NO. 00569/2011 REG.PROV.COLL.

The Regional Administrative Court (TAR) of Tuscany

(Second Section)

has released the present

judgment

on the appeal brought by:

WWF ITALIA-Associazione Italiana per il World Wild Fund For Nature Onlus

Vs.

Province of Arezzo

Chimet S.p.A.

for the annulment of:

A) with regard to appeal no. 376 of 2008:

management order no. 195/EC issued on 6 December 2007 by the Manager of the Ecology Service of the Province of Arezzo, posted on the Praetorian Roll from 6 December 2007 for fifteen consecutive days, by which an integrated environmental authorisation is issued to CHIMET SPA until 5 December 2015 for the activities indicated therein, limited to the three activities specified below, carried out at the plant itself: 1) disposal or recovery of hazardous waste, concerning the disposal of waste oils, with a capacity of more than 10 tons per day; 2) landfill receiving more than 10 tons per day or with a total capacity of more than 25000 tons, excluding landfills for inert waste; 3) a plant for smelting and alloying non-ferrous metals, including recovered products, of all further points of the measure that relate to the specified activities, in particular points 2,5,6,7,8,9,10,12,20,24, and of any other act, even if not known to the claimant, related and consequent assumption. .

B) as regards appeal no. 942 of 2010:

management order no. 51 /EC (Ecology Department) issued on 16 March 2010 by the Secretary General of the Province of Arezzo, posted on the Praetorian Roll for 15 consecutive years, known by the appellant not before 2 April 2010, by which the company CHIMET SPA, better indicated above, is granted an integrated environmental permit until 5 December 2012 for the activities indicated therein, limited to the three activities specified below, carried out at the plant itself: 1) the elimination or recovery of hazardous waste (point 5. 1 of Annex I of Legislative Decree no. 59/2005), of the list in art. 1, paragraph 4, of Directive 91/689/EEC as defined in Annexes IIA and IIB (operations R1, R5, R6, R8 and R9) of Directive 75/442/EEC and in Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, with a capacity exceeding 10 tons per day, 2) of landfill receiving more than 10 tons per day or with a total capacity exceeding 25,000 tons, excluding landfills for inert waste (point 5.4 of Annex I of Legislative Decree 59/2005). 59/2005), 3) a plant for melting and alloying non-ferrous metals, including recovered products, with a melting capacity of more than 4 tonnes/day for lead and cadmium or 20 tonnes/day for all other metals (point 2.5 b) of Annex I of Legislative Decree 59/2005), all other points of the measure that have relevance to the specified activities and any other act, even if not known to the complainant, presupposition, related and consequent, in particular the resolution of the Provincial Council of 15 March 2010 no. 146 .

Given that the applicant association, at its specific request, was admitted to legal aid, the Inland Revenue proposed a request for withdrawal to the competent Commission before this Court which had ordered it,

which withdrew the benefit in question in view of the income for the year 2007 recognised in the applicant's possession.

As a result, the appellant filed a readmission application on 9 June 2010.

Secondly, the Board confirms the revocation of the applicant's admission to legal aid in relation to application No. 376/2008 and the rejection of the application in relation to application No. 942/10.

On this point, the applicant claims that it is not for profit and that not only the main activity, but also the connected activity that may be carried out, functionally intended to support the former, does not contribute to the taxable income of this Onlus, in accordance with the conditions of Article 119 d.p.r. no. 115/2002, to be considered an exceptional rule since the treatment that already belongs to the associations that are not well-off, in accordance with Article 74 d.p.r. cit, by virtue of this provision, is also due to the wealthy associations on conditions that are non-profit making and do not carry out economic activity, since - like the applicant - Onlus and O.n.g.

In this regard, therefore, this Court refers to the aforementioned rules, which, respectively, provide for:

"Legal aid is also provided in civil, administrative, accounting and tax proceedings and in matters of voluntary jurisdiction, for the defence of citizens who are not well-off when their reasons are not manifestly unfounded". (Art. 74, paragraph 2); "Those who have a taxable income for personal income tax purposes, resulting from the last declaration, not exceeding €10,628.16" (Art. 76, paragraph 1); "The treatment provided for Italian citizens is also guaranteed to foreigners legally residing in the national territory at the time the relationship or event to be established is established and to stateless persons, as well as to bodies or associations that are non-profit making and do not exercise economic activity" (Art. 119).

The applicant association, in essence, maintains that the latter, as an "exceptional" rule, is the only one to apply to non-profit making associations or associations not pursuing economic activities, which would not see the rule set out in Articles 74 and 76 cited above, which place a limit on income, applied to them.

