

JUDGMENT

Council of State, Section IV - 07/09/2022, No. 7799

ITALIAN REPUBLIC

ON BEHALF OF THE ITALIAN PEOPLE

The Council of State

sitting in judicial capacity (Fourth Section)

has pronounced this

JUDGMENT

on appeal No. 1763 of 2017, brought by the Circolo Sibilla Aleramo of Legambiente, in the person of its legal representative *pro tempore*, represented and defended by lawyer Roberto Gaetani, with digital domicile as per Pec by Registers of Justice;

against

the Municipality of Civitanova Marche, in the person of its *pro tempore* mayor represented and defended by Andrea Calzolaio and Claudio Baleani, with a digital address for service in accordance with the Pec in the Registers of Justice, with an address for service at the Chambers of Andrea Del Vecchio in Rome, Viale Giulio Cesare 71;

against

Depositi e vendite s.r.l., in the person of its legal representative *pro tempore*, represented and defended by lawyer Maria Stefania Ottoni, with an address for service in accordance with PEC by Registers of Justice with an address for service at the Chambers of Luisa Gobbi in Rome, via Ennio Quirino Visconti n. 103;

of Fallimento Prica s.r.l., in the person of its *pro tempore* legal representative *tempore*, not constituted in the proceedings;

for the reform

of the judgment of the Regional Administrative Court for Marche, section one, No. 500 of 31 October 2016, rendered between the parties.

Having regard to the appeal and its annexes;

Having regard to the cross appeal filed by the Municipality of Civitanova Marche;

Having regard to the notice of appearance filed by Depositi e Vendite s.r.l.;

Having regard to the defence briefs;

The following was convened in the council chamber on 23 June 2022 by Counsellor Claudio Tucciarelli, hearing for the parties the lawyers Roberto Gaetani and Andrea Calzolaio and having regard to the request for a decision filed by the lawyer Maria Stefania Ottoni.

FACT and LAW

(omissis)

11. In logical order, the objection of inadmissibility of the action at first instance must be examined first.

The objection is well founded.

The appeal at first instance was brought by Circolo "Sibilla Aleramo" of Legambiente. That appeal focused on the applicant's legitimacy and interest in bringing proceedings (p. 20 to p. 24). To that end, the appeal:

- emphasised the origins of the Circle, which has always intended to protect the public and social use of most of that area;
- pointed out that the Circolo was recognised by the Marche Region, by Decree No 141, amb/pr, of 16 November 1994 and therefore entered in the regional register of voluntary environmental protection organisations and that the original memorandum of association of 1986 was supplemented in 1998, following the judgment of the Supreme Criminal Court of Cassation No 948 of 1997, which, for the purposes of forming a civil party in criminal proceedings, required that the association be aimed at safeguarding historically circumstantiated situations;
- the memorandum of association states that, in the territory of Civitanova Marche, the Circle intends to act for "the defence of the Ceccotti and Cecchetti office areas, from undue increases in volume that do not safeguard the old kiln and the old industrial buildings, jeopardising the usability of the work for the fulfilment of public parking standards, serving the historic centre";
- informed that, in keeping with this commitment, the club submitted Observations to Council Resolution No. 4 of 23 February 2012 with regard to the second implementation plan for the Ceccotti area;
- referred to the further implementation plan of the area;
- pointed out that the legitimacy to the defence of collective interests has recently been dealt with by the ruling of the Council of State, section IV, No. 5451 of 2013 and that the Circle also has a procedural interest in the proper management of the Ceccotti area, having contributed, with the observation of 2012, to block the second implementation plan.

The Panel considers that what the appellant represents is not capable of overcoming the scrutiny of the existence of the Circolo's legitimacy to act.

In particular, the Council of State (see, in particular, Council of State, Plenary Session, No. 6 of 2020) has highlighted the guiding principles in this matter, from which the Panel sees

no reason to depart. In fact, with regard to the recognition of the existence of a general legitimacy of exponential entities with regard to the protection of collective interests before the administrative judge, the protection of "diffuse" (i.e. *ad hoc*) interests has been ensured since the 1970s through the recognition of the existence of a legitimate interest of a collective nature attributable to an entity that by virtue of the possession of certain requirements identified by case law (effective representativeness, statutory purpose, stability and non-occasionality, in some cases a connection with the territory) becomes eligible to assume ownership (Council of State, section V, No. 253 of 1973; Supreme Court of Cassation, United Sections, 8.5.1978, No. 2207; Council of State, Plenary Session, 19.11.1979, No. 24).

