapporto*, (Marzo- Giugno 2019), 117-118,121.

³⁷ *Andronicou and Constantinou v Cyprus*, Application no 86/1996/705/897, Judgment, 10 October 1997, [171].

and society as a whole.³⁸ It is for this reason that the right to life, even though not absolute,³⁹ is recognised as fundamental and from which no derogation can be permitted. This, in turn, has restricted State discretion and power to deprive an individual of their right to life.⁴⁰

12. As with all rights safeguarded under the ECHR, States bear both a negative and a positive obligation to protect the right to life. This requires States to ensure that public authorities do not, through their actions and omissions, interfere with the right.⁴¹ Nevertheless, going beyond merely a prohibition of arbitrarily depriving an individual of their life, Article 2 also entails a positive obligation which requires States to safeguard life which is known as the duty of due diligence.⁴² Accordingly, States have an obligation to adopt the necessary regulatory, legislative and administrative framework which will safeguard both the procedural and substantive aspects of the right to life.⁴³ This is consistent with contemporary legal trends, as stipulated in the recent General Comment No 36 adopted by the Human Rights Committee on the right to life, according to which this right also entails the duty to safeguard life from acts or omissions, including foreseeable threats and life-threatening situations, intended or expected to cause premature or unnatural death.⁴⁴

13. The UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste, in his latest report, stressed that States must prevent arbitrary deprivation of life resulting from toxics and adopt positive measures to protect that right,⁴⁵ including effective measures to prevent and safeguard against hazards that threaten the lives of human beings. Additionally, States must take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.⁴⁶

C. The obligation to ensure the practical and effective protection of the guarantees under the ECHR from all risks including from the conduct of private parties

14. It is difficult to establish the threshold below which the efforts that the State has shown to have undertaken constitute a breach of its obligations under Article 2. Therefore, the question that arises in this case is whether Italy has taken all necessary measures expected of it to prevent interferences with the right to life and which arise from the illegal activity of private actors.

15. The positive aspect of the obligation to safeguard life has extended the scope of Article 2 by requiring States to protect life not only in relation to conduct (acts or omissions) carried out by

³⁸ General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, [2].

³⁹ *Ibid.*, [2].

⁴⁰ J-F Renucci, *Introduction to the European Convention on Human Rights: The Rights Guaranteed and the Protection Mechanism*, (Council of Europe Publishing: 2005), 12.

⁴¹ *McCann and others v. the United Kingdom*, 27 September 1995 [23].

⁴² *L.C.B. v United Kingdom*, Application no 23413/94, Judgment, 9 June 1998; *Association X v United Kingdom*, Application no 7154/75, Admissibility, Judgment, 12 July 1978, [32].

⁴³ *Budayeva v Russia*, Application no 15339/02, Judgment, 20 March 2008, [129].

⁴⁴ General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36, 30 October 2018, [3] and [7].

⁴⁵ HRC, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste A/HRC/36/41, (11-29 September 2017) [7]; see also Human Rights Committee, general comment No. 6 (1982) on the right to life, [5].

⁴⁶ *Ibid* general comment No. 6, [5]. While the Committee states that it would be “desirable” for States to take all possible measures, the evidence is now much stronger that States must take all possible measures to respect, protect and fulfil.

public authorities, but also in relation to conduct carried out by private, non-state actors.⁴⁷ To comply with this, States must put in place appropriate legislative and administrative measures which are necessary to protect the right from ‘reasonably’ foreseeable threats and interferences which result from the conduct of private parties.⁴⁸

16. Importantly, according to the settled case-law of this Court, the protection of the rights embedded in the ECHR is not merely theoretical or illusory, but rather it is intended to be practical and effective.⁴⁹ As a consequence, the duty to safeguard life requires public authorities to effectively investigate the circumstances of an individual’s death⁵⁰ and to effectively punish those responsible for the deprivation of life even if this has occurred as a result of the conduct of non-state actors.⁵¹ The duty to investigate requires that such investigation is prompt, effective, independent, impartial, thorough, credible and transparent, and that if a violation is found, appropriate and effective remedies are given to its victims. Failure to do so will be a violation of the duty to protect life as safeguarded under Article 2 ECHR.