This Court does not agree with this interpretation.

In the first place, the conclusion of the Court of Milan, Section III, 14.12.2004, no. 739, also referred to by the appellant, appears to be agreeable, in the part in which it is argued that it is well understood that the action of non-profit associations can be facilitated from a fiscal point of view, but not that the legislator exempts the State from paying court costs to those associations that enjoy income above the legal limit, especially when that income derives from payments made by members also for the specific purpose of protecting widespread interests in court.

Secondly, examining the structure of the relevant body of rules, it should be noted that Part Three, entitled "Legal Aid", contains in Title I the "General provisions on legal aid in the administrative...process...". In this general framework, Chapter I provides for the establishment of legal aid (Articles 74, also referred to above, and 75) and Chapter II sets out the conditions for admission to legal aid (Articles 76, also referred to above, and 77).

In the opinion of this Court these are the general rules applicable to all cases of legal aid. The following are the "Special Provisions on Legal Aid in Criminal Proceedings (including Art. 90, which provides for the equal treatment of the foreigner and the stateless person), in Title II and III, and the "Special Provisions on Legal Aid at State's expense in civil, administrative, accounting and tax proceedings", in Title IV, which, in Art. 119, paragraph 1, again provides for the equal treatment of the foreigner and the stateless person.

It follows that the "General Provisions" of Title I - including those on the income limit - apply to all forms of legal aid, while the "Special Provisions" of Title II and Title IV apply, in addition, to the criminal and administrative proceedings, respectively, as far as they are concerned.

This is confirmed by the fact that the Legislator has included the rule on the equal treatment of foreigners and stateless persons in both Title II and Title IV, as evidence that these provisions are each added to the general system which provides for the admission to legal aid only for persons who are not well-off within the meaning of Article 76, paragraph 1, cited above.

The rule referred to in Art. 119, cited above, cannot therefore be considered as an exceptional rule, in the sense that it is extraneous to the foregoing to directly regulate the hypotheses provided for therein, referring instead to the previous ones.

In fact, where Art. 119, first part, states that "The treatment provided for Italian citizens is also guaranteed to the foreigner legally residing in the national territory at the time the relationship or event to be established and to the stateless person", it can only logically refer to the general "treatment" provided for by Articles 74-76 city, since it is not otherwise logical to find a provision which, if interpreted as a "special" rule alienated from the general context that precedes it, would allow legal foreigners and stateless persons a better condition than other citizens for the purposes of legal aid in question, not considering that rule the maximum income indicated by Art. 76 cit.

Consequently, the second part of Art. 119 in question can only be interpreted according to the same logic, in the sense that the benefit in question is also extended to bodies and associations that are non-profit making and do not carry out economic activity - as well as to regular foreigners and stateless persons - provided, however, that they fall within the general parameters of Art. 76 cit.

The Board, therefore, to the interpretation advocated by the applicant, which favours the "subjective" profile, considering the mere qualification of a body or association that pursues no profit-making purposes or carries out economic activity as suitable to allow patronage as requested, considers preferable the "objective" one that links the benefit in question to the demonstration of the possession of an income not exceeding that indicated in Article 76 cit. even for the subjects indicated in Article 119 cit.

Neither can this conclusion be considered as concurring with a conclusion which was defined by the applicant, in its specific plead no. 942/2010, as "aberrant" because the WWF would be "discouraged" from carrying out its institutional task, since the purpose of legal aid is not to "encourage" subjects with specific interests, even if collective and widespread, but to make up, precisely from an objective point of view, the income shortfall that would not allow to provide an effective defense in the courts, according to Article 24 Cost.

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

The Regional Administrative Court for Tuscany (Section Two), definitively ruling on the appeals as in the epigraph proposed:

[…]

(2) declares appeal No 376/2008 inadmissible due to lack of interest;

(3) declares the appeal No 942/2010 partly inadmissible and partly dismisses it;

(4) Rejects the application for readmission to legal aid;

5) compensates the costs for the appeal no. 376/2008 and for the appeal no. 942/2010 orders the applicant association to pay to the Province of Arezzo and Chimet spa the costs of the litigation, which it settles in Euro 2,000.00 plus legal fees, for each one.

So decided in Florence in the council chambers of 22 December 2010 and 3 January 2011 with the intervention of the magistrates:

Maurizio Nicolosi, Chairman

Ivo Correale, First Referee, Extender

Pierpaolo Grauso, First Referee