

JUDGMENT

Council of State section IV - 17/05/2022, No. 3885

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

The Council of State

sitting in judicial capacity (Fourth Chamber)

has pronounced this

JUDGMENT

on appeal No. 10757 of 2021, brought by the "Associazione di Promozione Sociale Comitato Opzione Zero", by the "Associazione Sportiva Dilettantistica Progetto Nascere Meglio", by the "Associazione Medicina Democratica - Movimento di Lotta per la Salute Onlus", by the Volunteer Association "Ecoistituto del Veneto Alex Langer", by the association of Social Promotion "Casa of Venice People A.P.S.", in the person of their respective legal *pro tempore* representatives, and Messrs Da. Gi., Fr. Ma., Au. Tr. And Li. Be., represented and defended by Carla Ciani and Debora Pretin, with a digital address for service in accordance with the PEC in the Registers of Justice and address for service at the Chambers of Paolo Migliaccio in Rome, Via Cosseria, No.5;

against

the Veneto Region, in the person of the President *pro tempore* represented and defended by Antonella Cusin, Bianca Peagno and Giacomo Quarneri, with digital domicile as per PEC by Registers of Justice and with an address for service at the Chambers of Andrea Manzi in Rome, via Alberico II, No. 33;

the Metropolitan City of Venice, in the person of the Mayor *pro tempore*, represented and defended by the lawyers Roberta Brusegan Fabio Francario and Katia Maretto, with digital domicile as per PEC from the Registers of Justice;

the Municipality of Venice, in the person of the Mayor *pro tempore* represented and defended by lawyers Stefano Gattamelata, Antonio Iannotta and Nicoletta Ongaro, with digital address as in PEC from Registers of Justice and with an address for service at the office of lawyer Stefano Gattamelata in Rome, via di Monte Fiore, No. 22;

the Ministry of the Interior and the "Soprintendenza Archeologia Belle Artie Paesaggio" per il Comune di Venezia e Laguna, in the person of their respective *pro tempore* legal representatives, represented and defended by the "Avvocatura Generale dello Stato", at whose offices they are domiciled *ex lege* in Rome, via dei Portoghesi, No. 12;

the "Consiglio di Bacino Venezia Ambiente", in the person of its legal representative *pro tempore*, represented and defended by Roberta Brusegan, Fabio Francario and Katia Maretto, lawyers, with digital domicile as per PEC in the Registers of Justice;

the "Consiglio di Bacino Laguna di Venezia", in the person of its *pro tempore* legal representative, represented and defended by attorneys Roberta Brusegan, Fabio Francario and Katia Maretto, with digital domicile as in PEC from the Registers of Justice;

the "Port System Authority of the Northern Adriatic Sea", the "Regional Agency for Environmental Prevention and Protection of Veneto - Arpav", the "Azienda - U.l.s.s. 3 - Serenissima", the "Prefettura - Ufficio Territoriale" of the Venice Government, in the person of their respective legal representatives *pro tempore*, not constituting in court;

against

the company Ecoprogetto Venezia s.r.l., in the person of its legal representative *pro tempore*, represented and defended by lawyers Domenico Giuri and Alessandro Veronese, with digital domicile as per PEC by Registers of Justice;

for the reform

of the judgment of the Regional Administrative Court of Veneto, (Second Chamber), No. 1153 of 30 September 2021, rendered between the parties.

Having regard to the appeal and the annexes thereto;

Having regard to the affidavits of the Veneto Region the Metropolitan City of Venice, the Municipality of Venice, the Ministry of the Interior and the "Soprintendenza Archeologia Belle Arti e Paesaggio" for the Municipality of Venice and the Lagoon, the Consiglio di Bacino Venezia Ambiente, of the Laguna di Venezia Basin Council and the company Ecoprogetto Venezia s.r.l.;

Having regard to all the documents in the case;

Relator at the public hearing on 21 April 2022 the Councillor Michele Conforti and heard for the parties the lawyers as from the minutes;

Held and considered in fact and in law the following.

FACT AND LAW

(omissis)

5. The appeal is unfounded.

5.1. The Regional Administrative Court correctly found that the appellants did not meet the conditions for bringing the action and, in particular, that unrecognised associations had no legal standing and that natural persons had no interest.

5.2. With regard to the lack of standing, in the application initiating the proceedings, the associations attached the following: *'As regards, on the other hand, the applicant associations Comitato Opzione Zero, Progetto Nascere Meglio, Medicina Democratica - Movimento di Lotta per la Salute, Ecoistituto Veneto Alex Langer, Casa del Popolo Venezia, they are all aimed (as per their respective statutes and articles of association (see doc. 32) at pursuing the protection of the environment, health and quality of life in the area between the provinces of Venice and Padua, in the Veneto region and in the national territory.*

These are therefore first-rate associations with an adequate level of representativeness in the territory between the provinces of Venice and Padua, in the regional territory of Veneto as well as in the national territory.

Moreover, the stable and non-occasional nature of all the applicant associations can be deduced from their long-standing activity and from the lack of a predefined deadline as well as from their indefinite duration'.