17. The duty to protect life also entails a procedural duty to inform the public. The Court has indeed found that States have a duty based on Article 2 to ‘adequately inform the public about any life threatening emergencies, including natural disasters.’⁵² In this context, the interveners note that preliminary information on the extent of the illegal waste business were covered by State secrecy until 2013.⁵³ It is submitted to this effect that the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste stressed that ‘the enjoyment of the right to information is critical in the context of toxics, in order to prevent adverse impacts, to ensure the realization of the right to freedom of expression and to enable individuals and communities to participate in decision-making processes and to seek and obtain remedy. Health and safety information about toxic chemicals must never be confidential’.⁵⁴

D. Positive and negative obligations of States pursuant to Article 8 ECHR

18. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence. This imposes a negative obligation upon States.⁵⁵ However, while the objective of Article 8 is essentially that of protecting the individual from the arbitrary interference of public authorities, it also entails an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in this provision.⁵⁶ Accordingly, States have an obligation to adopt the necessary regulatory, legislative and administrative framework aimed at ensuring that factual conditions for exercising the right are met.⁵⁷ This

⁴⁷ J-F Renucci, *Introduction to the European Convention on Human Rights*, 10.

⁴⁸ General Comment No 36, [18].

⁴⁹ *Airey v Ireland*, Application no 6289/73, Judgment, 9 October 1979, [24].

⁵⁰ *Cyprus v Turkey*, Application no. 25781/94, Judgment 10 May 2001, [127].

⁵¹ *Öneryıldız v. Turkey* [GC], Application no. 48939/99, Judgment 30 November 2004, [92]; *Budayeva and Others v. Russia*, [139].

⁵² *Manual on Human Rights and the Environment*, (Council of Europe Publishing, 2017), 22.

⁵³ *Di Caprio et autres contre l’Italie et 3 autres requêtes*, [4].

⁵⁴ *Supra* note 39, [20].

⁵⁵ *Kroon and Others v. the Netherlands*, Application no. 18535/91, Judgment 27 October 1994, [31].

⁵⁶ *Lozovyye v. Russia*, Application no. 4587/09, Judgment 24 April 2018, [36].

⁵⁷ *Marckx v. Belgium*, Application no. 6833/74, Judgment 13 June 1979, [31].

obligation does not only apply in cases where interference with Article 8 is directly caused by State activities but also when it results from the activities of private actors.⁵⁸

19. As in the case of negative obligations, in implementing their positive obligations under Article 8 ECHR, State parties enjoy a certain margin of appreciation.⁵⁹ While the choice of the means to secure compliance with Article 8 is, in principle, within the State's discretion, the Court has held that effective deterrence against grave acts committed by private actors requires efficient criminal-law provisions. This is especially where fundamental values and essential aspects of private life are at stake.⁶⁰ State parties therefore have a positive obligation under Article 8 to enact criminal law provisions effectively punishing interferences with Article 8 and to apply them in practice through effective investigation and prosecution.⁶¹

E. The obligation to ensure that the risk posed by environmental degradation is assessed in accordance with the legal standards set out in Articles 2 and 8 ECHR and in light of the principles of international environmental law

20. The ECHR does not guarantee a substantive right to a healthy environment and none of its provisions are specifically designed to ensure the general protection of the environment. Nevertheless, the Court has increasingly examined complaints in which individuals have argued that a breach of one of their Convention rights has resulted from adverse environmental factors.⁶² The premise of this development is the notion that the Convention is to be interpreted as a living instrument in light of 'present day conditions'.⁶³ Since the 1960s, the Court has issued approximately 270 environment-related rulings⁶⁴ based on Articles 2, 6 (1), 8, 10, 13 and Article 1 of Protocol No. 1 of the Convention⁶⁵ and has held that in order to raise an issue under the Convention, there must be a direct and immediate link between the environmental degradation and the undermining of the applicant's rights.⁶⁶ The Court has found that the positive obligation of States may extend to dangerous activities, including waste disposal, whether carried out by public authorities themselves or by private companies. The positive obligation emerging from the Court's case law requires States to put in place effective legislative and administrative framework that regulates the licensing, start-up, operation and control of the hazardous activity.⁶⁷

21. As established by this Court's case law, the obligations under the ECHR are interpreted in the light of other international law standards and obligations, including under treaty and customary international law.⁶⁸ In identifying environmental conditions as being relevant for the enjoyment of fundamental human rights, the Court has added an important and respected voice to a growing body of international legal authorities emphasising the risk posed by environmental risks to human rights. The interveners submit to this effect that regional human rights Courts and international

⁵⁸ *Hatton and Others v. the United Kingdom* [GC], Application no. 36022/97, Judgment of 8 July, [98]; 7

⁵⁹ *Hatton and Others v. the United Kingdom*, [97-98, 100].

