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***Terra dei Fuochi* and the Systemic Failure of Italian Environmental Governance**

Introduction

The area between the provinces of Naples and Caserta, stretching across approximately ninety municipalities and home to some 2.9 million inhabitants, has earned the grim denomination of *Terra dei Fuochi* owing to the toxic fires that for decades have consumed illegally dumped industrial, urban and hazardous waste buried or scattered across agricultural land, roadsides and abandoned quarries¹. The expression entered legal and political discourse through the *Ecomafia Report* published by Legambiente in 2003², but the underlying phenomenon had been developing since at least the late 1980s, when the first episodes of systematic illegal disposal were documented³.

The legal relevance of this vicenda is considerable and multi-dimensional. It raises questions of constitutional law (particularly following the 2022 reform of Articles 9 and 41 of the Italian Constitution, which elevated environmental protection to a foundational principle)⁴, of administrative law, of criminal law, of EU law and of international human rights law. Most significantly, it has generated a substantial body of supranational case law in which both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) have found the Italian State in persistent violation of its

¹ M.P. POTO, C. D'ANDREA, "*Terra dei Fuochi*": violazione dell'Italia al diritto alla vita e per "massacro ambientale", in *Responsabilità civile e previdenza*, n.4, 2025, p. 1180.

² Legambiente, *Rapporto Ecomafia 2003. L'illegalità ambientale in Italia e il ruolo della criminalità organizzata*, Roma, 2003, p. 27, as cited in POTO, D'ANDREA, *supra* note 1, p. 1178, n. 1.

³ M.P. POTO, C. D'ANDREA, *supra* note 1, p. 1180.

⁴ L. COLELLA, L. MAZZA, *Dalla "crisi dell'emergenza rifiuti" alla "Terra dei Fuochi": profili giuridici a margine della recente sentenza della Corte EDU*, in *Società e Diritti*, n.19, 2025, p. 129.

legal obligations, thereby performing a propulsive function in the identification and elaboration of positive state duties in the environmental field.

This article pursues three principal objectives. First, it reconstructs the historical genesis of the *Terra dei Fuochi* crisis and the structural factors, above all the role of organised crime and the failures of planning, that allowed a localised emergency to become a chronic environmental disaster. Second, it critically analyses the legal responses deployed at domestic and supranational levels, with particular attention to the systemic shortcomings of emergency-based governance, the limits of Italian environmental criminal law and the evolving jurisprudence of the European courts. Third, it assesses the adequacy of Italy's post-judgment compliance and formulates normatively grounded proposals *de lege ferenda*.

1. The Origins of the Crisis: Waste Trafficking and Organised Crime

The roots of the *Terra dei Fuochi* disaster lie in a combination of structural deficiencies in Italian waste governance and the opportunistic infiltration of the waste cycle by the Campanian Camorra and, to a lesser extent, other organised crime groups. As Colella and Mazza document, the alarm was raised by environmental organisations as early as the late 1980s, yet systematic investigations did not begin until 1993, when the scale of illegal disposal was first fully revealed⁵. Parliamentary commissions of inquiry progressively documented what they described as an “environmental massacre” (*catastrofe ambientale*), a term later incorporated into the ECtHR's 2025 judgment⁶.

The criminal economy at the heart of the phenomenon operated on a straightforward logic of cost externalisation. Waste producers, principally industrial enterprises concentrated in the wealthier northern regions of Italy, found in the Camorra an intermediary capable of disposing of hazardous, special and urban waste at prices far below those charged by authorised operators. The organised crime groups, in turn, exploited the structural absence of adequate disposal infrastructure in Campania and the weakness of regulatory controls to generate substantial profits from illegal burial, dumping in former quarries and open incineration⁷. Moreover, waste often originating from northern industrial production were systematically interred in areas where groundwater was used for agricultural irrigation, with devastating consequences for the food chain and for public health⁸.

The epidemiological consequences were correspondingly grave. Studies commissioned by the Civil Protection Authority and carried out by the World Health Organisation in collaboration with the National Research Council documented a significantly elevated incidence of lymphomas and hepatic, pulmonary and bladder tumours, as well as increased rates of congenital malformations, in the affected municipalities⁹. The so-called

⁵ *Id.*, p. 130.

⁶ ECtHR, *Cannavacciuolo and others v. Italy*, par. 35.

⁷ M.P. POTO, C. D'ANDREA, *supra* note 1, p. 1181.

⁸ *Ibidem*.

⁹ *Ibidem*. Mortality rates for certain pathologies were found to exceed the national average, although the precise attribution of causality to specific disposal sites remained scientifically contested

“triangle of death” was identified as a high-incidence area in a landmark Lancet Oncology study published in 2004¹⁰.

