

The Regional Court of Administrative Justice (TAR)

Autonomous Section of Bolzano

First Section

has released the present

judgment

on the appeal supplemented by additional pleas in law, brought by Onlus Association Ve. Am. and So. - V.A., with lawyers Da. Gr. e Ch. Fa,

Vs.

Municipality of Bolzano with lawyers Gu. Ag., Al. Me. and Bi. Ma. Gi. dell'Avvocatura Comunale

Autonomous Province of Bolzano, with lawyers Re. vo. Gu., Fa. Ca., Pa. Gi. and Ju. If.,

and

Wa. S.p.A. with lawyers Al. Ez. del Foro di Milano and Ma. Sc. del Foro di Bolzano,

for the annulment

A) as regards the introductory appeal:

- of the building permit signed jointly by the Deputy Mayor of the Municipality of Bolzano, of the Technician in charge and Director of the Land Management Office of the Municipality of Bolzano, prot. no. 23788/2019, doc. no. 293/2019, prat. ed. 2019-65-0 on 30.05.2019, and known at following access to the deeds on 25.07.2019, concerning "Infrastructure construction, tunnels and external accommodation via (omissis) / piazza (omissis) - pedestrian-cycling subway Bridge Lo. / piazza (omissis), as part of the Urban Redevelopment Plan via (omissis) and others";

B) as regards the reasons added on 2.12.2019:

- building permit no. 204/2019, prot. no. 8930/2019, prat. Ed. 2019 23 0 on 30.05.2019 for "Demolition and excavation lot 1 PRU";

Having regard to the appeal, the grounds added and the related annexes;

Having regard to the deeds of of the Municipality of Bolzano, of the Autonomous Province of

Bolzano and the Wa. S.p.A.;

Having regard to the application for free legal aid filed on 21 July 2020;

Having regard to the T.U. on justice expenses, approved by D.P.R. 30 May 2002, n. 115;

1. By appeal dated 23 October 2019 the applicant states that it is an association environmentalist, nationally recognized under art. 13 Law no. 349/1986 .

[...]

11. Application for legal aid (*gratuito patrocinio*).

With regard to the application for legal aid filed by the defence counsel of the applicant in this proceeding, this Court notes that the applicant claims is an association of national relevance, not for profit, not to carry

out economic activity and that pursues the exclusive aim of protecting the country's landscape, environmental, architectural, historical and cultural values, as better indicated in its Statute of foundation.

The association justifies its request that no provisions be made in relation to legal disputes, not to have any assets or other economic income, being it supported by the personal contribution of the members, and to pursue so-called ultra-associative interests i.e. "collective interests which, by definition, are outside the sphere of the association, and of its members".

As a matter of principle, legal aid may be granted under the following conditions:

1. That the claim is not unfounded (art. 74, second paragraph, Presidential Decree no. 115/2002) and the applicants does not exceed the income thresholds pursuant to Article 76 of Presidential Decree no. 115/2002;
2. That, pursuant to Article 119 of Presidential Decree no. 115/2002 for organisations and associations, the said conditions are met in addition to those specific to the lack of profit and the absence of commercial and economic activities;

However, settled administrative jurisprudence has clarified that for the purposes of admission to legal aid (*gratuito patrocinio*) of a non-profit entity, in addition to the existence of the conditions for respecting the income thresholds and the fact that the claim is not manifestly unfounded, the mere absence of profit does not suffice *per se*, but it is also necessary that the non-profit entity does not carry out any economic activity.

The distinction between the two concepts of "absence of profits" and "conduction of economic activity" is now settled. As for the former, the profitability or lucrative purpose of an entity's activity occurs shall be identified when the same entity's undertaking aims to the generation of revenues in excess of costs; whilst profitability shall not be identified when revenues are redistributed by the entity with the aim to offset its incurred costs. As for the latter, the meaning of "economic activity" for the purposes of legal aid encompasses activities pursuing social utilities also by means of a solidarity aim, and regardless of the generation of actual revenues on top of its operational costs, even if those costs include the voluntary contribution of its members (see also TAR Marche, order no. 272/2017; TAR Reggio Calabria, order no. 486/2015).

Furthermore, the Constitutional Court has upheld the regime according to which, in civil, administrative, accounting or tax disputes is excluding the entitlement to legal aid of entities or associations, which are not eligible for legal aid, even though they are not for profit, they carry out an economic activity which - precisely because of this, and regardless of the allocation of any profits and the size of the assets - allows for provisions in view, among other things, of possible legal disputes (see the judgment no. 35, March 6, 2019).