⁶⁰ See *M.C. v. Bulgaria*, Application no. 39272/98, Judgment 4 December 2003.

⁶¹ *Ibid.*

⁶² *Manual Human Rights and Environment*, 35.

⁶³ *Marckx v. Belgium*, [41].

⁶⁴ N. Kobylarz, 'The European Court of Human Rights: An Underrated Forum for Environmental Litigation', in H. Tegner Anker & B. Egelund Olsen (Eds.), *Sustainable Management of Natural Resources: Legal Instruments and Approaches* (Cambridge University Press, 2018), 99-120.

⁶⁵ *Manual Human Rights and Environment*, 31.

⁶⁶ *Ivan Atanasov v. Bulgaria*, Application no. 12853/03, Judgment 02 December 2010, [66].

⁶⁷ *Tătar v Romania*, Application no. 67021/01, [88].

⁶⁸ *Al-Adsani v. the UK*, Application no. 35763/97, Judgment 21 November 2001, [55].

legal authorities are increasingly endorsing environmental law standards and principles to assess violations of human rights. This is the consequence of internationally perceived urgency of environmental crises and the growing recognition of the importance of environmental protection to human well-being.

22. In 2018, for instance, following extensive consultation with representatives of Governments, international organizations, civil society organizations and academics, the UN Special Rapporteur on Human Rights and the Environment presented to the Human Rights Council 16 Framework Principles on Human Rights and the Environment.⁶⁹ The Principles stress that the positive and negative obligations of States arising from the protection of human rights also apply in the environmental context.⁷⁰ States should therefore refrain from violating human rights through causing or allowing environmental harm; they should protect against harmful environmental interference; and they should take effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity.⁷¹ Moreover, these principles spell out how States should maintain effective substantive environmental standards (Principle 11) and that States should ensure effective enforcement of domestic environmental standards (Principle 12). The work of the Special Rapporteur on Human Rights and the Environment as well as human rights treaty bodies has been instrumental in clarifying the human rights obligations of States and adds to an increasing body of case law from human rights tribunals establishing that States have obligations to prevent environmental harm. In its Advisory Opinion on State obligations arising from the need to protect the environment under the American Convention, the Inter-American Court of Human Rights relied on the reports of the Special Rapporteur in confirming the undeniable relationship between the protection of the environment and the fulfilment of human rights.⁷² The Inter-American Court, moreover, held that this well-established link creates certain obligations on States and that in determining these obligations the Inter-American Court may look to the body of international environmental law for clarification, much as the European Court of Human Rights has done itself.⁷³

23. The interveners submit to this effect that the dialogue between human rights and environmental protection rests on the analysis of the specific principles and obligations found in international environmental law. International environmental law recognizes a duty of due diligence in relation to all activities which take place within the jurisdiction and control of States.⁷⁴ Accordingly, States find themselves bound by a due diligence requirement to prevent harm (prevention principle). The interconnection between the obligation to prevent harm and the duty to exercise due diligence was understood by the International Court of Justice (hereinafter the ICJ) as ‘an obligation which entails not only the adoption of appropriate rules and measures, but also a

⁶⁹ Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human Rights Council Thirty-seventh session 26 February–23 March 2018 A/HRC/37/59 available on <https://undocs.org/A/HRC/37/59>.

⁷⁰ J. Knox, Framework Principles on Human Rights and the Environment, (2018), 5 available at <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf> [accessed 31/08/2019], 6.

⁷¹ Ibid.

⁷² Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., (ser. A) No. 23 (Nov. 15, 2017), [47].