5.2.1. The allegations were further clarified in the pleading of 20 May 2021: *'In particular, for the Association Progetto Nascere Meglio this purpose is explicitly set out in Article 3 letter d) of the bylaws, which expressly provides for "the carrying out of activities having as their object the environment"; likewise, for the Association Medicina Democratica ONLUS, this purpose is set out in Article 3 letter a) of the bylaws, which expressly provides for "the carrying out of activities having as their object the environment"; for the Association Medicina Democratica ONLUS, this purpose is set out in Article 3 letter a) of the bylaws, which expressly provides for "the carrying out of activities having as their object the environment". Finally, Article 4(d) of the articles of association of the Associazione Casa del Popolo expressly provides for the promotion of initiatives for the protection of health and environmental rights and, under point (f), for interventions and services aimed at safeguarding and improving environmental conditions.*

As regards the social promotion association Comitato Opzione Zero, and the voluntary association Ecoistituto del Veneto Alex Langer, they have been established in the Veneto region for many years and are therefore sufficiently representative to justify their legitimacy and interest in bringing the action'.

5.3. According to what has been pointed out by this Council, the court may well *"...allow non-member associations to take action, after verifying their actual representativeness, according to the so-called "double track" criterion which distinguishes between the legitimacy ex lege of recognised national environmental protection associations (which does not require verification) and the legitimacy of other associations (among others, Council of State, section IV, 2 October 2006, No. 5760; section VI, 13 September 2010, No. 6554).*

The latter must be ascertained in each specific case with regard to the existence of three prerequisites: the bodies must pursue environmental protection objectives in a non-occasional manner, they must have an adequate degree of representativeness and stability and they must have an area of reference that can be linked to the area in which the asset for collective use that is allegedly harmed is located (Council of State, section IV, 16.2.2010, No. 885)" (Council of State, Plenary Session, 20 February 2020, No. 6).

5.4. In view of the party's brief allegations and on the basis of the aforementioned principles of case law, the reasons supporting the trial court's ruling of inadmissibility are correct.

5.5. In the writs of first instance and, especially, in the introductory appeal (which outlines the *thema decidendum* of the administrative process; see Council of State, section IV, 31 July 2018, No. 4715) lacks sufficient elements, which would allow to perceive the "non-occasional" care of the environmental protection objectives by the appellants; what their "adequate" degree of representativeness and stability consists in (beyond a generic and unproven assertion); their "afferrance" to the area in which the asset for collective use that is allegedly injured is located, which is also not adequately represented and proved.

5.6. In addition to the fact that the application is wholly lacking in deductive allegations, no evidence of the foregoing has been offered, either by filing documentation or otherwise. In this regard, it should also be pointed out that the evidence follows and confirms the allegations made by the parties, which are indispensable to allow an assessment of the actual relevance of the evidence offered and, even before that, to illustrate to the decision-maker, in a punctual and specific manner, what the aforesaid requirements of legitimacy have been expressed in and to allow that assessment of "concrete representativeness" referred to by the Plenary Assembly.

5.7. Similar and more detailed considerations may then be made as to the non-existence of the requirement that the appellants must have "no occasional concern for the objectives of environmental protection", which is immediately apparent from an examination of the composite and varied statutory objectives, as described by the appellants themselves and their counterparts at both instances (admissibly, as regards the first instance; inadmissibly in these proceedings, for breach of Article 104 of the Code of Civil Procedure, as regards the circumstances not raised at first instance).

5.7.1. The multitude of these purposes, which range over different and transversal fields, reinforces the conviction, highlighted by the Judge at first instance, that these associations, beyond what was stated in the judgment, only occasionally "also" pursue the promotion or protection of environmental interests.

5.7.2. Faced with by-laws that set out multiple statutory purposes and varied fields of associative action, the allegation and proof of the concrete pursuit of the environmental interest and the allegation and proof of the other requisites of legitimacy must be more precise and rigorous, so as to allow the Administrative Judge to ascertain that the judicial initiative is not extemporaneous and contingent but corresponds to the effective expression of the associative activity.

5.8. In view of the foregoing, the reasons given by the Veneto Regional Administrative Court are therefore consistent with the legal principles governing the matter, in accordance with the writings and documents produced in the proceedings and consistent from both a logical and legal point of view.

5.9. Pursuant to the prohibition imposed by Article 104 of the Code of Civil Procedure, also objected to by some of the opposing parties, the further evidence produced by the associations at this level of the proceedings to support the existence of the requirements necessary to prove the right to bring proceedings cannot be admitted.

5.10. In conclusion, the Panel considers that the part of the judgment at first instance that declared the lack of active legitimacy of the appellant associations should be upheld.

(omissis)

FOR THESE REASONS

The Council of State sitting in judicial capacity (Fourth Chamber), definitively ruling on appeal No. 10757/2021, dismisses it and, as a result, confirms the Judgment of first instance.

Condemns the appellants, jointly and severally, to reimburse, in favour of each of the appellants (i.e. the Municipality of Venice, the company Ecoprogetto s.r.l., the Metropolitan City of Venice, the Veneto Region, the Venice Lagoon Basin Council, the Venice Environment Basin Council), the costs of the proceedings, which they settle for each of them in Euro 2,000.00 (two thousand/00), plus the accessories provided for by law (VAT, C.P.A. and reimbursement of general expenses at 15%).

Orders the Ministry of the Interior and the "Soprintendenza Archeologia Belle Arti e Paesaggio" for the Municipality of Venice and the Lagoon to pay the costs.

Order that this judgment be enforced by the administrative authority.

Thus decided in Rome in the council chamber of 21 April 2022 with the intervention of the magistrates:

Luca Lamberti, President FF

Alessandro Verrico, Councillor

Giuseppe Rotondo, Councillor

Michele Conforti, Councillor, Extender

Emanuela Loria, Councillor

LODGED WITH THE SECRETARIAT ON 17 MAY 2022.