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THE MOST HONORABLE COUNCIL OF STATE IN A JUDICIAL CAPACITY

Appeal

For the "COMMITTEE FOR THE PROTECTION OF THE ENVIRONMENT AND THE HEALTH OF CITIZENS (former NO-Maxistalla)," located in Perugia, at Strada Santa Maria Rossa, no. 92, represented by the acting President, Dr. Stefania Minestrini ([redacted]), represented and defended by lawyer Urbano Barelli ([redacted]) with the authority granted on the margin of this document, who declares that he wants to receive communications on his fax no. [redacted] or at the email address CEM: urbano.barelli[redacted] with his domicile elected at the sectional secretariat of the Council of State;

against

the MUNICIPALITY OF PERUGIA, represented by the acting Mayor, with domicile elected at the offices of lawyers Luca Zetti and Sara Mosconi in Perugia, Corso Vannucci 39, Legal Office of the City of Perugia;

and

the ARPA UMBRIA, represented by the acting legal representative, with domicile elected at the office of lawyer Paolo Sportoletti in Perugia at Via Baglioni no. 10;

towards

the entity OPERE PIE RIUNITE DI PERUGIA, represented by the acting President, with domicile elected at the office of lawyer Matteo Frenguelli in Perugia at Via Cesarei, no. 4;

against

the judgment of the TAR Umbria no. 303/2013 of May 23, 2013, notified on July 3, 2013;

rendered in the appeal for the annulment

- of the administrative determination no. 31 of November 23, 2011, signed by the Head of the Private Building Unit of the City of Perugia, published in the Bulletin Board of the City of Perugia on December 6, 2011;

SPECIAL POWER OF ATTORNEY:

The undersigned Stefania Minestrini, with tax identification number [redacted], residing at [redacted], as the President of the "Committee for the Protection of the Environment and the Health of Citizens (formerly NO-Maxistalla)," with headquarters in Perugia at Strada Santa Maria Rossa n.92, delegates the representation, assistance and defense in every phase and degree of the present lawsuit to the lawyer Urbano Barelli, granting him the most extensive legal powers, including the ability to sign the lawsuit, to propose additional grounds, to propose precautionary measures, and to substitute for individual obligations.

The undersigned elects as his/her domicile the Secretariat Section of the Council of State.

Perugia, October 17, 2013

- of every other prerequisite, connected, and/or consequent act mentioned in this appeal or not known;
- if necessary, of articles 151-bis and 151-ter of the TUNA of the City of Perugia's PRG and the ARPA Umbria opinion of November 11, 2011.

(*omissis*)

FACT

In January 2011, the local press (**doc. n. 1**) reported the news of the realization of a cattle breeding project with an attached biogas plant by the Perugia Opere Pie Riunite entity in Santa Maria Rossa, in the municipality of Perugia.

This news alarmed the local community, including residents and property owners, and led the NO-MAXISTALLA Committee to first collect about 450 signatures (**doc. n. 2**) sent to the municipality of Perugia on August 24, 2010, and then, on February 23, 2011, to send a warning to Opere Pie Riunite, the municipality of Perugia, and for knowledge, to the Prefect of Perugia, the President of the Regional Council, the Regional Environmental Commissioner, the Regional VIA Service, the Umbria ARPA and the Mayors of the municipalities of Torgiano and Deruta, to object to the implementation of the project due to various profiles of illegitimacy (**doc. n. 3**). However, the warning was ignored. In order to allow the construction of the cattle breeding farm and biogas plant, the Perugia Municipal Council, with its resolution No. 169 of 28th April 2011 (**doc. n.4**), started the process of amending the land use plan as the lands in question were located in the EA (agricultural area of special interest) and in the 3S landscape unit, where the construction of new buildings and animal husbandry facilities is prohibited.