From a legal standpoint, these circumstances generated several critical problems. First, the causal nexus between exposure to illegally disposed waste and individual pathological harm proved exceptionally difficult to establish in domestic litigation, given the multiplicity of potential sources of contamination and the temporal distance between exposure and the manifestation of disease. Second, the criminal enterprises involved in waste trafficking operated with a sophistication that repeatedly frustrated prosecutorial efforts. Third, and most fundamentally, the institutional actors responsible for environmental governance failed for an extended period to register the gravity of the situation or to translate their awareness into effective regulatory and enforcement action.

It is in this third dimension that the legal analysis must focus. As Baroni observed, Italy’s chronic preference for waste disposal through landfill rather than recovery, in consistent contravention of European hierarchical principles, had already generated a structural deficit in disposal infrastructure that the criminal economy of waste trafficking found fertile ground to exploit¹¹. The failure was, in other words, not merely the failure to suppress organised crime, but the prior and deeper failure to create the regulatory environment in which organised criminality in the waste sector could not have established itself with such ease.

2. The State’s Response: Emergency Management and Extraordinary Powers

Confronted with the progressive deterioration of the waste situation in Campania, the Italian State’s institutional response took the form of recourse to emergency powers, with the declaration of a state of emergency (*stato di emergenza*) by decree of the President of the Council of Ministers on 11 February 1994¹².

The juridical architecture of this emergency governance rested on Law 225/1992 on the National Civil Protection Service, and specifically on Article 5 thereof, which authorised the appointment of Commissars delegate (*Commissari delegati*), special commissioners endowed with powers to act in derogation of ordinary legislation¹³. The state of emergency, that should have lasted for a period of just a year, not only was successively renewed (with a final extension to 31 December 2009) but also the strategy kept being the same: the emergency was managed by a succession of commissioners operating through a cascade of ordinances that progressively displaced the ordinary legal

¹⁰ K. SENIOR, A. MAZZA, *Italian “Triangle of death” linked to waste crisis*, in *The Lancet Oncology*, 5(9), 2004, p. 525-527.

¹¹ L. BARONI, *Le principali sentenze di condanna dell’Italia per la mala gestio dell’emergenza rifiuti in Campania e la perdurante violazione della normativa europea*, in *Rivista italiana di diritto pubblico comunitario*, n. 2, 2015, p. 623.

¹² D.P.C.M. 11 February 2011.

¹³ V. PEPE, *La gestione dei rischi nel codice della protezione civile. Brevi note sul sistema italiano e francese*, in *Federalismi.it*, n.1, 2020, p. 216 ff.

framework¹⁴. Each ordinance sought to address immediate operational problems while simultaneously deferring the structural solutions that would have required sustained planning and political will. By 2007, it had become apparent that the seven CDR plants built during the emergency were not functioning as designed to the point where, by 2008, the system had reached total saturation.

The D.L. 90/2008, converted into Law 123/2008, represented an attempt to initiate a transition from emergency to ordinary governance by replacing the Commissioner with a Sub-Secretary of State for the Waste Emergency, and by introducing the concept of “areas of national strategic interest” (*aree di interesse strategico nazionale*) as a mechanism for centralised intervention¹⁵. The formal declaration of the end of the state of emergency, effected by D.L. 195/2009, was, however, premature because the structural crisis had by no means been resolved, and subsequent legislative interventions (D.L. 196/2010, D.L. 225/2010, D.L. 4/2011, D.L. 94/2011, D.L. 2/2012) confirmed that the emergency regime had been formally terminated without its underlying conditions having been addressed¹⁶.

The critical assessment of this governance apparatus that emerges from the doctrinal literature is substantially uniform. It has been described as a confused proliferation of structures and administrative models producing overlapping competences between central and local authorities¹⁷. Furthermore, from a criminal law perspective, the State had been aware of the dangers and had consistently failed to activate the countermeasures necessary to prevent them¹⁸. More generally, the Campanian case has been regarded as a paradigmatic example of the tendency of Italian environmental governance to address environmental problems only once they have produced catastrophic effects.

