

ORDER OF THE ADMINISTRATIVE COURT OF SECOND INSTANCE

THE CONSIGLIO DI STATO (Fourth Section)

has pronounced the following

JUDGMENT

on the appeal number 3285 of 2011, filed by :WWF Italia (...)

against

- the Ministry for the Infrastructures and Transports (...); the Ministry for the Cultural Heritage and Activities, the Minister for the Economy, (...);

- the Municipality of Ventimiglia (...);

-the Region Liguria (...);

-the Regional Agency for the Protection of the Environment of Liguria (A.R.P.A.L.), the Province of Imperia, Conference of Services,

in the regards of

- A.I.G.A.

- CALA DEL FORTE S.R.L

for the review

of the decision of the Administrative Court of Liguria – Genova: Section 1 N. 0048/2011, regarding the approval of the final project, in the quality of an operative urban plan, for the construction of the new turistic port in Scoglietti

Seen the appeals and the related annexes;

Seen the acts through which the Ministry of Infrastructures and of Transports, the Ministry for the Cultural Heritage and Activities, the Municipality of Ventimiglia, the Region Liguria, Cala del Forte S.r.l. have joined the proceedings;

Seen the defense briefs;

Seen all the acts of the proceeding;

The reporting judge of the public hearing of the 14th May 2013 is (...)

FACT:

The Association for the WWF Italia Onlus has challenged in front of the Administrative Court of Liguria the act approving the final project, having the quality of operative urbanistic plan for the construction of a new turistic port in the Municipality of Ventimiglia, in the area of Scoglietti.

The Regional Administrative Court has partly declared inadmissible the appeal because it was too general and founded on the administration's decisions on the merit and partly rejected it because the alledged violations resulted unfounded: the opinion's incompleteness, due in particular to the lack of the favourable opinion of the Province of Imperia and of the Port Authority of Imperia; the project's conformity to the amendaments made in the Environmental Impact Assessment; the procedure's legitimacy, pursuant to the Presidential Decree n. 509/1997 for the presence of a public interest for the construction of the work; for the conformity of the commercial areas to the provisions of the municipal urban plan, which has not been appealed.

The association has upheld the Court of first instance decision, on the following grounds:

- 1) The Court of first instance has incorrectly rejected the first reason on the basis of which the appeal had been presented, concerning the the failure to acquire the favourable opinion of the Province of Imperia, whilst it did not deal in depth with the issue of the lack of an appropriate hydreologeological risk plan;
- 2) It did not take in consideration the contrast existing between the projects and the municipal urban plan provisions;
- 3) The volumetric dimensions of the areas planned for commercial and residential scopes may not be qualified as complementary to the infrastructure;
- 4) What the Court of First Instance has qualified as oppositions to the aministration's decisions on the merit had instead to be considered as lack of assessment and study of the land's natural activities, of the compatibility of the project with the road system, with the beach's nourshment and with the caves which are present in the surroundings and the consequences on the habitat and on the marine environment.

(...)

The appeal has to be rejected.

The judicial fees have to be compensated to the Public Administrations while the appellant is sentenced to refund the fees in favor of the Municipality of Ventimiglia, of the Region of Liguria and of the Cala del forte S.r.l., in the amount decided below.

for these reasons

the Court of Appeal of Second Instance (Fourth Section) has definively rejected the appeal, confirming the order of the Court of First Instance.

It orders the judicial compensation of the fees in favour of the Public Administrations and sentences the appellant to the payment of the fees in favor of the Municipality of Ventimiglia, of the Region of Liguria and of Cala del Forte s.r.l., in the total amount of 2.000,00 (two thousand) euros for each party.

It orders that the present judgement has to be enforced by the administrative authority.

This has been decided in Rome on May the 14th 2013 with the intervention of the following judges:

(...)

DEPOSIT OF THE DECISION AT THE SECRETARY

ON 25/06/2013

THE SECRETARY