On October 12th, 2011, Opere Pie Riunite of Perugia presented the Simplified Authorization Procedure (PAS) to the Perugia Municipality in order to build a biogas plant, separating the original request for the cattle breeding farm (**doc. n.5**).

On October 19th, 2011, the Perugia Municipality summoned a conference of services for October 28th, 2011, in order to obtain the necessary opinions from competent authorities for the completion of the PAS procedure. The conference of services was concluded in the following session of November 7th, 2011. With the contested Decision No. 31 of November 23rd, 2011 (**doc. n.6**) signed by the Director of the Private Building Unit, Dr. Eng. Ivana Moretti, the Perugia Municipality determined the completion of the PAS procedure under Article 6, paragraph 5, of Legislative Decree 28/2011, submitted on October 12th, 2011 by Opere Pie Riunite of Perugia, regarding the construction and operation of a biogas energy production plant, including a cogeneration plant with an electrical power of 999 KW, in Pontenuovo street, in San Martino in Campo, Perugia.

Through a lawsuit notified on ..., the applicant committee challenged the above-mentioned acts by exposing the following grievances:

1. Violation of Articles 7 and 8 of Law No. 241 of 1990, as well as Articles 1 and 3 of Law No. 241 of 1990, the principle of transparency, and the Aarhus Convention. Violation of the horizontal subsidiarity principle under Article 118 of the Constitution.

The applicant committee did not receive the notice of the conference of services, even though it had sent a warning about the illegality of the project (**doc. n.3**) and was,

therefore, an identified or easily identifiable subject to whom could derive a prejudice from the measure.

The Municipality of Perugia failed to identify or easily identify the subject who could suffer prejudice from the measure. Instead, the City of Perugia posted the notice on the Official Bulletin, which is only required in cases of a large number of recipients, and failed to justify this choice.

2. Violation of Articles 9 and 10 of Law No. 241 of 1990, of the Aarhus Convention as a whole and in particular Article 6, paragraph 4 and of the horizontal subsidiarity principle provided for in Article 118 of the Constitution.

The Municipality of Perugia did not consider the content of the complaint from the Committee, which was sent on February 23, 2011.

3. Violation of Article 6 of Law No. 241 of 1990.

The person responsible for the proceedings failed to verify the different subject matter deficiencies of the public body Opere Pie, despite having obtained the certificate from the Chamber of Commerce, Industry, Agriculture and Crafts (see attachment **doc. No. 6**).

4. Violation of Articles 14 and following of Law No. 241 of 1990 and of Ministerial Decree No. 47987 of September 10, 2010.

The services conference should have concluded with a motivated determination, given the decisive nature of the services conference, while the impugned determination only acknowledged the "completion of the authorization procedure", without any reference to the conclusions of the RUP taken at the services conference and without any justification for the conclusion of the procedure.

5. Violation of Article 12, paragraph 7 of Legislative Decree No. 387 of 2003, Article 174 of the EU Treaty, and Article 3-ter of Legislative Decree No. 152 of 2006, and in particular the precautionary principle.

The placement of renewable energy facilities in agricultural areas is not unconditional, but rather subject to specific compatibility checks. It does not appear that these checks were carried out, nor does it appear that the authorized facility in the agricultural area and included in the 3S landscape unit contributes to the enhancement of local agri-food traditions, or to the protection of biodiversity, or to the protection of the cultural heritage and of the rural landscape.

Even the principle of precaution is not respected, directly binding for all public administration with a significance not only programmatic, but directly imperative within the framework of national legal systems, obligated to apply it if there are doubts regarding the existence or scope of risks to people's health.

Renewable energies are not zero impact and authoritative scientific studies have shown the risks of biomass plants to the environment and health.

6. Violation of part II, title III of Legislative Decree no. 152 of 2006 and of article 2, paragraph 4, letter b, regional regulation no. 7 of 2011. Excess of power due to lack of investigation.