The structural problem identified across these contributions is the transformation of exception into norm: the emergency apparatus, conceived as a temporary response, became the ordinary mode of governance for a problem that required instead sustained planning, infrastructure investment and multi-level coordination. This pathological dynamic is the key to understanding why fifteen years of extraordinary management produced no durable solution, and why the structural deficit in disposal infrastructure

¹⁴ Such deadline was first extended by D.P.C.M. of 16 April 1994 and D.P.C.M. of 7 October 1994 to 31 December 1995. From the year 1996 and up to in 2003, annually, the extension of the state of emergency was renewed with the following measures: D.P.C.M. of 30 December 1996, D.P.C.M. of 23 December 1997, D.P.C.M. of 23 December 1998, D.P.C.M. of 3 December 1999, D.P.C.M. of 15 December 2000 (extension until 31 December 2002), D.P.C.M. of 20 December 2002 (extension until 31 December 2003) and the consequent issuance of numerous ordinances, which specified the roles and powers conferred on the commissioners: ord. No. 2425/1996; ord. 2470/1996; order no. 2560/1997; order no. 2714/1997; order no. 2774/1998; order no. 2948/1999; order no. 3011/1999; order no. 3031/1999; order no. 3032/1999; order no. 3060/2000; order no. 3095/2000.

¹⁵ Art. 2 D.L. 90/2008

¹⁶ L. BARONI, *supra* note 11, p. 617.

¹⁷ L. COLELLA, *La governance dei rifiuti in Campania tra tutela dell'ambiente e pianificazione del territorio. Dalla “crisi dell'emergenza rifiuti” alla “società del riciclaggio”*, in *Rivista Giuridica dell'Ambiente*, n. 3, 2010, p. 493-538.

¹⁸ M. NICOLINI, *Gli obblighi positivi degli Stati nella gestione delle emergenze*, in *Rivista italiana di diritto e procedura penale*, n. 1, 2024, p. 367.

documented by the CJEU in 2010 had been entirely foreseeable long before it became legally consequential.

3. The Domestic Legal Response and Its Limits

The inadequacy of the State's administrative response was paralleled by the limitations of domestic legal instruments – both administrative and criminal – in providing effective environmental protection to the residents of the *Terra dei Fuochi*.

At the level of administrative law, the fundamental difficulty was institutional fragmentation. Competences in waste management were distributed across the State, the Region, the Provinces and the municipalities, with successive legislative interventions (including the regionalisation introduced by Law 4/2007 and the subsequent provincialisation effected by Law 4/2008) continuously reshaping the institutional landscape without producing a coherent and functional governance architecture. The repeated transfers of competence between levels of government reflected political choices rather than reasoned governance design, and each transition created a further period of uncertainty and dysfunction.

At the level of criminal law, the picture is no less troubling. The case of the “Lo Uttaro” landfill, a major disposal site in the province of Caserta, illustrates well enough the systemic failures of criminal justice as an instrument of environmental protection. Criminal proceedings against the directors of the managing consortium and against the responsible Commissioner were opened by the Public Prosecutor's Office of Santa Maria Capua Vetere on charges including “organised activities for the illegal trafficking of waste” (Article 452-*quaterdecies* of the Criminal Code) and “unnamed disaster” (Article 434 of the Criminal Code). A conviction was obtained at first instance; on appeal, the Court of Appeal of Naples, while confirming the charges, acquitted the defendants on grounds of statutory limitation (*prescrizione*). The judgment was subsequently quashed by the Court of Cassation for inadequate reasoning, leaving the matter unresolved¹⁹.

This outcome illustrates a structural paradox that Nicolini identifies with analytical precision: the principle of fragmentation of criminal law (*principio di frammentarietà*), which dictates that criminal law should be reserved for conduct of high and specific offensiveness against legally protected interests of constitutional significance, is structurally ill-suited to the prosecution of macro-harmful environmental phenomena. The “unnamed disaster” provision of Article 434 of the Criminal Code, applicable as a residual and subsidiary instrument, was by its nature inadequate to capture the systemic and diffuse nature of the harm inflicted on the population of the *Terra dei Fuochi*²⁰.

The 2015 reform (Law 68/2015) – which introduced the new environmental crimes (*eco-delitti*) into Book II, Title VI-*bis* of the Criminal Code, replacing a regime based predominantly on administrative offences (*contravvenzioni*) with a set of genuine

¹⁹ *Id.*, p. 368-369.

²⁰ *Id.*, p. 371-372.

criminal offences (*delitti*) – represented a structural improvement, but one whose effects the ECtHR was ultimately unable to assess in *Cannavacciuolo*: the Court observed that it could not extend its scrutiny beyond the pre-2015 period, given that Italy had failed to transmit data concerning criminal proceedings initiated under the new *eco-delitti* provisions²¹.

The introduction in 2013 of the first systematic legislative response specifically targeted at the *Terra dei Fuochi* (Law Decree 136/2013, converted into Law 6/2014) provided for the mapping of contaminated land, the prohibition of agricultural use in polluted areas, and reinforced environmental monitoring, as well as the formal designation of the “*Terra dei Fuochi*” area comprising fifty-seven municipalities²². However, the ECtHR found it “striking” that the first attempt at a coordinated, systematic and comprehensive approach to health monitoring had been put forward “almost two decades” after the commencement of the crisis, and that even the health-related provisions of Law 6/2014 did not take tangible operational form until 2016²³.