⁷³ See E.g. Ole W Pedersen, ‘The European Court of Human Rights and International Environmental Law’ in John H Knox and Ramin Pejman (eds), *The Human Right to a Healthy Environment* (CUP 2018).

⁷⁴ See for instance International Law Commission’s Commentary to Art. 3 of the 2001 Draft Articles on Prevention of Transboundary Harm from Hazardous Activities; see also 2011 Advisory Opinion of the Seabed Dispute Chamber of the International Tribunal of the Law of the Sea, [131, 228-230].

certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring activities undertaken by such operators'.⁷⁵

24. Like the prevention principle, the precautionary principle has received support in numerous recent international decisions, which demonstrate a trend towards crystallizing it as customary international law.⁷⁶ The precautionary principle establishes that the lack of scientific certainty about the actual or potential effects of an activity must not prevent States from taking appropriate measures to prevent environmental damage.⁷⁷ As acknowledged by the Supreme Court of India, the precautionary principle is based on the assumption that it is better to lean toward precaution than to remediate environmental damage that may be irreversible. The precautionary principle involves anticipation of environmental damages and adoption of measures to prevent them.⁷⁸

25. Significantly, in its Advisory Opinion, the Inter-American Court found sufficient evidence to conclude that the precautionary principle is relevant in determining whether a State has complied with its duties under the American Convention.⁷⁹ The Court underscored that the duty to ensure the rights to life and personal integrity implies a duty to act with due diligence. Thus, States must act in accordance with the precautionary principle, even in the absence of scientific certainty, and adopt measures to prevent serious or irreversible damage to the environment.⁸⁰ Breach of environmental standards and principles may therefore involve a breach of the right to life, particularly if such threat could be mitigated or prevented.⁸¹ This is particularly significant since States can no longer evade their responsibilities in relation to environmental degradation and climate change. Rather, States have firm obligations to take all necessary steps to mitigate threats and risks to quality of life. This is no longer an aspiration, but rather an integral part of the right to life.

26. It is submitted to this extent that contemporary international human rights law is progressively extending the scope of the right to life as encapsulating the right to live life with dignity, hence recognising quality of life as an aspect of the right to life.⁸² Whilst there is continuing debate in international and European environmental law and international human rights law about whether there exists a right to a healthy environment,⁸³ such right seems indeed to at least arise from existing and well-established human rights standards such as the right to life and the right to health, as well as from international environmental law. Moreover, today the right to a healthy environment has gained constitutional recognition and protection in more than one hundred States,⁸⁴ including Italy. To this effect, the Italian Constitutional Court has interpreted Article 32, which guarantees the individual right to health, as the right of the individual to live in a 'healthy environment'. The Court affirmed the inviolability of this right, which cannot be suppressed by the

⁷⁵ *Pulp Mills on the River Uruguay, Argentina v. Uruguay*, 113 ICJ reports 2006, [101].

⁷⁶ See, e.g., *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Case No. 17, Advisory Opinion (ITLOS Seabed Disputes Chamber 1 Feb. 2011), 50 I.L.M. 458, [35]; see also *Case Concerning Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 18, (20 Apr. 2010), [164].

⁷⁷ Art. 15 Rio Declaration on Environment and Development (1992), ILM 31, 874.

⁷⁸ *Supreme Court of India, AP Pollution Control Boards v. Prof. M.V. Nayudu and Ors. Respondent*, Judgment 27 January 1999.

⁷⁹ Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., [175-180].

⁸⁰ *Ibid.*

⁸¹ General Comment No 36, [3].

⁸² *Ibid.*, [3].

⁸³ See J. H. Knox and Ramin Pejman (eds), *The Human Right to a Healthy Environment* (CUP 2018).

⁸⁴ See D. Boyd, 'Catalyst for change: evaluating forty years of experience in implementing the right to a healthy environment', in *The Human Right to a Healthy Environment*, J. Knox and R. Pejman, eds (CUP, 2018), 17-41.