The authorized plant has an electrical power of 999 kWh and a thermal power of 1049 kW. The dimensioning of the 999 kWh plant represents an evasion of the regulations on environmental impact assessment and in particular the check of subjection.

7. Violation of article 6 of Legislative Decree no. 28 of 2011, as well as article 216 of the Health Laws Consolidated Text. Violation of article 4 and 7 of regional regulation no. 7 of 2011. Violation of article 269 of Legislative Decree no. 152 of 2006. Violation of article 38 of the TUNA of the Perugia Municipality Plan.

The plant will also be powered by the waste of the current stable and the announced one and is among the unsanitary first-class industries referred to in article 216 of the Health Laws Consolidated Text, which establishes that these industries must be isolated in the countryside and kept away from residential areas.

The project does not contain a specific analysis to identify and mitigate the production of odor emissions during the production cycle, nor is there any study on winds and the transmission of odor emissions given that the area is heavily anthropized.

8. Violation of article 12 of Legislative Decree no. 387 of 2003, article 6 of Legislative Decree no. 28 of 2011, article 20 of the Umbria Regional Law no. 27 of 2000 and articles 31 and 38 of the TUNA of the Perugia Town Plan. Violation of article 3 of Law no. 241 of 1990. Excess of power due to lack of investigation.

The area on which the plant should be built is classified by the current PRG (Local Plan) of the municipality of Perugia as EA (Area of particular agricultural interest) and can be used only if it is demonstrated that alternative solutions are impossible.

The same area falls within the 3S landscape unit in which the construction of new buildings and related facilities for agro-zootechnical activities is not permitted.

9. Violation of Article 4 of the regional regulation of the Umbria region of July 29, 2011, No. 7, and Article 6 of Law No. 241 of 1990. Excess of power caused by a lack of investigation and a misinterpretation of the facts.

The area on which the plant is supposed to be built is not compromised, as claimed by the proponent, nor is it true that the municipality of Perugia "designed and approved" the Ikea settlement.

10. Violation of Article 6 and Article 14-ter of Law No. 241 of 1990, as well as Article 6 of Decree No. 28 of 2011. Excess of power caused by a lack of investigation. Violation of Article 33, paragraph 3 of TUNA. Violation of Ministerial Decree No. 10 of September 2010.

The challenged decision was issued based on a deficient investigation without any evidence of compliance with the current regulations.

The municipality of Perugia, the ARPA, and the United Charitable Works of Perugia appeared in court and disputed the validity of the appeal.

The TAR Umbria rejected the appeal with the challenged decision.

Against this decision of the TAR Umbria, the "Committee for the protection of the environment and the health of citizens (formerly the NO Maxistalla Committee)" is

appealing to this Honorable Council of State through its legal representative pro tempore, on the following main legal grounds:

LAW

(*omissis*)

A) On the legitimacy of the appeal

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1. On the legitimacy of the appeal, recognized with "some elements of problematic nature" by the Umbria TAR, it is appropriate to reconstruct the facts and documents submitted in court:

• The area where the plant should be built is in the plain and open countryside, near the Tiber with few homes and is located near the inhabited centers of S. Maria Rossa and S. Martino in Campo;

• Not coincidentally, the area is classified as of particular agricultural interest and included in the Unit of Landscape No. 3S of the Perugia City Plan;

• Before the projects of the maxistalla, the biogas plant and the Ikea warehouse were presented in that area, the need to protect the surrounding environment that maintained, as mentioned, the characteristics of the Umbrian plain countryside, was never raised;

• The three aforementioned projects - two from Opere Pie Riunite and the nearby IKEA - have prompted the citizens of the area to come together to discuss the environmental impact of these projects on the quality of life in the area and then to form a committee;

• The first news of the maxistalla project was reported by the "Corriere dell'Umbria" in an article dated July 28, 2010, entitled "La maxistalla arriva in Comune"[1] which described the project of what was referred to as the largest stable in Umbria;

• Following this article and the information obtained by the citizens of the area, a petition was immediately prepared on August 9, 2010, with the subject "Contestation of the construction of a maxistalla in Santa Maria Rossa (PG)" (**doc. n.2**).

