Letter from former President of WWF Italia Fulco Pratesi

Senator Alfonso Pecoraro Scanio
Minister for the Environment, Land and Sea

Senator Francesco Rutelli
Minister for Cultural Heritage and Activities

Senator Paolo Ferrero
Minister for Social Solidarity

Rome, December 21st, 2006

Dear Ministers,

with this letter I would like to draw your attention on some matters that, although seem to concern only nonprofit organizations, have *de facto* deep consequences on society.

You are aware of the role played by nonprofit organizations in various social sectors: from health care, to the promotion of culture and art, education, scientific research, charity as well as the protection of civil rights and of the environment.

It often happens that nonprofit organizations, in order to pursue their statutory purposes, which prove to be always socially very important, must bring matters in front of a court.

Pursuant to article 18, paragraph 5 of the law 349/1986, environmental nonprofit organizations recognized by the Ministry for the Environment according to article 13 of the same law (at present 64), act in order to ensure judicial protection of collective interests in matters concerning environmental damages and bring claims in front of administrative courts for the annullment of illegitimate acts; moreover, according to article 146, paragraph 13 of the legislative decree 42/2004 (Code of the cultural heritage and Cultural Heritage and Landscape) they may challange lanscape authorisations in front of Administrative Regional Courts. These activities have a crucial social importance since they are carried out not just in the members' interests but also for the collective interests (community) and in order to ensure the constitutional right to the protection of the environment.

At present, however, the judicial protection of the community's interests is far more difficult and expensive as a consequence of normative provisions that concern all nonprofit organizations.

From the media we acknowledged that the government will pass by the end of the year a tax law, which will modify the Financiary Law of 2007. I consider this an important opportunity to tackle some problems, including interpretative issues of which I will now discuss.

A first issue concerns the incorrect interpretation of article 27-bis of the table in Annex B of the Presidential Decree (Provisions on stamp duty), which has unluckly spread through the judiciary. This article has been added by article 17 of the legislative decree n. 460/1997

concerning the “Reorganization of tax provisions applying to non-commercial entities and nonprofit organizations of social utility”. Art. 27-bis totally exempts from stamp duty "Acts , documents , petitions , contracts , as well as copies although declared conform , extracts , certificates , statements , declarations and put in place or required by nonprofit organizations of social utility (…).”

Nevertheless, for all acts issued in court in order to pursue statutory objectives, nonprofit organizations are not exeemed from the payment of the stamp duty, known as“contributo unificato”, despite the fact that the term "acts” of art. 27-bis should be interpreted as “procedural and judicial acts” since the other types of activities that an NGO can carry out in the regards of Public Administration are indicated in an exhaustive list: "*instances, communications, extracts, copies compliance, statements, representations, certifications*. “

In the interest not only of WWF, but of all non-profit organizations, allow me to propose a text which can possibly be included in the new law that, in our opinion, should clear any interpretative issue:

Article 27-bis of the table in Annex B of the DPR 26/10/1972 n . 642 after “acts” should include the following words “procedural, administrative and judicial”.

The imminent decree may also be an opportunity to remove another major obstacle that nonprofit organizations meet in their activities in court.

I am referring to Presidential Decree n. 115/2002 (Consolidated legilsative provisions and regulations on legal costs.) Art. 74 provides that: “in penal proceedings, citizens which do not have sufficient financial means, who may be the victims of the crime, or the person who sufferd harm as a result of the offence and intends to join the criminal proceedings as a civil party is granted legal aid”. The following art. 119 states that “the treatment provided for Italian citizens is assured also to non profit organizations and associations which do not carry out economic activities.”

Non-profit organizations, despite the aforementioned article, more often see denied or withdrawn legal aid because they exceed the income ceiling of € 9,732,84 set in case of unsufficient financial means. The misinterpretation stems from the fact that the incomes declared by a non-commercial entity or by a nonprofit organization may in fact in some cases exceed the amount provided by law but these are not to be considered revenues arising from commercial activities and therefore distributable amongst members, but derive from property owned which do not generate annuities or rental income but are (simply) stated at book values for real estate tax purposes.

Also in this case we believe that the new decree will be an opportunity to remove what today represents a barrier for non-profit organizations for the protection in court of the community’s interests.

As I said before I suggest a possible text of a paragraph to be included in the decree.

Article 119 of the presidential decree n. 115/2002 concerning judicial fees, after the words "exercise economic activity" should include the following ones: "and which produce stated incomes not arising from profits of commercial activities.”

I am sure your interest for this matter will be crucial for all non-profit organizations.

Sincerely,

The President

Fulco Pratesi