Public Administration even for reasons of public order, since it constitutes an absolute right.⁸⁵ The right to a healthy environment has also been recognised by regional human rights Courts such as the Inter-American Court of Human Rights. In its Advisory Opinion the Inter-American Court recognized the existence of an autonomous right to live in a healthy environment as a guarantee with protracted individual and collective dimension.⁸⁶ The Inter-American Court stated that this right not only has a basis in the San Salvador Protocol on Economic, Social and Cultural Rights, but also in Article 26 of the American Convention.⁸⁷ Moreover, the Inter-American Court recognized that the right to a healthy environment has implications, *inter alia*, for the rights to life, personal integrity, privacy, health, water, housing, cultural participation, property, the prohibition not to be forcibly displaced.⁸⁸

27. Importantly, and in the most express exposition concerning the relationship between environmental degradation and the right to life yet, the Human Rights Committee (hereinafter the HRC), the human right monitoring body of the International Covenant on Civil and Political Rights (hereinafter the ICCPR), stressed that ‘environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant [on the right to life]. Implementation of the obligation to respect and ensure the right to life, and in particular *life with dignity*, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.’⁸⁹

28. Moreover, in its most recent case on environmental pollution and the right to life the HRC stressed that the right to life cannot be properly understood if it is interpreted restrictively and that States parties may be violating Article 6 ICCPR *even when threats to the right to life have not translated into loss of life*.⁹⁰ The HRC also established that the burden of proof does not fall solely on the applicants, especially since alleged victims and State Parties do not always enjoy the same access to the evidence.⁹¹ In cases where evidence depends on information available only to the State Party, the Committee may consider that the allegations are substantiated if the State Party does not refute them ‘by providing satisfactory evidence and explanations.’⁹²

29. The interveners submit therefore that due to the significant environmental damage in Campania and the widespread detrimental impact that such damage has had, and continues to have, on public health which has resulted to increase of mortality, and in the view of the paramount significance of the right to life which constitutes the cornerstone of the protections under the ECHR, a full evaluation of the risk posed by such environmental degradation on public health and the right to life is required to ensure that the protections guaranteed under the ECHR are not merely theoretical and illusory but rather practical and effective.

⁸⁵ Cass. Civ. S.U., October 6, 1979, n. 5172.

⁸⁶ Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., (ser. A) No. 23 (Nov. 15, 2017), [62-62].

⁸⁷ *Ibid*, [57].

⁸⁸ *Ibid*, [66].

⁸⁹ General Comment No 36, [62].

⁹⁰ HRC, *Portillo Cáceres v Paraguay*, Application no. 2751/2016, Judgment 26 July 2019, [7.2]. (emphasis added).

⁹¹ See also ICJ judgment of 2 February 2018 regarding compensation owed by Nicaragua to Costa Rica. The Court has stated that: ‘as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact’. Nevertheless, the Court has recognized that this general rule may be applied flexibly in certain circumstances, where, for example, the respondent may be in a better position to establish certain facts’ [33].

⁹² HRC, *Portillo Cáceres v Paraguay*, Application no. 2751/2016, Judgment 26 July 2019, [7.2].

30. The interveners submit to this effect that although the Italian State knew about the risk posed to human health by the illegal waste business and burning of waste since the late 1980s, regulatory responses have come too late to avert it.⁹³ The interveners also recall that this Court has accepted that criminalization of disposal, treatment and storage of hazardous waste is consistent with current trends towards imposing harsher penalties for environmental pollution, ‘as issue inextricably linked with the endangerment of human life’.⁹⁴ This is consistent with EU Directive 2008/99/EC on the protection of the environment through criminal law which recognized as sensitive areas of environmental crime the illegal emission or discharge of substances into air, water or soil and the illegal shipment or dumping of waste.⁹⁵ Thus, it requires State parties, including Italy as EU Member State, to ensure that the commission of the offences is subject to effective, proportionate and dissuasive criminal sanctions. The interveners therefore recall that practitioners have underlined that the misdemeanour nature of the vast majority of environmental crime in Italy negatively affected the enforcement of environmental laws.⁹⁶

31. As regards to Article 8, notwithstanding the wide margin of appreciation enjoyed by States in the area of environmental protection,⁹⁷ the interveners acknowledge that the Court has previously held that the Government’s failure to secure proper management of waste in Campania gives rise to ‘positive obligation to take reasonable and adequate steps to protect the right of the people concerned to respect for their homes and their private life and, more generally, to live in a safe and healthy environment.’⁹⁸ Even where the link between the failure of a government to take appropriate action and the extent of the material risk is not well-established, the Court has ruled that Article 8 may be relied on in the absence of any evidence of a serious danger to people’s health.⁹⁹ The positive obligation on the State to put in place effective regulatory responses to serious environmental risks threatening the applicants’ rights consequently applies in circumstances like the present one *for those applicants where the causal link may not be well-established*.