• From the press review submitted to the court, it appears that the "No maxistalla" Committee was born in August 2010 after the news of the breeding project was published in the "Corriere dell'Umbria" on July 28, 2010; in fact, the same newspaper on August 12, 2010, titled "The birth of the committee against the maxistalla" (**doc. n.1/6**).

• On December 7, 2010, the "Corriere dell'Umbria" titled: "La maxistalla sees the light. Controversy over the area: environmentalists risk pollution", and in the text of the article, it is noted that the citizen committee "No maxistalla" organized a meeting that "two weeks ago filled the CVA of San Martino in Campo" (**doc. n.1/1**).

• The newspaper "La Nazione" titled "The maxistalla will be in Santa Maria Rossa" and wrote that the Committee had organized "a public meeting on November 27, 2010 at the CVA of San Martino in Campo to discuss and delve into the topic" (**doc. n.1/2**).

[1] http://rassegna.crumbria.it/pdf/pdf2010/304855.pdf

• On December 13, 2010, the newspaper "Il Giornale dell'Umbria" published a letter from the president of the "No maxistalla Committee", in which the reasons against the construction of the plant in that area were listed: "*there are neither the urban planning conditions nor the hydrogeological characteristics nor the social guarantees suitable to host a structure that is defined as the largest in Umbria. With all the difficulties with connections due to the probable traffic of operational vehicles. Given that other commercial activities are planned at a short distance, with a new Ikea center*"; the statement ended with the announcement of another public assembly for December 15th, 2010 (**doc.n.1/3**);

• On February 23rd, 2011, the "No Maxistalla Committee" sent a formal warning to Opere Pie and the Municipality of Perugia, and for information to the Prefect of Perugia, the President of the Regional Government, the Regional Environment Commissioner, the VIA Service of the Region, ARPA Umbria, and the Mayors of the municipalities of Torgiano and Deruta, not to proceed with the presentation and realization of the maxistalla and biogas plant project (**doc.n.3**) and the press reported the news (**doc.n.1/8**);

• The newspaper "Il Messaggero" on September 7th, 2011 had the headline "San Martino. The committee: <<We don't want the maxistalla>>" and wrote: "*Is it right to still insist on building a biomass plant with a maxistalla in the same area where the construction of Ikea in San Martino in Campo is certain? This is what the No Maxistalla committee, opposed to the Santa Maria Rossa plant proposal, is asking. With regards to Ikea, the committee explains how the memorandum of understanding signed by the three municipalities makes it clear that the affected territory will undergo a profound transformation, both in terms of traffic and land use*" (**doc.n.1/5**);

• On September 8th, 2011, "Il Corriere dell'Umbria" had the headline "The committee: No maxistalla and Ikea store" (**doc.n.1/5**);

• In November 2011, the newspaper "Il Messaggero" wrote that "*the committee contests the municipal government's failure to consult with the citizens of the territory in a decision of such great strategic importance for the social, environmental, and economic life of a very large inhabited area that also includes citizens of two neighboring municipalities*" (**doc.n.1/4**);

• On December 4th, 2011, "Il Corriere dell'Umbria" had the headline "Maxistalla, biogas can be done" (**doc.n.1/7**);

• On January 28th, 2012, the "Committee for the environmental protection and citizens' health (formerly No-maxistalla)" was formally established. Article 1 of its statute provided that "*the Committee has unlimited duration*", while in article 2 it reads that "*the objectives of the Committee are: the defense and protection of the environment and the health of citizens living in the area. The territory referred to is that of Santa Maria Rossa, San Martino in Campo, Viale and the surrounding areas of the municipalities of Perugia, Deruta and Torgiano. In particular, the Committee aims: to closely monitor the environmental protection of the area and to improve the quality of life and health of citizens; to solve problems arising from pollution caused by industrial or agricultural activities or any activities that may have an impact on the area*" (document annexed to the appeal).

