

ORDER OF THE ADMINISTRATIVE COURT OF THE REGION OF LIGURIA

The Administrative Court of the Region of Liguria

Has pronounced the following

JUDGEMENT:

concerning the appeal number 348 of 2010 presented by WWF ITALIA ONLUS (...)

against

- the Ministry of Infrastructures and Transports (...);
- the Municipality of Ventimiglia (...);
- the Region Liguria;
- Regional Agency for the Protection of the Environment of Liguria (A.R.P.A.L.), The Province of Imperia, the Ministry of the Cultural Heritage and Activities, the Ministry of the Economy and Finance, the State Property Office of Imperia, the Custom Agency, the Harbour Master Office, the Conference of Services, the Local Health Authority n.1 of Imperia, Provincial Fire Brigade, Interregional Superintendence for Public Works,

in the regards of

- A.I.G.A. (...)
- CALA DEL FORTE S.R.L (...)

for the annulment

of the decision of the Municipality of Ventimiglia (...) approving the final project, in the quality of operative urban plan, for the construction of the new turistic port in Scoglietti; of the decree of the Director of the Regional Concertation Procedure n. 3689 of the 23 December 2009, on the basis of which the procedure of the Conference of Services had been formally concluded (according to article 14 ter, paragraph 9, of the law 241/1990) and has been published on the Official Regional Legal Journal n. 8 of the 24 of February 2010; of every preliminary, inherent act consequent and/or in any case connected with every deliberation of the Conference of Services; of every preliminary, preconditional, inherent act, consequent and/or in any case connected, known and unknown, any excluded.

Seen the appeals and the related annexes;

Seen the acts on the basis of which the Ministry of the Infrastructures and Transportation, the Region of Liguria, the Municipality of Ventimiglia, A.I.G.A. and Cala del fonte S.r.l. have joined the proceedings;

Seen the defense briefs;

Seen all acts of the proceeding;

The reporter Judge of the public hearing held on 2nd December 2010 is (...)

FACT:

With appeal filed on the 14th of April 2010, WWF Italia has challenged the above-mentioned decision alleging:

1. violation of art. 81 of the Presidential Decree 616/1977 and of article 3 of the Presidential Decree n. 383/1994 in relation to articles 8 and 9 of the law 1150/1942 and of article 59 of the regional law 36/1997, abuse of power for lack of precondition and investigation since no verification has been carried out, up until now, on the project's compatibility with the hydrogeological risk plan.

2. violation of article 81 of the Presidential Decree 616/1977 and of article 3 of the Presidential Decree 383/1994 in relation to the regional law 36/1997, abuse of power for lack of investigation, since the project, for what concerns to the coastline is in breach of the territorial plan and would have been significantly modified after the Environmental Impact Assessment.

3. violation of the Presidential Decree 509/1997 and lack of coordination with the european legislation concerning public works, lack of competence, abuse of power for lack of precondition and motivation, since the rules of the Decree Burlando have been unable to guarantee publicity and competition, moreover the Municipality is not obliged to initiate the procedure pursuant to the Presidential Decree 509/97 whenever it detects the incompatibility of the intervention with the public interest, moreover the commercial activities which would be installed would not result reasonable in regards to the kind of intervention and the residential functions which fall outside the scope of the Decree.

4. violation of art. 6 of the Presidential Decree 509/97 in relation to article 27 of the law 142/90, incompetence and abuse of power for lack of precondition and motivation since the conference of services was not the competent authority for the approval of the projet given the fact that it was a zoning variant of the municipal urban plan.

5. violation of article 14 of the law 84/94, lack of compentece, abuse of power for lack of precondition and motivation since the Maritime Authority's opinion had not been heard;

6. violation of article 81 of the Presidential Decree 616/1997 and of article 3 of the Presidential Decree 383/1994, of articles 146 and 159 of the legislative decree 42/204 and of article 1 of the regional law 20/1991, violation of article 3 of the law 241/90, abuse of power under various grounds, since the location of the turistic port results unappropriate as regards to accessibility, connection, abolition of existing beaches, and of the potential damage which may be caused to the sea caves of Punta della Rocca and other.

The Municipality of the Ventimiglia, the Region Liguria, the Minister of the Infrastructure and of the Transport, Aiga s.p.a. and Cala del frote s.r.l. have joined the proceeding.

(...)

The appeal is rejected.

Judicial fees are beared by the unsuccessful party and are liquidated in the amount determined below.

for these reasons

The Administrative Regional Court of Liguria (First Section) has rejected the appeal.

The Court condemns the appellant to pay in favour of the counterparties that have joined the proceeding, the judicial fees that are to be liquidated in the amount of 4,000 (four thousand) euros (IVA and CPA included) for each of the parties.

(...)

This has been decided in Genova on the 2nd of December 2010 (...).

DEPOSIT OF THE DECISION AT THE SECRETARY

ON 14/01/2011