In particular, the Plenary Session stated the following: "the circumstance that the care of the general public interest is entrusted to the administration does not detract, however, from the fact that it is subjectively referable, albeit indistinctly, to social formations, and that the latter, in their associated dimension, represent the actual and final users of the common good whose care is in question. The situations are in fact different and heterogeneous: the administration has a duty to look after the public interest and therefore enjoys a legal situation capable of affecting communities and categories (power); the associations representing collectivities or categories, on the other hand, embody the substantial interest, they are its beneficiaries, and therefore the legal situation of which they are the owners is that of legitimate interest, i.e. that pertinent to the subjective sphere of the association, correlated to a public power, which, on the procedural side, arises in an instrumental sense to obtain protection with regard to the goods of life, affected by the power granted to the administration" (Council of State, Plenary Session, No. 6/2020, cit.).

There is no doubt as to the legitimacy of associations, when all the salient features of collective interest are present in the legal situation being challenged: "legitimacy, in order to exist, must refer to an interest that was originally widespread, and therefore *ad hoc*, which, concerning goods for collective use, is "personalised" in the head of an exponential body, endowed with data characteristics, thus becoming the body's own legitimate interest" (Council of State, Plenary Session, No. 6/2020).

The Plenary Session, in decision No. 9/2015, clarified that "It is, moreover, indispensable that the interest protected by the intervention is common to all the members, that the subjective positions of only a part of the members are not protected and that, ultimately, no internal conflicts within the association (even with the interests of only one of the members) can be configured, which would automatically imply the lack of the general and representative nature of the position brought before the court (see also, *ex multis*, Council of State, section III, 27 April 2015, no. 2150)".

Once the possibility of the legal protection of widespread (i.e. shared and not exclusive) substantial interests through an exponential body that assumes statutory and not occasional representation thereof has been recognised, it is however necessary to ascertain whether such connotations exist in the concrete case.

It is worth reiterating that, for the purposes of legal standing, the associative purpose is not in itself sufficient to differentiate a diffuse or ad hoc interest, belonging to a more or less extensive part of the population, but it is necessary to prove an adequate degree of representativeness, a stable connection with the reference territory and an action with appreciable consistency, also taking into account the number and quality of the members (see, for example, Council of State, section IV, No. 1001/2010; section I, No. 1254 of 2020).

With regard to the legitimacy to bring proceedings, and in particular to appeals brought by associations representing citizens and users, case law is firm in considering that, in administrative proceedings, the aforementioned requirement of *legitimitas ad causam* cannot be considered satisfied where one of such associations takes legal action in order to pursue, in a general way, the correct exercise of administrative power or for the mere purpose of justice, it is instead necessary to identify, in such cases, an injury to the legitimate interests of the association itself or a direct and current injury to the diffuse interests of the persons protected by the same, without prejudice to the need to verify the existence of an interest in the appeal consisting in the identification of an advantage, or at least the expectation of an advantage, current and direct, that may derive from the annulment of the contested measure (Council of State, section III, Judgment No. 2892, para. III, of 9 June 2014).

With regard to the legitimacy of committees, a distinction must be made between subjective requirements, relating to the characteristics of the appellant committee, and objective requirements, concerning the type of admissible action. According to the well-established case law of this Council of State, in order for a committee to be able to validly bring an appeal to challenge acts deemed to be damaging, it is necessary that it pursues, in its bylaws, in a non-occasional and generic manner, the objectives of protecting the interests brought before the court; it has an adequate degree of representativeness and stability; it has an area of relevance 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, Judgment No. 1838 of 15 March 2018)" (Council of State, section I, No. 805/2019 and, similarly, section I, No. 1693/2018 and No. 2202/2017).

The Panel cannot but confirm this approach, whereby the legitimacy to challenge administrative acts of an association (circle) of citizens that lacks the character of exponential body on a stable and continuous basis and is not endowed with adequate representativeness is to be excluded.