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2. Based on the documents submitted to the court, it is therefore proven that the applicant, "Committee for the protection of the environment and citizens' health (formerly No-maxi stalla)":

- was established in August 2010;
- on August 9, 2010, it collected around 450 signatures against the maxistalla and biogas plant;
- on February 23, 2011, it sent a warning to the Perugia Municipality and the Works of Mercy;
- it organized several public assemblies to discuss the maxistalla and biogas plant projects;
- on several occasions and through press releases or letters, it opposed projects to modify the territory;
- on several occasions, it spoke out against the Ikea project;
- after carrying out its activities for about a year and a half, on January 28, 2012, its constitution was formalized, the statute was approved with the provision of unlimited duration and the purpose of defending and protecting the environment in the area of S.Martino in Campo, S.Maria Rossa, and the name was changed from "No-maxistalla Committee" to "Committee for the protection of the environment and citizens' health (formerly No-maxi stalla).

This is a summary of the facts that were proven in court, to which a wider collection of press reports could be added to demonstrate the intense activity of the committee, which can nonetheless be consulted on the website of the Regional Council of the Umbria Region[2].

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3. According to the defendants, the plaintiff committee would lack standing because it "was created to oppose a specific initiative and has taken only and exclusively measures aimed at opposing the realization of specific projects" (page 3 of Opere Pie's discussion memo) and "was established for an occasional and contingent purpose by some residents of Santa Maria Rossa and some property owners located there" (page 3 of Perugia's Municipality discussion memo).

However, from the facts and documents described above, it is evident that while it is well known that the committee was created to oppose the maxistalla project (as reported by the press), it is equally evident that the committee then dealt with the biogas plant and Ikea establishment in broad terms of environmental protection and defense of the area.

The committee only dealt with these projects for the simple and fortunate reason that before then, the area had maintained the characteristics of the flat Umbrian countryside and there was no need for the local citizens to organize a committee for the protection of the environment in that territory.

After the presentation of the maxistalla and biogas projects, the citizens were forced to question the impact of such projects and that of Ikea, and they came together and organized themselves into a committee to protect their territory.

It cannot be expected that a committee will arise on abstract issues that are not perceived as local problems. A committee always arises following a fact or a project perceived as harmful to the local environment[3]. It would therefore be unreasonable to expect that the

[2] http://rassegna.crumbria.it/consultazione/storico.php
[3] *Conflitti ambientali. Biodiversità e democrazia della terra*, a cura del CDCA - Centro di documentazione sui conflitti ambientali, Milano, 2011.

committee would only arise on the initial fact or project - which was worthy of protection according to the legal system that recognizes environmental protection as a primary matter that cannot be subordinated to any other interests, even economic[4] ones, it would be unlikely for the judiciary to deny the legitimacy of a committee's recourse.

This is because it is certain that committees are formed as a result of events or projects that harm or have the potential to harm the environment, but it is unlikely that in the limited area in which committees usually operate, problems of the same severity or impact on the population will occur (with the exception, as in the present case, of a large Ikea settlement project planned for the same area).

This is the reason why committees are normally formed and exist for only one event or project that is considered harmful to the environment. However, if the legitimacy to act were denied to a committee because it opposed only one event or project, this would mean that the same committee would be deprived of the main and often necessary judicial protection on the only issue that led to the need for citizens to come together as a committee (in violation of Articles 2, 24, 103, 113 and 118 of the Constitution).

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4. In this case, the purpose of the plaintiff committee is to protect the environment in the areas of S. Martino in Campo and S. Maria Rossa and not just the biogas plant project that is the subject of the present lawsuit. Furthermore, the substantial activities of the Committee (formerly known as "No-Maxistalla" and then as "Committee for the Protection of the Environment and the Health of Citizens (ex No-Maxistalla)"), as described above, clearly demonstrate its representativeness with regard to the interest of protecting the environment and the health of citizens.