Pursuant to Article 79 of Presidential Decree no. 115/2002, the application for legal aid submitted in accordance with the following provisions must contain "a statement by the interested party, in accordance with the following terms article 46, paragraph 1, letter o), of the Presidential Decree of 28 December 2000, no. 445, certifying the existence of the income conditions for admission, with specific determination of the total income that can be valued for these purposes, determined according to the modalities indicated in article 76".

In general, the Court observes:

- that the petition under examination does not contain any declaration in lieu of certification in relation to income conditions;
- that the applicant, however, in relation to these conditions, to whom the grant of the benefit is subordinate, nothing has produced or declared, except that the association would not have any assets, nor any other kind of income, and which would be supported by the personal contribution of the associates;

- that the Statute of the association states that all members of the association are obliged to pay an annual membership fee (Art. 5), determined by the same association's National Council (art. 7), which contribute to the overall assets of the association;

- that art. 17 of the Articles of Association clarifies that the Association's assets consist of "a) contributions from members; b) inheritances, donations, legacies; c) contributions from the State, Regions, the local authorities, of public bodies or institutions, also aimed at supporting specific and documented programmes carried out within the framework of the statutory purposes; d) contributions from the European Union and from international organisations; e) Revenue from the provision of contracted services, deriving from related activities; f) Proceeds from the sale of goods and services to members and third parties, including through the performance of related economic activities of a commercial nature, carried out in such a way as to auxiliary and subsidiary and in any case aimed at achieving institutional objectives; g) Donations from members and third parties; h) Income from promotional initiatives aimed at financing its own financing, such as parties, charity gatherings, conferences and subscriptions also with prizes; i) Further revenues compatible with the aims of the association of social promotion and non-profit organizations of social utility; j) Any other remaining sum as part of the budget";

- that the Statute also provides for the obligation for the association to draw up an annual budget (art. 18).

This point must be further considered:

- that Art. 119 of Presidential Decree no. 115 of 30 May 2002, no. 115, does not imply the admission tout court of the "ONLUS" to the free legal aid, but this provision must be read and interpreted together with the remaining provisions on the matter. Therefore, it must be interpreted in the sense that the treatment that the regime applied to individuals shall also be extended to associations with non-profit aims and do not engage in economic activities provided, however, that they fall within the income parameters of which Article 76 of the same Presidential Decree no. 115 of 2002, applicable to all cases of patronage (see also TAR Palermo sent. no. 1757/2016; Corte Cost. sent. no. 128 of 01.06.2016);

- that the applicant has not rendered the required statement about the "specific determination of the total income assessable for these purposes, determined according to the modalities indicated in the article 76" (see Art. 79 of Presidential Decree 115/02), nor has it rendered its annual budget, which by Statute is however obliged to draw and approve;

- that Article 76 of Presidential Decree no. 115/02 provides, in paragraph 1, that the following persons may be admitted to legal aid holder of a taxable income for the purposes of personal income tax, resulting from the latest declaration, not exceeding € 11,493.82, and, in paragraph 3 below, that, for the purposes of the determination of this limit, account shall also be taken of income which is exempt by law from personal income tax (IRPEF) or which are subject to withholding tax to tax title, i.e. substitute tax;

- that the applicant has limited itself to asserting that it has no assets, while from the Statute it emerges that the association has assets to which the proceeds can also contribute "of related economic activities of a commercial nature" (see Article 17, letter f. of the Articles of Association).

In conclusion, this Court concludes that, in addition to the inadmissibility of the appeal, the general requirements set by the law to ensure the granting of legal aid have not been met by the applicant association.

The application shall thus be rejected.

12. The costs of the proceeding shall follow the follow the event rule and shall be settled as below.

The Regional Court of Administrative Justice - Bolzano Autonomous Section

ruling on the appeal and on the appeal on additional grounds, as in the epigraph proposed:

- rejects them, as partly inadmissible and partly inadmissible;
- declares the claim for damages inadmissible;
- rejects the application for legal aid;
- orders the applicant association to pay the costs of the proceedings, which are awarded in favour of each winning party in the amount of Euro 2,000.00 (two thousand/00), plus legal expenses and VAT, if and as due.

Bolzano 22 July 2020

Alda Dellantonio - Chairman

Lorenza Pantozzi Lerjefors - Councillor

Michele Menestrina - Councillor, Extender

Stephan Beikircher - Councillor