

Remarks and amendments proposed by WWF Italy to the draft of the Law of Stability n. 2679 of 2015

Introduction

Text of the amendments proposed by WWF

New article 15-bis (Reformulation of court costs and nonprofit organizations)

1. WWF calls for a reformulation of the tax “contributo unificato” provided by the presidential decree n. 115/2002 concerning judicial fees, in favor of nonprofit organizations compatibly with the unquestionable role they play in various social fields: from health care to the promotion of culture and art, education and scientific research to charity, as well as the protection of civil rights and the environment.
2. Very frequently nonprofit organizations, in order to pursue their statutory purposes, which prove to be always socially very important, must bring matters in front of a court. In some cases it is the law that relies on associations of environmental protection for the judicial protection of collective interests. Consider for example:
  - a) art. 18, paragraph 5, of the law 8 June 1986, n. 349 which has insituted the Ministry of the Environment and entitles recognized national environmental organizations with the power to file claims to the administrative court for the annulment of an unlawful administrative act prejudicial
  - b) art. 146, paragraph 12, of Legislative Decree n. 42/2004 (Code of Cultural Heritage and the landscape) which entitles nonprofit organizations to appeal the TAR against landscaping authorizations
3. At present, however, the judicial protection of the interests of the community is made far more difficult and expensive due to certain rules that apply to nonprofit organizations.

In fact, paragraph 6-bis of art. 13 of Presidential Decree 30 May 2002 n. 115 concerning judicial fees exempts from the payment of the tax “contributo unificato” in case of appeals against the refusal of access to environmental information (cfr. Decree. n. 195/2005 implementing Directive 2003/4 / EC), but, inexplicably, does not extend this exemption also to the appeals that may be done, pursuant to art. 18, paragraph 5 of Law no. 349/86, against provisions which conflict with environmental interests.

The result of this legislative choice is to force associations which are engaged in the environment’s protection, to exercise the powers conferred upon them by law against measures that conflict with environmental interests but only after the payment of a very expensive tax, which is intended to increase according to the draft of the new law, for each appeal filed, to the Agenzia delle Entrate.

In this way, nonprofit organizations which do not act in order to pursue their own interests but for the purpose of ensuring that the public administration acts in conformity with the law in environmental matters, are paradoxically subject to the same tax regime envisaged for large companies when bringing a claim in front of an administrative court in order to achieve their financial interests (think, for example, of very expensive competitive tendering procedures)

In the interests of all the non profit organizations committed to the protection of the environment, the writer proposes an amendment to insert in the text of the law at stake.

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Finally, the Stability Law in question, also constitutes an opportunity to remove another considerable obstacle that non-profit organizations encounter when bringing matters to court.

Article 74 of the aforementioned DPR n. 115/2002 provides that "Legal aid is granted in penal proceedings for the defense of citizens which do not have financial means (...) victim of a crime, or the person who suffered harm as a result of the offence and intends to join the criminal proceedings as a civil party (...) ". The following art. 119 states that "the treatment provided for Italian citizens is assured also (...) to organizations or associations that do not pursue profits and do not exercise economic activity. "

The non-profit organizations, despite the above-mentioned article, more and more often see denied or withdrawn legal aid because they exceed the income ceiling of € 9723.84 set for the people not having financial means. The misinterpretation stems from the fact that incomes declared by a non-commercial entity or by a nonprofit organization may, in some cases, exceed the amount provided by law, but these are not to be considered revenues arising from commercial activities and therefore distributable amongst the members but derive from property owned which do not produce annuities or rental income but are (simply) stated at book values for real estate tax purposes.

Also in this case we believe that the new law represents an important opportunity to remove a considerable obstacle for non profit organizations, in particular when acting in their role of protection, even in court, of the community's interests.

Emendaments:

We propose the insertion of the following new article 15-bis within the text of the Stability Law 2015 (AC n. 2679)

"Article 15-bis (Reformulation of the legal costs and NPO)"

Taken into account the role of nonprofit organizations, working for the achievement of public non profit patrimonial purposes, we propose the following changes to the regulations in force:

a) After the words "Environmental information" of paragraph 6-bis of art. 13 of the Presidential Decree May 30, 2002, n. 115, added by art. 21, paragraph 4, of the D. L. July 4, 2006, n. 223, converted with amendments by Law 4 August 2006, n. 248 and, subsequently amended by art. 1, paragraph 1307, Law 27 December 2006 n. 296, the following ones should be added: "as well as the remedies provided by art. 18, paragraph 5, of the law 8 June 1986, n. 349 and 146, paragraph 12, of Legislative Decree n. 42/2004 ".

b) After the word "acts" of Article 27-bis of the table in Annex B of DPR 26/10/1972 n. 642 the following words should be added "procedural, administrative and legal".

c) In Article 119 of Presidential Decree n. 115/2002 concerning judicial fees after the words "exercise economic activity" are added the following ones: "and whose declared income does not derive from profits of commercial activities."