It is considered that the TAR Umbria adheres to the thesis that the administrative judge can, on a case-by-case basis, recognize the legitimacy to challenge administrative acts affecting the environment[5]. In the present case, the facts and documents mentioned above make it possible to consider the plaintiff committee legitimate to bring the lawsuit because it has:

a) **a statute that non-occasionally pursues environmental protection objectives in a specific area** (unlimited duration, protection and defense of the environment and health of citizens in the area of Santa Maria Rossa, San Martino in Campo, and surrounding areas of the municipalities of Perugia, Deruta, and Torgiano);

b) **a broad environmental protection purpose in its statute, not just the specific purpose of opposing a single project** (environmental protection of the territory and

[4] In its most immediate meaning, the principle of primacy tends to highlight the fundamental character of environmental interest, the awareness of the essential need to protect the environment as a essential premise for human existence (M. Cecchetti, Constitutional principles for environmental protection, Milan, 2000, p. 85). If combined with the concept of the environment as a constitutional value, primacy expresses the high weight that must be recognized to the environment in the balancing of other constitutional values, highlighting the need to attribute a sort of generic favor to the protection of the ecological balance (G. Morbidelli, The special administrative regime for the environment, in Studies in honor of Alberto Predieri, Milan, 1996, p. 1134). Primacy, above all, shows the need to pursue the goal of a high level of protection, especially in the light of the principles of preventive and precautionary action. The Constitutional Court has repeatedly stated that environmental protection is imposed by constitutional norms (arts. 9 and 32) and has become a primary and absolute value (Constitutional Court, December 30, 1987, no. 641; June 27, 2008, no. 232; November 7, 2007, no. 367; February 24, 1992, no. 67; July 27, 1994, no. 356).

[5] TAR Umbria, First section, 28 agosto 2012, no. 334 ; TAR Umbria, First section, 2 ottobre 2012, no. 400.

improvement of the quality of life and health of citizens; solution of problems resulting from pollution caused by industrial or agricultural activities or any activity that may have an impact on the territory; opposition to three projects: maxistalla, biogas plant, and Ikea settlement);

c) **adequate representativeness** (various public assemblies, about 450 signatures collected with the petition, a warning, and various press releases);

d) **adequate stability** (the committee has been active since August 2010 and on January 28, 2012, it formalized its establishment by adopting a statute and taking on the name indicated in the lawsuit).

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5. Having demonstrated that all the requirements that a part of the jurisprudence requires for recognizing the active legitimacy of a committee are met in the present case, it should not be forgotten that the prevailing orientation is for an expansion of active legitimacy and not for its restriction.

This Council of State has in fact specified that "*the legitimacy to appeal is also due to* ***spontaneous committees*** *that are established for the primary purpose of protecting the environment, health and/or the quality of life of the populations residing in a defined territory.* ***Otherwise, the locations and their populations, affected by threats to public health or the environment in a local and defined area, would not have autonomous protection in case of inertia of the recognized environmental associations by the Ministry of the Environment***"[6].

The same ruling then continues by stating that "*a different opinion would not be in line with the Constitution (Articles 24, 103 and 113), if it were intended to exclusively grant the Administration the power to select the subjects authorized to act in court, thus preventing access to judicial protection to entities representing differentiated and qualified subjective positions, defined as legitimate interests*".

With another decision, it also established that "*the last paragraph of Article 118 of the Constitution -* ***in particular the principle of horizontal subsidiarity*** *- consecrates and concludes a process of autonomy no longer connected to the phenomenon of entity formation, but simply related* ***to civil society and its democratic development at a level that is almost always voluntary*** *(as recognized by the Council of State, Consulting Section for normative acts, August 25, 2003, No. 1440/2003)*"[7].

