

Notified: 11/11/2020

**ADMINISTRATIVE CHAMBER OF THE HIGH COURT OF JUSTICE OF
ANDALUSIA, CEUTA AND MELILLA, located in MALAGA**

Avda Tomás Heredia, 26. CP: 29071 Phone: 952918147
Code C.D. and Cons. 3031 - IBAN ES55 0049 3569 9200 0500 1274, MALAGA
General ID Number: 2906733320200000093
Proceedings: Challenge against legal aid decisions - **No. 3/2020 Unit: ML**
By: FEDERACIÓN ECOLOGISTAS EN ACCIÓN DE ANDALUCÍA
Representative: MARIA JOSE HUESCAR DURAN
Against: LEGAL AID COMMITTEE
Representative: ATTORNEY OF THE REGIONAL
ADMINISTRATION OF ANDALUSIA - MALAGA
Co-defendant:
Representative:

CONTESTED ACT:

ORDER

PRESIDENT: Mr MANUEL LÓPEZ AGULLÓ (Judge-Rapporteur)
JUDGES: Ms MARIA TERESA GOMEZ PASTOR
Mr CARLOS GARCIA DE LA ROSA

Malaga, on the third of November of the year two thousand and
twenty.

FACTS AS FOUND

ONE. On 17 JUNE 2020, the LEGAL AID COMMITTEE issued a Decision denying the right to legal aid requested by FEDERACIÓN ECOLOGISTAS EN ACCIÓN DE ANDALUCÍA.

TWO. The aforementioned Federation submitted to the Secretary of the Legal Aid Committee a document challenging said Decision, which, together with the administrative dossier, has been forwarded to this Court.



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SIGNED BY	MANUEL LOPEZ AGULLO 05/11/2020 10:46:12	DATE	05/11/2020
	MARIA TERESA GOMEZ PASTOR 05/11/2020 13:04:05		
	CARLOS GARCIA DE LA ROSA 05/11/2020 14:07:39		
	INMACULADA NUÑEZ PEDRAZA 05/11/2020 14:10:41		
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THREE. After the dossier was received, it was sent to the interested parties and the Attorney of the Legal Services of this Autonomous Community following the standard procedure, and the results can be consulted in the corresponding documents.

LEGAL ARGUMENTS

ONE. The challenged Decision of the Legal Aid Committee denied the appellant recognition of the right to legal aid, as it did not accredit compliance with article 3.5 of Act 1/96, i.e., the provisions referred to in article 23.2 of Act 27/06.

TWO. It is a known fact that the fundamental right to effective judicial protection enshrined in article 24.1 of the Spanish Constitution (EDL 1978/3879) is not “a right to a freedom that may be exercised simply and directly on the basis of the Constitution” (Constitutional Court Rulings 99/1985 and 206/1987 [EDJ 1987/205]), nor is it “an absolute or unconditional right” (Constitutional Court Rulings 15/1985 [EDJ 1985/15], 34/1989 [EDJ 1989/1561], 164/1991 [EDJ 1991/8073], 192/1992 [EDJ 1992/11278], 28/1993 [EDJ 1993/458], 101/1993 [EDJ 1993/2983] and 220/1993 [EDJ 1993/6462]), but, rather, a right that is “configured by law” (Constitutional Court Rulings 99/1985, 354/1993 [EDJ 1993/10811], 331/1994 [EDJ 1994/9321], and 178/1996 [EDJ 1996/7026]). This means that the legislator, within their scope of authority, may set limits to full access to jurisdiction, provided that—and it being understood that—said limits are reasonable and proportionate with regard to the ends that may be pursued in the framework of the Constitution (Constitutional Court Rulings 4/1988 [EDJ 1988/320], 107/1992 [EDJ 1992/7191] and 140/1995 [EDJ 1995/4492]).

The provision on justice being free of charge, enshrined in article 119 of the Spanish Constitution, according to Constitutional Court Ruling 16/1994 [EDJ 1994/264] “does not proclaim the free-of-charge nature of the administration of justice [...] It proclaims the right to justice being free of charge, but in the cases and in the manner determined by the legislator. It is a right to a benefit and one that is configured by law; the delimitation of its content and specific conditions for its exercise, as in the case of other rights of this nature, is the responsibility of the legislator, who shall do so taking into account the public and private interests involved, and the specific budgetary availability.”

THREE. Pursuant to article 23 of Act 27/06: “....1. Any non-profit legal person able to certify compliance with the following requirements is entitled to pursue an *actio popularis* as regulated in article 22:

a) *The statutory objectives set forth in its articles of association include the protection of the environment in general, or of one of its elements in particular.*



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b) *The legal person was incorporated at least two years before bringing the actio popularis, and has been actively undertaking the activities required to meet its objectives as set forth in its articles of association.*

c) *Pursuant to its articles of association, the legal person carries out its activity in a territorial scope that is affected by the administrative action or omission.*

2. The non-profit legal persons referred to in the preceding paragraph shall be entitled to legal aid in the terms set forth in Act 1/1996 of 10 January, on Legal Aid...."

For its part, article 22 sets forth: "...Actions and, as the case may be, omissions attributable to public authorities that violate the environmental provisions listed in article 18.1 may be challenged by any non-profit legal persons that meet the requirements set forth in article 23, through the appeal procedures regulated in Title VII of Act 30/1992 of 26 November on the Legal System of the Public Administrations and the Common Administrative Procedure, as well as through the administrative appeal set forth in Act 29/1998 of 13 July, regulating the Administrative Jurisdiction.

An exception is made for actions and omissions attributable to the authorities listed in article 2.4.2...."

It follows from the aforementioned articles that because the appellant Federation has *locus standi* to bring an *actio popularis* in the terms quoted, it is entitled to the benefit of legal aid in the terms stipulated in the Act regulating said benefit. Therefore, and as stated in the Order of 22 April 2013 issued by the Chamber of Extremadura, no consideration may be given to any interpretation that makes a legal provision unnecessary or nugatory, a principle included in established case law – vid. Supreme Court Ruling of 5 November 2008, appeal 4755/2005. The aforementioned provisions, and other applicable provisions, were considered.

RULING

The appeal lodged by FEDERACIÓN ECOLOGISTAS EN ACCIÓN DE ANDALUCÍA against the Decision issued by the Legal Aid Committee denying the right to legal aid requested is allowed, and by virtue whereof, the appellant is recognized said right with all favourable effects.

The original Orders shall be returned to said Committee, with an authoritative copy of this Decision for its enforcement and compliance, and for the appropriate legal purposes.

We hereby hand down, issue and sign this Order.



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ADMINISTRACIÓN
DE
JUSTICIA

Publication. On this same date the above Decision was read and published by the Judge who handed it down in a public hearing. Where to I attest.

“The dissemination of the text of this Decision to anyone other than the parties interested in the process in which it was issued may only be carried out after dissociation of the personal data contained therein and with full respect for the right to privacy and the rights of persons who require special protection or the guarantee of the anonymity of victims or injured parties, where appropriate.

The personal data contained in this Decision may not be transferred or disclosed for purposes against the law.”



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