32. The circumstances in the present claim, moreover, stand apart from the claims where applicants have sought to invoke the Court’s jurisdiction to second-guess well-established domestic regulatory responses put in place by the responding state, allowing applicants to make representations and provide for recourse to independent review.¹⁰⁰ This submission accepts, as the Court held in *Fadeyeva v Russia* that: ‘[I]t is not the Court’s task to determine what exactly should have been done in the present situation to reduce pollution in a more efficient way’.¹⁰¹ However, again, as the Court held in *Fadayeveva* ‘it is certainly within the Court’s jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests.’¹⁰² By failing to take effective steps to prevent the applicants from being exposed to significant risks, seriously endangering their health, Italy has failed to approach

⁹³ *Infra*, [7].

⁹⁴ *Oneryildiz v. Turkey*, [61].

⁹⁵ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6.12.2008.

⁹⁶ *Infra*, [8].

⁹⁷ *Hatton and Others*, [100], and *Buckley v. the United Kingdom*, Application no. 20348/92, Judgment 25 September 1996, [74-77].

⁹⁸ *Di Sarno v. Italy*, Application no. 30765/08, Judgment 10 January 2012, [110].

⁹⁹ *Di Sarno v. Italy*, [108]; see also *Lopez Ostra v. Spain*, App no 16798/90, Judgment 09 December 1994, [51] and *Budayeva and others v. Russia*, [176].

¹⁰⁰ See *Hardy and Maile v. United Kingdom*, Application no. 31965/07, Judgment 14 February 2012.

¹⁰¹ *Fadeyeva v. Russia*, Application no. 55723/00, Judgment 30 November 2005, [128].

¹⁰² *Fadeyeva v. Russia*, [128].

the illicit dumping and burning of waste with the required due diligence. In the present claim, whilst the government has attempted to adopt regulatory responses to the waste problem in Campania¹⁰³ these responses are clearly lacking in effectiveness and fall well beyond the international human rights and environmental standards, including those required under the ECHR and in particular Article 2 and Article 8 of the Convention.

Conclusions

33. In light of the facts of the case and the data provided in section A, the interveners submit that the environmental disaster of Campania is undeniable. The interveners also submit that notwithstanding difficulties in establishing an express causal link between the environmental pollution of Campania and the detrimental impact upon health, scientific evidences are progressively demonstrating a statistical and causal link between the environmental disaster and increase of mortality and malformation in this region. Therefore, and in light of most recent development of international law on human rights obligations related to a healthy and balance environment, the interveners submit that Italy has violated its obligation to protect the rights safeguarded under Article 2 and Article 8 ECHR through failure to effectively and promptly address, prevent and mitigate the detrimental effects that environmental degradation has had, and continues to have on public health.

The Newcastle Forum for Human Rights and Social Justice (NHRSJ) aims to foster debate within and beyond Newcastle University about the concepts of human rights and its place within broader conceptions of social justice. [NHRSJ website](#)

The Environmental Regulation Research Group aims to bring together leading scholars from different disciplines to address legal challenges of regulating environmental issues and to apply this research in our environmental law teaching and supervision of postgraduate students. [Website](#)

Let's do It! Italy is the Italian branch of the international movement Let's Do It! World Foundation which is an accredited partner of United Nations Environment Programme and co-founder of the campaign World Clean-up Day. Let's Do It! World Foundation directly addresses the UN Sustainable Development Goals and tackles environmental and social problems related to mismanagement of solid waste by among others using innovative technological solutions to map and deal with waste. [Let's do it! Italy website](#)

Legambiente is an Italian non-profit organization founded in 1980s and the most prominent environmental association in Italy. Since 1994 Legambiente has drafted the annual report "Ecomafia", through which it has reported and denounced environmental crimes throughout Italy. [Legambiente website](#)