The domestic legal response thus presents a consistent pattern: belated acknowledgement, partial and fragmented intervention, and the systematic failure to translate legislative recognition into operative effectiveness. The distance between norm and reality is the central theme of the domestic legal critique that emerges from these contributions.

4. The Intervention of the European Courts: Positive Obligations and Systemic Failure

The inadequacy of domestic responses ultimately generated a substantial corpus of supranational case law, in which both the CJEU and the ECtHR found the Italian State in persistent violation of its legal obligations. These judicial interventions constitute the most legally significant dimension of the *Terra dei Fuochi* vicenda, not only because they imposed concrete obligations on Italy but because they contributed, progressively and cumulatively, to the elaboration of a doctrine of positive state obligations in the environmental field.

4.1 The Court of Justice of the European Union

The CJEU’s engagement with the Campanian waste crisis predates the formal designation of the *Terra dei Fuochi* and spans more than two decades of infringement proceedings. The first case specifically concerning the Campanian territory was related to illegal waste

²¹ L. COLELLA, L. MAZZA, *supra* note 4, p. 141.

²² M.P. POTO, C. D’ANDREA, *supra* note 1, p. 1181.

²³ “[...] While the Court acknowledges the progress made in the intervening period, as described in the preceding paragraphs, and in no way underestimates the importance of the measures taken, it finds it striking that the first attempt at a coordinated, systematic and comprehensive approach to monitoring the health and ensuring epidemiological surveillance of the population living in the area affected by the pollution phenomenon at issue was put forward almost two decades later, with the enactment of Law no. 6 of 2014 [...]. The Court cannot but notice, in addition, that efforts to implement what are referred to by the Government as the “health-related provisions” of Law no. 6 of 2014 appear to have taken tangible form only as of 2016. [...]” (ECtHR, *Cannavacciuolo and others v. Italy*, par. 429)

discharges in the San Rocco valley in Naples²⁴. The Court there articulated the important principle that the persistence of a factual situation involving significant environmental deterioration for a prolonged period without intervention by the competent authorities “may reveal that Member States have exceeded the margin of discretion” conferred upon them by EU waste directives²⁵.

The landmark judgment delivered on 4 March 2010 represents the central intervention of the CJEU in the Campanian crisis²⁶. The Court found that Italy had failed to create an integrated and adequate network of waste disposal installations in Campania, in violation of Articles 4 and 5 of Directive 2006/12/EC. Two aspects of this judgment are worth mentioning. First, the Court explicitly held that the presence of criminal organisations or persons operating “at the margins of legality” in the waste management sector cannot justify a Member State’s violation of its EU obligations: this ruling definitively foreclosed the argument that organised crime constituted a force majeure exonerating Italy from responsibility²⁷. Second, the Court held that “a diligent administration should have adopted the measures necessary to protect itself against contractual non-performance of the kind that occurred in Campania, or to ensure that, despite such failures, the effective and timely realisation of the infrastructure necessary for the disposal of the region's waste would be guaranteed.”²⁸ This formulation establishes a standard of institutional diligence that the Italian administration had demonstrably failed to meet.

Inevitably, the judgment of 2 December 2014 – preceded by infringement proceedings under Article 260 TFEU for non-execution of the C-297/08 judgment – imposed severe financial sanctions and confirmed the persistence of Italy’s failure to comply²⁹. In parallel with the infringement proceedings, the European Commission declared inadmissible the Italian requests for ERDF payments under Measure 1.7 of the Campania Operational Programme, on the ground that the infringement proceedings called into question the entire waste management system in the region³⁰.

4.2 The European Court of Human Rights

The ECtHR’s engagement with the *Terra dei Fuochi* has unfolded in three principal judgments: *Di Sarno and others v. Italy* (10 January 2012), *Locascia and others v. Italy* (19 October 2023) and *Cannavacciuolo and others v. Italy* (30 January 2025).

In *Di Sarno and others v. Italy*, the Court found a violation of the material aspect of Article 8 ECHR, holding that Italy’s “prolonged inability to ensure the proper functioning of the waste collection, treatment and disposal service” had interfered with the applicants’

²⁴ CJEU, *European Commission v. Italy*, Case C-365/97, 9 November 1999.

²⁵ *Id.*, par. 68. This formulation established a presumption of breach arising from prolonged inaction, a precursor to the doctrine of systemic failure later developed by the ECtHR.

²⁶ CJEU, *European Commission v. Italy*, Case C-297/08, 4 March 2010.

²⁷ *Id.*, par. 84.

