Access to Justice by Environmental NGOs: Recent Developments in the Italian Legal System

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The paper explores, through the analysis of the case-law, the main trends related to environmental litigations triggered by NGOs in Italy.

The Italian legal system does not provide for specific judicial bodies or for special judicial procedures in environmental matters: these are mainly dealt with by the administrative jurisdiction and, though with a minor role, by claims brought by NGOs before the criminal courts when the damages derive from an environmental crime (e.g. disaster or water poisoning).

As far as the administrative jurisdiction is concerned, two main issues must be highlighted. The first one deals with the standing requirements for NGOs. The Italian case-law is in fact divided between an approach that allows local branches of recognized[1] environmental associations to go before the Courts in order to challenge decisions, acts or omissions of the public authorities that have an impact on their interests, and a more rigorous judicial trend that entitles only the representatives of the national associations to go before the Courts. This trend does not seem to meet the obligations deriving from the Aarhus Convention, nor the EU legislation implementing it. However, the flexible approach seems to be preferred by the most recent Italian case-law (e.g. Council of State, Section. III, 15 February 2012, n. 784 dealing with the decision to widen a landfill in the Region of Piemonte. The Court allowed standing to Legambiente Piemonte in so far as it had a direct and specific interest in the decision affecting the territory in which the NGO was operating).

The second issue refers to the nature of the "interest" given to NGOs in order to challenge allegedly unlawful environmental decisions adopted by public authorities. While the Italian legislation confers to NGOs the power to challenge only environmental decisions *stricto sensu* with the exclusion of urban planning acts, the recent case-law seems to adopt a different approach, more in line with the Aarhus Convention, according to which the concept of "environmental interest" has to be interpreted in a wide sense, so as to include planning and building decisions as well, when they undermine the environment (e.g. Regional Administrative Tribunal of Brescia, Section II, 10 December 2012, n. 1927 dealing with the request of annulment of a cave plan issued by the Region of Lombardia. The case was brought by WWF Italia, Italia Nostra and Legambiente).

As far as the criminal jurisdiction is concerned, the Italian legislation provides that only the Ministry of the environment is entitled to exercise the civil action in order to claim compensation for the environmental damage. Nevertheless, recent practice seems to open the legitimation also to environmental associations. It must be noted, though, that these claims do not refer to the recovery of the environmental damage in the public interest, but to material and non-material damages suffered directly by the association, such as, for example, the costs of raising public awareness on the environmental damage or the discredit deriving from the failure to pursue the objectives of environmental protection expressed by the statute of the association itself (e.g. Criminal Court of Torino, Section I, 13 February 2012, n. 5219, where the two former executives of the fiber cement company Eternit were charged of "intentional omissions of precautions for workers" and of "intentional disaster" and finally were sentenced to 16 years in jail. In that context, the Court also awarded damages in favor of WWF and Legambiente that had brought the civil action in the criminal proceeding).

[1] In order to be officially recognized the NGOs need to act across the whole Country or in at least five Regions; have democratic internal rules; pursue objectives of environmental protection and have continuity of action.