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7. In the environmental field, it cannot be forgotten that Principle 10 of the Rio Declaration on the environment and development establishes that "*the best way to deal with environmental issues is to ensure the* ***participation*** *of all interested citizens at different levels... States will facilitate and encourage public awareness and participation by making information widely available.*

[6] Council of State, Sixth section, 23 maggio 2011, no.3107; Council of State, Sixth section, 13 settembre 2010, no.6554; Council of State, Sixth section, 11 luglio 2008, 3507; Council of State Sixth section, 11 novembre 2011, no.5986.

[7] Council of State, Sixth section, 13 settembre 2010, no.6554.

Effective access to judicial and administrative proceedings, including remedies and compensation, will be ensured."

The Aarhus Convention assumes that the public will contribute positively towards the creation and implementation of environmental regulations[8], and it is centered on three pillars: **information, participation and enforceability**.

The three pillars of the Aarhus Convention have been widely discussed in previous defense writings. In this context, we only want to reiterate that environmental enforceability is an integral and important part of the convention, as widely discussed in Article 9.

With this article, it is necessary to repeat, the convention establishes that "*each Party ensures that members of the public who meet the requirements specified in its domestic law* ***can initiate administrative or judicial proceedings to challenge acts or omissions by private individuals or public authorities that obstruct the provisions of national environmental law***" (Article 9, paragraph 3) and that "*each Party ensures that* ***the public is informed of the possibility that it is given to initiate administrative or judicial proceedings, and provides for the implementation of adequate assistance mechanisms whose aim is to eliminate or reduce financial or other obstacles that prevent access to justice***" (Article 9, paragraph 5).

The Court of Justice, ruling on a preliminary basis on the interpretation of Article 9, paragraph 3 of the Aarhus Convention, has ruled that "***the national judge is obliged to interpret****, to the extent possible, the procedural rules concerning the conditions that must be met in order to bring an administrative or judicial appeal in accordance with both the purposes of Article 9, No. 3 of the above-mentioned convention and the objective of effective judicial protection of the rights conferred by the legal order of the Union,* ***in order to allow an environmental protection organization to challenge in court a decision adopted following an administrative procedure, if it is contrary to Union environmental law***"[9].

On the application of international conventions, also the Constitutional Court has established that "***it is the duty of the common judge to interpret domestic law in accordance with the international provision***"[10].

It is worth mentioning that our country is behind in environmental enforceability and this delay is recognized by the Ministry of the Environment, Land and Sea Protection in the public consultation text of November 26, 2010 of the "***Second National Report on the Implementation of the Aarhus Convention***"[11].

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[8] F. ROMANIN JACUR, *L'accesso alla giustizia nella prassi del meccanismo di compilance della Convenzione di Aarhus*, in *La Convenzione di Aarhus e l'accesso alla giustizia in materia ambientale*, edited by A.TANZI, E.FASOLI, L.IAPICHINO, Milano, 2011, p.17.

[9] The European Court of Justice, decision of March 8, 2011, in the case C-240/09; see also: European Court of Justice, May 12, 2011, in the case C-115/09.

Regarding the application of the Aarhus Convention, and in reference to the merit of the present appeal and the balancing of private interests in carrying out the project and public interests in environmental protection, it is worth mentioning the recent decision of the European Court of Justice, Grand Chamber, January 15, 2013, in the case C-416/10 with which it is recognized that "*the right of ownership is not presented as an absolute prerogative, but must be considered in relation to its social function"* (113), *and that environmental protection is among the objectives of general interest "and is therefore capable of justifying a restriction on the exercise of the right of ownership*" (114).

[10] Constitutional Court, 24 ottobre 2007, no. 349.

[11] In http://www.minambiente.it/export/sites/default/archivio/allegati/vari/rna_convenzione_ aarhus_bozza_26_11_2010 .pdf