²⁸ *Id.*, par. 86.

²⁹ CJEU, *European Commission v. Italy*, Case C-196/13, 2 December 2014.

³⁰ CJEU, *Italy v. European Commission*, Case C-385/13 P, 6 November 2014.

right to respect for their private life and home³¹. Significantly, the Court held that Article 8 may be invoked even in the absence of proof of a serious risk to health, thereby widening the threshold of Convention relevance for environmental degradation cases³². It also found a violation of Article 13 ECHR, on the ground that the applicants had not had access to effective domestic remedies for the consequences of the mismanagement of the waste service³³. It is relevant the important contrast between the approaches of the CJEU and the ECtHR: the former had identified consequences for human health in its reasoning, while the latter “deliberately distanced itself from this dimension”, maintaining an individualistic approach to human rights that avoided addressing the collective dimension of environmental harm³⁴.

In *Locascia and others v. Italy*, the Court focused specifically on the Lo Uttaro landfill and developed a significant refinement of its positive obligations doctrine. Examining the period from 1994 to 2020, the Court distinguished between the emergency period (1994-2009) and the post-emergency decade (2010-2020). It found a violation of Article 8 for the first period, on the basis of the inadequacy of the measures adopted by Italy to manage the crisis of waste pollution³⁵. For the second period, the Court found no sufficient proof of a deterioration in health conditions connected with continued exposure to pollution, except with regard to the Lo Uttaro landfill itself where the persistent failure to fulfil remediation obligations justified a finding of violation. The Court's treatment of the epidemiological evidence is a methodological innovation: relying on statistical data showing an increased incidence of oncological pathologies in exposed populations, without requiring proof of individual causal nexus, the Court adopted a probabilistic approach to causation that, as he notes, had already been foreshadowed in CJEU case law.

The most far-reaching judgment is *Cannavacciuolo and others v. Italy* (30 January 2025), delivered and triggered the pilot-judgment procedure. The Court found a violation of Article 2 ECHR (the right to life) rather than merely Article 8, on the basis of the State's failure to adopt adequate and sufficient measures to protect the life of applicants residing in the affected areas³⁶. This represents a significant elevation of the Convention threshold applied to environmental pollution cases, and reflects the Court's characterisation of the phenomenon as an “environmental massacre” (*massacro ambientale*), borrowing the language of the Fifth Parliamentary Commission of Inquiry³⁷.

The activation of the pilot-judgment procedure, introduced by Resolution (2004)3 of the Committee of Ministers and formalised in Article 61 of the Rules of Court, signals the Court's recognition that the violation is of a structural and systemic character, not reducible to the individual circumstances of the applicants. This procedure enables the

³¹ ECtHR, *Di Sarno and Others v. Italy*, 10 January 2012, par. 112.

³² *Id.*, par. 108.

³³ *Id.*, par. 118.

³⁴ C. FELIZIANI, *Il diritto fondamentale all'ambiente salubre nella recente giurisprudenza della Corte di giustizia e della Corte EDU. Analisi di due approcci differenti*, in *Rivista italiana di diritto pubblico comunitario*, n.6, 2012, p. 999-1030.

³⁵ ECtHR, *Locascia and others v. Italy*, 19 October 2023, par. 149.

³⁶ ECtHR, *Cannavacciuolo and others v. Italy*, 30 January 2025, par. 392.

³⁷ *Id.*, par. 35.

Court to indicate to the respondent State the systemic measures to be adopted within a fixed period in order to prevent the recurrence of analogous violations³⁸. The measures prescribed in *Cannavacciuolo* are correspondingly comprehensive: Italy is required to develop a “global strategy” bringing together all existing and planned measures at every level of the State apparatus; to establish an independent monitoring mechanism; to create a publicly accessible single information platform; and to engage in meaningful consultation with stakeholders at local, regional and national levels, including representatives of civil society and relevant associations³⁹. All this must be accomplished within two years of the judgment becoming final⁴⁰.

The pilot judgment also raised important questions concerning the *locus standi* of environmental associations, which the Court declared inadmissible as applicants under Article 34 ECHR, holding that the right to life under Article 2 can be invoked only by natural persons⁴¹. This determination generated significant judicial disagreement: Judge Krenč, in a concurring opinion, described the distinction between environmental and climate issues as “bewildering” and called for the development of clear and coherent guidelines on the conditions for organisational standing⁴². Moreover, Judge Serghides, in a partly dissenting opinion, argued that the term “victim” in Article 34 should be interpreted autonomously and evolutively to include the applicant associations, in line with the Convention’s character as a “living instrument”⁴³. Serghides went further, contending that Article 2 ECHR “implies and entails also the implicit right to a healthy environment, indispensable for the exercise and enjoyment of the right to respect for one’s right to life” drawing an analogy with the right of access to a court implied by Article 6⁴⁴.