Again case law (most recently the aforementioned Plenary Session No. 6 of 2020 and No. 8 of 21 May 2019), then requires, in order to configure an actionable collective interest, that it be homogeneous and, in the case instead of collective subjects created by private autonomy, which group together only those who concretely gave rise to the initiative, considers it necessary to examine it concretely (on the specific point, Plenary Session, No. 6 of 2020 § 10.3.; subsequently section IV, No. 1535 of 2021; section IV, No. 4174 of 2021).

In the present case, the appellant attached at first instance the renewal of the memorandum of association and the new by-laws of 1994, which set out the purposes of the club (including compliance with density standards, parking, public green spaces, distances) and the possibility for all citizens of four municipalities in the Marche region (including Civitanova Marche) who wished to join to assert, both individually and collectively, the protection of their right to a healthy environment to do so.

With the integration of the bylaws, registered on 6 May 1998 under no. 203 at the Macerata registry office, it was then specified, in order to allow the club to constitute itself as a civil plaintiff in criminal proceedings (in compliance with the decision of the Court of Cassation, section III criminal, with Judgment No. 948 of 29 April 1997) that the association intends, in particular, to turn its attention to safeguarding a series of "historically circumstantial" situations, among which is expressly indicated, in the Municipality of Civitanova Marche, the defence of the Ceccotti and Cecchetti office areas from undue increases in volume, which would not safeguard the old furnace and the old industrial buildings, jeopardising the usability of the area to meet public parking standards serving the historic centre.

It must be pointed out that the association's constitution dating back to 1986 and its subsequent recognition in 1998 are not sufficient to establish legitimacy, since no allegation of a substantial and adequate membership base or continuity of action for the pursuit of its institutional purposes has been provided.

Nor can the submission of observations to the urban planning instruments be considered sufficient for that purpose, since legitimacy to act cannot be automatically inferred from procedural legitimacy. Procedural participation (see Article 9 of Law No. 241/1990), by itself, is not capable of generating the existence of the condition of action in the proceedings.

Nor is the declared affiliation of the Circolo 'Sibilla Aleramo' with Legambiente relevant here.

12. The Panel incidentally notes that the appeal is in any case unfounded since - apart from the parts of the judgement of the Regional Administrative Court that have not been appealed - the area in question is currently private property, as per the purchase deed, and its status as a public car park (i.e.: a municipal property area intended for community parking) must be excluded. The legitimacy of the contested deeds must therefore be recognised, since the assumption invoked by the appellant club, *i.e.* the public ownership of the area in question, is lacking, it being understood that the use of the area as a public car park for the service of the community is in any case safeguarded, so that the area does not lose urban planning standards.

13. For the above reasons, the appeal must be rejected and, in reform of the contested judgment, the appeal to the Regional Administrative Court (n.r.g. 162/2016) must be declared inadmissible. The rejection of the appeal follows the inadmissibility of the cross-appeal. The costs of the present proceedings shall be awarded as per the operative part.

FOR THESE REASONS

The Council of State sitting in judicial capacity (Fourth Chamber), definitively ruling on appeal No. 1763/2017, as in the epigraph, dismisses it and, as a result, in reforming the contested judgment, declares the inadmissibility of the appeal to the Regional Administrative Court for Marche No.162/2016.

Condemns the appellant to reimburse the Municipality of Civitanova Marche and Depositi e Vendite s.r.l. the costs of the present proceedings, settled in a total amount of € 3,000 (three thousand euros) - € 1,500 to the Municipality of Civitanova Marche and € 1,500 to Depositi e Vendite s.r.l. - plus VAT, CPA and general expenses at 15 per cent, as per law.

Order that this judgment be enforced by the administrative authority.

Thus decided in Rome in the council chamber on 22 June 2022, with the intervention of the magistrates:

Vincenzo Lopilato, President FF

Alessandro Verrico, Councillor

Silvia Martino, Councillor

Claudio Tucciarelli, Councillor, Extender

Ugo De Carlo, Councillor

LODGED WITH THE SECRETARIAT ON 07 SEP. 2022.