5. The Persistent Inadequacy of Implementation

The post-judgment response of the Italian State has been characterised by the same pathologies that generated the crisis in the first place: precipitousness substituting for planning, symbolic gestures substituting for structural reform, and criminal law substituting for the comprehensive governance strategy actually required.

Within less than thirty days of the *Cannavacciuolo* judgment, the Council of Ministers appointed General Giuseppe Vadalà as Commissioner for the remediation of the *Terra dei Fuochi* (19 February 2025)⁴⁵. The Commissioner published his first report on 14 May 2025, identifying four macro-categories of intervention: contaminated agricultural land;

³⁸ M.P. POTO, C. D’ANDREA, *supra* note 1, p. 1183.

³⁹ ECtHR, *Cannavacciuolo and others v. Italy*, 30 January 2025, par. 494-500.

⁴⁰ *Id.*, par. 501.

⁴¹ *Id.*, par. 216.

⁴² *Id.*, *Concurring opinion of Judge Krenč*, par. 6, 15.

⁴³ *Id.*, *Partly concurring, partly dissenting opinion of Judge Serghides*, par. 2.

⁴⁴ *Id.*, par. 6.

⁴⁵ Ministero dell’Ambiente e della Sicurezza Energetica, “*Terra dei Fuochi: Picchetto, da Cdm ok a Commissario unico*” (Comunicato Stampa, 19 febbraio 2025, in <https://www.mase.gov.it/portale/web/guest/-/terra-dei-fuochi-picchetto-da-cdm-ok-a-commissario-unico>).

surface-dumped waste; landfill and site remediation; and public health⁴⁶. The speed of the appointment was immediately criticised by Valentina Centonze, one of the lawyers who had brought the original application, as the “antithesis” of what the Court had prescribed, on two grounds: the inherently individual and atomistic character of a single-person mandate, and the absence of any mechanism for consultation with affected communities and civil society organisations⁴⁷.

The more significant legislative response was the Law Decree of 8 August 2025, n. 116, converted into Law of 3 October 2025, n. 157 (the so-called “*Terra dei Fuochi* Decree”) whose assessment is essentially negative on both substantive and structural grounds.

On substantive grounds, it can be identified a fundamental category error at the heart of the decree: it intervenes exclusively on the terrain of criminal law, introducing new offences, converting existing administrative infractions (*contravvenzioni*) into criminal offences (*delitti*), tightening sentencing frameworks, and expanding the catalogue of offences for which corporate criminal liability under Legislative Decree 231/2001 may be engaged⁴⁸. What the decree does not do, and what the Court's judgment explicitly required, is define the integrated global strategy, allocate the financial resources for remediation, strengthen the institutional coordination mechanisms⁴⁹. The provision dedicated to remediation (Article 9) amounts to little more than the appointment of the Commissioner and the allocation of fifteen million euros, an amount “wholly insufficient to cover the cost of this complex activity, given the extent and scale of environmental contamination in the Terra dei Fuochi.”⁵⁰

On structural grounds, it is of uttermost importance to highlight the paradox of timing: the State had been granted a reasonable period of two years to fulfil the Court's prescriptions, yet elected to act in a matter of weeks, producing a decree-law whose constitutional prerequisites of extraordinary necessity and urgency (independently required by Article 77 of the Constitution) were “fragile or even non-existent”⁵¹. This excess of haste generated a text afflicted by multiple technical deficiencies: new offences that overlap problematically with existing provisions, producing unresolved conflicts of norms and paradoxical sentencing outcomes⁵².

Part of the doctrine observed that the Court had evaluated Italy's criminal law framework as it stood before the 2015 eco-crimes reform, and had itself acknowledged that it could not assess the post-reform situation due to Italy's failure to provide relevant data⁵³. The

⁴⁶ Presidency of the Council of Ministers, “*Relazione sui Siti e le Aree Inquinare delle Province di Napoli e Caserta*” in https://www.commissariobonificadiscariche.governo.it/media/qioitpmb/1_relazione_avvio_napoli_caserta_20250512_pp148.pdf.

⁴⁷ <https://www.fanpage.it/napoli/terra-dei-fuochi-e-la-sentenza-della-cedu-il-commissario-e-lantitesi-di-quello-che-indica-la-corte/>.

⁴⁸ L. SIRACUSA, *Decreto “Terra dei fuochi”: un surplus repressivo che non risana le ferite della violenza ambientale*, in *Diritto penale e processo*, n.2, 2026, p. 170-173.

⁴⁹ *Id.*, p. 170 ff.

⁵⁰ *Ibidem*.

⁵¹ *Ibidem*.

⁵² *Id.*, p. 172-174.

⁵³ *Id.*, p. 170-171.

pre-2015 criminal law, predominantly contravention-based and characterised by light penalties, was indeed inadequate; the post-2015 framework, including the new eco-delitti of Articles 452-*bis* through 452-*terdecies* of the Criminal Code, represented a substantial structural improvement. The D.L. 116/2025 therefore intervenes on a problem that had already been substantially addressed, while leaving the actual problem identified by the Court, the absence of a comprehensive remediation strategy with adequate financial backing, entirely unresolved.

This diagnosis resonates with the broader pattern observed throughout this article: Italy's response to the *Terra dei Fuochi*, both in its long history and in its most recent episode, has consistently privileged the punitive-symbolic over the preventive-structural, the legislative gesture over the operational commitment, and the declaration of emergency over the patient construction of governance capacity. The result is a systemic failure to respond adequately, both in terms of time and effort, to the pollution problem under scrutiny⁵⁴.

6. Perspectives *De Lege Ferenda*

The critical analysis developed in the preceding sections permits the identification of several reform directions that are normatively grounded in the doctrinal contributions examined.

First, the reinforcement of environmental monitoring obligations. Drawing from the *Cannavacciuolo* judgement, the requirement that any compliance strategy must include a genuinely independent monitoring mechanism, with publicly accessible results and clear accountability for non-compliance⁵⁵. The current Italian framework lacks such a mechanism specifically tailored to the *Terra dei Fuochi*. What is required is not an *ad hoc* Commissioner but a permanent, legally independent body with defined powers of investigation, access to information, and reporting obligations to Parliament and to the Committee of Ministers of the Council of Europe.

Second, radical transparency and access to information. The Court's prescription of a "single public information platform" responds to a documented failure of the Italian State to provide the affected population with accessible and structured information about contamination levels, health risks and remediation activities⁵⁶. Legislative implementation should guarantee real-time access to monitoring data, in a form comprehensible to non-specialist citizens, with regular mandatory updates and mechanisms for civil society participation in the assessment of the data.

Third, structural reform of the multi-level governance of waste management. The waves of institutional reform – from the *consorzi di bacino* to the *Autorità d'ambito*, to the provincialisation of 2008, and onwards – produced recurring confusion of competences

⁵⁴ M. NICOLINI, *supra* nota 18, p. 371.

⁵⁵ ECtHR, *Cannavacciuolo and Others v. Italy*, 30 January 2025, par. 494-500.

⁵⁶ *Id.*, par. 500.

without ever delivering a stable and functional governance architecture⁵⁷. What is needed is a durable assignment of competences, backed by adequate financial resources and enforced by effective administrative supervision, that eliminates the institutional vacuum periodically exploited by criminal organisations.

Fourth, the definitive abandonment of emergency-based governance as a mode of managing environmental crises. The fifteen years of commissarial management stand as a cautionary tale against the use of derogatory powers as a substitute for structural planning⁵⁸. Future legislation should restrict the use of emergency powers in the environmental field to genuinely acute and short-term crises, while requiring the parallel and immediate activation of ordinary governance mechanisms for medium- and long-term planning. The principle of subsidiarity and the constitutional requirement that emergency powers be strictly temporary and proportionate should be applied with rigour.

Fifth, improved coordination between criminal and administrative instruments of environmental protection. A careful analysis of the D.L. 116/2025 demonstrates the dangers of relying on criminal law as the primary, or indeed exclusive, instrument of environmental governance⁵⁹. Criminal law is a reactive and selective instrument, ill-equipped to prevent systemic environmental harm: its proper function is to provide a sanction of last resort for the most serious individual violations, not to substitute for the regulatory, monitoring and enforcement functions of administrative law. Legislative reform should therefore prioritise the strengthening of administrative enforcement mechanisms, with particular emphasis on restorative and remedial measures aimed at repairing environmental harm and restoring affected territories. This approach is reflected in EU Directive 2024/1203, which promotes restorative sanctions (Art. 5, par. 3, lett. a) and recognises post-offence remediation efforts as a mitigating circumstance (Art. 9).⁶⁰

Sixth, effective implementation of the pilot judgment and meaningful engagement with the Committee of Ministers' supervision mechanism. Italy's compliance with *Cannavacciuolo* will be subject to ongoing supervision by the Committee of Ministers under Article 46(par. 2) ECHR. This process requires the Italian Government not only to adopt the structural measures prescribed by the Court but to demonstrate that those measures are being implemented effectively and on schedule.⁶¹ Civil society organisations and local communities should be afforded structured participation in this process, consistent with the Court's explicit prescription of consultation as a component of the required global strategy.⁶²

Seventh, the legislative recognition, at domestic level, of the implicit right to a healthy environment. As Serghides argued in his separate opinion in *Cannavacciuolo*, Article 2 ECHR may be read as implying such a right⁶³; and the 2022 reform of Articles 9 and 41

⁵⁷ L. COLELLA, L. MAZZA, *supra* note 4, p. 131-135.

⁵⁸ *Ibidem*.

⁵⁹ L. SIRACUSA, *supra* note 48, p. 170,184.

⁶⁰ *Id.*, p. 183.

⁶¹ M.P. POTO, C. D'ANDREA, *supra* note 1, p. 1190.

⁶² ECtHR, *Cannavacciuolo and others v. Italy*, 30 January 2025, par. 495.

⁶³ *Id.*, *Partly concurring, partly dissenting opinion of Judge Serghides*, par. 6.

of the Italian Constitution has already taken a significant step in this direction at the domestic level. A legislative framework explicitly operationalising this constitutional guarantee would provide a firmer domestic basis for the protection of the affected population and reduce Italy's dependence on supranational judicial correction.

Conclusions

The *Terra dei Fuochi* vicenda permits several firm doctrinal conclusions.

First, the environmental crisis reflected systemic shortcomings within the regulatory and administrative framework governing waste management.⁶⁴ Chronic deficiencies in disposal infrastructure, ineffective monitoring mechanisms, and the prolonged inability of public authorities to ensure compliance with EU waste directives generated a governance vacuum that facilitated the widespread diffusion of unlawful waste disposal practices.⁶⁵

Second, the emergency governance apparatus deployed between 1994 and 2009, and partially perpetuated thereafter, was structurally incapable of resolving the underlying crisis, precisely because it was designed to manage immediate operational problems rather than to address their structural causes.⁶⁶ The institutionalisation of emergency, produced fifteen years of legislative activity without a durable solution, and ultimately generated the conditions for the twin condemnation by the CJEU and the ECtHR.

Third, domestic criminal law proved an inadequate primary instrument of environmental protection in this context. The structural limitations – the principle of fragmentation, the operation of statutory limitation, the difficulty of establishing individual causal nexus in cases of diffuse environmental harm – are not contingent pathologies of the Italian system but inherent features of any criminal law regime when applied to phenomena of macro-lesive environmental harm⁶⁷. The 2015 eco-crimes reform mitigated some of these deficiencies; the D.L. 116/2025 responded to them incoherently and practically insufficiently.⁶⁸

Fourth, the European courts performed an indispensable propulsive function in articulating and enforcing the positive obligations of the Italian State in the environmental field. The CJEU established that Member States must create adequate disposal infrastructure and cannot excuse non-compliance by reference to criminal infiltration or political opposition⁶⁹. The ECtHR, in the progression from *Di Sarno* to *Locascia* to *Cannavacciuolo*, progressively elevated the Convention standard applicable to environmental pollution (from Article 8 to Article 2) and, through the pilot judgment procedure, transformed the individual enforcement mechanism of the Convention into an

⁶⁴ L. COLELLA, L. MAZZA, *supra* note 4, p. 130-132, 142ff.

⁶⁵ L. BARONI, *supra* note 11, p. 625-631.

⁶⁶ L. COLELLA, L. MAZZA, *supra* note 4, p. 130ff.

⁶⁷ M. NICOLINI, *supra* nota 18, p. 371.

⁶⁸ L. SIRACUSA, *supra* note 48, p. 171.

⁶⁹ CJUE, *European Commission v. Italy*, Case C-297/08, 4 March 2010, par. 84.

instrument for addressing structural governance failures.⁷⁰ The separate opinions in *Cannavacciuolo*, suggest that this trajectory is not yet complete: the recognition of an autonomous right to a healthy environment, and the extension of associational standing to environmental organisations, remain live questions on the Court's doctrinal agenda⁷¹.

Lastly, and perhaps most importantly, the central challenge of the *Terra dei Fuochi* remains the implementation of European judicial prescriptions in a domestic institutional environment that has repeatedly demonstrated its incapacity, as noted by part of the doctrine⁷², to translate legal obligations into operational reality. Whether the pilot judgment procedure will prove capable of generating genuine structural change, or whether it will remain a formal legal commitment inadequately matched by material compliance, is the question upon which the future of the *Terra dei Fuochi*, and of the 2.9 million people who inhabit it, ultimately depends.

⁷⁰ L. BARONI, *supra* note 11, p. 628-633.

⁷¹ M.P. POTO, C. D'ANDREA, *supra* note 1, p. 1182-1188

⁷² L. BARONI, *supra* note 11.